CITY COUNCIL MEETING NOTICE AND AGENDA

Notice is given that the City Council of the City of Farmington will hold a regular meeting on **Tuesday, December 6, 2022** at City Hall 160 South Main, Farmington, Utah. A work session will be held at **5:30 pm** in Conference Room 3 followed by the regular session at 7:00 pm.in the Council Chambers. The link to listen to the regular meeting live and to comment electronically can be found on the Farmington City website at www.farmington.utah.gov. If you wish to email a comment for any of the listed public hearings, you may do so at dcarlile@farmington.utah.gov

WORK SESSION – 5:30 p.m.

- Fire Department Discussion
- Discussion of regular session items upon request

UDOT ENVIRONMENTAL IMPACT STATEMENT DISCUSSION – 6:00 p.m.

REGULAR SESSION – 7:00 p.m.

CALL TO ORDER:

- Invocation – Amy Shumway, Councilmember
- Pledge of Allegiance – Alex Leeman, Councilmember

PRESENTATION:

- Music In Me musical number
- Promotion ceremony for new Police Lieutenant and Sergeant and introduction of new Police Officer
- Department Discussion - Parks & Recreation

PUBLIC HEARING:

- A recommendation of approval for a Project Master Plan and Development Agreement on 14.50 acres of property located at approximately 1550 W Burke Lane in the OMU (Office Mixed Use) zone

BUSINESS:

- Consolidated Fee Schedule (CFS) changes – Street Excavation Fees
- Zone Text Amendment to Chapter 11-10, Agricultural Zones, to clarify Commercial Recreation and allowed lot coverage.
- Interlocal Agreement with Davis County regarding Transportation Project Reimbursement
- Cell Tower Lease Agreement with All West at Public Works

SUMMARY ACTION:

- Ordinance Establishing Dates, Time and Place for holding Regular City Council Meetings
- Cell Tower Lease Agreement with Verizon at Station Park Ball Fields
- Franchise Agreement with Utah Broadband
- Revocable license for the use of property located at 120 W 600 N
- Clark Lane Commercial Subdivision – Improvements Agreement
- Consider Approval of RC Pavement to Construct the 200 E to Main Sidewalk Project

GOVERNING BODY REPORTS:

- City Manager Report
  - Building Activity Report for October
- Mayor Anderson & City Council Reports

ADJOURN

CLOSED SESSION – Minute motion adjourning to closed session, for reasons permitted by law.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations due to a disability, please contact DeAnn Carlile, City Recorder at 801-939-9206, at least 24 hours in advance of the meeting.

CERTIFICATE OF POSTING *I hereby certify that the above notice and agenda were posted at Farmington City Hall, Farmington City Public Works, Farmington Library, the State Public Notice website and the city website www.farmington.utah.gov, on December 1st, 2022*

DeAnn Carlile, Farmington City Recorder

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

PUBLIC HEARING: **A recommendation of approval for a Project Master Plan and Development Agreement on 14.50 acres of property located at approximately 1550 W Burke Lane in the OMU (Office Mixed Use) zone**

GENERAL INFORMATION:

See staff report prepared by Lyle Gibson, Assistant Community Development Director

FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Lyle Gibson, Assistant Community Development Director

Date: December 6, 2022

SUBJECT: **Project Master Plan, Development Agreement and Schematic Subdivision Plat on 14.50 acres of property located at approximately 1550 W Burke Lane in the OMU (Office Mixed Use) zone.**

RECOMMENDED MOTION

Move that the City Council approve the Project Master Plan/Development Agreement, and Schematic Subdivision Plat for The Trail located at approximately 1550 W Burke Lane, subject to all applicable Farmington City development standards and ordinances, and all Development Review Committee (DRC) comments, with the terms set forth in the included Development Agreement.

Findings:

1. The uses are consistent with the overall development agreement wherein the specific is eligible for consideration of flexibility through Section 11-18-140 including residential and non-residential use.
2. The site layout, number of units, and building height follow the existing development agreement and the underlying zoning district as applicable.
3. The proposed residential building with a wrapped parking structure promotes a more secure environment for residents and enables the majority of parking in the project to be hidden from view consistent with the objectives of the mixed-use areas fostering a more pedestrian friendly environment and better streetscapes.
4. The unit types within the residential development and proximity to trails and anticipated transit systems justify a small reduction in off-street parking availability.
5. The project is consistent with the recently adopted Station Area Plan.
6. Planning commission recognizes that the existing DA recognizes affordable housing for 80% AMI while the ordinance considers a fee in lieu scenario for rentals at 60% AMI.

BACKGROUND

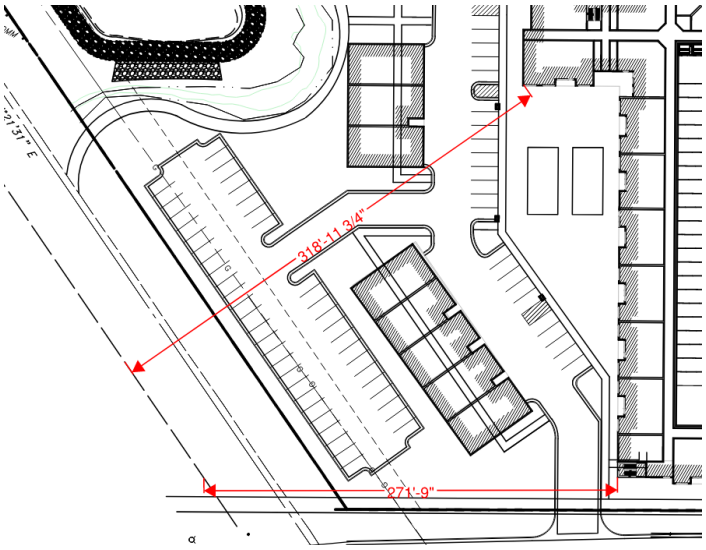
The Planning Commission and City Council have recently reviewed a previous step for this project which through a development agreement allowed for the use of Section 11-18-140 of the City Ordinances, more specifically it allows for flexibility and deviation from the standard requirements of the OMU zoning district within parameters outlined in the development agreement. Some key points related to this project already specifically identified is the ability to include residential uses on the site with a maximum number of units established at 410 units as well as height restrictions and a required commercial pad on what is shown as Parcel 3.

With the base parameters set by the existing development agreement, the Planning Commission is now tasked with a more detailed review of the site to make a recommendation to the Council regarding the specific site layout and buildings.

Unit Count:
The plan includes a 394 unit apartment building with a wrapped parking structure and 14 townhomes for a total of 408 residential units These residential units are located on what is identified as Parcel 2 which covers 9.2 acres. The unit count includes 29 studio units, 185 1-bedroom units, 159 2-bedroom units, 20 3-bedroom units, and 14 townhomes. (**Within maximum allowed by existing DA**)

Use:
The plan also includes Parcel 1 which is being created to be sold to Farmington City for use a detention facility/recreation area and a 2.2 acres commercial pad identified as Parcel 3 for commercial development. The applicant is also showing with the schematic subdivision plan Parcel 4 which is to be dedicated as right-of-way (**Consistent with terms of existing DA**).

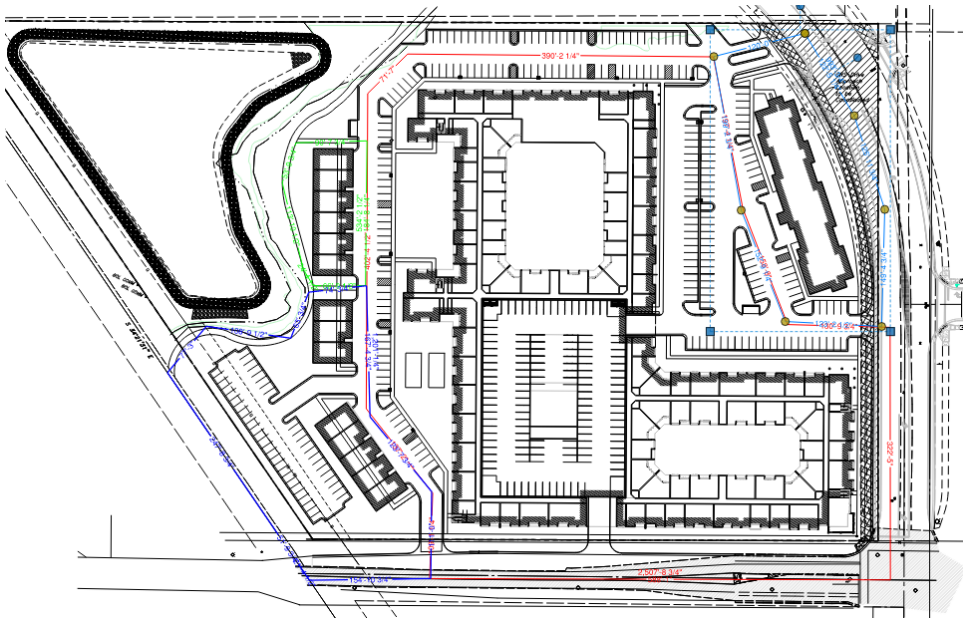
Height:
The applicant has provided plans showing a 2 story townhome product and the apartment building with a brief step from 3 stories to the main height of 4 stories. The 4 story element of the building is more than 350 ft. from the closest existing home. As proposed the townhomes are 2 stories in height, while a specific height is not identified in the PMP, it is anticipated that the architecture will comply with the 27 ft. height limitation within 200 ft. of the western right-of-way line for the D&RGW rail trail and not 4 story component of the apartment building is within this 200 ft. specified in the original agreement. The closest point of the 4 story apartment building is 270 ft. to the western line of the D&RGW right-of-way. (**Complies with existing DA**)



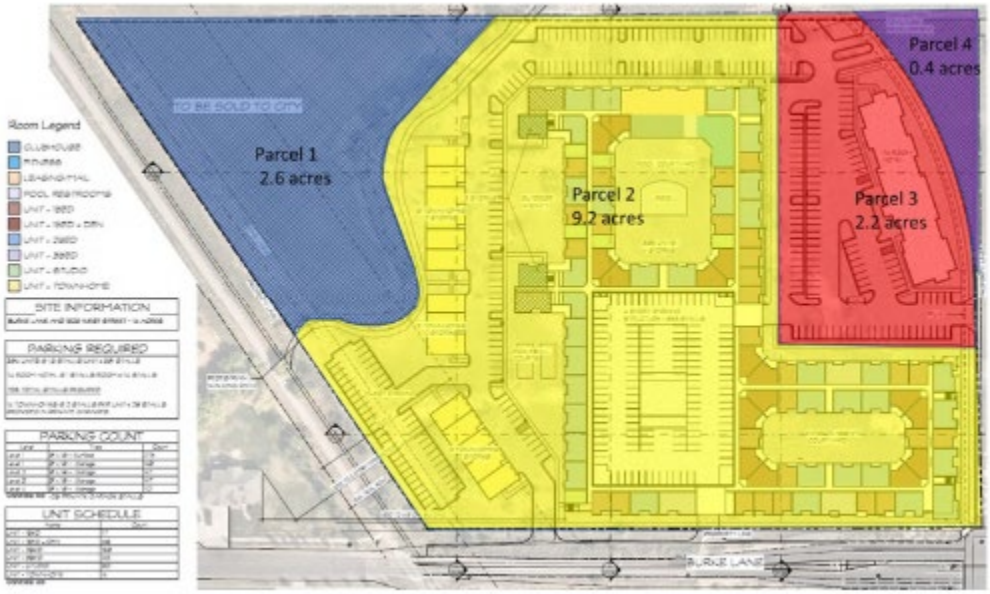
Parking:
Parking is provided at a ratio of 1 per room on potential hotel site and 1.82 stalls per unit for the residential. Required 1.85 for residential and 1 stall per hotel room + additional space for restaurant or meeting rooms if applicable. The total parking for all development is 856 stalls as indicated below. Based on a standard requirement, the project would have 869 stalls. This is a difference of 13 stalls. The anticipated hotel use isn't highly conducive of shared parking opportunities, but other potential uses on the commercial site such as office users would certainly facilitate a shared parking scenario. Per 11-18-100 'Parking requirements for any use in the mixed use districts may be reduced by up to 25% through the PMP process'. By the numbers, this site would be seeking a 1.5% reduction where the agreement looks for additional flexibility up to as much as a 15% reduction. (requires specific approval).

161 stalls on the residential surface lots
28 in private garages for townhomes
553 stalls in the parking structure interior to apartments
114 stalls with the commercial lot.
TOTAL **856**

Regulating Plan:
The OMU District indicates that the perimeter of an average block is 900 ft. with a maximum of 1,056 ft. Each block face should be 264 ft. in length or less. The proposed layout creates a block with a 990 ft. perimeter around the commercial site, and another block of 2,500 ft. around the apartment building, and blocks with perimeters of 534 ft. and 1,200 ft. around the townhomes. This makes for an average block size of 1,305 ft. There are a variety of block face lengths including the largest stretch of 630 ft. on the west side of the apartment building and another significant deviation at 588 ft. along Burke Lane (Requires amendment to regulating plan allowing larger blocks and longer frontages).



Subdivision:
The proposed lots each meet the minimum frontage and size requirements for the zone, but exceed the maximum lot width of 200 feet for both the commercial and residential lot.
(Requires approval of deviation in development agreement per eligibility through 11-18-140).



Siting:
The buildings address the street as desired in the Mixed Use Districts and contain buildings covering at least 60 of the block frontage as required and the buildings are sited within the 0' – 20' RBR (Required Build to Range)per the percentages required in the OMU district. (**Complies with OMU)**

Open Space:
Without including the open space that the detention/recreation area provides in lot 1, each lot meets or exceeds the required 10% open space for the OMU district. The development includes amenities such as a swimming pool, pickleball courts, and lounge areas. (**Complies**)

Consideration:
The Supplemental Development Agreement included with this packet outlines on page 2 the items which deviate from the typical Standards of the underlying zoning district and require additional consideration and approval beyond what has already been allowed in the existing Development Agreement.

It is within the City Council's purview to consider whether or not the project as proposed merits additional flexibility (indicated by topic in red) due to benefits from the proposed design vs meeting the standards. The Council may approve changes or variations that they feel achieve enough benefit to merit any flexibility requested by the project or may find that flexibility is not warranted. The recommended motion reflects the decision made by the Planning Commission with a 6-1 vote in favor of approving the PMP/DA and Schematic Plat.

The Commission noted during their meeting that the existing agreement includes a provision related to moderate income housing only requiring the project to control rent rate based on 80% AMI. The descending vote felt strongly that the city should be restricting rental units to pricing based off of 60% AMI. As the council has previously approved the 80% mark for this project, the Planning Commission wanted to highlight the point for consideration on future projects. In addition to conditions specifically related to the site plan process, the Planning Commission's motion included a condition to require that the moderate income housing units in the project be distributed across unit types so that 10% of 1 bed, 10% of 2 bed, 10% of 3 bed units be dedicated for MIH. This distribution is not already included in the existing development agreement.

SUPPLEMENTAL INFORMATION

1. Development Agreement / PMP including:
    a. Schematic Subdivision Plan
    b. Other relevant exhibits.

Respectfully Submitted

Lyle Gibson
Assistant Community Development Director

Concur

Brigham Mellor
City Manager

A SUPPLEMENTAL DEVELOPMENT AGREEMENT

FOR

THE TRAIL

THIS SUPPLEMENTAL DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____ 2022, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **EVERGREEN DEVCO, INC**., a California corporation, or nominee or assignee, hereinafter referred to as "Developer."

RECITALS:

A. Developer has the right to acquire 14.4 acres of land (the "Property"), within the boundary set forth in Exhibit "A" attached hereto and by this reference made a part hereofthe. Developer desires to develop the Property under the OMU zone, to be known as "THE TRAIL".

B. On October 4, 2022, the City approved a project master plan (the "PMP") for the Property in accordance with Chapter 18 of the City's zoning ordinance. The approved PMP is attached hereto as Exhibit "B" and incorporated herein by reference. The purposes of the PMP includes, among other things, the use of the land for commercial and residential development as set forth in the PMP, although the PMP is not intended to enable future development of the Property without final subdivision and site plan approval with respect to each phase.

C. The Property is subject to the City's Laws, including without limitation Section 11-18-140 of the City's zoning ordinance, pursuant to which this Agreement shall supersede the City's Laws with respect to the matters set forth herein, with the understanding that this Agreement and the PMP supersede the City's Laws and shall control in the event of any conflict.

D. Persons and entities hereafter developing the Property, or any portions of the Property, shall accomplish such development in accordance with the City's Laws and the provisions set forth in this Agreement.

E. The City also recognizes that the development of THE TRAIL, and any future phases thereof, may result in tangible benefits to the City through the stimulation of development of amenities that may enhance further economic development efforts in the vicinity of the Property, and is therefore willing to enter into this Agreement, subject to the terms and conditions set forth herein.

AGREEMENT

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

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Definitions.** In addition to the other capitalized terms defined elsewhere in this Agreement, the following terms shall have the respective meanings indicated below:

    a. "City's Laws" means, collectively, all City ordinances, rules and regulations, including the provisions of the City's General Plan, the City's zoning ordinances, the City's engineering development standards and specifications, and any permits issued by the City pursuant to the foregoing ordinances and regulations.

    b. "Effective Date" has the meaning set forth in Section 3.

3. **Effectiveness.** This Agreement, including the PMP, shall become effective on the date that Developer acquires fee title to the following parcels (as identified pursuant to a Davis County Assessor property search): Parcel ID 080590042 (the "Effective Date").

4. **Alternative Approval Process.** The uses of the Property and the respective areas of the Property designated for each such use shall be as set forth in the PMP Specific development standards and processing shall be as follows:
    a. Notwithstanding provisions of the City's Zoning Ordinance, and as specifically permitted pursuant to Section 11-18-140 of the Farmington City Municipal Code, residential uses will be allowed strictly as shown on the PMP.
    b. The City agrees to process and consider an amendment to the regulating plan to encompass the proposed PMP and anticipated Site Plans with minimal variation to accommodate for topography, provided open space and general street alignment and width. The parties agree to work together in good faith to make minor adjustments to the proposed site plans and elevation to assure that the regulating plan is appropriately amended and the Site is developed at reasonable potential.
    c. Building elevations shall be consistent with the provisions of the PMP. Elevations shall generally incorporate high quality materials and finishes as shown in the PMP.
    d. Street layout will generally conform to the attached PMP. Exceptions to widths and/or layout may be made where adjustments are required by the City's Fire Marshall.
    e. Block standard will be allowed to exceed the typical 264' face.
    f. Parking reduction of 15% as outlined in 11-18-100 although site is 0.8 miles from Rail Station instead of required 0.5 miles
    g. It is anticipated that the detailed uses of the Property and additional alternative development standards may be finalized with the approvals of final site plans

and/or permits to be issued by the City and as part of the approval process of the further land use applications. To the extent such approvals require the approval of additional alternatives development standards such standards shall not be approved without a public hearing before the Planning Commission and City Council and final approval from the City Council.

5. **Assignment.** Developer shall not assign this Agreement to unrelated entities or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. For avoidance of doubt, City hereby agrees that Developer may assign this Agreement to any affiliated or entity controlled by Developer including Evergreen-Burke & Commerce, L.L.C.

6. **Notices.** Any notices, requests and demand required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return requested, postage prepaid, to such party at its address shown below:

To Developer: Evergreen Devco, Inc.
c/o Jeremy Carver, Vice President
475 N 300 W, Suite 16, Kaysville, UT 84037

With a copy to: Evergreen Devco, Inc.
c/o Tyler Carlson
1873 S. Bellaire Street, STE 1200
Denver, CO 80222

To the City Farmington City
Attn: City Manager
160 South Main Street
Farmington, Utah 84025-0160

7. **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, and all regulatory approvals given by the City for the Property, contain the entire agreement of the parties and supersede any prior promises, representations, warranties or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Property, including any related conditions.

8. **Construction.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa, as the context may require. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein. Use of the word "including" shall mean "including but not limited to", including without limitation", or words of similar import.

9. **Non-Liability of Officials, Employees and others.** No officer, representative, agent , or employee of the City or Developer shall be personally liable to any party hereunder, or any successor-in-interest or assignee of this Agreement in the event of any default or breach or for any amount which may become due Developer, or tis successors or assigns, for any obligation arising under the terms of this Agreement, unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud, intentional misconduct or malice.

10. **No Third-Party Rights.** The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

11. **Recordation.** This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

12. **Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

13. **Term.** This Agreement shall become effective upon the Effective Date and shall continue in full force and effect from such date that is thirty (30) years, unless terminated earlier pursuant to Section 14 below.

14. **Termination.** Notwithstanding the foregoing, if Developer has not commenced development activities on the Property within five (5) years after principal roads are completed, the City may request Developer to provide the City with reasonable plans and assurances that Developer will develop the Property in accordance with this Agreement. In such event, Developer shall have 120 days after receiving such request from the City to provide the City with such information. If Developer fails to respond to such request within such time period or responds within such time period with plans and assurances that are unacceptable to the City in the City's reasonable discretion, the City may, as the City's sole and exclusive remedy, terminate this Agreement by giving written notice to Developer within sixty (60) days following the termination of the 120-day response period described above.

15. **Severability.** If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

16. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

"CITY"
FARMINGTON CITY

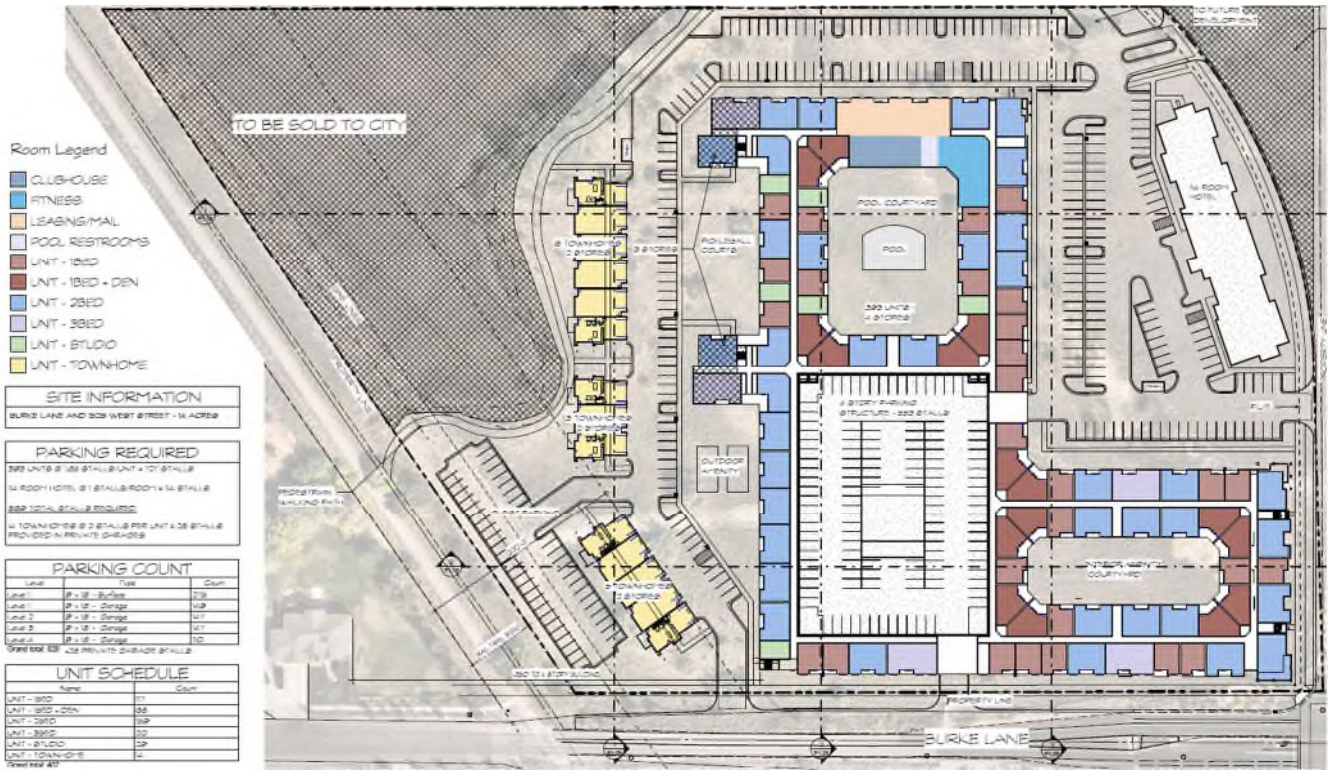
ATTEST:

City Recorder

Exhibit A



Exhibit B


TO BE SOLD TO CITY
Room Legend
CLUBHOUSE
FITNESS
LEASING/MAIL
POOL RESTROOMS
UNIT - 1BED
UNIT - 1BED + DEN
UNIT - 2BED
UNIT - 3BED
UNIT - STUDIO
UNIT - TOWNHOME
SITE INFORMATION
PARKING REQUIRED
PARKING COUNT
UNIT SCHEDULE
POOL COURTYARD
POOL
OUTDOOR AMENITY
BURKE LANE

Project Narrative

The Trail is an ultra-high end 394-unit wrap apartment community with 14 townhomes and a hotel or office building. The townhomes along the Western Rail Trail are 2-stories and the apartment height gradually increases to 4 stories along Commerce Drive (a future 5 lane road). The Trail has several large common areas with a wide variety of world class amenities including a pool and spa area, pickleball courts, fitness facility, BBQ and outdoor gathering areas. It is ideally situated along the Western Rail Trail with easy access to the to be built park. The 14.4-acre site will be subdivided into 4 parcels. Parcel 1 is 2.6 acres and is a critical area for the city to use for the water detention for the future Commerce Drive. It will be a park that will be used by trail users and nearby residents. It provides a transition buffer from the single-family homes to the higher density office to the north and east. Parcel 2 is 9.2 acres and will include the residential units. Parking will be hidden by residential units and landscaping. Parcel 3 is 2.2 acres and will most likely be a hotel or office use. Parcel 4 is 0.4 acres and will be dedicated to the city for the future construction of Commerce Avenue.

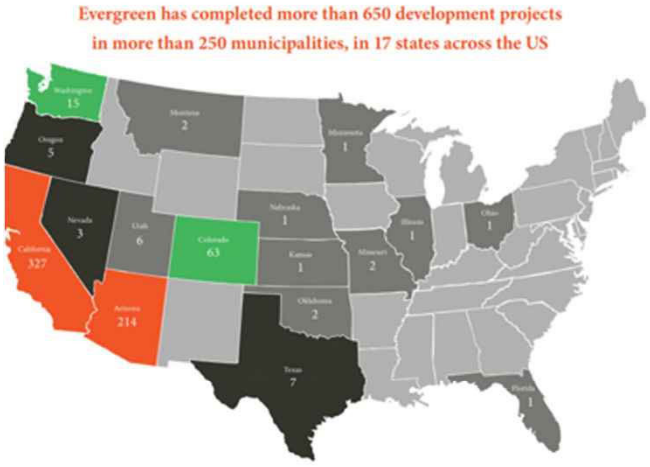
The Mixed-Use Districts Zoning Ordinance (Farmington City Zoning Regulations Chapter 18) from the Farmington City General Land Use Plan establishes development standards to provide a compatible mix of commercial and residential uses, that is consistent with the Farmington City General Plan. A mix of residential product types and floor plans is also expected. The site is well connected to the trail system, has active open space and tree lined streets. The commercial portion of the site seamlessly blends into the high-end residential units. The Trail is inline with the General Land Use Plan and the PMP Plan that was approved by City Council October 2022.

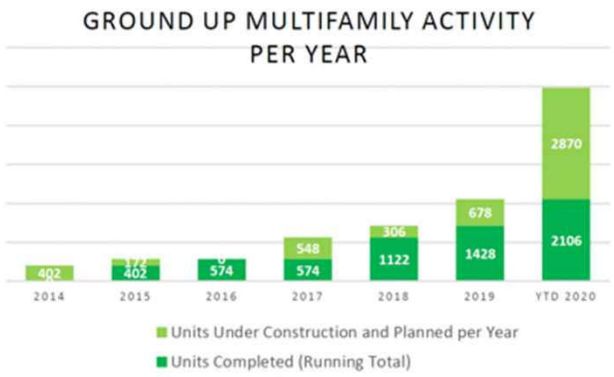
Chapter 32 of the City's Zoning Ordinance establishes the parking requirements for Farmington City. For greater than 5 units 1.6 stalls per unit and .25 guest stalls per unit is required. Most of the Trail's parking will be provided in the 4-story parking structure; the remainder will be surface parking stalls.

The utilities for the apartments and townhomes are expected to be in Burke Lane. The utilities for the hotel are expected to come from Commerce Drive.



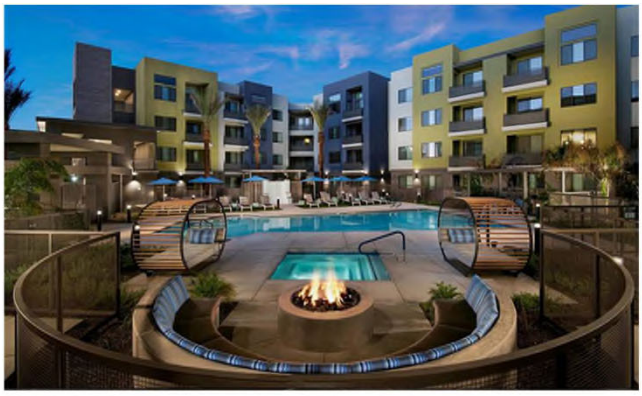
Evergreen Devco Information





Evergreen was founded in 1974 by Bruce Pomeroy and Andrew Skipper, and currently operates offices in Phoenix, Los Angeles, Denver, and Salt Lake. We are a fully diversified real estate company with vast experience in all aspects of retail and multifamily development, asset management and leasing.

Evergreen has evolved and expanded since its founding, but the foundation built upon relationships, a disciplined approach and a commitment to excellence have remained constant.



Parc Midtown, Phoenix, AZ – 2017 – 305 units



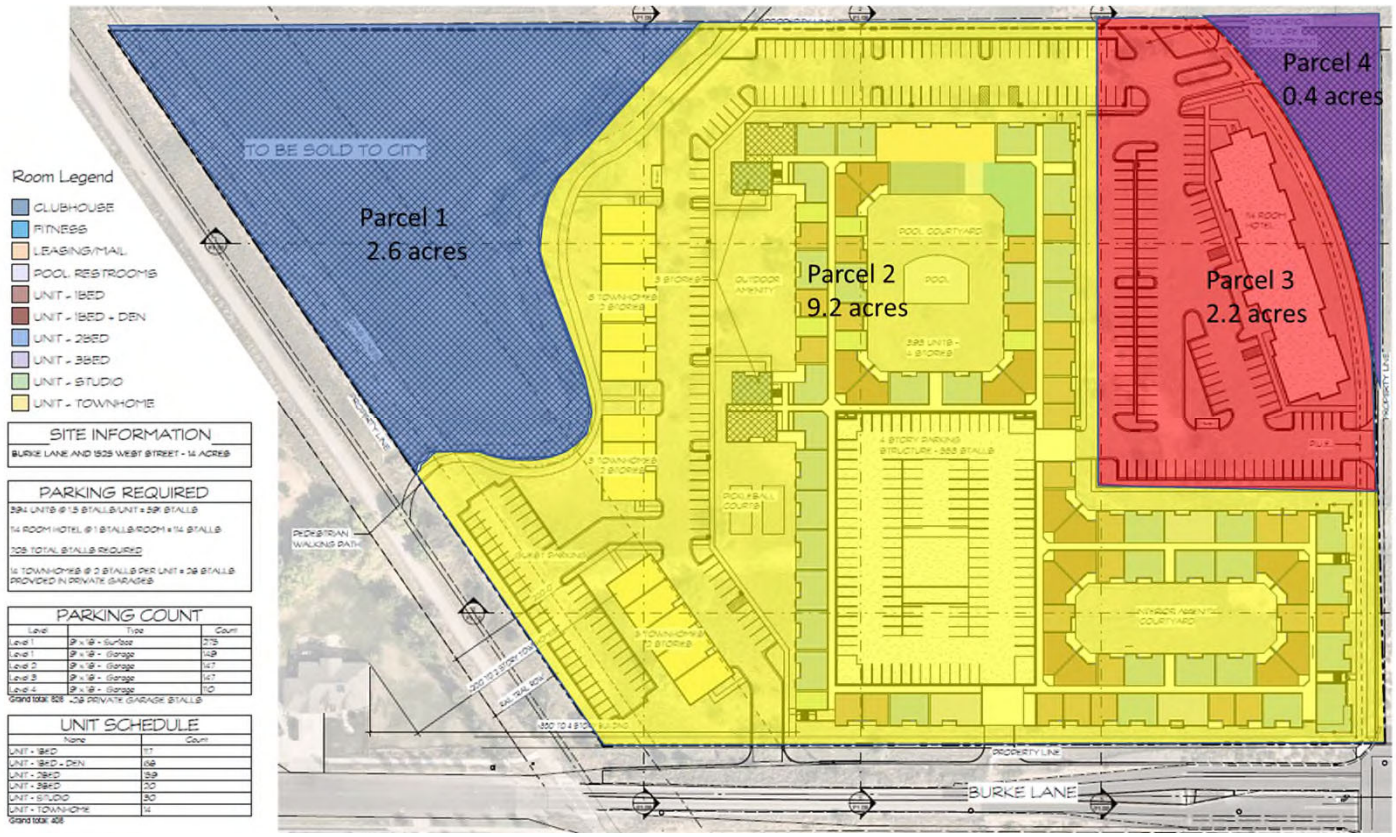
Outlook DTC, Denver, CO – 2017 – 250 units

Benefits to Farmington

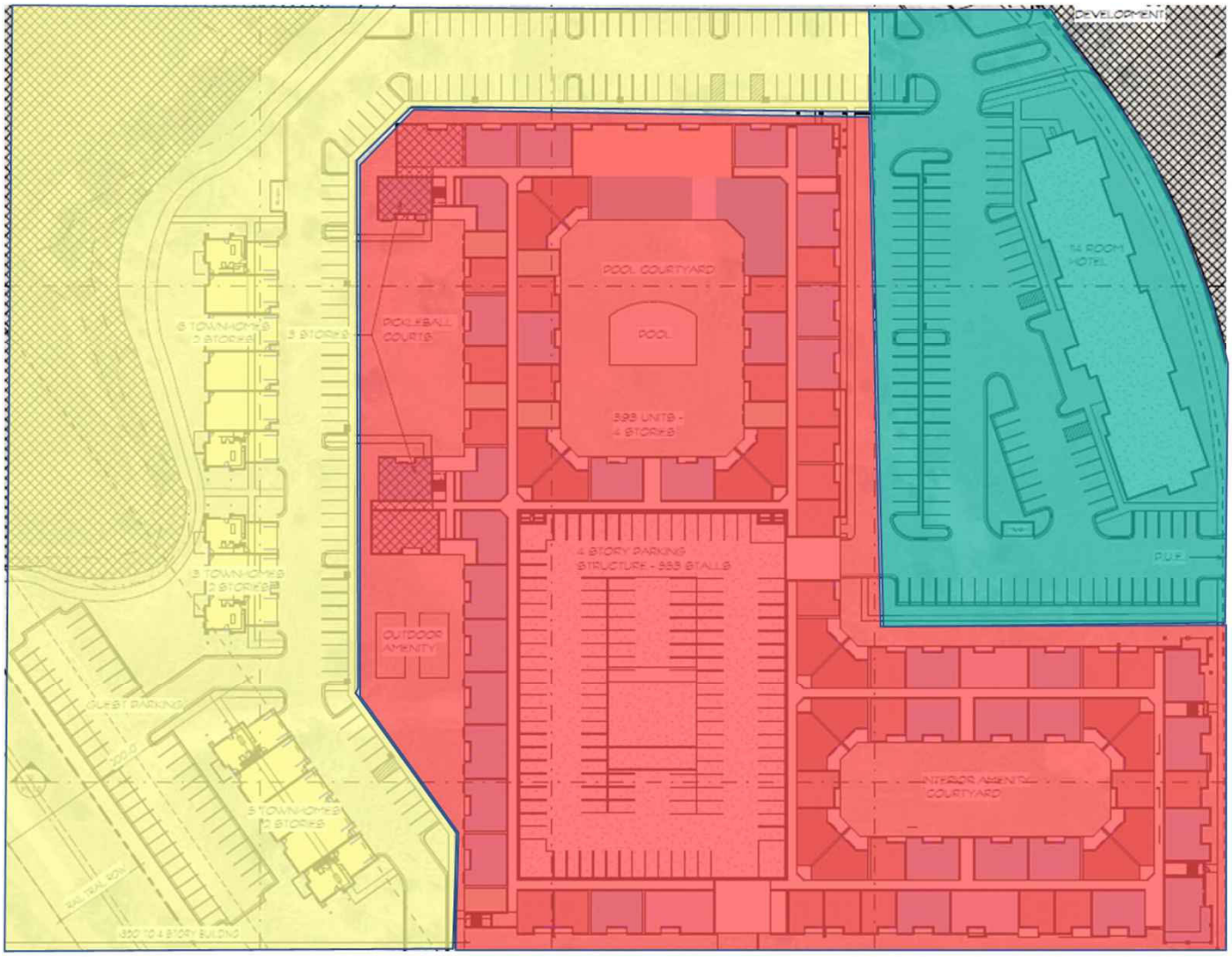
1. Public open space/playground/rest area along the trail that will never be built upon
2. A buffer between the 6-story office (90 feet tall) to the north and east and the single-family homes
3. Donate land necessary for Commerce Drive, provides a regional transportation solution
4. Water detention for Commerce Drive, provides a regional stormwater solution
5. OMU allows 6-story (90') office building with 20' setback, we propose 54' building with 200' setback
6. Creating 41 units of affordable housing



Subdivision



Construction Sequence





The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

NORTH

COVER

10-24-22

Architecture Belgique, Inc.



The Retreat at Farmington - Evergreen

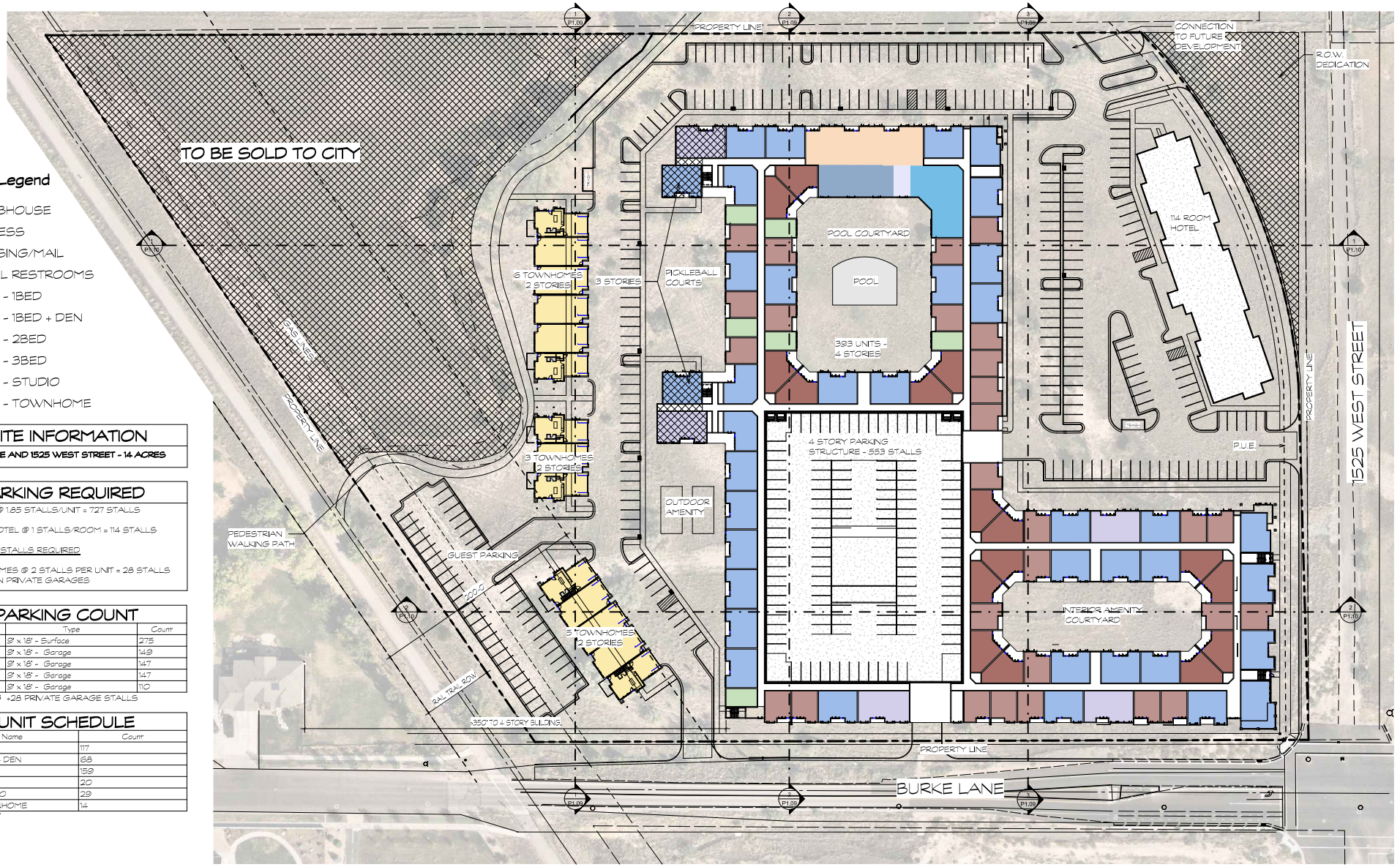
FARMINGTON, UTAH

NORTH

VICINITY MAP

10-24-22

Architecture Belgique, Inc.



Room Legend

- CLUBHOUSE
- FITNESS
- LEASING/MAIL
- POOL RESTROOMS
- UNIT - 1BED
- UNIT - 1BED + DEN
- UNIT - 2BED
- UNIT - 3BED
- UNIT - STUDIO
- UNIT - TOWNHOME

SITE INFORMATION

BURKE LANE AND 1525 WEST STREET - 14 ACRES

PARKING REQUIRED

393 UNITS @ 1.85 STALLS/UNIT = 727 STALLS

114 ROOM HOTEL @ 1 STALLS/ROOM = 114 STALLS

869 TOTAL STALLS REQUIRED

14 TOWNHOMES @ 2 STALLS PER UNIT = 28 STALLS PROVIDED IN PRIVATE GARAGES

PARKING COUNT

Level	Type	Count
Level 1	9' x 18' - Surface	275
Level 1	9' x 18' - Garage	149
Level 2	9' x 18' - Garage	147
Level 3	9' x 18' - Garage	147
Level 4	9' x 18' - Garage	110

Grand total: 828 +28 PRIVATE GARAGE STALLS

UNIT SCHEDULE

Name	Count
UNIT - 1BED	117
UNIT - 1BED + DEN	68
UNIT - 2BED	159
UNIT - 3BED	20
UNIT - STUDIO	29
UNIT - TOWNHOME	14

Grand total: 407

NORTH

SCALE 1" = 40'

0 20 40 80 160

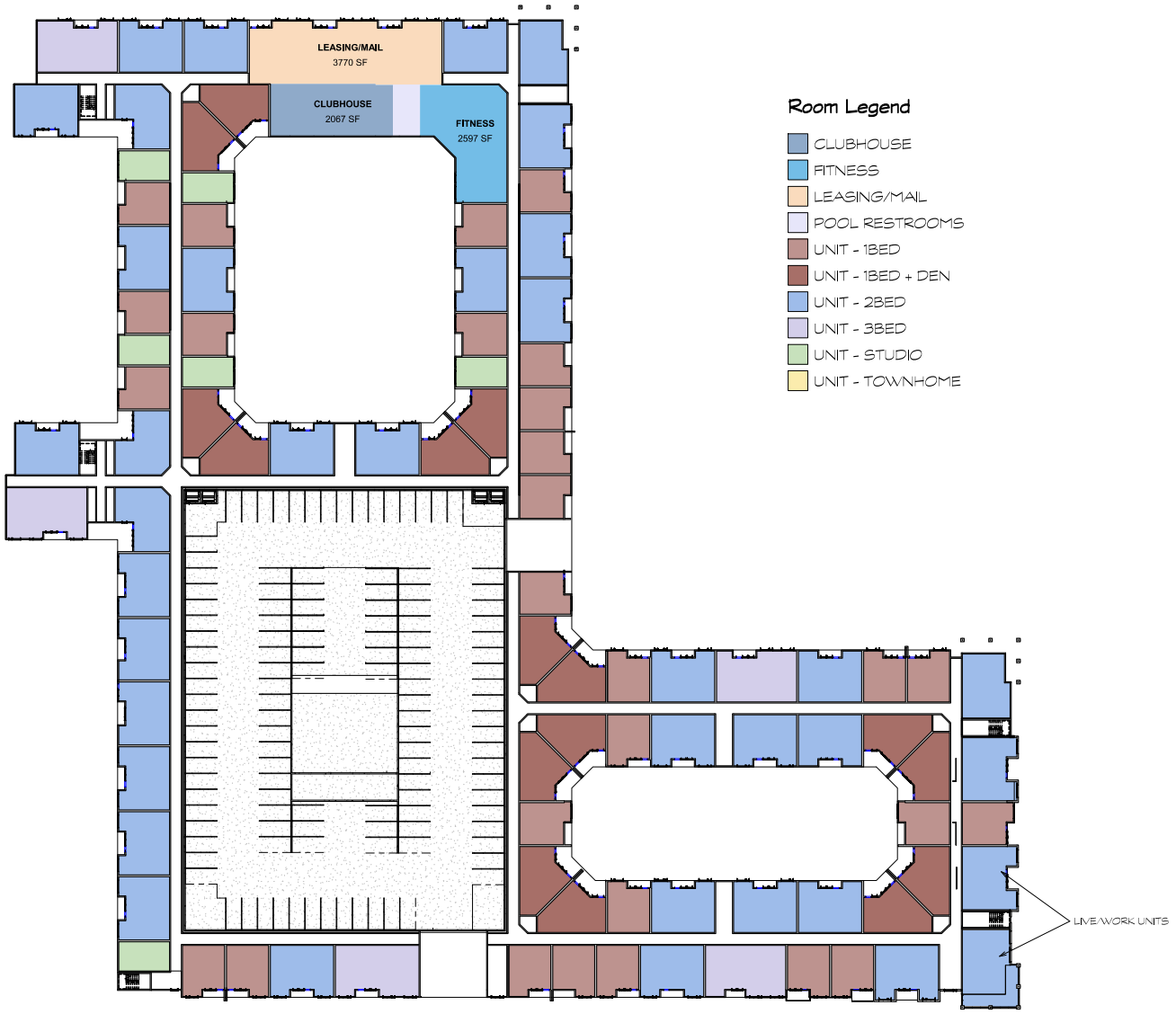
The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

SITE PLAN

10-24-22

Architecture Belgique, Inc.



The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

NORTH

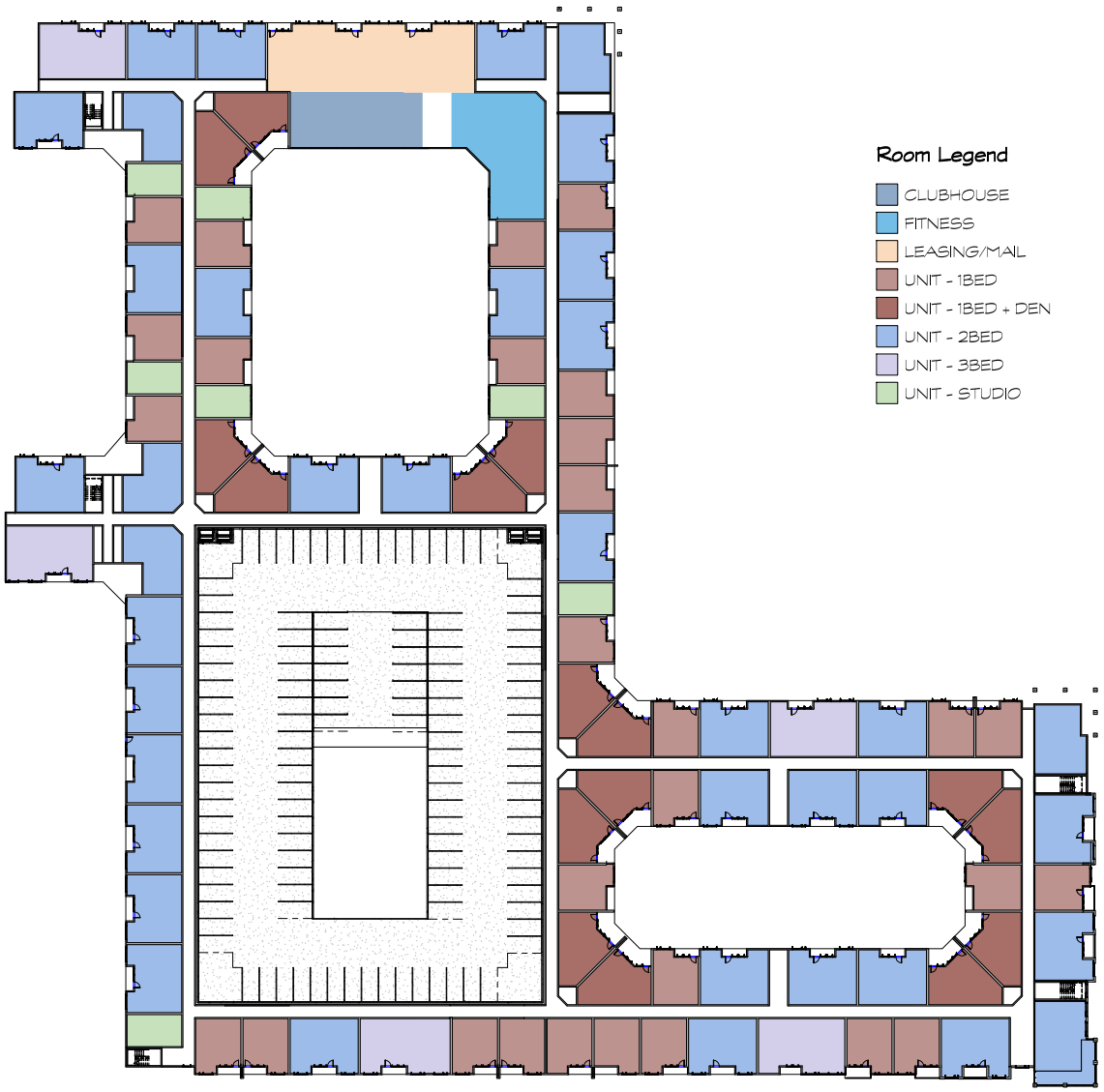
SCALE 1" = 30'

0 15 30 60 120

LEVEL 1

10-24-22

Architecture Belgique, Inc.



The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

NORTH

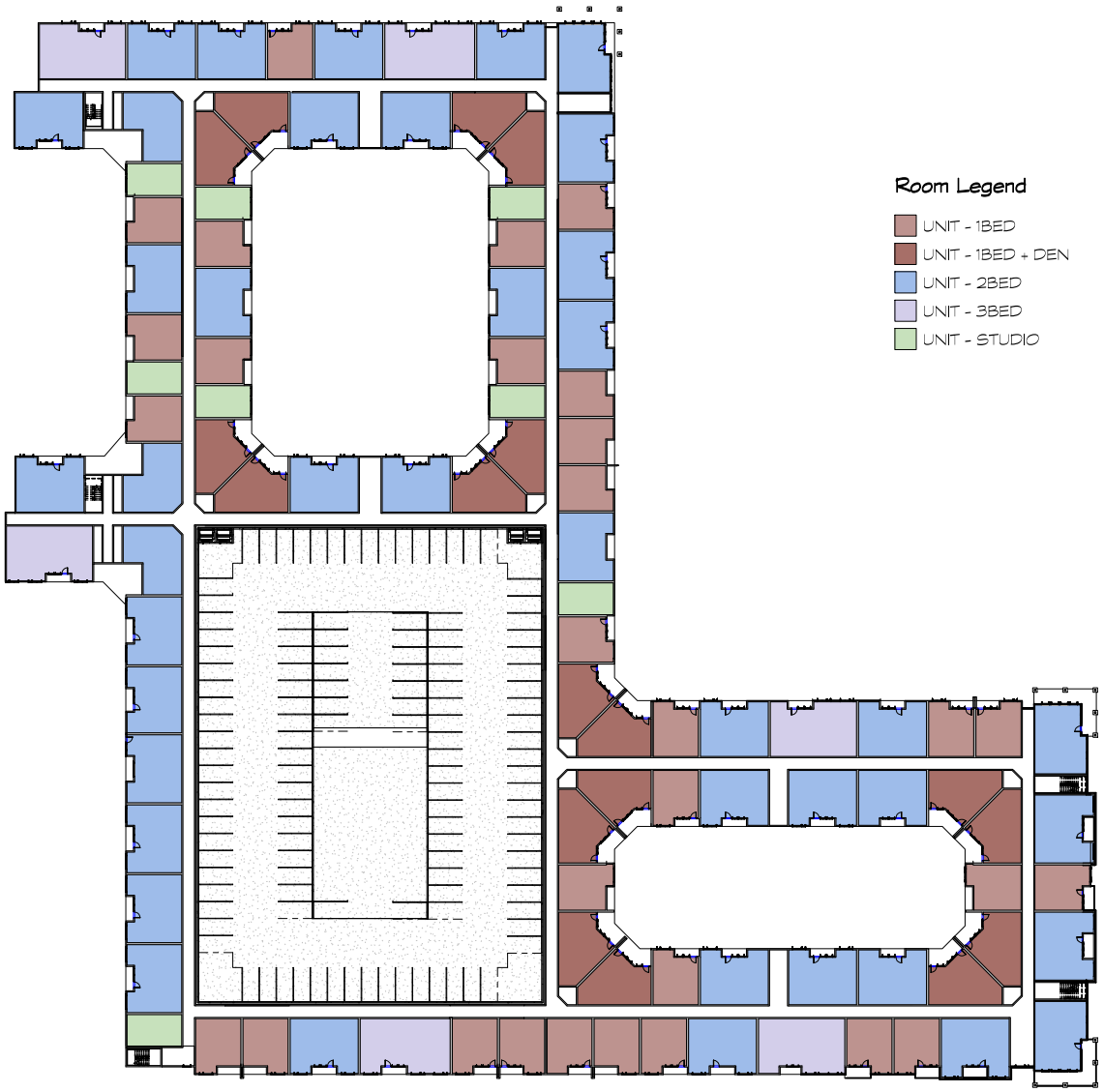
SCALE 1" = 30'

0 15 30 60 120

LEVEL 2

10-24-22

Architecture Belgique, Inc.



The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

NORTH

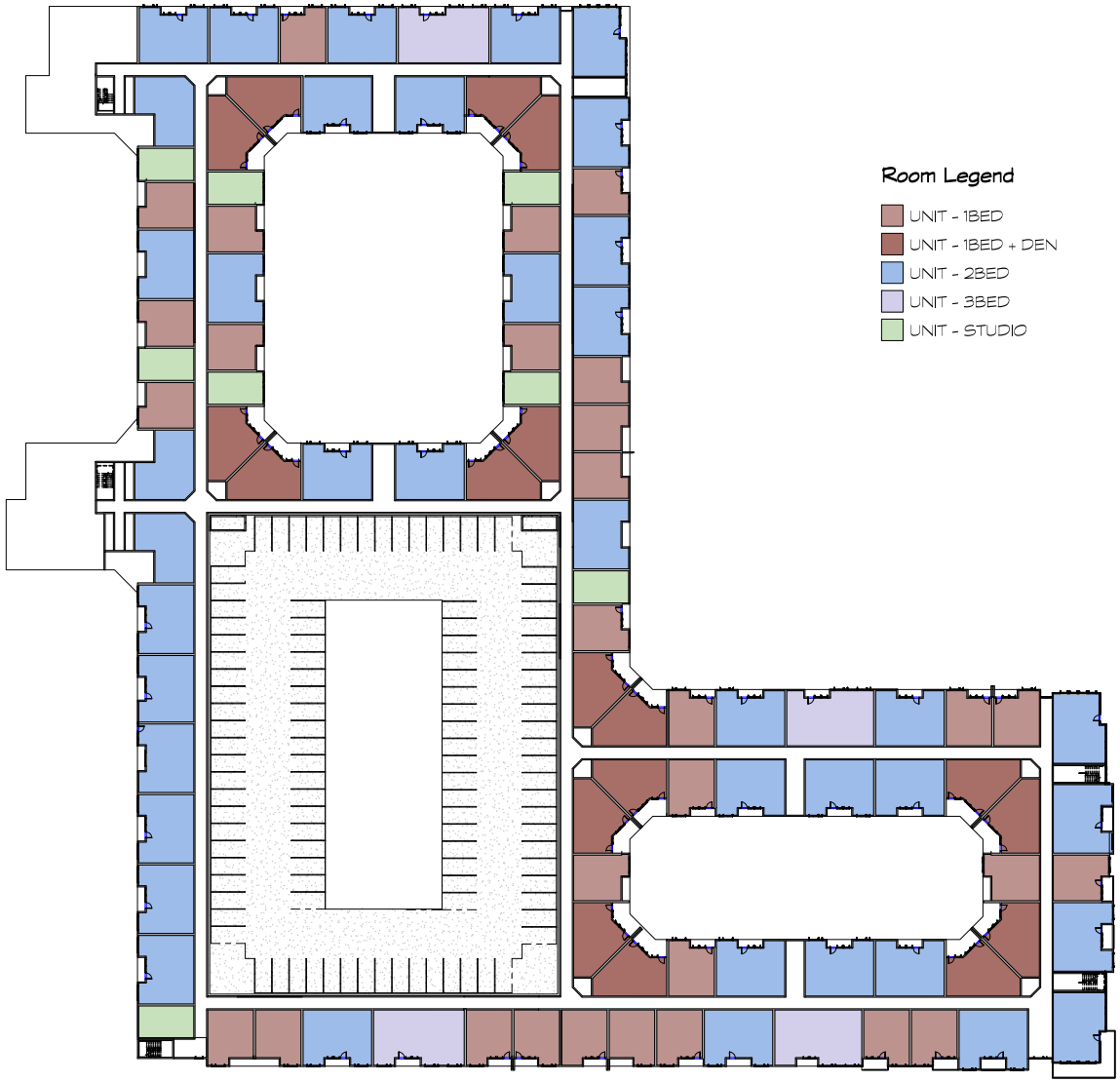
SCALE 1" = 30'

0 15 30 60 120

LEVEL 3

10-24-22

Architecture Belgique, Inc.



The Retreat at Farmington - Evergreen

FARMINGTON, UTAH

NORTH

SCALE 1" = 30'

0 15 30 60 120

LEVEL 4

10-24-22

Architecture Belgique, Inc.



APARTMENT BUILDING





TOWNHOMES

The Retreat at Farmington - Evergreen

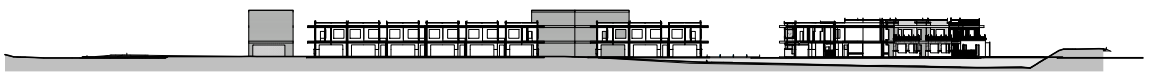
FARMINGTON, UTAH

NORTH

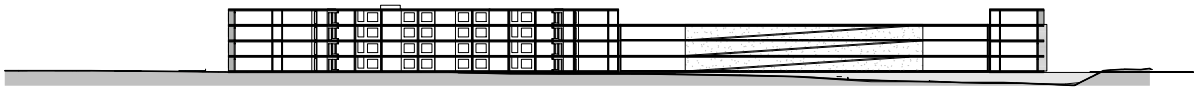
RENDERINGS

10-24-22

Architecture Belgique, Inc.



1 P1.09 Building Section - Section A
Scale: 1" = 40'-0"



2 P1.09 Building Section - Section B
Scale: 1" = 40'-0"



3 P1.09 Building Section - Section C
Scale: 1" = 40'-0"

The Retreat at Farmington - Evergreen

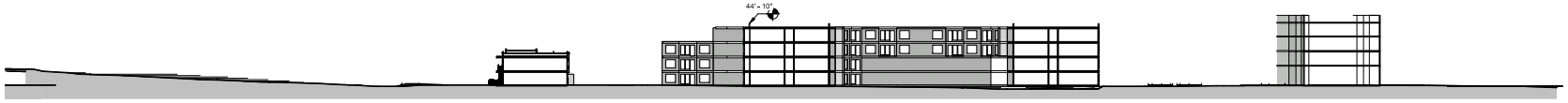
FARMINGTON, UTAH

NORTH

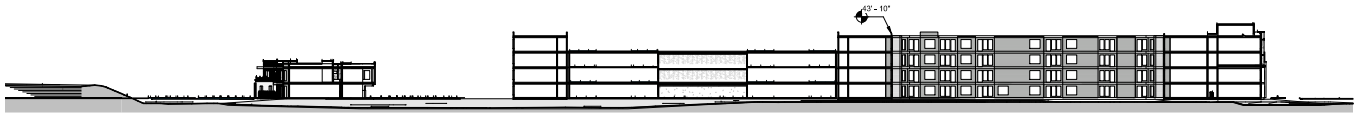
SITE SECTIONS

10-24-22

Architecture Belgique, Inc.



1 / P1.10 Building Section - Section D
Scale: 1" = 40'-0"



2 / P1.10 Building Section - Section E
Scale: 1" = 40'-0"

The Retreat at Farmington - Evergreen

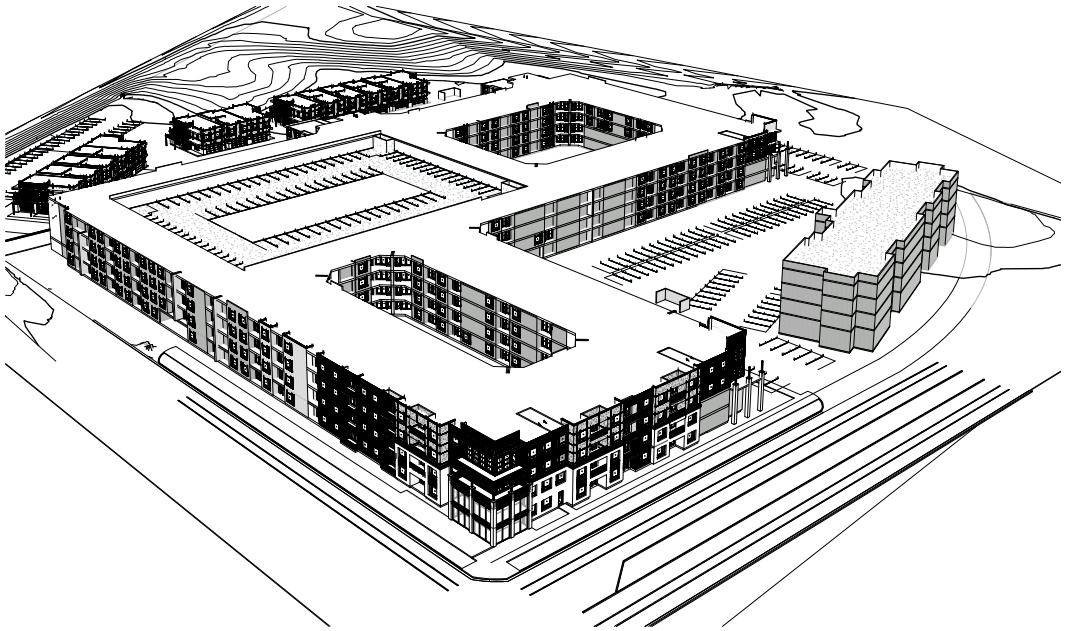
FARMINGTON, UTAH

NORTH

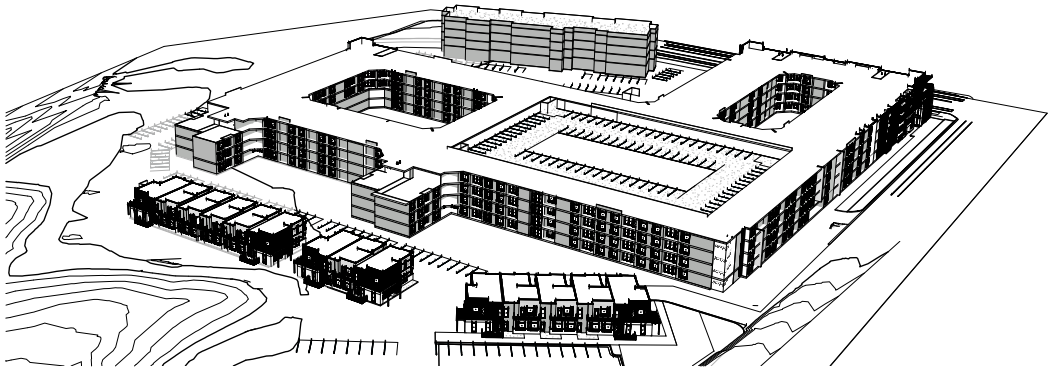
SITE SECTIONS

10-24-22

Architecture Belgique, Inc.



1 / P1.11 3D View - 3D View 1
Scale:



2 / P1.11 3D View - 3D View 2
Scale:

The Retreat at Farmington - Evergreen

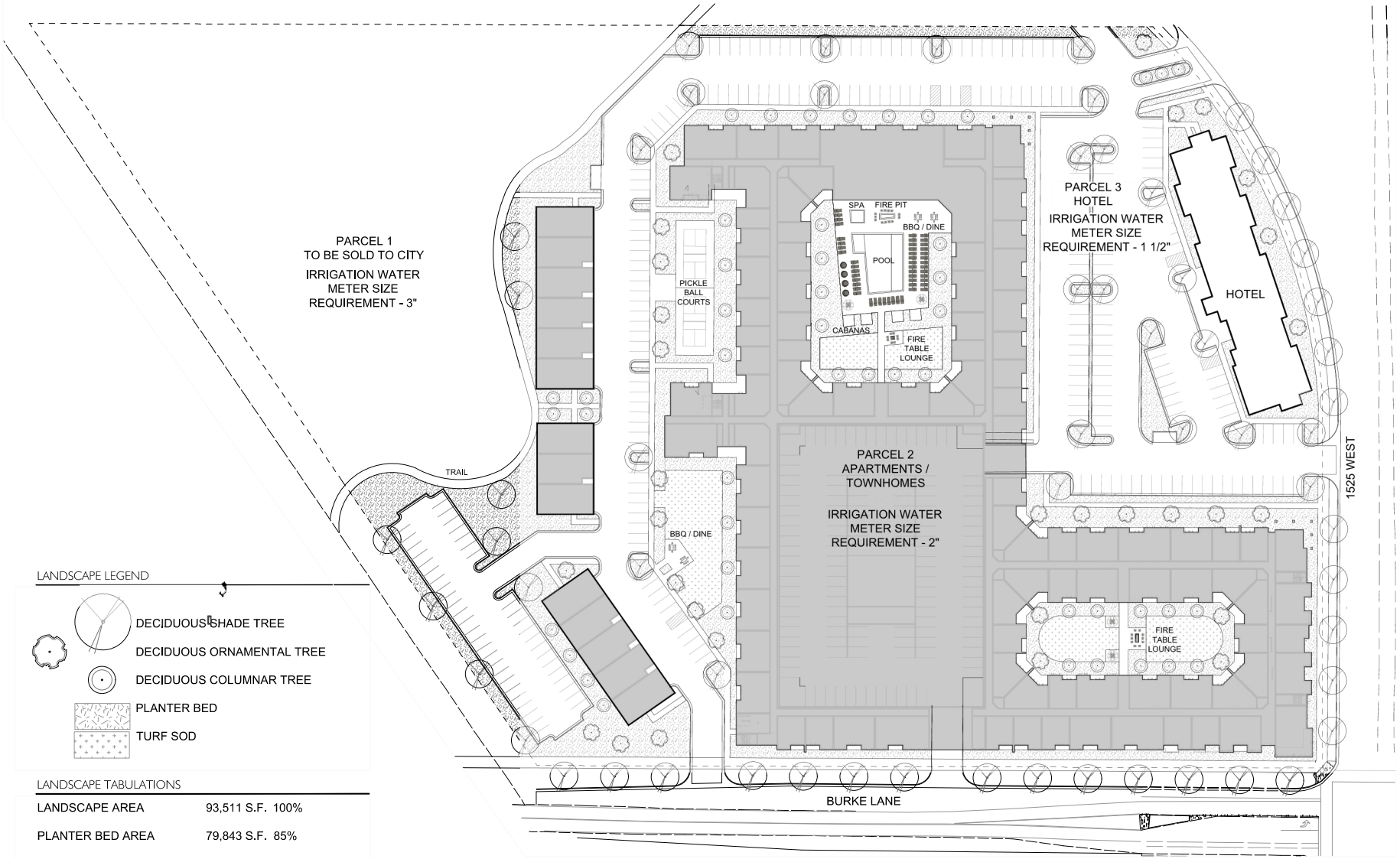
FARMINGTON, UTAH

NORTH

3D MASSING

10-24-22

Architecture Belgique, Inc.



LANDSCAPE LEGEND

- DECIDUOUS SHADE TREE
- DECIDUOUS ORNAMENTAL TREE
- DECIDUOUS COLUMNAR TREE
- PLANTER BED
- TURF SOD

LANDSCAPE TABULATIONS

LANDSCAPE AREA	93,511 S.F.	100%
PLANTER BED AREA	79,843 S.F.	85%
TURF AREA	13,668 S.F.	15%

A LANDSCAPE PLAN
24" X 36" - SCALE: 1"=40'-0" NORTH
0 10 20 40

STB DESIGN
LANDSCAPE ARCHITECTURE & LAND PLANNING
1375 E. PERRYS HOLLOW ROAD
SALT LAKE CITY, UTAH 84103
PH/TXT/MO 801.554.6146
SCOTT@STBDESIGNLLC.COM

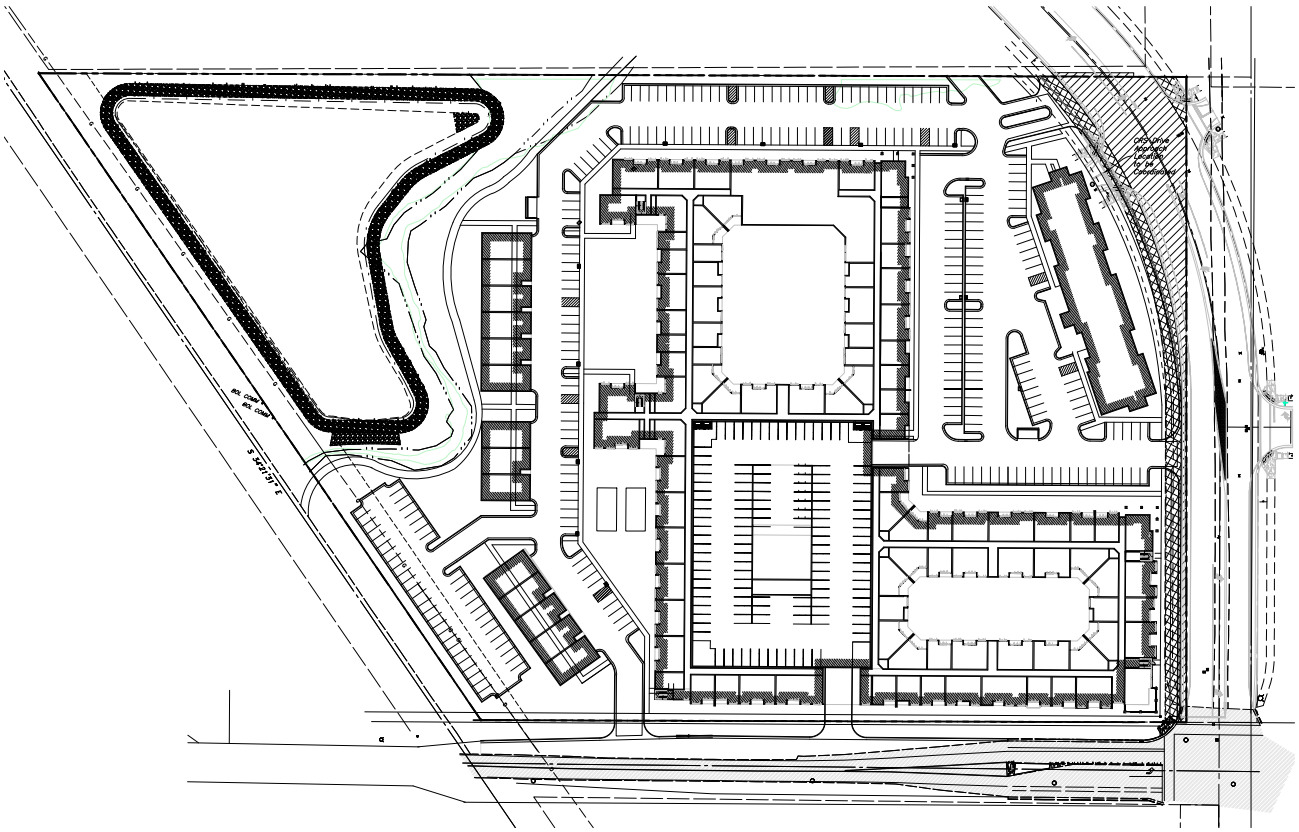
ISSUE DESCRIP.	DATE
	11.02.2022

This drawing, as an instrument of professional service, and shall not be used, in whole or part, for any other project without the written permission of SCOTT THOMAS BLAKE DESIGN L.L.C. Copyright © 2022

RETREAT AT FARMINGTON
FARMINGTON, UTAH

LANDSCAPE PLAN

L101



Site Data

Site Area = xx s.f. (xx ac.)
Landscape Area Provided = x s.f. (x%)
Impervious Area Provided = x s.f. (x%)
Building Area = x s.f (x%)
Parking Required = 1/x s.f. = x stalls
Parking Provided = x stalls (x/1,000)

Hatch Legend

- Standard Asphalt Paving
- Heavy Duty Asphalt Paving
- Existing Asphalt Paving
- Standard Concrete Paving
- Heavy Duty Concrete Paving
- Existing Concrete Paving
- Building Interior
- Rip Rap/Gravel Areas

Scale: 1" = 60'

60 0 60' 120'

Site Construction Notes

1. Const. 24" Curb & Gutter (x/x)
2. Const. Asphalt Paving (x/x)
3. Const. Conc. Sidewalk (x/x)
4. Const. Thickened Edge Sidewalk (x/x)
5. Const. Accessible Striping per MUTCD & ICC/ANSI A117.1 (Latest Edition) (See Accessible Details and Notes) (x/x)
6. Const. Accessible Ramp per ICC/ANSI A117.1 (Latest Edition) (See Grading Detail Sheets) (x/x)
7. Const. Accessible Sign per MUTCD & ICC/ANSI A117.1 (Latest Edition) (See Accessible Details and Notes) (x/x)
8. Const. Accessible VAN Sign per MUTCD & ICC/ANSI A117.1 (Latest Edition) (See Accessible Details and Notes) (x/x)
9. Const. 4" White Paint Stripe (Typ.) Contractor shall provide 15 mils min. Dry Thickness (Two Coats)
10. Const. Conc. Paving (x/x)
11. Sawcut; Provide Smooth Clean Edge
12. Dumpster Enclosure (See Arch. Plans)
13. Const. Directional Arrows per MUTCD
14. Const. 24" White Stop Bar
15. Const. Conc Wheel Stop
16. Const. Stop Sign per MUTCD R1-1 (x/x)
17. Conn. & Match Existing Improvements
18. Const. Landscape Edging (Coordinate w/ Landscape Plan)

General Site Notes:

1. All dimensions are to back of curb unless otherwise noted.
2. Fire lane markings and signs to be installed as directed by the Fire Marshal.
3. Aisle markings, directional arrows and stop bars will be painted at each driveway as shown on the plans.
4. Const. curb transition at all points where curb abuts sidewalk, see detail.
5. Contractor shall place asphalt paving in the direction of vehicle travel where possible.
6. Limits of demolition/disturbed areas shown on the plans may not be an exact depiction. It is the contractor's responsibility to determine the means and methods of how the work will be completed. The contractor shall determine the area of construction impact. The contractor is responsible to restore all impacted areas and all restoration shall be part of the contract bid.

Construction Survey Note:

The Construction Survey Layout for this project will be provided by Anderson Wahlen & Associates. The Layout Proposal and Professional Services Agreement will be provided to the General Contractor(s) for inclusion in base bids. The Survey Layout proposal has been broken out into Building Costs and Site Costs for use in the Site Work Bid Form.

Survey Control Note:

The contractor or surveyor shall be responsible for following the National Society of Professional Surveyors (NSPS) model standards for any surveying or construction layout to be completed using Anderson Wahlen and Associates ALTA Surveys or Anderson Wahlen and Associates construction improvement plans. Prior to proceeding with construction staking, the surveyor shall be responsible for verifying horizontal control from the survey monuments and for verifying any additional control points shown on an ALTA survey, improvement plan, or on electronic data provided by Anderson Wahlen and Associates. The surveyor shall also use the benchmarks as shown on the plan, and verify them against no less than three existing hard improvement elevations included on these plans or on electronic data provided by Anderson Wahlen and Associates. If any discrepancies are encountered, the surveyor shall immediately notify the engineer and resolve the discrepancies before proceeding with any construction staking.

PRIVATE ENGINEER'S NOTICE TO CONTRACTORS

The Contractor agrees that he shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property; that this requirement shall apply continuously and not be limited to normal working hours; and that the contractor shall defend, indemnify, and hold the owner and the engineer harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting for liability arising from the sole negligence of the owner or the engineer.

REV	DATE	DESCRIPTION

Designed by: DH
Drafted by: DK
Client Name:
Evergreen Devco, Inc.
22-076 SP

ANDERSON WAHLEN & ASSOCIATES
2010 North Redwood Road, Salt Lake City, Utah 84116
(801) 521-8529 - AWAssociates.net

Concept Site Plan

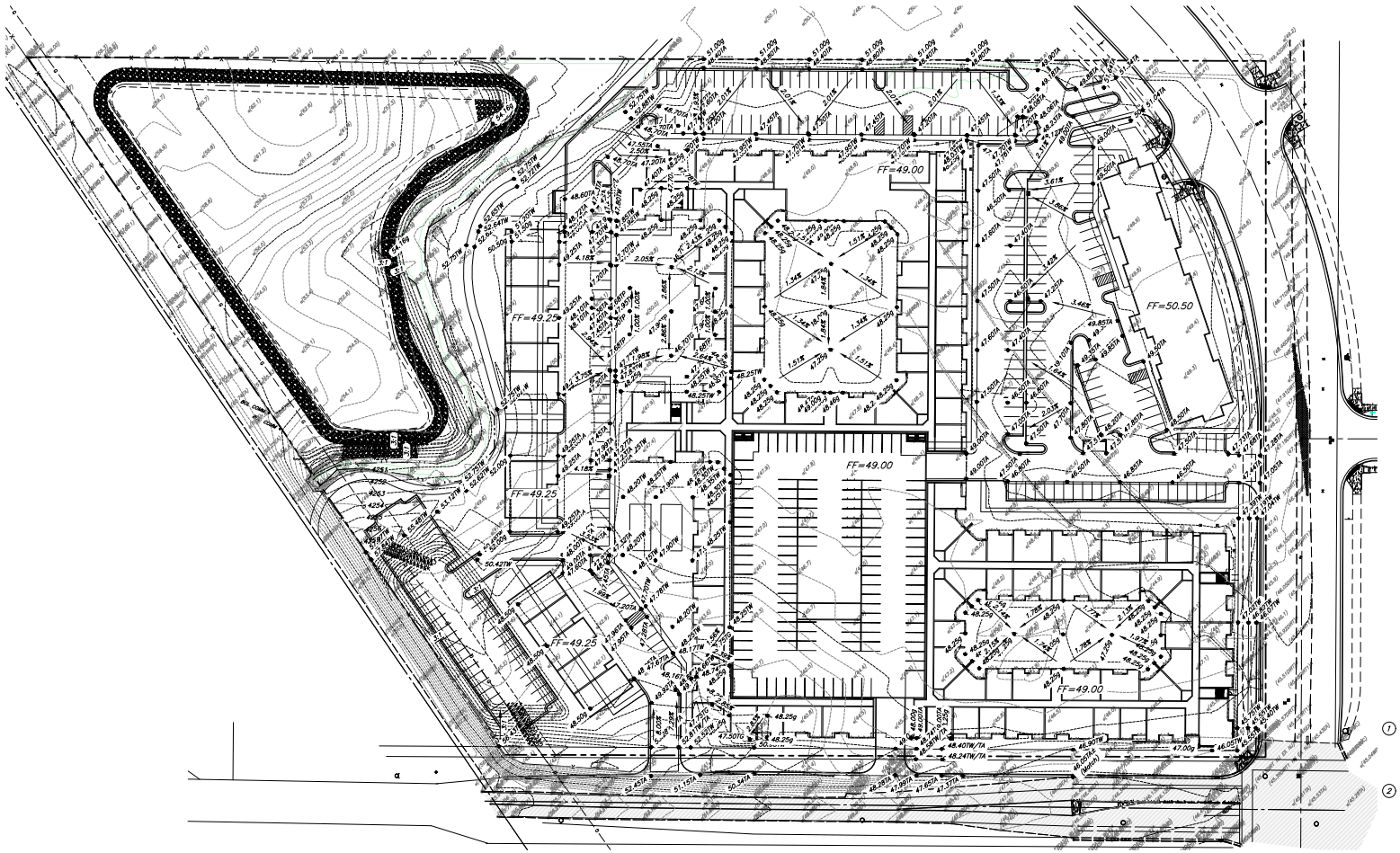
Evergreen Farmington

675 North 1525 West
Farmington City, Utah

Preliminary
For Review
Not For Construction

26 May, 2022

SHEET NO.
C1.1
of 1



Scale: 1" = 50'

50' 0 50' 100'

General Grading Notes

1. All grading shall be in accordance with the project geotechnical study.
2. Cut slopes shall be no steeper than 3 horizontal to 1 vertical.
3. Fill slopes shall be no steeper than 3 horizontal to 1 vertical.
4. Fills shall be compacted per the recommendations of the geotechnical report prepared for the project and shall be certified by a Geotechnical Engineer.
5. Areas to receive fill shall be properly prepared and approved by a Geotechnical Engineer prior to placing fill.
6. Fills shall be benched into competent material as per specifications and geotechnical report.
7. All trench backfill shall be tested and certified by a Geotechnical Engineer.
8. A geotechnical engineer shall perform periodic inspections and submit a complete report and map upon completion of the rough grading.
9. The final compaction report and certification from a Geotechnical Engineer shall contain the type of field testing performed. Each test shall be identified with the method of obtaining the in-place density, whether sand cone or drive ring and shall be so noted for each test. Sufficient maximum density determinations shall be performed to verify the accuracy of the maximum density curves used by the field technician.
10. Dust shall be controlled by watering.
11. The location and protection of all utilities is the responsibility of the permitee.
12. Approved protective measures and temporary drainage provisions must be used to protect adjoining properties during the grading process.
13. All public roadways must be cleared daily of all dirt, mud and debris deposited on them as a result of the grading operation. Cleaning is to be done to the satisfaction of the City Engineer.
14. The site shall be cleared and grubbed of all vegetation and deleterious matter prior to grading.
15. The contractor shall provide shoring in accordance with OSHA requirements for trench walls.
16. Aggregate base shall be compacted per the geotechnical report prepared for the project.
17. The recommendations in the following Geotechnical Engineering Report by AGEC Applied GeoTech are included in the requirements of grading and site Preparation. The Report is titled "Geotechnical Investigation Proposed Hotel and Town Homes, NWC of 1525 West Burke Lane, Farmington, Utah"

    Project No.: 1220583
    Dated: September 20, 2022
18. As part of the construction documents, owner has provided contractor with a topographic survey performed by manual or aerial means. Such survey was prepared for project design purposes and is provided to the contractor as a courtesy. It is expressly understood that such survey may not accurately reflect existing topographic conditions.
19. If Contractor observes evidence of hazardous materials or contaminated soils he shall immediately contact the project engineer to provide notification and obtain direction before proceeding with disturbance of said materials or contaminated soil.

Curb and Gutter Construction Notes

1. Open face gutter shall be constructed where drainage is directed away from curb.
2. Open face gutter locations are indicated by shading and notes on the grading plan.
3. It is the responsibility of the surveyor to adjust top of asphalt grades to top of curb grades at the time of construction staking.
4. Refer to the typical details for standard and open face curb and gutter dimensions.
5. Transitions from open face to standard curb and gutter are to be smooth. Hand form these areas if necessary.
6. Spot elevations are shown on this plan with text masking. Coordinate and verify site information with project drawings.

Sidewalk Construction Notes

1. Concrete sidewalk shall be constructed with a cross slope of 1.5% unless shown otherwise on plan.
2. Running slope of sidewalks shall be built per grades shown on the plan. where grades are not provided, sidewalks shall be constructed with a maximum running slope of 4.5%
3. Refer to the Site Plan for sidewalk dimensions.

REV	DATE	DESCRIPTION

Designed by: DH
Drafted by: DK
Client Name:
Evergreen Devco, Inc.
22-076 GR

ANDERSON WAHLEN & ASSOCIATES
2010 North Redwood Road, Salt Lake City, Utah 84116
(801) 521-8529 Fax: (801) 521-8530 www.awa-engineering.com

Concept Grading Plan

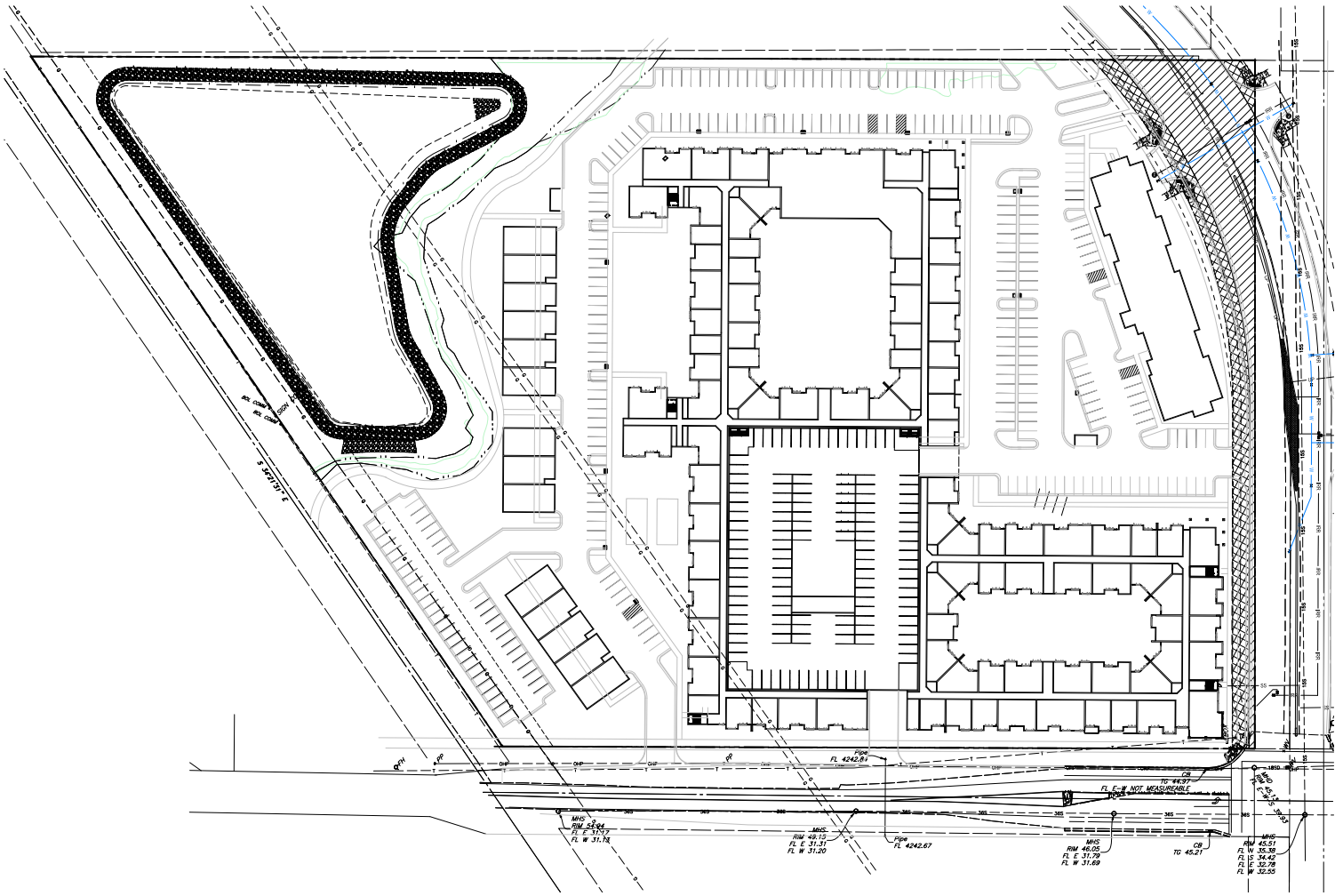
Evergreen Farmington

675 North 1525 West
Farmington City, Utah

For Review
Not For Construction

26 May, 2022

SHEET NO.
C2.1



Scale: 1" = 50'

50' 0 50' 100'

General Utility Notes:

1. All sewer and water facilities shall be constructed per local jurisdiction standards and specifications. Contractor is responsible to obtain standards and specifications.
2. Coordinate all utility connections to building with plumbing plans and building contractor.
3. Verify depth and location of all existing utilities prior to constructing any new utility lines. Notify Civil Engineer of any discrepancies or conflicts prior to any connections being made.
4. All catch basin and inlet box grates are to be bicycle proof.
5. Refer to the site electrical plan for details and locations of electrical lines, transformers and light poles.
6. Gas lines, telephone lines, and cable TV lines are not a part of these plans.
7. Water meters are to be installed per city standards and specifications. It will be the contractor's responsibility to install all items required.
8. Water lines, valves, fire hydrants, fittings etc. are to be constructed as shown. Contractor is responsible, at no cost to the owner, to construct any vertical adjustments necessary to clear sewer, storm drain, or other utilities as necessary including valve boxes and hydrant spools to proper grade.
9. Contractor shall install a 12" concrete collar around all manholes, valves, catch basins, cleanouts & any other structures located within the asphalt.

Utility Piping Materials:

All piping materials shall be per local agency standards or the specifications below at a minimum. All utility piping shall be installed per manufacturers recommendations. Refer to project specifications for more detailed information regarding materials, installation, etc.

Culinary Service Laterals

1. Polyethylene (PE) Water Pipe (Up to 3 inches diameter), AWWA C901, PE 3408, SDR 9 (200 psi)
2. Copper Pipe (Up to 3 inches diameter): Type 'K.'

Water Main Lines and Fire Lines

1. Polyvinyl Chloride (PVC) (4 inches to 12 inches diameter): AWWA C900, Class 235

Sanitary Sewer Lines

1. All sewer piping to be Polyvinyl Chloride (PVC) sewer pipe, ASTM D3034, Type PSM, SDR 35

Storm Drain Lines

1. 12" pipes or smaller – Polyvinyl Chloride (PVC) sewer pipe, ASTM D3034, Type PSM, SDR 35
2. 15" pipes or larger – Reinforced Concrete Pipe, ASTM C76, Class III

Building Data	
Type:	x
Square Footage:	x
Fire Sprinkled:	x
Building Height:	x
Fire Flow Required:	x

CAUTION :

The locations and/or elevations of existing utilities as shown on these plans are based on records of the various utility companies and, where possible, measurements taken in the field. The information is not to be relied on as being exact or complete.

Storm Drain & Sanitary Sewer Note:

All Storm Drainage & Sanitary Sewer Pipe Lengths and Slopes are from Center of Structure to Center of Structure

Onsite Utility Connection Notes:

1. Contractor shall field verify all utility connection elevations prior to any utility construction has begun.
2. Contractor shall construct utility lines into site prior to any onsite utility construction. Gravity lines are to be constructed starting at the lowest point and be installed prior to any waterline installation
3. Construction of any onsite utilities prior to the offsite connection will be done at the contractors risk.

Know what's below. Call 811 before you dig.
BLUE STAKES OF UTAH
UTAH NORTH/CENTRAL CNTR, INC
www.bluestakes.org
1-800-662-4111

REV	DATE	DESCRIPTION

Designed by: DH
Drafted by: DK
Client Name:
Evergreen Devco, Inc.

22-076 UT

ANDERSON WAHLEN & ASSOCIATES
2010 North Redwood Road, Salt Lake City, Utah 84116
(801) 521-8529 – Fax
AWAssociates.net

Concept Utility Plan

Evergreen Farmington

675 North 1525 West
Farmington City, Utah

Preliminary

For Review
Not For Construction

26 May, 2022

SHEET NO.
C3.1
of 1

DEVELOPMENT AGREEMENT

FOR

THE TRAIL APARTMENTS

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 11th day of October 2022, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **EVERGREEN DEVCO, INC.**, a California corporation, or nominee or assignee, hereinafter referred to as "Developer."

RECITALS:

A. Developer has the right to acquire 14.4 acres of land, and the City owns 10.6 acres of land, within the boundary set forth in Exhibit "A" attached hereto and by this reference made a part hereof (collectively, the "Property"). Developer desires to develop the Property in accordance with the Project Master Plan (the "PMP" included herein as Exhibit 'B').

B. The Property is subject to the City's Laws, including without limitation Section 11-18-140 of the City's zoning ordinance, pursuant to which this Agreement shall supersede the City's Laws with respect to specific matters set forth herein.

C. Persons and entities hereafter developing the Property, or any portions of the Property shall accomplish such development in accordance with the City's Laws and the provisions set forth in this Agreement, with the understanding that this Agreement, the PMP and any Supplemental Development Agreement (the "Supplement") related to the property herein identified under Exhibit 'A', shall supersede the City's Laws as to specific matters identified in the Supplement and shall control in the event of any conflict.

D. The City also recognizes that the development of the Property may result in tangible benefits to the City through the stimulation of development of amenities and/or infrastructure that may enhance further economic development efforts in the vicinity of the Property, providing affordable housing units, and collaborating on the dedication and purchase of ground for city projects and is therefore willing to enter into this Agreement, subject to the terms and conditions set forth herein.

AGREEMENT

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

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Definitions.** In addition to the other capitalized terms defined elsewhere in this Agreement, the following terms shall have the respective meanings indicated below:

    a. "City's Laws" means, collectively, all City ordinances, rules and regulations, including the provisions of the City's General Plan, the City's zoning ordinances, the City's engineering development standards and specifications, and any permits issued by the City pursuant to the foregoing ordinances and regulations.

    b. "Effective Date" has the meaning set forth in Section 3.

3. **Effective Date.** This Agreement, including the PMP, shall become effective when both of the following have occurred (the "Effective Date"):
(A) Developer acquires fee title to the following parcels (as identified pursuant to a Davis County Assessor property search): Parcel ID 080590042; And
(B) Both parties have executed the Agreement.

4. **Allowed Uses.** The development may include multi-family residential units and uses ancillary to residential uses, in addition to uses currently permitted in the underlying zoning district, including commercial and hotel uses. Uses shall be consistent with and limited to areas as designated on Exhibit B.

5. **Limits on Residential Units & Height.** Developer may develop no more than 410 residential units within the Project. Developer shall develop the Property in accordance with Exhibit B and residential buildings shall be limited to a maximum height of four (4) stories and fifty-four feet (54'), measured as designated in Farmington City Code. Commercial buildings shall not exceed four (4) stories in height. Developer agrees to construct 2 story townhomes on the western portion of the residential area identified in Exhibit B and to then transition to four stories within the development. No residential building or portion thereof exceeding two stories and twenty-seven feet (27') in height may be constructed within 200 feet from the Western boundary of the Denver & Rio Grande Western right-of-way. The buffer restriction on construction does not apply to the non-residential development on the City-owned parcel to the South.

6. **Moderate Income Housing.** A minimum of ten percent (10%) of residential units developed within this area shall be dedicated as units which qualify for moderate-income housing based on the 80% of AMI rent limit established for the Ogden-Clearfield , UT HUD Metro FMR Area. This Agreement constitutes a written agreement regarding the number of moderate-income housing units, as provided in Utah Code Ann. §10-9a-535(1)(a), and Developer affirmatively agrees to this requirement by executing this Agreement.

7. **Development of Commercial Building.** Developer agrees to prepare a rough graded pad for the commercial development prior to occupancy of any residential unit. If Developer or its assignees constructs a commercial building (which may include office, retail and hospitality or other uses permitted in the OMU zoning and which may contain two (2) stories) within ten (10) years of the first application for a building permit within the Project:

    a. Developer shall be entitled to the benefit of a three-hundred thousand five-hundred ninety six dollars and fifty cents ($308,596.50) transportation and stormwater impact fee credits related to the commercial building if the building is substantially completed within the time established in Section 7. If Developer fails to complete the commercial building by that date, then it shall not be entitled to the impact fee credits associated with the commercial building, even if it increases the difference between all impact fees collected for the Project and the amounts established in Section 9(b) of this Agreement.

8. **City Land**. Davis County Parcel ID #08-059-0045, which is part of the property identified in Exhibit B labeled as 'City Land' shall be used for non-residential purposes.

9. **Dedication & Sale of Land – Obligations Regarding Land.**

    a. Developer agrees to dedicate land at the northeast corner of the property, as identified in the Exhibits, for the construction of Commerce Drive, within thirty (30) days of closing on the Property by Developer. Developer also agrees to sell to the City and City agrees to purchase from Developer the 2.61-acre site as shown on Exhibit B.

    b. City agrees to pay Developer in the following manner:

        i. Five-hundred seventy thousand dollars ($570,000.00) at the time of conveyance;
        ii. Seven-hundred seventy thousand dollars ($770,00.00) in credit toward the Transportation Impact Fees that would be paid across the Project. If the cumulative transportation impact fees for the Project in its entirety is less than $770,000.00, then the City shall pay the net difference within thirty (30) days after the date of the issuance of the last building permit for the Project. This payment of net difference does not apply to a difference that

arises due to Developer's non-construction of the commercial component of the Project, as described in Section 7(a) of this Agreement.

iii. Six-hundred sixty thousand dollars ($660,00.00) in credit toward the Stormwater Impact Fees that would be paid across the Project. If the cumulative stormwater impact fees for the Project in its entirety is less than $660,000.00, then the City shall pay the net difference within thirty (30) days after the date of the issuance of the last building permit for the Project. This payment of net difference does not apply to a difference that arises due to Developer's non-construction of the commercial component of the Project, as described in Section 7(a) of this Agreement.

iv. Subject to City Council amendment of the Parks & Recreation Master Plan to include the proposed park amenities in the area identified in this Subsection 9(a) and the amendment of the Parks Impact Fee Facility Plan. One million five hundred fifty-seven dollars and nine hundred and ninety six dollars ($1,557,996.00) in credit toward the Parks & Recreation Impact Fees that would be paid across the Project.

c. Additional City Obligations:

i. City shall construct the portions of Commerce Drive abutting the Property by April 30, 2025, including pavement and utilities to back of curb and a traffic signal at the intersection of Burke Avenue and Commerce Drive. City shall construct, by the same date, a full-traffic access point and traffic signal at the Northeast corner of the property near the access point shown on Exhibit B. All construction shall be at City's cost.

ii. City agrees to construct no later than by April 30, 2025 a walking path on the 2.61-acre site shown on Exhibit B, and a park on the 2.61-acre site.

iii. City agrees to permit Developer to use the 2.61-acre site for water detention purposes. City agrees to allow Developer to discharge into Shepherd Creek undetained. City agrees to allow Developer to use the existing storm drainage facility on Commerce Drive.

d. Additional Developer Obligations:

i. Developer agrees to construct a walking path along the area shown on Exhibit B.

ii. Developer agrees to maintain, or to establish a commercial association or other similar set of covenants (such as a maintenance director) to maintain, the area west of Spring Creek on the 2.61-acre parcel in perpetuity, which shall remain open to the public. Maintenance shall include mowing the lawn and routine sprinkler maintenance. The City shall be responsible for repairs to park sprinklers which exceed two-thousand dollars ($2,000.00). Prior to development of the park by City, it shall consist of weed management.

10. **Application for Rezone to OS.** Developer agrees that in association with its site plan request, it will apply for a rezone of the property abutting the creek, in the width necessary for the trails to the Open Space (OS) zoning district.

11. **Cross-Access.** Developer shall provide a commercially reasonable cross-access easement to property to the North, sufficient for ordinary vehicular travel between the parcels.

12. **Alternative Approval Process.** The City has held all public hearings necessary for, and has approved the PMP. Such approval of the City council shall remain in full force and effect from the date hereof until the termination of this Agreement. Developer and/or Developer's successors and assigns may from time to time apply to develop a hotel or commercial building and a phase of The Trail Apartments greater than one (1.0) acre in size in accordance with an alternative approval process as set forth in section of 11-18-140 of the City's zoning ordinance. Developer shall be entitled to bring such future applications under Section 11-18-140 of the City's zoning ordinance, even if a future phase is less than 25 acres in size. Such future applications may deviate from the PMP approved hereunder at the discretion of the City and shall be considered according to the procedures and standards for approval set forth in Section 11-18-140 of the City's zoning ordinance. This Agreement is a "development agreement" as contemplated by Section 10-9a-532 of the Utah Code.

13. **Assignment.** Except for any assignment (partial or otherwise) to a successor-in-interest to the Project, Developer shall not assign this Agreement to unrelated or unaffiliated entities or any rights or interests herein without prior written consent from the City, which consent will not be unreasonably denied, conditioned or delayed. Any future assignee shall consent in writing to be bound by the applicable terms of this Agreement as a condition precedent to the assignment. For avoidance of doubt, City hereby agrees that Developer may assign this Agreement to any affiliated or entity controlled by Developer including Evergreen-Burke & Commerce, L.L.C.

14. **Notices.** Any notices, requests and demand required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return requested, postage prepaid, to such party at its address shown below:

To Developer: Evergreen Devco, Inc.
c/o Jeremy Carver, Vice President
475 N 300 W, Suite 16, Kaysville, UT 84037

With a copy to: Evergreen Devco, Inc.
c/o Tyler Carlson
1873 S. Bellaire Street, STE 1200

Denver, CO 80222

To the City

Farmington City

Attn: City Manager

160 South Main Street

Farmington, Utah 84025-0160

15. **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, including the PMP and Supplement, and all regulatory approvals given by the City for the Property, contain the entire agreement of the parties and supersede any prior promises, representations, warranties or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Property, including any related conditions.

16. **Construction.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa, as the context may require. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein. Use of the word "including" shall mean "including but not limited to", including without limitation", or words of similar import.

17. **Non-Liability of Officials, Employees and others.** No officer, representative, agent , or employee of the City or Developer shall be personally liable to any party hereunder, or any successor-in-interest or assignee of this Agreement in the event of any default or breach or for any amount which may become due or for any obligation arising under the terms of this Agreement, unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud, intentional misconduct or malice.

18. **No Third-Party Rights**. The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

19. **Recordation.** This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

20. **Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

21. **Term.** This Agreement shall become effective upon the Effective Date and shall continue in full force and effect from such date that is thirty (30) years, unless terminated earlier pursuant to Section 14 below.

22. **Termination.** Notwithstanding the foregoing, if Developer has not commenced development activities (which includes applying for site plan approval, clearing and grubbing, or grading or foundation permit applications) on the Property within five (5) years after the Effective Date, the City may request Developer to provide the City with reasonable plans and assurances that Developer will develop the Property in accordance with this Agreement. In such event, Developer shall have 120 days after receiving such request from the City to provide the City with such information. If Developer fails to respond to such request within such time period or responds within such time period with plans and assurances that are unacceptable to the City in the City's reasonable discretion, the City may, as the City's sole and exclusive remedy, terminate this Agreement by giving written notice to Developer within sixty (60) days following the termination of the 120-day response period described above.

23. **Severability.** If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

24. **Amendment.** This Agreement may be amended in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

"CITY"

FARMINGTON CITY

FARMINGTON CITY INCORPORATED SEAL NOV 21, 1892 Davis County, Utah

STATE OF UTAH, COUNTY OF DAVIS, ss:

This instrument was acknowledged before me on this 11th day of October 2022 by Brett Anderson, Mayor, on behalf of Farmington City Corporation.

DeAnn P. Carlile

Notary Public

My Commission Expires: 6-5-24

DEANN P. CARLILE
Notary Public State of Utah
My Commission Expires on:
June 5, 2024
Comm. Number: 712440

"DEVELOPER" - Evergreen Devco, Inc.

By: Tyler Carlson

Title: Managing Principal

STATE OF COLORADO, COUNTY OF Denver, ss:

This instrument was acknowledged before me on this 6th day of October 2022 by Tyler Carlson, on behalf of Evergreen Devco, Inc., who being duly sworn, did say that he is the signer of the forgoing, who duly acknowledged to me that he executed the same.

Notary Public
My Commission Expires: 4/15/2025

Tracey L Johnson
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054006639
MY COMMISSION EXPIRES April 15, 2025

Exhibit A

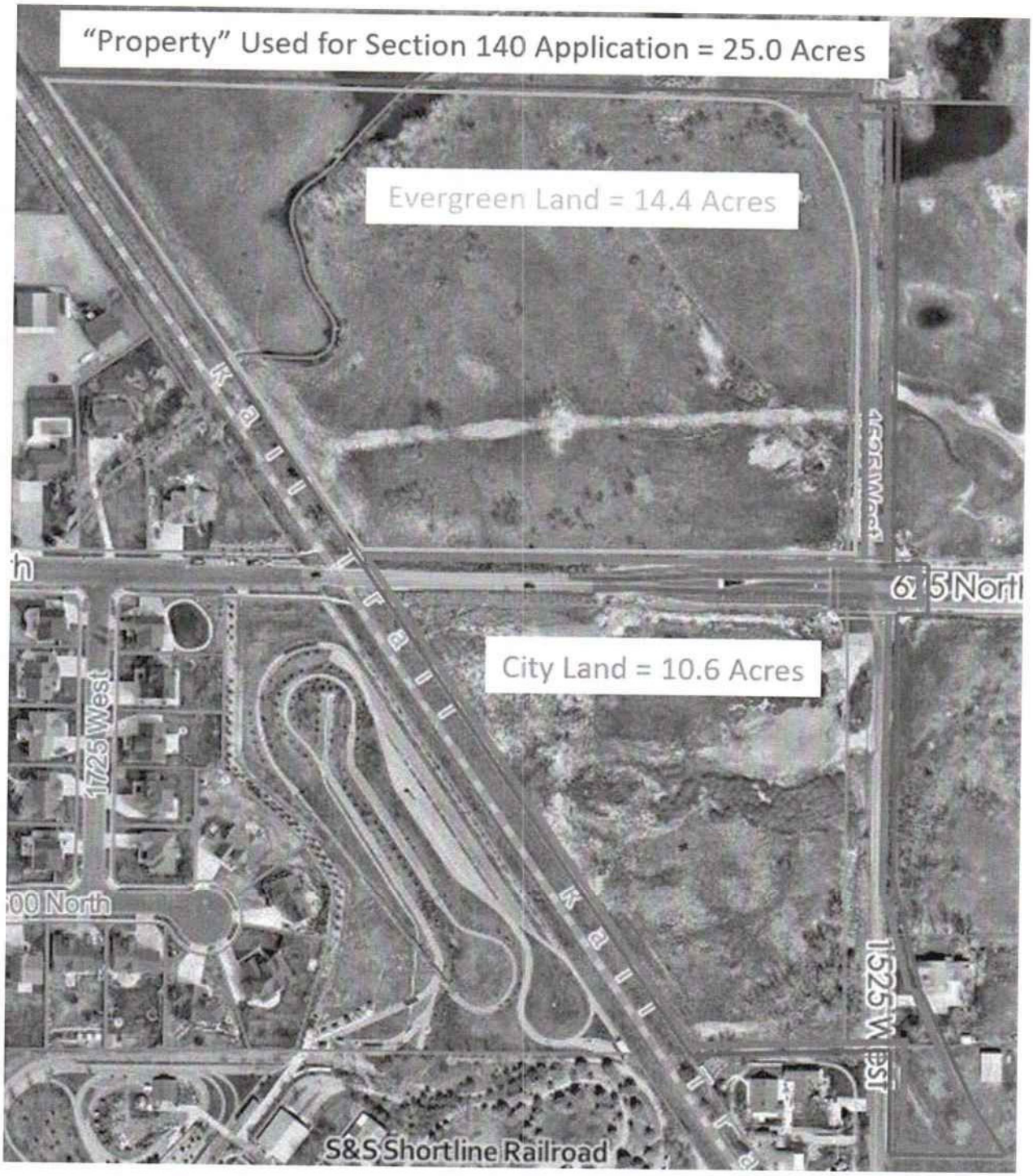

"Property" Used for Section 140 Application = 25.0 Acres
Evergreen Land = 14.4 Acres
City Land = 10.6 Acres
1725 West
1525 West
S&S Shortline Railroad

Exhibit B

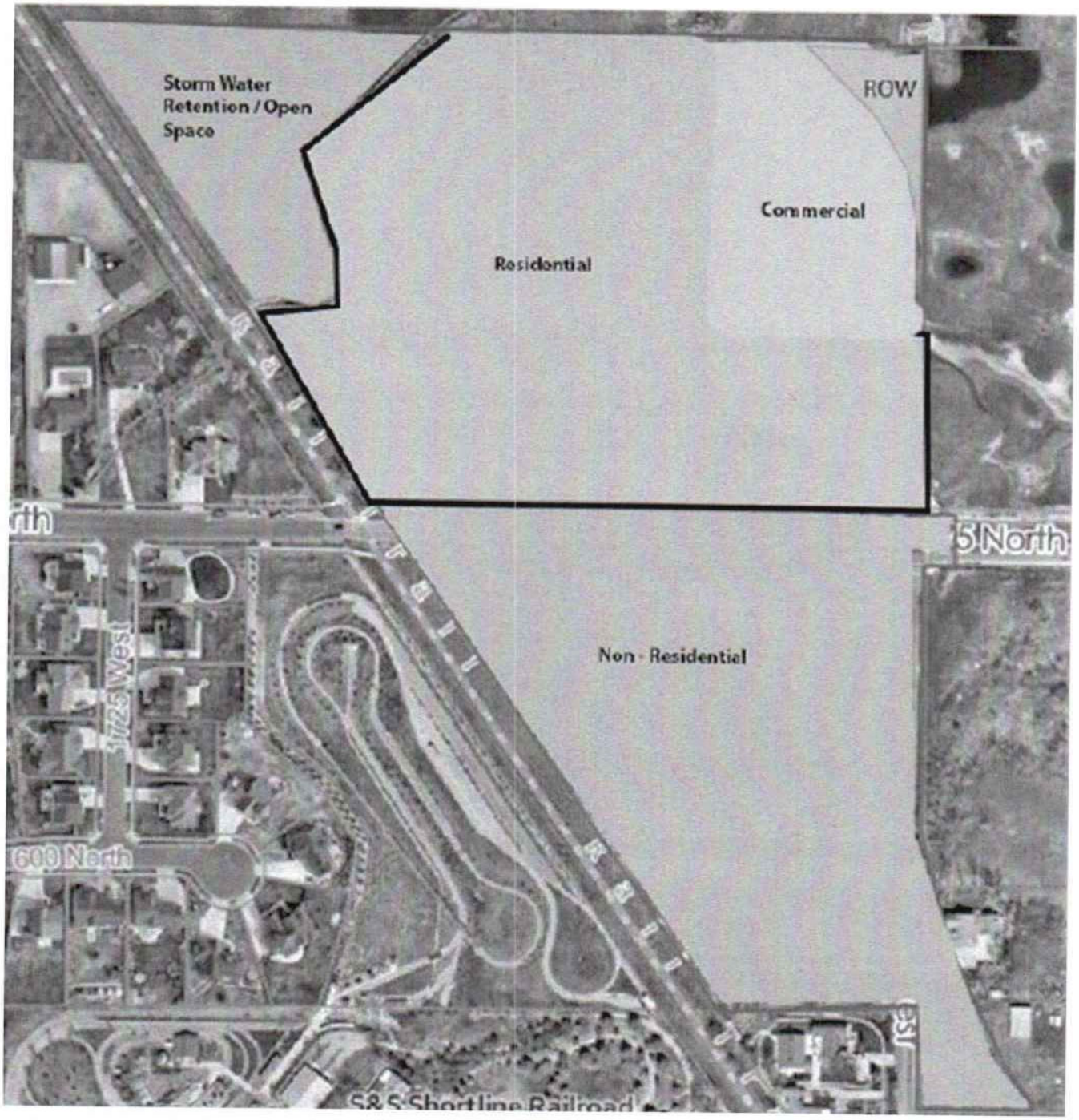

Storm Water
Retention / Open
Space
ROW
Commercial
Residential
Non - Residential
rth
S North
1125 West
600 North
S&S Shortline Railroad

Exhibit A


"Property" Used for Section 140 Application = 25.0 Acres
Evergreen Land = 14.4 Acres
City Land = 10.6 Acres
1725 West
1525 West
S&S Shortline Railroad

Exhibit B


Storm Water
Retention / Open
Space
ROW
Commercial
Residential
Non - Residential
600 North
S&S Shortline Railroad

Planning Commission Sub-committee: Evergreen Proposal August/September 2022				
Summary		Remaining Issues?		Notes:
Tax Generation	= Office > Other types of Residential < Retail	No		Not under the scope of the Planning Commission.
Schools	School District: Capacity not a problem	No		Not under the scope of the Planning Commission.
Public Services (Water, Fire, Police, City Services, Power/Gas/Electrical, Other)	All entities will serve, capacity not a problem	No		These issues are under the scope of the Planning Commission, but were previously vetted by the City's development review committee (DRC).
Traffic	Planned/funded local street network can absorb traffic generated from project	No		Will be an issue if City does not obtain a detention basin and/or Commerce Dr. Right of Way
Commercial Mix	Majority of Haltman Property Residential; but 60/40 for entire 25 acres if City property is developed as non-residential		Yes	60/40 on Haltman property or follow General Plan? Currently not entitled for residential, but developer is seeking permission for this entitlement as per Section 140.
Density/Massing *				Bulk, regulating plan, and other standards (even height and building placement) if different than the underlying zone may be approved (or not approved) as per Section 140.
	Commercial (Non-residential)—entitled			
	Density	N/A		
	Height	No		
	Building placement ("build to") distances	Maybe		
	Bulk (footprint)		Yes	
	Regulating Plan		Yes	
	Residential—Not Entitled			Height, building placement, bulk, regulating plan, and other standards if different than the underlying zone may be approved (or not approved) as per Section 140.
	Density (see commercial mix above)		Yes	
	Height		Yes	
	Building placement ("build to") distances	Maybe		
	Bulk (footprint)		Yes	
	Regulating Plan		Yes	
Buffers	Commercial (Non-residential)—Entitled	No		Some may think enough buffer exists between single-family residential uses to west and others may think otherwise. If residential, buffers can be determined as per Section 140; however, buffers for commercial/non-residential uses are not required.
	Residential—Not Entitled		Yes	
* REGULATING PLAN NOTE: Adherence to the regulating plan may mitigate massing issues; however, developer is not following City regulating plan standards but seeking permission to deviate from the plan as per Section 140.				

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

BUSINESS: **Consolidated Fee Schedule (CFS) changes – Street Excavation Fees**

GENERAL INFORMATION:

See staff report prepared by Kyle Robertson, Accountant

FARMINGTON CITY

BRETT ANDERSON
MAYOR
ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL
BRIGHAM MELLOR
CITY MANAGER

CITY COUNCIL STAFF REPORT for December 6, 2022

To: Mayor and City Council
From: Kyle Robertson
Date: November 30, 2022
Subject: **Consolidated Fee Schedule (CFS) changes – Street Excavation Fees**

RECOMMENDATION

Move that the City Council adopt the enclosed resolution amending the Consolidated Fee Schedule.

BACKGROUND

In response to increasing demand on City resources relating to street excavation inspection, monitoring, and repair, City staff began to explore the possibility of recovering the costs from developers. The proposed fees are the result of research and discussion conducted by City staff. These fees have not been charged by the City before; however, these types of fees are assessed by other cities and in-line with what other cities charge.

Respectfully submitted,

Kyle Robertson
Accountant

Review and concur,

Brigham Mellor
City Manager

RESOLUTION NO: ___

A RESOLUTION OF THE FARMINGTON CITY COUNCIL AMENDING THE CONSOLIDATED FEE SCHEDULE

WHEREAS, the City Council has review the Consolidated Fee Schedule and has determined that the same should be amended as provided herein; and

WHEREAS, the City Council, upon recommendation from the City's Administrative staff, has determined that an amendment of the Consolidated Fee Schedule is necessary to include certain new and adjusted fees

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH AS FOLLOWS:

Section 1: Amendment. The Farmington City Consolidated Fee Schedule is hereby amended to include the various changes as proposed by City staff. See exhibited "A" attached.

Section 2: Severability. If any section, clause, or provision of this Resolution is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Section 3: Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, THIS 6TH DAY OF DECEMBER 2022.

ATTEST: **FARMINGTON CITY**

_____ _____

DeAnn Carlile, City Recorder **Brett Anderson, Mayor**

FARMINGTON CITY CONSOLIDATED FEE SCHEDULE

E. PUBLIC PROPERTY/PARKS & RECREATION RELATED FEES

Time of Payment

a. For Cemetery services, payment is generally due at time request for services is made

b. Parks & Recreation user fees are due as per the Parks & Recreation Rules & Procedures

E1. Street Excavation Fees

Working without a permit will double all fees in this section (E1). All fees in this section are non-refundable.

Street Excavation Permit Fee	$	70.00	

Requires minimum cash bond of $1000 as per Section 8-5-140 of City code and additional bonding as determined by the City's Public Works Director

Construction Inspection as Required		Actual Cost	
*Excavation Trench Maintenance Fees			
Perpendicular Cuts			
Short Crossing	$	250.00	
Long Crossing	$	500.00	
Parallel Cuts	$	15.00	per linear ft
Cutting Fees			
Road age 3 years or less**	$	500.00	minimum
Road age 4-5 years	$	250.00	minimum
Road age 6 years or more	$	150.00	minimum
Potholing & Bore Pit Maintenance Fees			
Pothole	$	25.00	each
Bore Pit	$	70.00	each
Road closure fee***	$	500.00	per day

*An additional 15% of the orginial Excavation Trench Maintenance fee will be assessed each day beyond the original deadline until the excavation is patched as per the Excavation Permit requirements.

** Cutting into road surfaces less than 3 (three) years old must be approved by the Public Works Director. If cutting into such a road is required, maintenance fees double.

***The City Engineer and the Public Works Director must approve all road closures. All excavations within the City Right of Way are subject to the requirements of the excavation permit.

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

BUSINESS: **Zone Text Amendment—Amendments to Chapter 11-10, Agricultural Zones, to clarify which Commercial Recreation uses are permitted and to increase the amount of allowed lot coverage after review of a special exception by the Planning Commission**

GENERAL INFORMATION:

See staff report prepared by Lyle Gibson, Assistant Community Development Director

FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Lyle Gibson, Assistant Community Development Director

Date: December 6, 2022

SUBJECT: **Zone Text Amendment—Amendments to Chapter 11-10, Agricultural Zones, to clarify which Commercial Recreation uses are permitted and to increase the amount of allowed lot coverage after review of a special exception by the Planning Commission.**

RECOMMENDATION

1. Move that the City Council adopt the enclosed ordinance adopting and codifying amendments to Chapter 11-10, Agricultural Zones.

   Findings

   1. Allowing additional lot coverage for structures may help facilitate desirable use of property in the agricultural zoning districts that is not currently permitted.
   2. The additional lot coverage for a structure would permit a reasonable use of land that is fitting with the purpose of the Agricultural zoning districts.

BACKGROUND

Since April of this year the Planning Commission has off and on discussed options for addressing a property owner's interest in building a structure to cover additional tennis courts near the south west border of the city.

The commission has shown interest in the before mentioned proposal, but has determined in these previous meetings that a temporary building is still subject to lot coverage restrictions, a rezone is not an appropriate means of accommodating the request, and allowing extra coverage for a temporary structure isn't in the city's best interest. Based on these initial findings and direction from the Planning Commission the owner of the tennis courts that has initiated this conversation has determined that they are able and willing to do a permanent building over their desired additional courts.

The actual consideration for this specific project would require a return to the planning commission with an application to revise their existing conditional use permit. Before that can happen, the ordinance needs to allow for the request, thus the reason for the proposed zone text amendment.

The proposed zoned text change modifies the table of uses slightly to conform with previous decisions that indoor facilities are acceptable. The text amendment also allows the Planning Commission to consider additional lot coverage through the Special Exception process.

The Planning Commission reviewed this over multiple meetings and eventually recommended the proposed language in part based on some of the date indicating which properties may potentially be impacted by the change.

To understand the potential scale of buildings that may be proposed, staff researched the number of properties within each agricultural zoning district and identified the largest and average size of properties within each:
A - 55 properties, Average 2.07 acres, largest is 38.47 acres (the Bangerter Farm Property)
AA - 111 properties, Average 7.31 acres, largest is 233 Acres (UDOT - West Davis Corridor piece)
AE - 2,106 properties, Average .67 acres, largest is 12.04 acres (Farmington Ranches HOA property... in conservation easement)

To ensure that the size of buildings doesn't create something unanticipated, the proposed ordinance limits where the new use would be allowed to the A and AA zones to limit where it may be considered and put a total square footage cap in together with the potential increased lot coverage percentage at 21,780, which is the equivalent of ½ an acre.

SUPPLEMENTAL INFORMATION

1. Ordinance amending Title 11, Chapter 10
2. Link to map showing Farmington City Zoning (Zoning Map)

Respectfully Submitted

Lyle Gibson
Assistant Community Development Director

Concur

Brigham Mellor
City Manager

ORDINANCE NO. 2022-

AN ORDINANCE AMENDING
TITLE 11, CHAPTER 10, AGRICULTURAL ZONES UPDATE

WHEREAS, the Farmington City Planning Commission has made a recommendation to the City Council to amend text of Chapter 11-10 in order to allow additional lot coverage for specified uses and to allow indoor sports court for Commercial or Private use.

WHEREAS, the City Council desires to update and amend Title 11, Chapter 10 of the Farmington Municipal Code to clarify which Commercial Recreation uses are permitted and to increase the amount of allowed lot coverage after review of a special exception by the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, UTAH, AS FOLLOWS:

Section 1: **Amendment**. Title 11, Chapter 10 of the Farmington City Municipal Code is hereby amended in its entirety as set forth in Exhibit "A" attached hereto and by reference made a part hereof.

Section 2: **Severability.** If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 3: **Effective Date.** The provisions of this Ordinance shall become effective immediately.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, THIS 6th DAY OF December, 2022.

FARMINGTON CITY

By: _____
Brett Anderson

ATTEST:

_____
DeAnn Carlile, City Recorder

Exhibit "A"

11-10-020: SCHEDULE OF USES:

The following table identifies permitted uses by the letter "P" and conditional uses by the letter "C". The letter "X" indicates that the use is not allowed. Uses not listed shall not be allowed, except as provided in subsection 11-4-050F of this title:

Use	Agricultural Zones		
	AA	A	AE

Use	Agricultural Zones		
	AA	A	AE
Accessory dwelling unit	C	C	C
Accessory living quarters	C	X	X
Agriculture	P	P	P
Boarding kennel	X	C	X
Class A animals (small animals)	P	P	P
Class B animals (large animals)	P	P	P
Class C animals (commercial farming)	P	P	C
Class D animals (dangerous animals)	X	X	X
Commercial outdoor-recreation, minor (i.e., family reunion center, outdoor reception facilities, equestrian facilities, picnic grounds, tennis courts, etc.)	C	C	C
Daycare, preschool	X	C	C
Fruit and vegetable stands for sale of produce grown on the premises	P	P	P
Greenhouse/garden center (retail or wholesale) less than 5 acres	C	C	C
Home occupations complying with provisions of the home occupation chapter of this title, except as specified in section 11-35-040 of this title	P	P	P
Home occupations specified in section 11-35-040 of this title	C	C	C
Indoor Sports Court for Commercial or Private use (gymnasium, basketball, tennis, etc.)	C	C	P*
Internal accessory dwelling unit	P	P	P
Private school, public school or hospital	X	C	C
Public uses	X	C	C
Public utility installations (not including lines and rights-of-way)	C	C	C
Quasi-public uses	X	C	C
Radio, television and telephone transmission and relay towers and facilities, except as specified in section 11-28-190 of this title	C	C	C
Residential facilities for the elderly	X	C	C
Residential facilities for the disabled	P	P	P
Signs complying with title 15 of this Code	P	P	P
Single-family dwelling	P	P	P
Sportsman's kennel (3 to 5 dogs for noncommercial use)	C	C	C
Trails and parks	C	C	C
Uses customarily accessory to a listed conditional use	C	C	C
Uses customarily accessory to a listed permitted use	P	P	P
Veterinary clinic	C	C	C

*For private use only

11-10-040: LOT AND SETBACK STANDARDS:

C. Lot Coverage: Not more than twenty five percent (25%) of the gross area of a lot shall be covered by the main building, accessory buildings or other structures in the A Zone and lots greater than 0.75 acre in size in the AE Zone, and not more than the lesser of ten percent (10%) or 80,000 sq. ft. of the gross area of a lot for the AA Zone. On lots less than 0.75 acre in size, the lot coverage requirements for accessory buildings and structures set forth in chapter 11 of this title shall apply. Per section 11-3-045, the Planning Commission may consider a special exception to allow up to an additional 25% or 21,780 square feet of lot coverage, whichever is less.

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

BUSINESS: **Interlocal Agreement with Davis County re: Transportation Project Reimbursement**

GENERAL INFORMATION:

See staff report prepared by Brigham Mellor, City Manager

FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: **Paul Roberts, City Attorney**
Date: December 6, 2022
Subject: **Interlocal Agreement with Davis County re: Transportation Project Reimbursement**

SUMMARY

The City applied for funding from Davis County for a construction project, and received authorization for $12,000,000 for eligible expenses. This Agreement will govern the distribution of that grant money.

RECOMMENDATION

Approve the Agreement.

RECOMMENDED MOTION LANGUAGE

I move that the City Council adopt the resolution approving the Interlocal Cooperation Transportation Project Reimbursement Agreement between Davis County and Farmington City.

BACKGROUND

The City sought and received authorization for reimbursement from Davis County for up to $12,000,000 related to the expenses of constructing Digital and Commerce Drives, due to their impact on the regional transportation system.

The attached Interlocal Agreement will govern the distribution of those funds. The contract is currently undergoing legal review at the County, and so the final version may be slightly different from what is approved by the Council during this meeting. We do not anticipate substantial changes.

The Agreement requires that we complete the project within two years of the agreement's execution and allows for progress payments due to the size of the grant. Questions regarding details of the construction and its progress should be directed to Chad Boshell.

Respectfully submitted,

Paul Roberts
City Attorney

Review and concur,

Brigham Mellor
City Manager

RESOLUTION NO: _____

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN DAVIS COUNTY AND FARMINGTON CITY FOR TRANSPORTATION PROJECT REIMBURSEMENT

WHEREAS, Farmington City is constructing Digital and Commerce Drives as a transportation corridor between Kaysville and Farmington; and

WHEREAS, Farmington City applied for 3rd Quarter Transportation funding from Davis County, which application was approved; and

WHEREAS, the attached Interlocal Agreement will govern the reimbursement of up to twelve-million dollars ($12,000,000.00) from Davis County to Farmington City for approved expenses associated with the construction of Digital and Commerce Drives; and

WHEREAS, state law requires the City Council as Farmington City's governing body to approve contracts of this nature; and

WHEREAS, the Council finds that the proposed agreement is acceptable and in the best interest of the City,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, AS FOLLOWS:

Section 1: Approval. The Interlocal Cooperation Transportation Project Reimbursement Agreement (attached as Exhibit A) is approved, and the Mayor is directed to execute that Agreement.

Section 2: Severability. If any section, clause, or provision of this Resolution is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Section 3: Effective Date This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, THIS 6TH DAY OF DECEMBER, 2022.

ATTEST: **FARMINGTON CITY**

_____ _____

DeAnn Carlile, City Recorder **Brett Anderson, Mayor**

INTERLOCAL COOPERATION TRANSPORTATION PROJECT REIMBURSEMENT AGREEMENT

This Interlocal Cooperation Transportation Project Reimbursement Agreement (this "Agreement") is made and entered into by and between Davis County, a political subdivision of the state of Utah (the "County"), and Farmington City, a municipal corporation of the state of Utah (the "City"). The County and the City may be collectively referred to as the "Parties" herein or may be solely referred to as a "Party" herein.

Recitals

A. WHEREAS, the Parties, pursuant to Utah's Interlocal Cooperation Act, which is codified at Title 11, Chapter 13, Utah Code Annotated (the "Act"), are authorized to enter into in this Agreement; and

B. WHEREAS, Utah Code Annotated §59-12-2217, the County Option Sales and Use Tax for Transportation Fund provide the opportunity for a Council of Governments and the local legislative body to prioritize and approve funding for transportation projects that are included in the area's Regional Transportation Plan; and

C. WHEREAS, The Davis County Council of Governments (COG) is the council of governments with the authority to work with Davis County, the local legislative body, to prioritize and approve funding for such transportation projects; and

D. WHEREAS, the County, on or about May 22, 2020, requested the cities located within Davis County, the Utah Department of Transportation ("UDOT'), and the Utah Transit Authority ("UTA") to submit applications for a limited portion of the County's 2020 3rd Quarter transportation sales tax revenue to be used for qualifying transportation projects; and

E. WHEREAS, the City, on or about June 30, 2020, submitted a *Davis County 3rd Quarter Funding Application* (the "Application") to the County for the Digital and Commerce Drive Road (the "Project"), a copy of the Application is attached hereto as Exhibit A; Project Cost Estimate (the "Cost Estimate") is attached hereto as Exhibit B and incorporated herein by this reference, and made a part of this Agreement; and

F. WHEREAS, The COG accordingly approved such request on October 21, 2020 and subsequently sent a recommendation to the Davis County Commission requesting approval, and such request was approved by the County Commission on October 27, 2020; and

G. WHEREAS, the City desires to commence and complete the Project in a manner consistent with the Application and as further set forth in this Agreement; and

H. WHEREAS, the County desires to grant the Application and partially reimburse the City for the permitted or authorized costs, expenses, or otherwise incurred by the City in connection with the Project in a manner consistent with the terms and provisions of this Agreement.

NOW, for and in consideration of the mutual promises, obligations, and/or covenants contained herein, and for other good and valuable consideration, the receipt, fairness, and sufficiency of which are hereby acknowledged, and the Parties intending to be legally bound, the Parties do hereby mutually agree as follows:

1. The City's Duties, Obligations, Responsibilities, or Otherwise.

   a. The City shall commence and complete all material aspects of the Project in a manner consistent with the Application within two years from the date that this Agreement is executed by the City and the County; and

b. The City shall be fully and solely responsible for all costs, expenses, or otherwise related to the Project; and

c. The City shall be solely responsible for operating and maintaining the Project including, but not limited to, all costs, expenses, or otherwise related to the operation and/or maintenance of the Project; and

d. The City shall ensure that the Project complies with the American Public Works Association ("APWA") standards and all other federal, state, or local laws, regulations, rules, requirements, codes or otherwise that are applicable to the Project; and

2. The County's Duties, Obligations, Responsibilities, or Otherwise. The County shall reimburse the City in an amount up to 80% of the total authorized costs of the Project as identified in the Application, incorporated herein by this reference, and made a part of this Agreement, not to exceed $12,000,000.00, only upon all of the following being timely and completely satisfied by the City:

a. The City commences and completes the Project in a manner consistent with the Application within two years from the date that this Agreement is executed by the City and the County; and

b. The City notifies the County of its timely completion of the Project and provides the County with a detailed breakdown of all expenses, costs, or other approved match payments paid by the City in connection with the Project.

3. Progress Payments Authorized. The City may, on a quarterly basis, provide reimbursement requests to the County for authorized costs paid by the City for the Project. After confirming that the costs provided in a reimbursement request are authorized for reimbursement, the County shall reimburse the City in an amount equal to 75% of the authorized costs sought through a reimbursement request. The tender or receipt of progress payments under this Section shall not relieve the City of its obligations under this Agreement. The County shall reimburse the City for the remaining 25% of the authorized costs sought through the City's reimbursement requests in an amount up to 80% of the total authorized costs of the Project, not to exceed $12,000,000.00, only if the City timely and completely satisfies its obligations under Sections 1 and 2 of this Agreement.

4. Effective Date of this Agreement. The Effective Date of this Agreement shall be on the earliest date after this Agreement satisfies the requirements of Title 11, Chapter 13, Utah Code Annotated (the "Effective Date").

5. Term of Agreement. The term of this Agreement shall begin upon the Effective Date of this Agreement and shall, subject to the termination and other provisions set forth herein, terminate fifty years from the Effective Date of this Agreement.

6. Termination of Agreement. This Agreement may be terminated prior to the completion of the Term by any of the following actions:

a. The mutual written agreement of the Parties;

b. By either party:

1) After any material breach of this Agreement; and

2) Thirty calendar days after the nonbreaching party sends a demand to the breaching party to cure such material breach, and the breaching party fails to timely cure such material breach; provided however, the cure period shall be extended as may be required beyond the thirty calendar days, if the nature of the cure is such that it reasonably requires more than thirty calendar days to cure the breach, and the breaching party commences the cure within the thirty calendar day period and thereafter continuously and diligently pursues the cure to completion; and

3) After the notice to terminate this Agreement, which the non-breaching party shall provide to the breaching party, is effective pursuant to the notice provisions of this Agreement; and

c. As otherwise set forth in this Agreement or as permitted by law, ordinance, rule, regulation, or otherwise.

7. Notices. Any notices that may or must be sent under the terms and/or provisions of this Agreement should be delivered, by hand delivery or by United States mail, postage prepaid, as follows, or as subsequently amended in writing:

To the City:	To the County:
Farmington City Attention: Brigham Mellor 160 South Main Farmington, UT 84025	Davis County Attn: Chair, Davis County Board of Commissioners P.O. Box 618 Farmington, UT 84025

8. Damages. The Parties acknowledge, understand, and agree that, during the Term of this Agreement, the Parties are fully and solely responsible for their own actions, activities, or business sponsored or conducted.

9. Indemnification and Hold Harmless. The City, for itself, and on behalf of its officers, officials, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of the City (collectively, the "City Representatives"), agrees and promises to indemnify, save and hold harmless the County, as well as the County's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "County Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, including defense costs, fee, or otherwise (collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to this Agreement, the Project, and/or the negligent acts or omissions of the City and/or the City Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise. The City, for itself, and on behalf of the City Representatives, agrees and promises that all costs, including defense costs, expenses, or otherwise relating to the Claims and incurred by County or the County Representatives or which the County or the County Representatives would otherwise be obligated to pay, shall be paid in full by the City within thirty (30) calendar days after the County provides the City with documents evidencing such costs, including, if applicable, defense costs, expenses, or otherwise. No term or condition of this Agreement, including, but not limited to, insurance that may be required under this Agreement, shall limit or waive any liability that the City may have arising from, in connection with, or relating in any way to this Contract, the Project, and/or the negligent acts or omissions of the City or the City Representatives.

10. Governmental Immunity. The Parties recognize and acknowledge that each Party is covered by the *Governmental Immunity Act of Utah*, codified at Section 63G-7-101, et seq., *Utah Code Annotated*, as amended, and nothing herein is intended to waive or modify any and all rights, defenses or provisions provided therein. Officers and employees performing services pursuant to this Agreement shall be deemed officers and employees of the Party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such Party under the provisions of the *Utah Governmental Immunity Act*.

11. No Separate Legal Entity. No separate legal entity is created by this Agreement.

12. Approval. This Agreement shall be submitted to the authorized attorney for each Party for review and approval as to form in accordance with applicable provisions of Section 11-13-202.5, *Utah Code Annotated*, as amended. This Agreement shall be authorized and approved by resolution or

ordinance of the legislative body of each Party in accordance with Section 11-13-202.5, *Utah Code Annotated*, as amended, and a duly executed original counterpart of this Agreement shall be filed with the keeper of records of each Party in accordance with Section 11-13-209, *Utah Code Annotated*, as amended.

13. Survival after Termination. Termination of this Agreement shall not extinguish or prejudice either Party's right to enforce this Agreement, or any term, provision, or promise under this Agreement, regarding insurance, indemnification, defense, save or hold harmless, or damages, with respect to any uncured breach or default of or under this Agreement.

14. Benefits. The Parties acknowledge, understand, and agree that the respective representatives, agents, contractors, officers, officials, members, employees, volunteers, and/or any person or persons under the supervision, direction, or control of a Party are not in any manner or degree employees of the other Party and shall have no right to and shall not be provided with any benefits from the other Party. County employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of the County for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits. City employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of the City for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits.

15. Waivers or Modification. No waiver or failure to enforce one or more parts or provisions of this Agreement shall be construed as a continuing waiver of any part or provision of this Agreement, which shall preclude the Parties from receiving the full, bargained for benefit under the terms and provisions of this Agreement. A waiver or modification of any of the provisions of this Agreement or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Agreement cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the Party whose rights will be diminished or adversely affected by the waiver.

16. Binding Effect; Entire Agreement, Amendment. This Agreement is binding upon the Parties and their officers, directors, employees, agents, representatives and to all persons or entities claiming by, through or under them. This Agreement, including all attachments, if any, constitutes and/or represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Unless otherwise set forth herein, this Agreement supersedes and cancels all prior agreements, negotiations, and understandings between the Parties regarding the subject matter herein, whether written or oral, which are void, nullified and of no legal effect if they are not recited or addressed in this Agreement. Neither this Agreement nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Agreement and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.

17. Force Majeure. In the event that either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, acts of the United States Government, the State of Utah Government, fires, floods, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inclement weather, restrictive governmental laws, ordinances, rules, regulations or otherwise, delays in or refusals to issue necessary governmental permits or licenses, riots, insurrection, wars, or other reasons of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act(s) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, without any liability to the delayed Party.

18. Assignment Restricted. The Parties agree that neither this Agreement nor the duties, obligations, responsibilities, or privileges herein may be assigned, transferred, or delegated, in whole or in part, without the prior written consent of both of the Parties.

19. Choice of Law; Jurisdiction; Venue. This Agreement and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Agreement or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the state of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Agreement, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Anyone who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing Party for its attorneys' fees, and the Party prevailing in any such dispute shall be awarded its attorneys' fees.

20. Severability. If any part or provision of this Agreement is found to be invalid, prohibited, or unenforceable in any jurisdiction, such part or provision of this Agreement shall, as to such jurisdiction only, be inoperative, null and void to the extent of such invalidity, prohibition, or unenforceability without invalidating the remaining parts or provisions hereof, and any such invalidity, prohibition, or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Agreement, which are not invalid, prohibited, or unenforceable, shall remain in full force and effect.

21. Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement shall be construed cumulatively, and none of the rights and/or remedies under this Agreement shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.

22. No Third-Party Beneficiaries. This Agreement is entered into by the Parties for the exclusive benefit of the Parties and their respective successors, assigns and affiliated persons referred to herein. Except and only to the extent provided by applicable statute, no creditor or other third party shall have any rights or interests or receive any benefits under this Agreement. Notwithstanding anything herein to the contrary, the County is expressly authorized by the City to enter into similar agreements with any or all of the other cities, or other governmental or quasi-governmental entities, located within Davis County.

23. Recitals Incorporated. The Recitals to this Agreement are incorporated herein by reference and made contractual in nature.

24. Headings. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

25. Authorization. The persons executing this Agreement on behalf of a Party hereby represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such Party.

26. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same Agreement.

[This space is left blank intentionally. The signature page follows.]

WHEREFORE, the Parties have signed this Agreement on the dates set forth below.

FARMINGTON CITY

_____
Mayor
Dated: _____

ATTEST:

_____
Farmington City Recorder
Dated: _____

APPROVED AS TO FORM AND LEGALITY:

_____
Farmington City Attorney
Dated: _____

DAVIS COUNTY

_____
Chair, Davis County Board of Commissioners
Dated: _____

ATTEST:

_____
Davis County Clerk/Auditor
Dated: _____

APPROVED AS TO FORM AND LEGALITY:

_____
Davis County Attorney's Office, Civil Division
Dated: _____

EXHIBIT A

FARMINGTON CITY

H. JAMES TALBOT
MAYOR

BRETT ANDERSON
SHAWN BEUS
SCOTT ISAACSON
AMY SHUMWAY
REBECCA WAYMENT
CITY COUNCIL

SHANE PACE
CITY MANAGER

6-25-2020

Davis County
Chair, Davis County Board of Commissioners
P.O. Box 618
Farmington, UT 84025

Re: Davis County 3rd Quarter Transportation Funding Application

Dear Commissioners,

Farmington City thanks you for the opportunity to apply for the Davis County 3rd Quarter Transportation Funding. We are submitting one application for the Construction of Digital and Commerce Drives which is a major transportation corridor that creates a north-south connection between Kaysville and Centerville, connects four major freeways and three interchanges; and provides access to a major business park and high-density multi-family housing development that will spur economic development County wide. This project is partially funded by the City, private development, and impact fees but still falls short and is in need of assistance. Attached with this letter is the City's application in both PDF and excel formats. Please contact me if you have any questions or concerns.

Sincerely,

Shane E. Pace

Shane Pace
City Manager
801-939-9203

Davis COUNTY

3rd Qtr
Davis County Transportation Funding

Davis County 3rd Quarter Transportation Funding Application

Notes: Signatures confirm the commitment of the Applicant to follow the Guidelines established by Davis County. The Applicant is responsible for the maintainance and upkeep of the project during implementation and after project completion.

Your signature below indicates your agency's willingness to enter into formal agreement to complete and maintain the project if selected for funding.

Signature: Shane E. Pace	Date: 1-Jul-20

APPLICATION INFORMATION

Project Sponsor:	Farmington City		
Contact Person:	Shane Pace	Title:	City Manager
Address:	160 South Main Street, Farmington, UT	ZIP:	84025
Phone:	801-939-9203	Mobile:	801-201-2034
Email:	space@farmington.utah.gov		

PROJECT INFORMATION

Project Title:	Digital and Commerce Drive						
Project Location:	Digital and Commerce Drive (Park Lane - 950 North)						
(A location map with aerial view must be attached)							
Facility Length:	2.1	Jurisdiction	State Owned	No	Locally Owned	Yes	Multiple (List Other Agencies)	N/A

Brief Project Description:

(Attach conceptual plans if available):

Davis County is growing, much of it occuring in Farmington and affecting the County. With the West Davis Corridor Interchange at 950 North and the Shepard Lane Interchange on I-15 the City is tasked with filling the transportation gaps. The Digital and Commerce Drive road projects fills a much-needed regional north-south connection and also provides economic growth for all of Davis County by providing access to a class A business park creating jobs and multi-family housing. The project includes two arterial roads connecting the Park Lane Interchange to the WDC and Shepard Lane Interchanges. These roads connect cities, provide safe routes to Farmington High School, interconnect interchanges, and provide trail and bike paths to active transportation routes and the Front Runner Station.

Have any public information or community meetings been held? Yes (Yes / No)

Describe public and private support for the project.

(Examples: petitions, written endorsements, resolutions, etc.):

This project has the following public and private support: private landowners affected by the roads, no negative comments were given from the city-wide open house, Wasatch Front Regional Council has awarded money to the project, Station Park, Kaysville, UDOT, and Davis Chamber of Commerce.

Project Description

Functional Classification - Link	Minor Arterial	Is the Project on the RTP highway or Transit Network?	Yes	Regional Transportation Plan - Link	
Anticipated year of Project Construction	1 to 5 years	Time Period for Right-of-Way Acquisition	Less than 1 year		

		Existing	Projected	
Roadway	Average Daily Traffic - Link	0	20,000	Projected Traffic - Link
Transit	*Current Daily Ridership*	0	2,900	*Opening Day - Anticipated Daily Ridership*

Provde Source of Ridership numbers: Stack Development Traffic Impact Study

Scope of Work *(Attach conceptual plans if available):*

The Digital and Commerce Drive project consists of designing and building both 5-lane and 3-lane arterial roads between 950 North and Park Lane. The project consists of the following: an environmental study and mitigation of wetlands; design of roads and infrastructure; coordination with UDOT and other ongoing transportation projects; acquisition of ROW; constructing two miles of roads that include bike lane facilities and connections to existing and future trails; installation of utilities in the roadway; low impact development for storm water facilities; landscaped medians; connecting to existing intersections; improving safety; constructing two crossings over Shepard Creek and Spring Creek; and designing Digital to connect to a remote transit hub.

Summarize any special characteristics of the project:

(Provide Typical Section drawings and describe the typical section here.):

Digital and Commerce Drives are designed as arterial roads, both roads have 14' landscape medians that taper to turn pockets creating a nice corridor. Digital is a 3-lane road with dedicated bike lanes and on street parking that can turn into additional travel lanes if needed. Commerce is a 5-lane road with on street parking.

How many Jurisdictions are Collaborating on this project? 9

Describe the nature of the Collaboration

Note: Collaborating is significantly more than a letter of support, and includes financial obligations to the project from each jurisdiction collaborating.

In addition to the collaboration with WFRC & UDOT via financial and road connections the City has collaborated with 7 entities to provide tax increment which promotes economic development adjacent to this transportation corridor to make this project possible: Davis School District, CDSD, Mosquito Abatement, Benchland, Weber Basin, & Davis County.

Describe any project work phases that are currently underway or have been completed.

Farmington has actively planned for these projects by: realigning Park Lane and constructing the Commerce intersection; currently reconstructing Burke Lane including intersections for Commerce and Digital and signal infrastructure; wetland delineations; designing and funding 950 North connecting the two new interchanges and Commerce.

Describe existing right of way ownerships along the project

(Describe when the right-of-way was obtained and how ownership is documented, i.e., plats, deeds, prescriptions, easements):

The existing portions of this project that has ROW or City owned property that will be used or traded for needed ROW along the corridor is explained: ROW in 1525 West was acquired in the 1800's by patent; the City owned property was acquired through density approvals; and ROW along Digital came from impact fees.

Is right-of-way acquisition proposed as part of the larger project? (if Yes, describe proposed acquisition including expected fund source, limitations on fund use or availability, and who will acquire and retain ownership of proposed right-of-way) Yes — Yes/ No/ NA

All property needed for these roads will become City ROW and will be acquired from developer paid impact fees, surplus City ROW from the Shepard Lane interchange, and City owned land trades. The use of these funds is not limited for the intended purpose and is currently available.

Efforts to Preserve the Corridor
((How much Right-of-Way has been acquired) divided by the (Total Amount of Right-of-Way necessary for the Project)) = (Percent of Corridor Preserved): 25 to 50 %

Project Details

Access to Opportunities

Link for "Access to Opportunities" - Reference Interactive Map

For the following 2 questions, 'please identify the dominant color at or along your project on the Interactive Map.

What is the Color for the Employment Intensity?	Red	What is the Color for the Residential Intensity?	Red

If Intensity or destination is planned, applicant must provide documentation e.g., zoning, developer agreement(s).

To which of the Following Does the Project Improve Access. *(Select All that Apply)* *Some have been identified on the map*

Community Center	Yes	Vulnerable Community	Yes	Elementary School	Yes	Library/ City Center	No
Grocery Store	Yes	Trails/ Parks	Yes	Junior High School	Yes	Other Retail	Yes
Core Transit Station	Yes	Higher Education	Yes	High School	Yes	Other Services	Yes
						Emergency Services	

To what extent does the project fill a gap or complete a connection?

Farmington is a pinch point between north and south Davis County with no north-south arterial road on the west side of I-15. Digital and Commerce Drives will solve this problem by connecting transportation routes from Centerville to Kaysville moving traffic out of residential areas and solving a regional transportation problem.

Which of the listed Safety Improvements will be included with this project

Sidewalks/ Path	No	Shoulders/ Curb & Gutter	Yes	Lighting/ Visibility	Yes
Bike Lanes	Yes	Adequate Turn Lanes	Yes	Access Control	Yes
Intersection Geometry	Yes	Removal of Roadway Obstructions	Yes	ADA/ Crosswalk	Yes
Signals/ Signs	Yes	Center Lane or Raised Median	Yes	Other . .	*If Other Enter Here*

Discuss the safety improvements that are included in this project.

This project solves safety problems that exist in the area in residential and commercial areas. Providing a route for commuters and high school traffic reduces the volume and speeds in the residential areas, it also alleviates congestion on Park Lane which eliminates by-pass traffic. The project will also realign a dangerous D&RG trail crossing.

Estimated delay reduction *(Vehicle Hours)* *(Provide documentation)*	New Road	Project Safety Index from UDOT Traffic and Safety Data (2013-2015)	5	Recreational Opportunities Associated with Project - Link		How many access management improvements are included? *(Provide documentation)*	7
Estimated reduction in vehicle miles traveled. *(Provide documentation)*	New Road	Total number of crashes on this facility or parallel roadway during the three years	7	How many signal phasing, timing, and other improvements are included *(Provide documentation)*	6	Number of Intelligent Transportation System (ITS) elements included *(Provide documentation)*	6
Number of Intersection Improvements? *(Provide documentation)*	4	Other Project Benefits not yet listed?	This project promotes quality local job growth and housing while reducing congestion and improving air quality.				

Project Implementation Information

Project phases included in funding request:

	Planning Activities
Yes	Project Development & Environment Study
Yes	Preliminary Engineering/ Final Design Plans
Yes	Construction
Yes	Construction Engineering & Inspection

Project Cost and Contributions:

$	23,591,981.69	Total Estimated Project Cost
$	12,000,000.00	Davis County 3rd Quarter Funding Request
$	4,600,000.00	Local Funds
$	3,991,981.69	In-Kind Donations *(Dollar Value)*
$	3,000,000.00	Other Funding Contributions

Eligible Match

** NOTE ** A minimum of 20% match is required

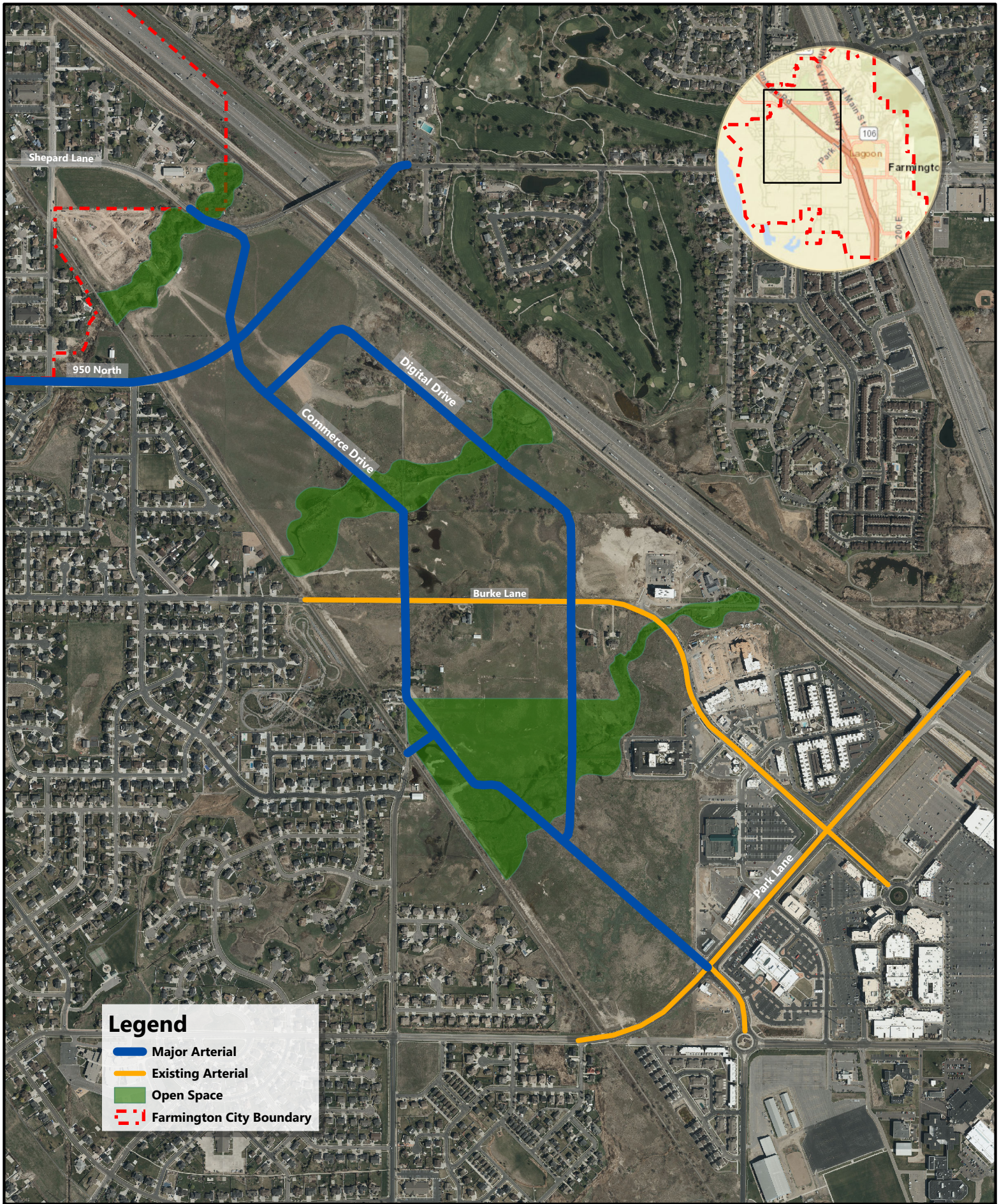
Project Cost Summary

Below, provide a summary of the estimated cost for the work being proposed. (A detailed project cost estimate must be attached to this application.)

Planning Activities	$	20,000.00	*(enter estimate)*
Project Development & Environment Study	$	1,125,000.00	*(enter estimate)*
Preliminary Engineering/ Final Design Plans	$	315,000.00	*(enter estimate)*
Right of Way	$	6,671,623.00	*(enter estimate)*
Construction	$	9,596,603.00	*(enter estimate)*
Maintenance of Traffic (MOT)	$	54,000.00	*(enter estimate)*
Mobilization	$	242,000.00	*(enter estimate)*
Subtotal	$	18,024,226.00	
Contingency (15 % of Subtotal)	$	2,703,633.90	
Utilities	$	50,000.00	*(enter estimate)*
Miscellaneous	$	100,000.00	*(enter estimate)*
Total Construction Cost	$	20,877,859.90	
Construction Engineering & Inspection (CEI) (13% of Total)	$	2,714,121.79	*(enter estimate)*
Other (Describe) _____	$	-	*(enter estimate)*
Total Project Cost	$	23,591,981.69	

Project Notes

ith he funding request disbursed over three years or all at once this year in the County bonds for it. The utilities item in the above project cost summary only includes the relocation of public utilities such as power, gas, and communication.



FARMINGTON

FARMINGTON CITY
VICINITY MAP

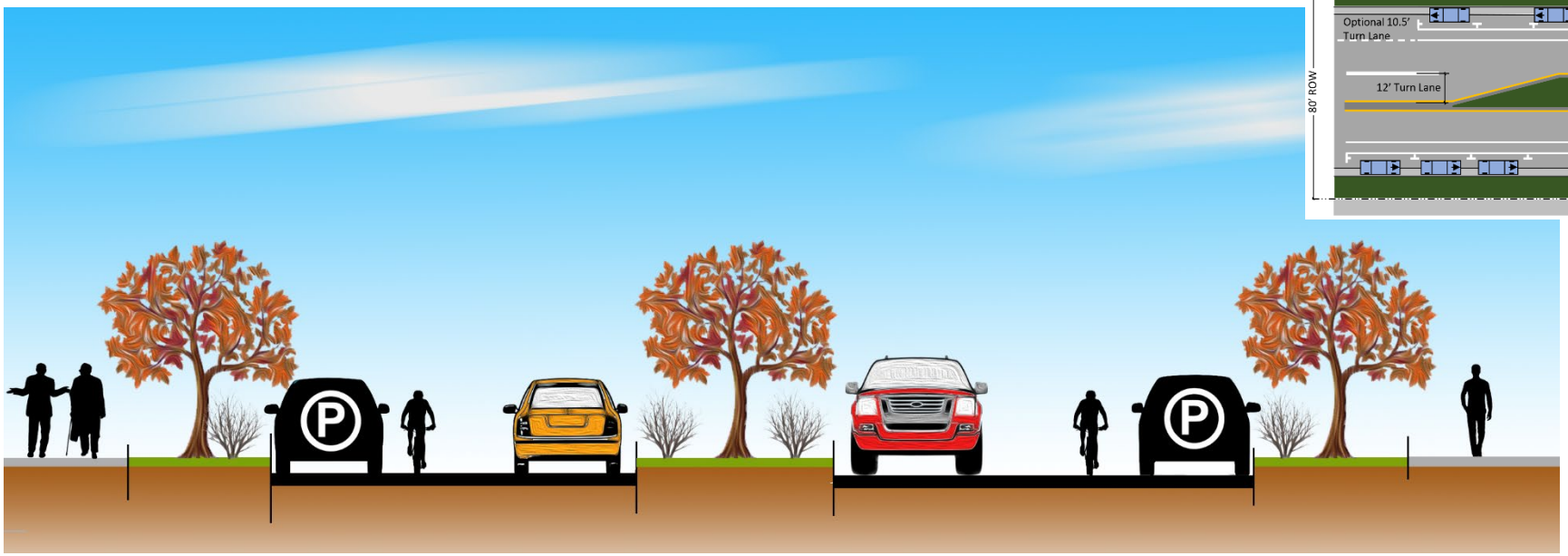
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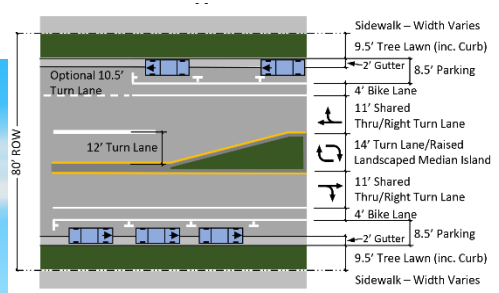
0 125 250 375 500 Meters

N W FC E S

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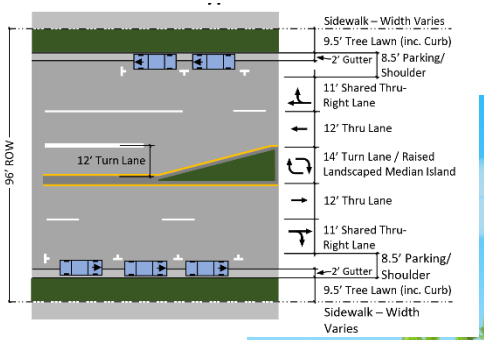
Cross-Section for Burke Lane and “Digital Drive”





Cross-Section for “Commerce Drive”





Shepard Lane Interchange

Shepard Lane

950 North

WDC Interchange

Commerce Drive

Digital Drive

Burke Lane

Park Lane Interchange

Park Lane

Legend

- Open Space
- OMU District
- GMU District
- TMU District
- RMU District
- Farmington City Boundary
- Existing Arterial
- Major Arterial

Disclaimer: This map was produced by Farmington City GIS and is for reference only. The information contained on this map is believed to be accurate and suitable for limited uses. Farmington City makes no warranty as to the accuracy of the information contained for any other purposes.

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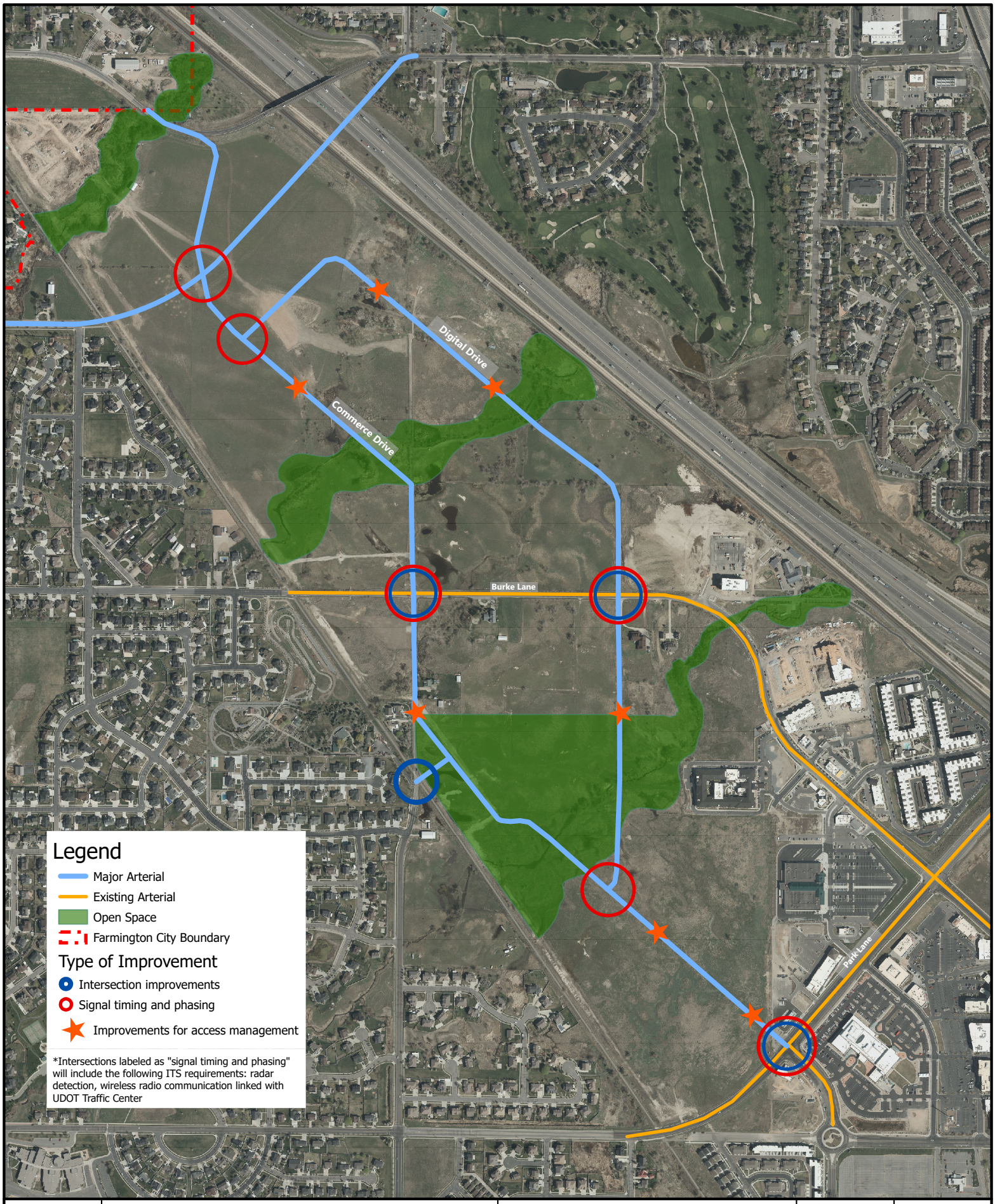
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FARMINGTON CITY

REGULATING PLAN WITH INTERCHANGES

FARMINGTON



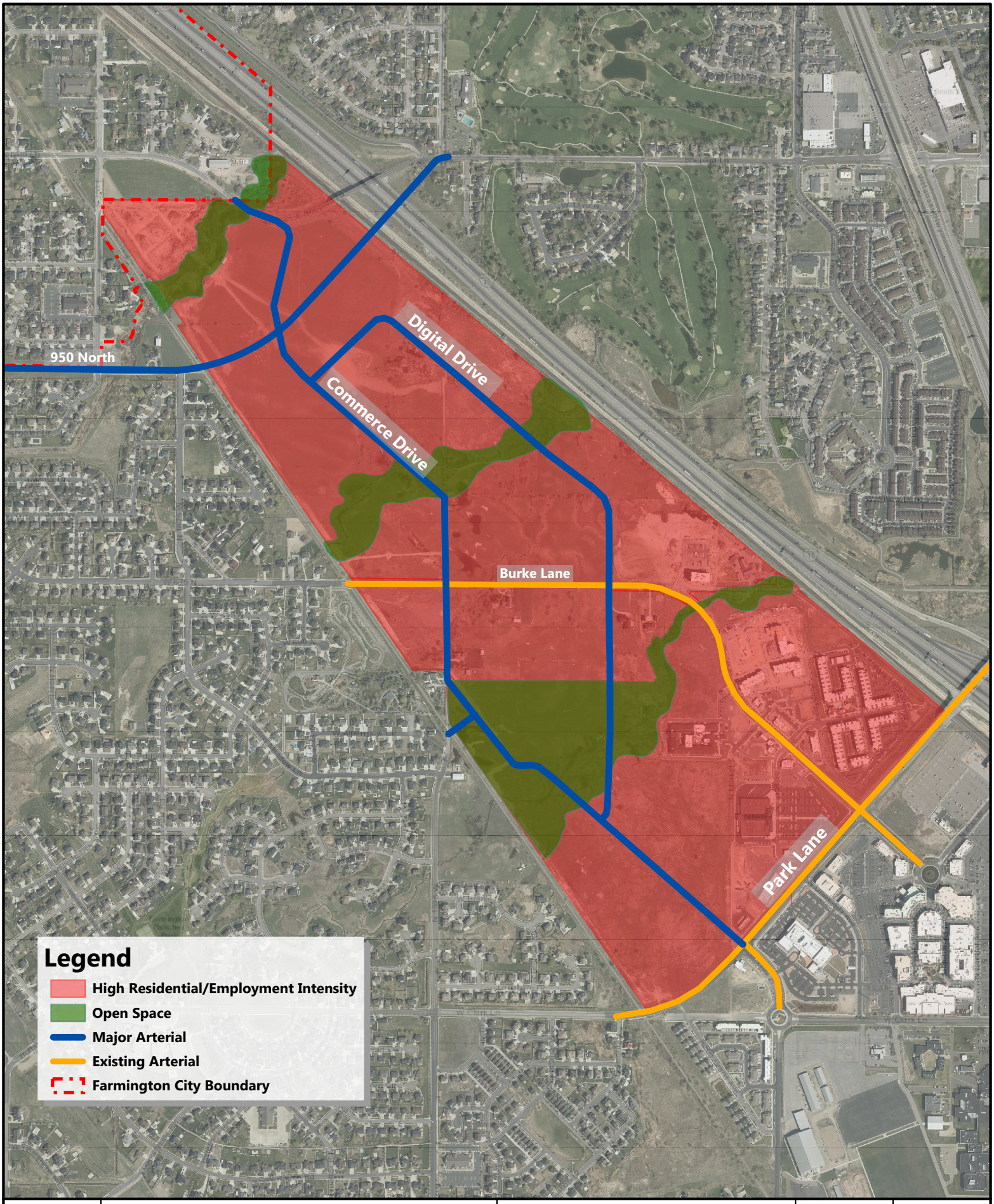
FARMINGTON CITY
INTERSECTION IMPROVEMENTS

0 400 800 1,200 1,600 Feet

0 100 200 300 400 Meters

N W FC E S

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FARMINGTON

FARMINGTON CITY

ACCESS TO OPPORTUNITIES

0 500 1,000 1,500 2,000 Feet

0 125 250 375 500 Meters

N W FC E S

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CENTERCAL
PROPERTIES, LLC

June 24, 2020

Davis County Council of Governments
61 South Main Street, Room 304
Farmington 84025

Re: Transportation Infrastructure

Dear Davis County Council of Governments,

We at CenterCal (Station Park) are aware of the transportation infrastructure installations that will be completed at Shepard Lane and along the West Davis Corridor by 2023. This provides much needed access to Farmington as the area continues to grow in popularity. However, it will not resolve congestion problems at Park Lane without arterial road connectivity, which filters traffic from the interstate offramps through the west side of the community.

We have committed over a million dollars to help resolve the offsite transportation connectivity issues in the community. Most recently we are helping fund the Burke Lane road upgrade that will take place this summer in partnership with Farmington City.

Please help Farmington fund these much-needed roads North of Station Park to prepare our community for the future.

Thank you.

Sincerely,

Craig J. Trottier
President, Intermountain Development

CENTERCAL PROPERTIES, LLC | *Creating Value for Retailers and Communities*
140 North Union Avenue Suite 225
Farmington, UT. 84025
☎ 801.451.5993 | 🖷 801.451.7399



Kaysville City

SETTLED IN 1850

Utah's Hometown *In the middle of everything*

Davis County COG
61 Main St. Suite 301
Farmington, UT 84025

June 25, 2020

Dear Davis County Council of Governments:

Thank you for your continued effort to work with cities in meeting the various needs of the residents of Davis County. We appreciate that neither of us can do it alone and it is wonderful to have a positive working relationship with elected officials from other jurisdictions as I feel Kaysville has with Davis County and the Council of Governments.

Kaysville recognizes the need for a north/south arterial connection between the D&RG Rail Trail and I-15 through the west side of Farmington. After the West Davis Corridor and the Interstate 15 Shepard Lane Interchange are completed, there will be no alternative for traffic heading to Lagoon and Station Park but to use residential roads. For Kaysville residents the need is also urgent as the boundary of Farmington High School includes most of the west side of Kaysville. Students are currently forced to wind through neighborhoods in Kaysville and Farmington to arrive at FHS.

Commerce Drive is important to area connectivity and would provide a safe and effective way for students, residents, and visitors to our area to get to these important destinations while not impacting residents and homes that live along the current route. For these reasons we support Farmington's application to the COG for 3rd Quarter Transportation Funding.

Again, thank you for your willingness to work with Kaysville and area communities in meeting the needs of all of our residents when it comes to transportation and other important services we provide. If you have any questions about this letter, feel free to contact me at (801) 546-1235.

Sincerely Yours,

Shayne Scott

Shayne Scott
City Manager, Kaysville City

23 East Center Street, Kaysville, Utah 84037 | phone 801-546-1235 | fax 801-544-5646
www.kaysvillecity.com

NORTHERN UTAH ECONOMIC ALLIANCE

262 N. University Avenue
Farmington, UT 84095
(801) 455-5690
www.nuea.org

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Davis County
Co-Chair

Commissioner Gage Froerer
Weber County
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Ryan Starks
GOED

Slade Opheikens
R&O Constructions

Taylor Woodbury
Woodbury Corporation

Theresa A. Foxley
EDCUtah

Senator David Buxton
Utah State Senate

Representative Stephen Handy
Utah House of Representatives

President Stuart Adams
Utah State Senate

Speaker Brad Wilson
Utah House of Representatives

Davis County Council of Government
P.O. Box 618
Farmington, UT 84025

June 30, 2020

Dear Council members:

I am writing to you on behalf of the Northern Utah Economic Alliance, in partnership with the Economic Development Corporation of Utah. We have an economic development opportunity here in Farmington to attract technology and office tenants. While there is a significant amount of interest in the area, lengthy timelines for constructing a finished office product due to the lack of road infrastructure limits the possibilities.

This area has the potential to house 10,000 or more high-paying office jobs and up to 2,000,000 square feet of office space. We have had significant interest from the development community. The timing is now for Northern Utah and this Farmington site.

While the developers plan to build local neighborhood roads at their own cost, the main arterial roads need funding. Without an adequate arterial system, a “shovel ready site” is not possible. Meeting this need is an ideal application of 3rd Quarter transportation funding. Such funding would support a regionally significant road system with major economic development implications.

Sincerely,

Chris Roybal
President
Northern Utah Economic Alliance

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

JASON E. DAVIS, P.E.
Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

June 25, 2020

Brigham Mellor
Assistant City Manager/Economic Development Director
160 S Main
Farmington, Utah 84025

SUBJECT: Davis COG 3rd Qtr. Transportation Funding Letter of Support for Commerce Drive Funding

Mr. Mellor,

You may attach this letter with your application that you are submitting to the Davis Council of Governments (COG) as a show of support from the Utah Department of Transportation (UDOT) to receive funding to help complete the construction of Commerce Drive to the connection of Shepard Lane/950 N. roadway.

Commerce Drive is a significant link in connecting traffic that will be generated from the development of the area north of Park Lane. A major component of the purpose and need for the Environmental Assessment being completed for the Shepard Lane interchange was to provide access to I-15 from this area. The construction of Shepard Lane is scheduled to be completed by the end of 2024. This coupled with the scheduled completion of the West Davis Highway with its interchange at 950 N. will significantly increase the need to have a collector connection tying transportation movements from the South to I-15, the West Davis Highway, and Kaysville to the north. Without the completion of Commerce Drive vehicles will be forced to find their way to these interchange locations through the local street network and subdivisions. Therefore, I see the need to complete Commerce Drive as significant.

It is my understanding that this roadway is primarily being funded by the City of Farmington, and that contributions from the COG would greatly aid in being able to obtain the needed revenue to complete the project. I, therefore, as stated above recommend this as a wise use of transportation funding that will bring huge benefit to not only Farmington City but the larger surrounding areas not only from an economic standpoint, but in a congestion relieving measure.

Sincerely,

Rex N. Harris

Rex N. Harris, S.E.
UDOT Project Director, WDC

Davis Chamber of Commerce

June 29th, 2020

Dear Davis Council of Governments,

I am writing to you to express the Davis Chamber of Commerce's support of the North/South Regional collector roads between the Shepard Lane Interchange and Park Lane interchange proposed by the city of Farmington. Currently, the Park Lane interchange, with services to I-89, Legacy, and I-15, regularly fails with the popularity of Station Park and Lagoon. It also serves as a bottleneck for Davis County residents coming and going from the job centers to the south. The new Shepard Lane interchange has the potential to relieve some of that pressure, but that will not be possible without a collector road west of I-15 from Shepard Lane.

As a major advocate for local businesses in the region, we realize that this project would open the door to many commercial possibilities. Diversifying the commercial entities in the county will provide for long term sustainable development that will bring high paying jobs and much-needed high density housing.

We feel this is an appropriate application of the 3rd quarter transportation funding. Building these roads promotes the safety of the residents and opens-up a substantial opportunity for commercial development.

Thank you for your consideration of funding for this project.

Sincerely,

Angie Osguthorpe

President/CEO, Davis Chamber of Commerce

Digital and Commerce Drive
Cost Estimate
6/18/2020

Construction - Storm Drain						
Item	**Quantity**	**Unit**		**Unit Cost**		**Amount**
24" RCP Pipe (Includes Bedding and Fill)	10960	LF	$	79.00	$	865,840.00
18" RCP Pipe (Includes Bedding and Fill)	900	LF	$	70.00	$	63,000.00
15" RCP Pipe (Includes Bedding and Fill)	2401	LF	$	61.00	$	146,461.00
Catch Basin Curb Inlet	45	EA	$	3,000.00	$	135,000.00
4' Storm Drain Manhole	35	EA	$	6,000.00	$	210,000.00
SWPPP	1	LS	$	32,500.00	$	32,500.00
Subtotal					**$**	**1,452,801.00**

Construction - Sanitary Sewer						
Item	**Quantity**	**Unit**		**Unit Cost**		**Amount**
Connect to Existing	3	EA	$	8,000.00	$	24,000.00
Sewer Manhole 4'	19	EA	$	3,500.00	$	66,500.00
Adjust Existing Manholes	8	EA	$	1,000.00	$	8,000.00
10" SDR-35 PVC Pipe	5100	LF	$	48.00	$	244,800.00
Subtotal					**$**	**343,300.00**

Construction - Secondary Water						
Item	**Quantity**	**Unit**		**Unit Cost**		**Amount**
Connect to Existing	7	EA	$	4,000.00	$	28,000.00
10" PVC C-900 DR 14 Secondary Water	9410	LF	$	56.00	$	526,960.00
Airvac	7	EA	$	2,000.00	$	14,000.00
Drain	7	EA	$	2,000.00	$	14,000.00
10" Gate Valve	13	EA	$	2,800.00	$	36,400.00
Subtotal					**$**	**619,360.00**

Construction - Culinary Water						
Item	**Quantity**	**Unit**		**Unit Cost**		**Amount**
Connect to Existing	10	EA	$	4,000.00	$	40,000.00
10" PVC C-900 DR 14 Culinary Water	9280	LF	$	56.00	$	519,680.00
10" Gate Valve	18	EA	$	2,800.00	$	50,400.00
Fire Hydrant	15	EA	$	6,000.00	$	90,000.00
Subtotal					**$**	**700,080.00**

Construction - Road						
Item	Quantity	**Unit**		**Unit Cost**		**Amount**
Surveying	1	LS	$	79,000.00	$	79,000.00
Clear and Grub	1	LS	$	143,000.00	$	143,000.00
Rough Grade	1	LS	$	143,000.00	$	143,000.00
Sawcut Asphalt	700	LF	$	4.00	$	2,800.00
Curb and Gutter w/ Base	23120	LF	$	20.00	$	462,400.00
Import Granular	109729	CY	$	16.00	$	1,755,662.22
12" Road Base	607070	SF	$	1.30	$	789,191.00
5" Asphalt Road (PG 64-34)	607070	SF	$	2.50	$	1,517,675.00
Traffic Signal	5	EA	$	150,000.00	$	750,000.00
Culvert	6	EA	$	35,000.00	$	210,000.00
Remove Asphalt	2778	SY	$	3.00	$	8,333.33
Striping	1	LS	$	180,000.00	$	180,000.00
Median Curbing	17800	LF	$	20.00	$	356,000.00
Median Irrigation and power sleeves	42	EA	$	2,000.00	$	84,000.00
Subtotal					**$**	**6,481,061.56**
Construction Total					**$**	**9,596,602.56**

Planning Activities						
Item	Quantity	**Unit**		**Unit Cost**		**Amount**
Public Open Houses	1	LS	$	20,000.00	$	20,000.00
Total					**$**	**20,000.00**

Project Development & Environmental Study						
Item	Quantity	**Unit**		**Unit Cost**		**Amount**
Stream Alteration Permit	1	LS	$	25,000.00	$	25,000.00
Wetlands Mitigation	1	LS	$	1,000,000.00	$	1,000,000.00
Environmental Study	1	LS	$	100,000.00	$	100,000.00
Total					**$**	**1,125,000.00**

Preliminary Engineering / Final Design Plans						
Item	Quantity	**Unit**		**Unit Cost**		**Amount**
Geotechnical	1	LS	$	40,000.00	$	40,000.00
Civil Engineering	1	LS	$	275,000.00	$	275,000.00
Total					**$**	**315,000.00**

Right of Way						
Item	Quantity	**Unit**		**Unit Cost**		**Amount**
ROW	650890	SF	$	10.00	$	6,508,900.00
Acquisition Costs (Survey, Legal, Appraisals)	1	LS		2.5%	$	162,722.50
Total					**$**	**6,671,622.50**

Maintenance of Traffic (MOT)				
Item	Quantity	**Unit**	**Unit Cost**	**Amount**
Traffic Control	1	LS	$ 54,000.00	$ 54,000.00
Total				**$ 54,000.00**

Mobilization				
Item	Quantity	**Unit**	**Unit Cost**	**Amount**
Mobilization	1	LS	$ 242,000.00	$ 242,000.00
Total				**$ 242,000.00**

Project Subtotal	**$**	**18,024,225.06**
Contingency (15% of Subtotal)	**$**	**2,703,633.76**
Utilities	**$**	**50,000.00**
Miscellaneous	**$**	**100,000.00**
Total Construction Cost	**$**	**20,877,858.81**
Construction Engineering & Inspection (CEI) (13% of Total)	**$**	**2,714,121.65**
Other (Describe)	**$**	**-**
Total Project Cost	**$**	**23,591,980.46**

Notes:

1. The medians do not include landscaping.

2. The asphalt quantities reflect the landscaped median portion removed.

3. Without a road design or preliminary surveying it is assumed that there will need to be 3.5' of granular fill, this may change the cost estimate significantly if more or less is needed.

EXHIBIT B

Item No.	Description	Unit	Estimated Qty	Unit Price	Bid Amount
0	General				
0.01A	Soft Spot Repair	CY	20,000	$32.55	$ 651,000.00
0.01B	Soft Spot Repair Geogrid	SY	23,061	$1.75	$ 40,356.75
0.02	Mobilization	LS	1	$545,000.00	$ 545,000.00
0.03	SWPPP	LS	1	$80,000.00	$ 80,000.00
0.04	Construction Survey	LS	1	$72,277.00	$ 72,277.00
1.00	Demolition and Site Preperation				
1.01	Clear and Grub and site prep	AC	40	$14,000.00	$ 560,000.00
1.02	Remove and dispose exist utilities	LS	1	$9,800.00	$ 9,800.00
1.03	Remove Asphalt pavement in 1525 west	CY	1,054	$9.50	$ 10,013.00
1.04	Striping Removal	LF	2,500	$2.75	$ 6,875.00
1.05	Remove and dispose exist fence	LF	7,127	$0.50	$ 3,563.50
1.06	Remove and dispose ex curb and gutter	LF	35	$5.00	$ 175.00
1.07	Sawcut existing asphalt section	LF	616	$5.00	$ 3,080.00
1.08	Remove and dispose ex concrete box culvert	EA	2	$7,625.00	$ 15,250.00
2.00	Signals				
2.01A	Intersection Signal System (Maker way and comme	LS	1	$128,350.00	$ 128,350.00
2.01B	Intersection Signal System (Maker way and comme	LS	1	$104,750.00	$ 104,750.00
202A	Intersection Signal System (Burke Lane & Commerc	LS	1	$92,550.00	$ 92,550.00
202B	Intersection Signal System (Burke Lane and Maker V	LS	1	$79,675.00	$ 79,675.00
2.03	Intersection Signal System (Park Lane)	LS	1	$43,350.00	$ 43,350.00
2.04	Traffic Control	LS	1	$90,000.00	$ 90,000.00
3.00	Subdivision Roads				
3.01A	Asphalt for roadway	Ton	21,589	$122.40	$ 2,642,493.60
3.01B	Asphalt for trail	Ton	119	$151.20	$ 17,992.80
3.02	Basecourse for roadway	CY	14,817	$35.91	$ 532,078.47
3.03	Concrete Sidewalk	SF	not used		
3.04	Borrow for roadway	CY	27,584	$30.05	$ 828,899.20
3.05	48" Concrete Waterway	LF	5,913	$53.90	$ 318,710.70
3.06	Commerce Drive Median curb	LF	5,602	$21.73	$ 121,731.46
3.07	Striping 12" White	LF	4,631	$1.90	$ 8,798.90
3.08	Bike Logo	EA	50	$27.75	$ 1,387.50
3.09	Signage	EA	42	$890.00	$ 37,380.00
3.1	30" Shedding Curb and gutter	LF	6,497	$21.56	$ 140,075.32
3.11	Rock mulch for flared end and spillway	CY	not used		
3.12	Drive Approach	EA	2	$4,345.00	$ 8,690.00
3.13	ADA Ramp	EA	40	$3,700.00	$ 148,000.00
3.14	Site Road Grading and compacting	AC	not used		
3.15	Concrete Channel (Clarke lane ditch)	LF	1,160	$325.40	$ 377,464.00
3.16A	Import of fill material	CY	127,250	$26.31	$ 3,347,947.50
3.16B	Cut Material	CY	54,600	$2.75	$ 150,150.00

3.17	Heavy duty concrete	SF	10,813	$10.75	$	116,239.75
3.18	UTA Trail crossing finishes	LS	1	$35,000.00	$	35,000.00
3.19	Rpad Base access road	SY	3,651	$10.89	$	39,759.39
3.2	Temporary Drainage Ditch	LF	720	$9.50	$	6,840.00
3.21	Striping 4" White Skipped	LF	10,865	$0.15	$	1,629.75
3.22	Striping 4" White	LF	15,797	$0.15	$	2,369.55
3.23	Striping 6" White	LF	7,341	$0.20	$	1,468.20
3.24	Striping Double Yellow Line	LF	5,932	$0.25	$	1,483.00
3.25	Striping Yellow Solid with Yellow Skipped Line	LF	3,881	$0.20	$	776.20
3.26	Striping Arrows	EA	75	$25.00	$	1,875.00
3.27	Striping Interstate Logo	EA	7	$1,900.00	$	13,300.00
3.28	30" Collecting curb and gutter	LF	12,435	$21.56	$	268,098.60
3.29	Plowable End Sections	EA	6	$1,870.00	$	11,220.00
4	Subdivision Culinary Water					
4.01	6" Waterline	LF	823	$38.64	$	31,800.72
4.02A	6" Waterline Fittings	EA	not used	not used	$	-
4.02B	8" Waterline Fittings	EA	25	$925.00	$	23,125.00
4.03	8" Water Main	LF	3,286	$51.29	$	168,538.94
4.04	8" Water Gate Valve	EA	26	$2,975.00	$	77,350.00
4.05	8" Blowoff Valve	EA	11	$2,000.00	$	22,000.00
4.06	12" Water main	LF	1,348	$89.45	$	120,578.60
4.07	12" Water Gate Valve	EA	9	$4,675.00	$	42,075.00
4.08	12" Waterline Fittings	EA	5	$1,250.00	$	6,250.00
4.09	Fire Hydrant Assembly	EA	26	$7,500.00	$	195,000.00
4.1	Vertical Waterline Loop	EA	3	$35,250.00	$	105,750.00
4.11	Connect New Waterline to existing	EA	6	$4,500.00	$	27,000.00
4.12	10" Water Main	LF	6,591	$68.42	$	450,956.22
4.13	10" Water Gate Valve	EA	22	$4,000.00	$	88,000.00
4.14	10" Waterline Fittings	EA	23	$1,250.00	$	28,750.00
4.15	Residential Water meter removal and new mtr insta	EA	2	$1,600.00	$	3,200.00
5	Subdivision Secondary Water					
5.01	8" Irrigation Main	LF	5,930	$52.12	$	309,071.60
5.02	8" Irrigation Fittings	EA	32	$1,000.00	$	32,000.00
5.03	8" Irrigation Gate Valve	EA	58	$2,975.00	$	172,550.00
5.04	10" Irrigation Main	LF	2,052	$69.90	$	143,434.80
5.05	10" Irrigation Fitting	EA	8	$950.00	$	7,600.00
5.06	10" Irrigation Gate Valve	EA	5	$4,225.00	$	21,125.00
5.07	Secondary Water Drain Assembly	EA	3	$4,700.00	$	14,100.00
5.08	Secondary Water Blowoff Valve	EA	22	$2,700.00	$	59,400.00
5.09	Connect New Secondary Waterline to existing	EA	4	$4,500.00	$	18,000.00
5.1	1" Secondary Water Metered Connection	EA	1	$3,000.00	$	3,000.00
5.11	6" Irrigation Main	LF	546	$39.41	$	21,517.86
5.12	6" Irrigation Fittings	EA	7	$550.00	$	3,850.00
5.13	6" Irrigation Gate Valve	EA	8	$2,300.00	$	18,400.00
6	Subdivision Storm Drain					
6.01	12" Reinforced Concrete Pipe	LF	not used			
6.02	15" Reinforced Concrete Pipe	LF	1,879	$79.75	$	149,850.25

6.03	18" Reinforced Concrete Pipe	LF	798	$84.56	$ 67,478.88
6.04	24" Reinforced Concrete Pipe	LF	2,990	$94.52	$ 282,614.80
6.05	30" Reinforced Concrete Pipe	LF	5,584	$115.53	$ 645,119.52
6.06	36" Reinforced Concrete Pipe	LF	751	$137.22	$ 103,052.22
6.07	48" Reinforced Concrete Pipe	LF	406	$205.52	$ 83,441.12
6.08	4' Storm Drain Manhole	EA	11	$4,475.00	$ 49,225.00
6.09	5' Storm Drain Manhole	EA	10	$6,335.00	$ 63,350.00
6.1	6' Storm Drain Manhole	EA	3	$6,960.00	$ 20,880.00
6.11	7' Storm Drain Manhole	EA	not used		
6.12	35-1/2" Storm Drain Catch basin	EA	24	$3,035.00	$ 72,840.00
6.13	4x6 Combo Box	EA	38	$6,020.00	$ 228,760.00
6.14	Concrete flared end with trash rack	EA	1	$2,300.00	$ 2,300.00
6.15	connect new storm drain to existing	EA	9	$2,750.00	$ 24,750.00
6.16	35-1/2" Storm Drain Catch Basin double inlet	EA	4	$4,950.00	$ 19,800.00
6.17	6x6 storm drain catch basin	EA	3	$8,403.33	$ 25,210.00
7	Subdivision Sanitary Sewer				
7.01	Field locate exist sewer and connect to new sewer	EA	1	$5,500.00	$ 5,500.00
7.02	Sewer Lateral nose-on connection	EA	12	$465.00	$ 5,580.00
7.03	4" Sewer Pipe SDR 35 Depths < 12'	LF	205	$57.78	$ 11,844.90
7.04	6" Sewer Pipe SDR 35 Depths < 12'	LF	2,191	$62.33	$ 136,565.03
7.05	8" Sewer Pipe SDR 35 Depths < 12'	LF	2,492	$69.55	$ 173,318.60
7.06	10" Sewer Pipe SDR 35 Depths < 12'	LF	709	$77.90	$ 55,231.10
7.07	12" Sewer Pipe SDR 35 Depths < 12'	LF	1,701	$86.82	$ 147,680.82
7.08	CDSD 18" Sewer Pipe SDR35 < 12'	LF	417	$126.34	$ 52,683.78
7.09	8" PVC C900 DR25 > 12'	LF	not used		
7.1	10" PVC C900 DR25 > 12'	LF	588	$249.08	$ 146,459.04
7.11	12" PVC C900 DR25 > 12'	LF	not used		
7.12	CDSD 18" PVC C900 DR25 > 12'	LF	570	$344.15	$ 196,165.50
7.13	CDSD 24" PVC C900 DR25 > 12'	LF	1,947	$435.95	$ 848,794.65
7.14	CDSD 5' Sewer Manhole Depths < 12'	EA	4	$5,520.00	$ 22,080.00
7.15	CDSD 5' Sewer Manhole Depths > 12'	EA	not used		
7.16	CDSD 6' Sewer Manhole Depths < 12'	EA	not used		
7.17A	CDSD 6' Sewer Manhole Depths > 12'	EA	7	$17,800.00	$ 124,600.00
7.17B	CDSD 6' Sewer Manhole Depths > 12' Drop Manhole	EA	1	$22,500.00	$ 22,500.00
7.18	4' Sewer Manhole Depths < 12'	EA	20	$4,200.00	$ 84,000.00
7.19	4' Sewer Manhole Depths > 12'	EA	2	$8,865.00	$ 17,730.00
7.2	5' Sewer Manhole Depths < 12'	EA	8	$5,520.00	$ 44,160.00
7.21	5' Sewer Manhole Depths > 12'	EA	2	$9,865.00	$ 19,730.00
7.22	6' Sewer Manhole Depths < 12'	EA	1	$6,900.00	$ 6,900.00
7.23	6' Sewer Manhole Depths > 12'	EA	1	$17,800.00	$ 17,800.00
7.24	Connect new sewer main to exist	EA	5	$7,500.00	$ 37,500.00
8	Subdivision Dry Utilities				
8.01	3-4" PVC Conduit	LF	1,312	$76.00	$ 99,712.00
8.02	Power Poles to be removed	EA	3	$2,175.00	$ 6,525.00
8.03A	Rocky Mountain Power Underground conduit	LS	740	$47.00	$ 34,780.00
8.03B	Rocky Mountain Power 7x12 Vault	EA	1	$25,575.00	$ 25,575.00
8.04	Rocky Mountain Power Coordination	EA	1	$5,827.50	$ 5,827.50

8.05	Dominion Energy Coordination	EA	1	$5,827.50	$ 5,827.50
8.06	Signal Cpmduit at 500 N & Commerce Drive	LF	262	$58.50	$ 15,327.00
8.07	Signal Boxes and power switch at 500 N and comme	EA	7	$3,175.00	$ 22,225.00
8.08	Signal Pole Foundations at 500 North and Commerc	EA	4	$8,150.00	$ 32,600.00
9	Wetland Crossings				
9.01	Retaining Walls	SF	1,730	$57.75	$ 99,907.50
9.02	Spring Creek Waterline Loops	EA	1	$28,750.00	$ 28,750.00
9.03	Open Bottom Culvert 10x3	LF	100	$1,450.00	$ 145,000.00
9.04	Box Culvert 5x3	LF	228	$3,000.00	$ 684,000.00
9.05	30" Reinforced Concrete Pipe	LF	302	$115.53	$ 34,890.06
9.06	Concrete flared end with trash rack	EA	3	$2,300.00	$ 6,900.00
9.07	Railing	LF	121	$110.00	$ 13,310.00
10	Spring Creek Detention Basin				
10.01	Rock mulch for flared end and spillway	CY	97	$66.15	$ 6,416.55
10.02	3x3 Storm Drain Catch Basin	EA	2	$3,340.00	$ 6,680.00
10.03	Orifice Plate	EA	2	$500.00	$ 1,000.00
10.04	Road Base access road	SY	1,729	$10.89	$ 18,828.81
10.05	12" Reinforced Concrete Pipe	LF	40	$75.78	$ 3,031.20
10.06	18" Reinforced Concrete Pipe	LF	23	$84.56	$ 1,944.88
10.07	30" Reinforced Concrete Pipe	LF	686	$115.53	$ 79,253.58
10.08	5' Storm Drain Manhole	EA	2	$6,335.00	$ 12,670.00
10.09	flared end section with trash rack	EA	6	$2,300.00	$ 13,800.00
11	Commerce Drive (North of Burke Lane to Maker Way)				
11.01	Clear and Grub and site prep	AC	5	$14,000.00	$ 70,000.00
11.02	Asphalt (for roadway)	ton	5,033	$122.40	$ 616,039.20
11.03	Concrete Sidewalk	SF	3,961	$9.36	$ 37,074.96
11.04	Commerce Drive Median curb	LF	2,367	$21.75	$ 51,482.25
11.05	Striping 12" White	LF	776	$1.90	$ 1,474.40
11.06	Striping Arrows	EA	15	$25.00	$ 375.00
11.07	Signage	EA	8	$900.00	$ 7,200.00
11.08	2.5' Curb and gutter	LF	3,592	$21.56	$ 77,443.52
11.09	ADA Ramp	EA	8	$3,700.00	$ 29,600.00
11.1	Site Road Grading and compacting	AC	not used		
11.11	6" Waterline	LF	82	$38.64	$ 3,168.48
11.12A	6" Waterline Fittings	EA	not used		
11.12B	8" Waterline Fittings	EA	3	$925.00	$ 2,775.00
11.13	8" Water Main	LF	368	$51.29	$ 18,874.72
11.14	8" Water Gate Valve	EA	5	$2,975.00	$ 14,875.00
11.15	8" Blowoff Valve	EA	not used		
11.16	12" Waterline Main	LF	1,689	$89.45	$ 151,081.05
11.17	12" Water Gate Valve	EA	9	$4,675.00	$ 42,075.00
11.18	12" Waterline Fittings	EA	6	$1,250.00	$ 7,500.00
11.19	Fire Hydrant Assembly	EA	3	$7,500.00	$ 22,500.00
11.2	Vertical Waterline Loop	EA	2	$35,250.00	$ 70,500.00
11.21	8" Irrigation Main	LF	888	$52.12	$ 46,282.56
11.22	8" Irrigation Fittings	EA	5	$1,000.00	$ 5,000.00
11.23	8" Irrigation Gate Valve	EA	5	$2,975.00	$ 14,875.00

11.24	10" Irrigation Main	LF	605	$69.90	$ 42,289.50
11.25	10" Irrigation Fitting	EA	5	$950.00	$ 4,750.00
11.26	10" Irrigation Gate Valve	EA	3	$4,225.00	$ 12,675.00
11.27	Secondary Water Drain Assembly	EA	2	$4,700.00	$ 9,400.00
11.28	Secondary Water Blowoff Valve	EA	6	$2,700.00	$ 16,200.00
11.29	Connect New Secondary Waterline to existing	EA	1	$4,500.00	$ 4,500.00
11.3	15" Reinforced Concrete Pipe	LF	782	$79.75	$ 62,364.50
11.31	18" Reinforced Concrete Pipe	LF	551	$84.56	$ 46,592.56
11.32	24" Reinforced Concrete Pipe	LF	557	$94.52	$ 52,647.64
11.33	30" Reinforced Concrete Pipe	LF	not used		$ -
11.34	36" Reinforced Concrete Pipe	LF	not used		$ -
11.35	4' Storm Drain Manhole	EA	2	$4,475.00	$ 8,950.00
11.36	35-1/2" Storm drain catch basin	EA	7	$3,035.00	$ 21,245.00
11.37	4x6 Combo Box	EA	9	$6,020.00	$ 54,180.00
11.38	connect new storm drain to existing	EA	1	$2,750.00	$ 2,750.00
11.39	Sewer Lateral nose-on connection	EA	2	$465.00	$ 930.00
11.4	6" PVC Sewer	LF	601	$62.33	$ 37,460.33
11.41	8" PVC Sewer Depths < 12'	LF	448	$69.55	$ 31,158.40
11.42	10" PVC Sewer Depths < 12'	LF	290	$77.90	$ 22,591.00
11.43	10" PVC Sewer Depths > 12'	LF	216	$249.08	$ 53,801.28
11.44	12" PVC Sewer Depths < 12'		not used	$ -	$ -
11.45	4' Sewer Manhole	EA	3	$4,200.00	$ 12,600.00
11.46	5' Sewer manhole	EA	4	$4,140.00	$ 16,560.00
11.47	Connect new sewer main to exist	EA	1	$26,915.00	$ 26,915.00
11.48	3-4" PVC Conduit	LF	523	$76.00	$ 39,748.00
11.49	Retaining Walls	SF	5,172	$57.75	$ 298,683.00
11.5	Spring Creek Waterline Loops	EA	2	$34,750.00	$ 69,500.00
11.51	Box Culvert 5x3	LF	110	$3,031.00	$ 333,410.00
11.52	30" Reinforced Concrete Pipe	LF	110	$115.53	$ 12,708.30
11.53	Railing	LF	175	$110.00	$ 19,250.00
11.54	Concrete Barrier	LF	393	$147.00	$ 57,771.00
11.55	1" Secondary Water Metered Connection	EA	2	$3,000.00	$ 6,000.00
11.56	6" Irrigation Main	LF	194	$38.64	$ 7,496.16
11.57	6" Irrigation Fittings	EA	1	$550.00	$ 550.00
11.58	6" Irrigation Gate Valve	EA	3	$2,300.00	$ 6,900.00
11.59	Concrete flared end with trash rack	EA	not used	$ -	$ -
11.6	Striping 4" White Skipped	LF	3,463	$0.15	$ 519.45
11.61	Striping 4" White	LF	3,521	$1.90	$ 6,689.90
11.62	Striping 6" White	LF	722	$1.90	$ 1,371.80
11.63	Striping Double Yellow Line	LF	45	$0.25	$ 11.25
11.64	8" ADS Pipe from spring creek to wetland C	LF	160	$38.00	$ 6,080.00
11.65	Connect new culinary waterline to existing	EA	1	$4,500.00	$ 4,500.00
11.66	Plowable End Sections	EA	6	$1,870.00	$ 11,220.00
11.67	Base Course	CY	2,486	$35.91	$ 89,272.26
11.68	Borrow for roadway	CY	4,971	$30.05	$ 149,378.55
12	Farmington City Park				
12.01	Mobilization	LS	1	$25,000.00	$ 25,000.00

12.02	SWPPP	LS	1	$12,000.00	$ 12,000.00
12.03	18" RCP	LF	430	$84.56	$ 36,360.80
12.04	30" RCP	LF	250	$115.53	$ 28,882.50
12.05	6x6 Utility Vault	EA	3	$5,585.00	$ 16,755.00
12.06	Connect to existing control structure	EA	2	$3,000.00	$ 6,000.00
12.07	construct inlet/outlet structure	EA	3	$7,045.00	$ 21,135.00
12.08	Bedding material for pipe	ton	250	$22.28	$ 5,570.00
12.09	Bedding material for structures	ton	20	$22.28	$ 445.60
12.1	Clear and Grub and site prep	SY	28,300	$3.00	$ 84,900.00
12.11	Strip and stockpile top 8" topsoil	CY	5,060	$3.50	$ 17,710.00
12.12	Excavation and offhaul material	CY	8,470	$20.71	$ 175,413.00
12.13	Grading	SY	28,300	$0.25	$ 7,075.00
12.14	Import and place UTBC under future path	Ton	500	$19.00	$ 9,500.00
12.15	Hydroseed draught resistance native seed mix	SF	254,700	$0.50	$ 127,350.00
					$ 22,878,537.59

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

BUSINESS: **Cell Tower Lease Agreement with All West at Public Works**

GENERAL INFORMATION:

See staff report prepared by Brigham Mellor, City Manager

FARMINGTON CITY

BRETT ANDERSON
MAYOR
ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL
BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Brigham Mellor

Date: December 6th, 2022

SUBJECT: Cell Tower Lease Agreement with All West at Public Works

RECOMMENDATION:

Approve the lease agreement between Farmington City and All West.

BACKGROUND:

From time to time the City will lease land to data providers for the purpose of providing infrastructure to serve the public. This lease goes beyond the use permitted on public property established in the franchise agreement with the company (namely locating a "fiber hut" on city property). All West will pay the city $24,000 per annum (with a 3% increase annually) for 5 years (the agreement also has 2 opportunities for extensions of 5 years each exercised at the discretion of the company).

Over 15 years this project will generate an additional $446,373 cumulatively while increasing data speeds for the public.

Respectfully Submitted

Brigham Mellor
City Manager

TELECOMMUNICATIONS EQUIPMENT AND HUT GROUND LEASE AGREEMENT

THIS TELECOMMUNICATIONS EQUIPMENT AND HUT GROUND LEASE AGREEMENT (the "Lease") is made and entered into this ____ day of _____, 2022 (the "Lease Date") by and between the City of Farmington, Utah, whose address is _____, ("Landlord") and All West/Utah, Inc., whose address is 50 West 100 North, Kamas, UT ("Tenant").

SUMMARY OF FUNDAMENTAL LEASE TERMS

This Summary of Fundamental Lease Terms is for ease of reference only. In the event of any conflict between any Fundamental Lease Terms and the remainder of this Lease, the remainder of this Lease shall in all instances be controlling.

Landlord:	Farmington City, Utah
Tenant:	All West/Utah, Inc.
Tenant Notice Address:	50 West 100 North, Kamas, UT 84036, Attn: Matt Weller
Leased Premises Address:	See Attachment
Rent Commencement:	per Section 2a.
Initial Term:	Five (5) years
Renewal Terms:	Two (2), five (5) Year Renewal Options
Permitted Use:	Telecommunications equipment hut and transmission facilities, per Section 6 below
Rent:	$24,000.00 Annual Payment
Rent Payment Address:	Farmington City Corporation Attn: Accounts Receivable 160 S. Main Street Farmington, UT 84025
Landlord Notice Address:	**Farmington City Corporation** **160 S. Main Street** **Farmington, UT 84025**

COMPLETE LEASE TERMS

FOR AND IN CONSIDERATION of the rents to be paid hereunder, and of the mutual terms, provisions, covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, Landlord does hereby lease unto Tenant and Tenant lease from Landlord the Leased Premises identified hereinafter for the Term and rents identified hereinafter, and upon and subject to the other terms, conditions and provisions set forth hereinafter:

1. Leased Premises. The Leased Premises consists of a tract of land located within the property of Landlord at 40.98219° N 111.90289° W, (the "Landlord Property"). The location and dimensions of the Leased Premises upon the Landlord Property is depicted more fully on Exhibit "A" attached hereto and incorporated herein.

2. Term.

Lease with 6 month inspection:

a. Inspection Period. For a period of up to six (6) months commencing with the full execution of this Lease (the "Inspection Period"), Tenant and its agents, engineers, surveyors and other representatives shall have the right to enter upon the Leased Premises to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Leased Premises, to apply for and obtain all licenses and permits required for Tenant's use of the Leased Premises from all applicable governmental or regulatory entities ("Governmental Approval"), and otherwise to do those things on or off the Leased Premises that, in the reasonable opinion of Tenant, are necessary to determine the physical condition of the Leased Premises, the environmental history of the Leased Premises, Landlord's title to the Leased Premises and the feasibility or suitability of the Leased Premises for Tenant's Permitted Use, all at Tenant's expense

("Inspections"). Tenant may terminate this Lease at any time during the Inspection Period by written notice to Landlord. In the event of such termination, neither Landlord nor Tenant shall have any further obligation or liability under this Lease except as otherwise provided herein.

b. Initial Term. The Initial Term of this Lease shall commence upon Tenant's satisfactory completion of Inspections (the "Commencement Date"). The Term of this Lease shall extend from the Commencement Date for an Initial Term of five (5) years years thereafter (the "Initial Term") and for such successive Renewal Terms as are hereinafter granted by Landlord and exercised by Tenant.

3. Renewal Terms. Provided Tenant is not in default (past the expiration of applicable notice and cure periods) at the expiration of the Initial Term or at the expiration of the initial Renewal Term (as the case may be), this Agreement shall automatically renew on the same terms and conditions for two (2) additional successive Renewal Terms of five (5) years each (each, a "Renewal Term"), unless Tenant provides notice that it will not renew at least sixty (60) days prior to the expiration of the Initial Term or to the expiration of the Renewal Term (as the case may be).

4. Lease Fee. In consideration of Landlord entering in to this Lease with Tenant, Tenant shall pay to Landlord an annual fee of Twenty Four Thousand Dollars ($24,000.00), the "Lease Fee", increasing by three percent (3%) each year of the Term. The first annual payment of the Lease Fee is due by Tenant within thirty (30) days of the Commencement Date and upon each anniversary of the Commencement Date thereafter.]

5. Title and Quiet Possession. Landlord warrants and covenants to Tenant that it is vested with fee simple title to the Leased Premises, subject to all record easements, rights of way, restrictions, covenants and conditions of title and such matters as would be revealed by a current accurate survey, title examination and inspection of the Leased Premises as of the date of this Lease. So long as Tenant shall pay all rents and observe and perform all covenants and provisions hereof, Tenant shall peacefully and quietly have and enjoy possession of the Leased Premises without any encumbrance or hindrance by, from or through Landlord, except that Landlord shall have the right to enter upon the Leased Premises at any time for inspection purposes so long as such entry shall in no way disrupt or interfere with the operation of the Equipment (as defined below). Landlord shall give Tenant reasonable prior notice of any proposed inspection that will include the interior of the Hut in order that a representative of Tenant may accompany Landlord, except in case of an emergency, in which case no prior notice to Tenant shall be required.

6. Use and Condition of Leased Premises. Tenant accepts the Leased Premises in its AS IS – WHERE IS condition. The Leased Premises shall be used for the sole purpose of (a) installation, operation, maintenance, repair, and/or replacement of telecommunications equipment and transmissions facilities (the "Equipment") upon or within a modular facility (the "Hut") to be installed by Tenant upon the Leased Premises in connection with Tenant's operation of a fiber optic telecommunications system, and (b) for the storage of tools, parts, replacement Equipment, fiber reels, and other telecommunications related equipment.

7. Ownership of Hut and Equipment. The Hut and the Equipment are and shall be Tenant's sole property and shall be removed by Tenant from the Leased Premises within thirty (30) days after the effective date of the expiration or earlier termination of this Lease, weather permitting.

8. Permit Notification. In conjunction with Tenant's commencement of any permit application submittals for the Hut and/or Equipment, Tenant shall submit to Landlord such information as Landlord shall request, including without limitation proposed Hut and Equipment location, size, elevations, dimensions, height, materials, colors, exterior appearance, and telecommunications system routing. Furthermore, in the event that Tenant shall elect at any time during the Term to replace or modify the Hut and/or all or any of the Equipment in any material respect, Tenant shall submit to Landlord, prior to Tenant's commencement of any permit application submittals for the replacement or modification of the Hut and/or the Equipment, such information as Landlord shall request with respect thereto, including without limitation proposed Hut and/or Equipment replacements, modifications, location, size, elevations, dimensions, height, materials, colors, exterior appearance, and electrical service routing.

9. Permitting. Tenant, at its cost, shall apply for all governmental permits necessary for the construction, installation, and operation of the Hut and the Equipment. Landlord shall reasonably cooperate in all Tenant applications for permits for the construction, installation, and operation of the Hut and the Equipment, so long as Landlord shall incur no liability or cost thereby.

10. Access. The Leased Premises shall include a non-exclusive appurtenant leasehold right and license for purposes of (a) vehicular and pedestrian access to and from the Leased Premises, (b) installing electrical power and back-up power systems to the Leased Premises, and (c) installing diverse fiber optic conduit points of entry from the nearest public right-of-way to and from the Leased Premises, all to be at such locations over, under, upon and across such portions of the Landlord Property as Landlord shall designate from time to time. Tenant shall have unrestricted access to the Leased Premises.

11. Electrical Service. Tenant shall arrange at its sole cost and expense for all electrical power service to the Hut and the Equipment to be separately installed and metered in Tenant's name alone, subject to the right of Landlord to approve, in its reasonable discretion, the location and manner of such installation.

12. Equipment Installation. Landlord grants to Tenant the right to enter upon the Landlord Property for the purposes of installing and erecting the Hut and the Equipment on the Leased Premises, so long as such entry, installation and/or erection shall not unreasonably interfere with (a) the conduct of Landlord's business upon the Landlord Property, and (b) access to the Landlord Property. The erection and installation of the Hut and the Equipment upon the Leased Premises shall be carried out in a good and workmanlike manner, in compliance with all normal and customary safety precautions, and with a duly secured work site. Any general contractor hired by Tenant to erect or install the Hut and/or the Equipment shall carry public liability insurance coverage with an insurance company reasonably acceptable to Landlord, in One Million and no/100 ($1,000,000.00) Dollars single limits coverage. In the event that any mechanic's lien or similar lien is filed against or attaches to the installation, erection, servicing, maintenance or operation of the Hut and/or the Equipment upon the Landlord Property, Tenant shall bond or secure the record discharge of such lien from the Landlord Property within thirty (30) days after the filing or attachment of such lien to the Landlord Property. To the extent that any construction, installation or erection of the Hut and/or the Equipment entails trenching or any other physical damage or disturbance to any improvements and/or landscaped areas upon any portion of the Landlord Property, Tenant shall promptly repair or restore such damaged or disturbed improvements and/or landscaped areas to a condition comparable or superior to that existing immediately prior to such damage or destruction.

13. Maintenance. Tenant shall at all times maintain the Hut, the Equipment and the Leased Premises in good and clean condition and repair, in accordance and compliance with all applicable laws and regulations applicable to Tenant's particular manner of use of the Leased Premises, with all applicable permits and governmental approvals, and with all requirements of this Lease. All maintenance of the Hut and the Equipment upon the Leased Premises shall be carried out in a good and workmanlike manner, in compliance with all normal and customary safety precautions.

14. Early Termination. Tenant shall have the right at any time to terminate this Lease, provided Tenant sends to Landlord sixty (60) days prior written notice of Tenant's intent to terminate ("Early Termination Notice"). Upon receipt of Tenant's Early Termination Notice, Tenant shall owe Lease Fees prorated through the date of Termination.

15. Relocation. During the term of this Lease, Landlord shall not relocate Tenant.

16. Condition at Surrender. At the expiration or other termination of this Lease, Tenant agrees to surrender and deliver up the Leased Premises in good and clean condition, comparable or superior to the condition of the Leased Premises as of the Lease Date and coordinated with the immediately surrounding Landlord Property, normal wear and tear and damage by the elements excepted. Tenant at its sole cost shall remove the Hut and the Equipment, any base or foundation of the Hut and the Equipment, and all of Tenant's tools, parts and replacement Equipment from the Leased Premises at or prior to surrender of the Leased Premises to Landlord. Tenant at its sole cost shall repair and restore all damage to the Leased Premises and the Landlord Property occasioned by Tenant's removal of the Hut, the Equipment, the Hut and Equipment base or foundation, and

all of Tenant's tools, parts, and replacement Equipment from the Leased Premises. Should Tenant fail to remove the Hut, the Equipment, the Hut and Equipment base or foundation, and all of Tenant's tools, parts and replacement Equipment from the Leased Premises at or prior to delivery of the Leased Premises back to Landlord, Landlord at its sole option, may in addition to any other rights or remedies available to Landlord hereunder, or law, or in equity, compel the removal of the Hut, the Equipment, the Hut and Equipment base or foundation, and all of Tenant's tools, parts and replacement Equipment from the Leased Premises at Tenant's sole cost by specific performance.

17. Indemnification. Tenant agrees to and shall indemnify and hold Landlord harmless from and against any and all liabilities, judgments, demands, causes of action, claims, losses, damages, costs and/or expenses, including reasonable attorneys' fees, to person or property arising out of or resulting from any negligence of the Tenant or its agents, employees, or workmen in the design, construction, installation, erection, operation, maintenance, servicing, repair or removal of the Hut or the Equipment. In the event that any action or proceeding is brought against Landlord for which Tenant is obligated to indemnify or defend Landlord pursuant to this Section, Tenant, upon notice from Landlord, shall defend such action or proceeding by counsel reasonably acceptable to Landlord.

18. Insurance. Tenant shall procure and maintain throughout the Term of this Lease at its sole cost and expense and, as applicable, shall compel its general contractor and any major subcontractors to procure and maintain throughout the course of any construction, installation, erection, servicing, maintenance, repair or removal of the Hut and/or the Equipment during the Term of this Lease, at the sole cost and expense of Tenant or such general contractor or material subcontractor, the following insurance coverages: (1) workmen's compensation insurance in such amount(s) as shall comply with all state statutorily mandated coverages required under applicable law, and (2) comprehensive general liability and property damage insurance for personal/bodily injury, death, and property damage liability (including completed operations and contractual liability) in the amount of One Million Dollars ($1,000,000.00) combined single limits, on an occurrence basis, insuring against all liability of Tenant, its employees, agents and contractors with respect to the Leased Premises, arising out of or resulting from the Hut, the Equipment and/or Tenant's activities upon the Leased Premises.

19. Assignability. This Lease is assignable by Landlord and shall inure to the benefit of and shall be binding upon the Landlord's successors and assigns. Tenant shall have the right to assign this Lease without Landlord's prior written consent to (i) any entity controlled, controlling or under common control with Tenant, (ii) a purchaser of all or substantially all of the assets of Tenant, or (iii) any entity into which Tenant is merged or consolidated.

20. Subleases. Tenant shall have the right to sublease all or any portion of the Leased Premises, the Hut, and/or any portion of the Equipment for any purpose whatsoever without the prior written consent of Landlord. Tenant shall remain fully and unconditionally liable to Landlord under this Lease, notwithstanding any sublease of all or any portion of the Leased Premises, the Hut, and/or any portion of the Equipment.

21. Eminent Domain. Landlord and Tenant shall each give immediate written notice to the other party of its receipt of any notification of the exercise of the power of eminent domain that affects the Leased Premises. In the event the Leased Premises, or any portion of the Landlord Property that may encompass the Leased Premises, is condemned or taken as a result of the exercise of the power of eminent domain by any governmental entity having jurisdiction thereof, this Lease shall terminate as of the effective date of such condemnation or taking, and Tenant at its sole cost shall remove the Hut and the Equipment from the Leased Premises. In such event, Landlord alone shall be entitled to all compensation from the condemning authority attributable to the real property that may encompass the Leased Premises; provided only that Tenant shall be entitled to seek separate compensation from the condemning authority (to the extent allowable by law) for any residual value of the Hut and/or the Equipment and for any compensable loss of revenues therefrom.

22. Taxes. Tenant shall pay all property taxes and assessments that may become due upon or with respect to the Hut and the Equipment. Landlord shall be responsible for the payment of all property taxes and assessments attributable to the underlying land that comprises the Leased Premises.

23. Compliance with Law. Tenant shall construct, install, erect, operate, service, maintain, and repair the Hut and the Equipment in full compliance with all applicable laws, ordinances, regulations, and governmental rules and regulations, together with all recorded covenants, restrictions and easements. In the event that Tenant shall be unable to obtain all necessary governmental permits, consents and approvals to enable Tenant to complete the initial construction, erection, installation, maintenance and operation of the Hut and the Equipment, then Tenant shall have the right to terminate this Lease without further liability to Landlord upon written notice of termination to Landlord prior to the end of the Inspection Period.

24. Notices. Except as expressly provided otherwise herein, all notices, requests, demands and other communications allowed, made or required to be made pursuant to the terms of this Lease shall be in writing and shall be deemed to be given or made when personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or three (3) business days after being deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, or the next business day when given by fax or email to such fax and email addresses that may be furnished by one party to the other in writing for such purposes (provided that any fax or email delivery shall be followed within one business day thereafter by one or the other permitted means of physical delivery). Notices required or permitted hereunder shall be addressed in any such event to the party to whom such communication is directed at the Notice address as is set forth herein for such party or at such other address as may hereafter be designated in writing by either party hereto.

25. Governing Law; Consent to Jurisdiction. The parties agree that this Lease shall be governed and construed in accordance with the laws of the State of the State of Utah. Any action or proceeding relating to this Lease shall be brought in and subject to the jurisdiction of any state or federal court of competent jurisdiction of the State of Utah.

26. Severability. Landlord and Tenant agree that each paragraph of this Lease is severable from the remainder. If any portion of this Lease shall be void or unenforceable, the remainder of the Lease shall continue in full force and effect to the extent allowable by law.

27. Default. The occurrence of any of the following events shall constitute an event of default under this Lease: (a) the failure of Tenant to pay when due any installment of rent or additional rent within five (5) days of the due date thereof, and such failure is not cured within five (5) business days following written notice thereof from Landlord to Tenant, or (b) the failure of Tenant to fulfill any other term, covenant, condition, requirement or provision of this Lease within thirty (30) days following written notice of such failure to Tenant.

28. Remedies. In the event of any default under this Lease, after expiration of any applicable notice and cure periods, the non-defaulting party may exercise any of the rights and remedies available at law, or in equity.

29. Attorneys' Fees and Costs. Should either party bring an action pertaining to this Lease against the other party, whether at law, in equity, or by arbitration, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, investigation costs, fees of experts, re-leasing and brokerage fees, and other reasonable legal fees and court costs incurred by the prevailing party in such action.

30. Entire Agreement. The parties agree that there are no prior or contemporaneous agreements with respect to the subject matter of this Lease. This Lease, and the leasehold rights contained herein, run with the Landlord Property for the duration of the Term of this Lease. Tenant may record a Memorandum of this Lease containing such terms as shall be reasonably acceptable to Landlord, which Landlord hereby agrees to sign at Tenant's request. This Lease embodies the entire agreement between the parties and may not be modified in any respect, except in writing, signed by the parties hereto.

31. Waiver of Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CIRCUMSTANCES TO THE OTHER PARTY FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR OTHER SIMILAR DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

IN WITNESS WHEREOF, the parties have hereunto executed these presents the day and year first above written.

Dated this ___ day of _____, 20___.

LANDLORD:

By: _____
Title: _____

Dated this 16 day of November, 2022

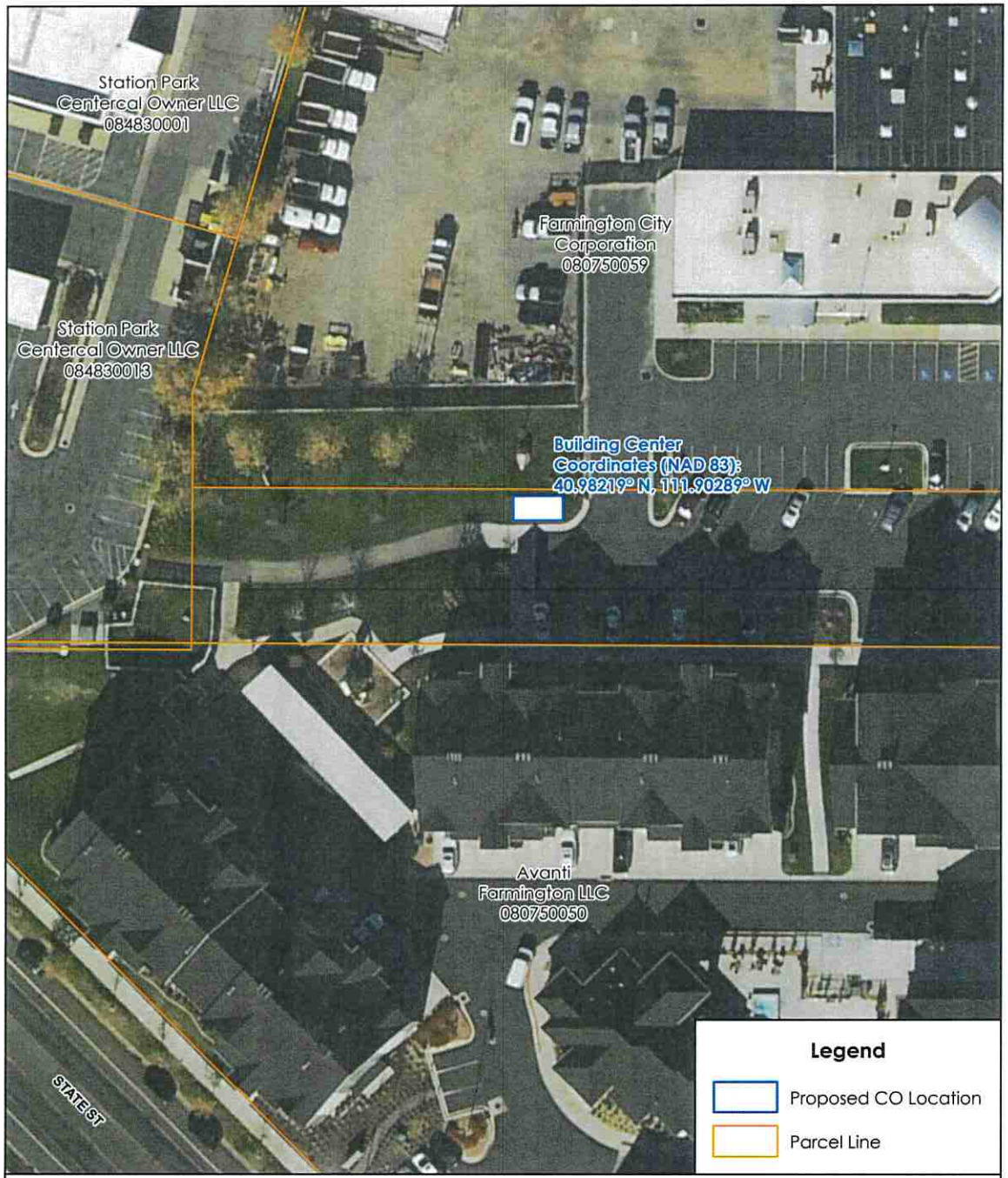
TENANT:

All West/Utah, Inc.

By: _____
Title: President

Exhibit A

To be attached separately and made apart thereof


Station Park
Centercal Owner LLC
084830001
Farmington City
Corporation
080750059
Station Park
Centercal Owner LLC
084830013
Building Center
Coordinates (NAD 83):
40.98219° N, 111.90289° W
Avanti
Farmington LLC
080750050
STATE ST
Legend
Proposed CO Location
Parcel Line
All West Communications
Fiber CO Location
0 25 50 100
Feet
N
W
E
S
CRS ENGINEERS
Imagery: Hexagon
Project Number: 2022-0296

CITY COUNCIL AGENDA

For Council Meeting:
December 6, 2022

SUMMARY ACTION:

1. Ordinance Establishing Dates, Time and Place for holding Regular City Council Meetings
2. Cell Tower Lease Agreement with Verizon at Station Park Ball Fields
3. Franchise Agreement with Utah Broadband
4. Revocable license for the use of property located at 120 W 600 N
5. Clark Lane Commercial Subdivision – Improvements Agreement
6. Consider Approval of RC Pavement to Construct the 200 E to Main Sidewalk Project

ORDINANCE 2022-

AN ORDINANCE ESTABLISHING DATES, TIME AND PLACE FOR HOLDING REGULAR FARMIGNTON CITY COUNCIL MEETINGS

BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON, UTAH:

Section 1. Time and Place of Regular Council Meeting.

The Governing body shall generally conduct two regular meetings per month which shall be held on the first and third Tuesday of each month or as noted otherwise herein.

Meetings shall be held in the **City Council Room of the Farmington City Hall, 160 South Main Street, Farmington, Utah,** unless otherwise noticed. Each meeting shall begin promptly at 7:00 p.m. The schedule of meetings for 2023 shall be as follows:

January	3	&	17
February	7	&	21
March	14		
April	4		
May	2	&	16
June	6	&	20
July	18		
August	1	&	15
September	5	&	19
October	3	&	17
November	14		
December	5	&	19

Section 2. Effective Date. This ordinance shall take effect immediately upon posting after passage.

PASSED AND ORDERED POSTED BY 5 of 5 Council Members present at the regular meeting of the Farmington City Council held on this 6th day of December 2022. Notice should be given as required by the Utah Open Meetings Act.

FARMINGTON CITY CORPORATION

ATTEST:

By: _____
Brett Anderson
Mayor

_____
DeAnn Carlile, City Recorder

FARMINGTON CITY

BRETT ANDERSON
MAYOR
ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL
BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Brigham Mellor

Date: December 6th, 2022

SUBJECT: Cell Tower Lease Agreement with Verizon at Station Park Fields

RECOMMENDATION:

Approve the lease agreement between Farmington City and Verizon.

BACKGROUND:

From time to time the City will lease land to cell providers for the purpose of erecting non-intrusive cell towers to serve the public. Dropped calls are common in the area surrounding our baseball fields. Verizon has offered to provide a cell tower on our property by replacing one of our lights at the baseball fields in an attempt to improve coverage in the area. Verizon will also pay the city $24,000 per annum (with a 2% increase annually) for 10 years (this is in line with the terms we have set with other cell tower operations in recent years)

The project was approved by the planning commission and the City's DRC. Over 10 years this project will generate an additional $262,793 cumulatively while providing better cell service to the public.

Respectfully Submitted

Brigham Mellor
City Manager

CELL TOWER LEASE AGREEMENT
BETWEEN FARMINGTON CITY AND VERIZON

Farmington City, a Utah municipal corporation (the "City"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon") enter into this agreement (the "Agreement") for the leasing of City property for the purpose of construction and maintenance of a cell tower.

RECITALS:

A. City owns real property located at 178 S. 650 W, Farmington, County of Davis, State of Utah 84025, more particularly described in Exhibit "A," which is attached to this lease and incorporated as a part of it. That real property shall be referred to as the "Property."

B. Verizon wants to lease a portion of the Property, which will be determined by the City. This portion of the real property shall be referred to as the "Premises." The City grants to Verizon a right-of-way for ingress and egress from the Premises and the location of utility lines needed for operation of the facilities. However, the City reserves the right to require Verizon to submit to the City's standard permitting process where required by the City's ordinances, before exercising that right-of-way for ingress and egress.

C. Verizon also wants to locate on the Premises a communications facility ("Facility"), to consist of an antenna structure (light pole), and necessary connecting appurtenances sufficient to be a fully operational facility in Verizon's intended licensed communications coverage area.

D. Subject to the terms and conditions of this lease and any other terms imposed by law, the City is willing to lease the Premises and rights-of-way to Verizon.

IN CONSIDERATION of the terms and sums to be paid as set forth in this Agreement, the City and Verizon agree as follows:

AGREEMENT FOR LEASE

1. City agrees to lease the Premises to Verizon.

2. Lease Term. This lease is for a term of ten (10) years beginning on the earlier of: (i) the first day of the month in which Verizon begins installation of Verizon's communications equipment, or (ii) September 1, 2023 (Commencement Date). At the conclusion of this ten (10) year period, the lease shall automatically renew for four (4) additional five (5) year terms, each unless either party gives written notice to the other party that it does not intend to renew. Subsequent renewals shall be the subject of negotiation.

3. Possession of Premises. On the commencement date, Verizon may enter and possess the Premises and continue in possession through termination of the Agreement. Verizon's possession includes the non-exclusive right of ingress and egress seven (7) days a week, twenty-four (24) hours a day. Ingress and egress may take place by foot or motor vehicle, including trucks and other equipment necessary for the installation of utility wires, cables, conduits, and pipes.

4. Lease Amount. Rent payments shall begin on the Commencement Date and be due at a total annual rental of $24,000.00, to be paid yearly on the Anniversary of the Commencement Date. Rent shall increase each year, in the amount of 2% of the previous year's rent, with the new rent to become effective upon the yearly anniversary of the Commencement Date. Lessor and Lessee acknowledge and agree that the initial rental payment shall be delivered by Lessee on or before that date which is 60 days after the Commencement Date. All payments shall be payable to and delivered to:

Farmington City
160 S. Main
Farmington, Utah 84025

Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and, in such event, Lessor agrees to provide Lessee with bank routing information for such purpose upon request of Lessee.

5. Construction of the Facilities. The parties agree that Verizon's facilities shall be located on a pole within the City Property, on the Premises, that will contain the facilities and a light fixture to light the City's adjacent baseball field. Verizon will construct the facilities relating to the City's light fixture, including the structural elements of the pole, strictly in accordance with plans that have been approved by the City, such approval not to be unreasonably withheld, conditioned or delayed. The design and construction, if reasonably feasible, shall permit the installation of separate power metering for Verizon's facilities. Verizon shall furnish and install, at its sole cost and expense, an electrical submeter at the Premises, for the measurement of electrical power used by Verizon. Verizon shall pay the utility provider directly for its own power consumption. Electrical power for the City's light fixture shall be connected to its existing electrical source and will be metered separately from Verizon's facilities. The parties agree that the City shall own the pole structure, but the Verizon facilities located on, within and appurtenant to the pole shall remain the property of Verizon. At the termination of this Lease Agreement, the City shall remain the owner of the pole structure and Verizon's removal of its facilities shall be undertaken in such a manner as to not impair the structural integrity of pole or the City's light fixture and related electrical and metering components.

6. Nature of Verizon's Use. Verizon shall use the Premises to construct, maintain, and operate a communications facility and engage in the uses incidental to those activities. The equipment comprising the Facility consists of a light pole and antenna structures, generators, ground equipment, and necessary connecting appurtenances sufficient for the Facility to be fully operable in its intended communications coverage area. Verizon agrees to keep the Property in a clean and orderly condition during occupancy. Upon termination of this Agreement, Verizon also agrees to deliver the Property to the City in a clean and presentable condition. In the event of a natural or manmade disaster, in order to protect the health, safety, and welfare of the community, Verizon may build additional telecommunications facilities and install additional equipment. This additional equipment will be allowed only on a temporary basis in order to assure continuation of service.

7. Verizon Required to Obtain Permits. Before beginning any construction, Verizon agrees to obtain any licenses, permits, and other necessary authorization from the City and from any other required agency or party.

8. Indemnity and Hold Harmless. Verizon shall indemnify and hold the City harmless against any claim of liability or loss from personal injury or property damages caused by or resulting from its own negligence, willful misconduct, or other tortious conduct or that of its employees, contractors, servants, or agents and from any damages suffered by the City or any third party, resulting from the maintenance of Verizon's facilities on the Premises. However, Verizon does not indemnify or hold the City harmless for claims resulting from the negligence, willful misconduct, or other tortious conduct of the City.

9. Reasons for Termination and Procedure. On the default of a party in the performance of any term of this Agreement, which is not cured within sixty (60) days after being given notice of the default, the non-defaulting party may terminate this Agreement without penalty or further liability. Verizon may terminate this Agreement for two reasons: (a) if it is unable to obtain or maintain any license, permit, or governmental approval necessary to the construction, maintenance, or operation of the Facility or Verizon's business; and (b) if the Premises becomes unacceptable to Verizon under its design or engineering specifications for the Facility or the communications system to which Verizon belongs. However, in the event Verizon terminates this Agreement, its rent obligations shall continue until its

facilities are removed from the Premises and the Premises and the Property are restored to their original condition.

10. Removal of Property After Termination. No later than sixty (60) days after termination of this Agreement, Verizon will remove its personal property and fixtures and restore the Premises to its original conditions as of the Commencement Date. This restoration included filling excavated areas, replacing topsoil as needed and reseeding. If time for removal or restoration causes Verizon to remain on the Premises after termination of the lease, Verizon shall pay rent to the City at the then-existing monthly rate or an existing monthly pro-rate basis if based on a longer payment term.

11. Insurance. Verizon agrees to maintain general liability insurance with combined general single limits of not less than $5,000,000.00, combined single occurrence limit, for claims for bodily injury or death and property damages.

12. Relocation. The City, on one (1) occasion, may relocate Verizon to another location on the City's Premises (herein referred to as the "Alternate Property"), provided:

(a) The Alternate Property is similar to Verizon's current Property in size and is compatible for Verizon's use in Verizon's sole discretion;

(b) The City shall give Verizon at least six (6) months' written notice before requiring Verizon to relocate;

(c) Verizon must be involved in the redevelopment process and Architectural Planning of the City's intended expansion; and

(d) Verizon's service will not be interrupted and Verizon shall be allowed, if necessary, to place a temporary cell site and antenna structure on the City's premises during relocation.

13. Utilities. Verizon is responsible for all utilities required by its use of the Premises. Verizon's facilities shall also be separately metered. Verizon will pay any increase in real estate taxes assessed on the Property that are caused by the improvements constructed by Verizon. At its expense, Verizon may contest any assessment imposed on the Premises or its own activities.

14. Title and Quiet Enjoyment. The City represents that (a) it has full right, power, and authority to execute this Agreement and will provide Verizon with evidence of that authority; and (b) the City believes it has good and marketable title to the Premises free and clear of any liens or mortgages except those matters that are of public record as of the Commencement Date. The City further covenants that Verizon shall have quiet enjoyment of the Premises during the term of this Agreement, and any renewal of it.

The City agrees to notify Verizon immediately if, at any time during the term of this Agreement, the City decides to change the status of the Premises or the Property, or if the City learns of any pending or threatened or contemplated actions, litigation, claims, condemnations, or other proceedings that would affect the Premises or any part of the Premises.

15. Assignments and Subleases. Without any approval or consent of the other Party, this Agreement may be sold, assigned or transferred by either Party to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Verizon may assign this Agreement to any entity which acquires all or substantially all of Verizon's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization without approval or consent of the City. As to other parties, this Agreement may not

be sold, assigned or transferred without the written consent of the other Party, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Verizon or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment hereunder. Verizon may assign or sublet its communications Facility, in Verizon's sole discretion; however, that assignee or sublessee must sign a separate Cell Tower Lease Agreement with the City before occupying the Premises.

16. [Intentionally Deleted.]

17. Indemnification for Environmental Hazards and Clean-up. Verizon will be solely responsible for and will defend, indemnify, and hold the City, its employees, contractors, servants, and agents harmless from and against any and all claims, costs, and liability's, including attorneys' fees and costs arising out of or in connection with the clean-up or restoration of the Premises associated with Verizon's use of hazardous materials. The City will be solely responsible for and will defend, indemnify and hold Verizon, its agents, employees, servants, or agents harmless from and against any and all direct claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Premises of hazardous materials other than those used or instructed by Verizon. "Hazardous Materials" means asbestos or any hazardous substance, waste, or materials as defined in any federal, state or local law, including CERCLA.

The obligations in this section survive the expiration or other termination of this Agreement.

18. Binding Nature of Agreement. This Agreement shall run with the Property and shall be binding and inure to the benefit of the parties, their respective successors, and assigns.

19. Complete Agreement — Integration. It is mutually agreed and understood that this Agreement contains all agreements, promises, and understanding between the City and Verizon and that no other agreements, promises, or understandings shall or will be binding on either the City or Verizon in any dispute, controversy, or proceeding at law. Any addition, variation, or modification to this Agreement is void and ineffective unless it is signed in writing by both parties.

20. Utah Law Applicable. This Agreement and its performant shall be governed, interpreted, construed, and regulated by the laws of Utah.

21. Delivery of Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by any of the following methods: United States Mail, first class, postage prepaid; registered or certified U.S. Mail, postage prepaid and return receipt requested; or by hand delivery (with the signature of a person receiving the notice on behalf of the City). A notice or communication sent by a different method becomes effective only if the person to whom the document is addressed actually receives it.

THE CITY: Farmington City
160 S. Main
Farmington, Utah 84025

VERIZON: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

THE CITY: Farmington City,
a Utah municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

VERIZON: Cellco Partnership
d/b/a Verizon Wireless

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"
Legal Description

The land referred to herein is situated in the County of Davis, State of Utah, and is described as follows:

A part of the West 1/2 of Section 24, Township 3 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows: Beginning at a point on the section line and the West right of way line of 650 West Street, which is 1197.24 feet South 0°06'01" East along said section line and right of way line from the center of said Section 24; (Basis of bearing being a line bearing South 89°52'28" West between the center and the West 1/4 corner of Section 24) and running thence South 0°06'01" East 115.34 feet along said section line and right of way line; thence South 89°43'59" West 188.83 feet; thence North 0°06'01" West 115.34 feet; thence South 89°43'59" West 1073.09 feet to the center of North Cottonwood Creek; thence North 40°30'54" East 848.09 feet; thence South 0°06'01" East 0.66 feet; thence North 38°00'01" East 147.33 feet; thence North 27°08'33" East 98.61 feet; thence North 32°22'30" East 318.26 feet; thence North 50°30'09" East 294.54 feet along said centerline of North Cottonwood Creek to the South right of way line of Clark Lane; thence Southeasterly along said right of way line and the arc of a 475.00 foot radius curve to the left for a distance of 23.72 feet, (central angle = 02°51'40" and long chord bears South 72°01'49" East 23.72 feet) to the intersection of said right of way line of Clark Lane and a project known as Project No. 0067; thence Southeasterly one (1) course along said project as follows: along the arc of a 1915.87 foot radius curve to the left a distance of 12.45 feet, (long chord bears South 59°7'22" East 12.44 feet); thence South 45°20'11" West 122.62 feet; thence South 55°21'40" West 63.44 feet; thence South 56°01'08" West 63.21 feet; thence South 50°39'16" West 48.30 feet; thence South 36°08'11" West 57.53 feet; thence South 30°48'40" West 60.62 feet; thence South 30°33'52" West 56.47 feet; thence South 32°55'22" West 97.73 feet; thence South 25°46'40" West 66.33 feet; thence South 25°00'10" West 67.11 feet; thence South 36°12'40" West 60.76 feet; thence North 90°00'00" East 270.73 feet; thence North 0°00'00" West 26.08 feet; thence North 90°00'00" East 337.51 feet to the West line of the property conveyed in Warranty Deed recorded April 16, 2001, as Entry No. 1653828, Book 2788, Page 71; thence along said line South 4°42'24" East 44.39 feet, more or less, to the 1/4 section line; thence South 0°06'01" East 676.14 feet to the point of Beginning.

Tax ID No. 08-076-0116 (shown for informational purposes only)

EXHIBIT "B" (Page 1 of 3)
Description of Premises

VERIZON WIRELESS EQUIPMENT LEASE AREA DESCRIPTION:
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, STATE OF UTAH, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED SOUTH 89°52'28" WEST 89.55 FEET ALONG SECTION LINE AND SOUTH 681.02 FEET FROM THE CENTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°14'56" WEST 12.00 FEET; THENCE NORTH 89°45'04" WEST 10.59 FEET; THENCE SOUTH 00°05'08" EAST 13.39 FEET; THENCE SOUTH 89°54'52" WEST 12.00 FEET; THENCE NORTH 32°34'55" WEST 8.69 FEET; THENCE NORTH 00°05'08" WEST 18.00 FEET; THENCE NORTH 89°54'52" EAST 27.33 FEET TO THE POINT OF BEGINNING.

CONTAINS: 532 SQ. FT. OR 0.012 ACRES, MORE OR LESS, (AS DESCRIBED).

VERIZON WIRELESS LIGHT POLE LEASE AREA DESCRIPTION:
BEGINNING AT A POINT LOCATED SOUTH 89°52'28" WEST 135.74 FEET ALONG SECTION LINE AND SOUTH 759.14 FEET FROM THE CENTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 69°58'38" EAST 15.42 FEET; THENCE SOUTH 20°01'22" EAST 14.00 FEET; THENCE SOUTH 69°58'38" WEST 15.56 FEET; THENCE NORTH 19°28'05" WEST 14.00 FEET TO THE POINT OF BEGINNING.

CONTAINS: 217 SQ. FT. OR 0.005 ACRES, MORE OR LESS, (AS DESCRIBED).

VERIZON WIRELESS CABLE UTILITY EASEMENT DESCRIPTION:
A 4 FOOT WIDE UTILITY EASEMENT FOR THE PURPOSE OF INSTALLING UNDERGROUND UTILITIES, BEING 2 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE SOUTHWEST LINE OF THE VERIZON WIRELESS EQUIPMENT LEASE AREA, SAID POINT BEING SOUTH 89°52'28" WEST 114.52 FEET ALONG SECTION LINE AND SOUTH 702.66 FEET FROM THE CENTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 57°25'05" WEST 6.32 FEET; THENCE SOUTH 12°25'05" WEST 46.04 FEET; THENCE SOUTH 20°01'22" EAST 5.61 FEET, MORE OR LESS, TO THE NORTH LINE OF THE VERIZON WIRELESS LIGHT POLE LEASE AREA AND TERMINATING.

CONTAINS: 232 SQ. FT. OR 0.005 ACRES, MORE OR LESS, (AS DESCRIBED).

VERIZON WIRELESS ACCESS EASEMENT DESCRIPTION:
A 8 FOOT WIDE ACCESS EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS, BEING 4 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE WEST LINE OF THE VERIZON WIRELESS EQUIPMENT LEASE AREA, SAID POINT BEING SOUTH 89°52'28" WEST 116.87 FEET ALONG SECTION LINE AND SOUTH 689.92 FEET FROM THE CENTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 56°43'28" WEST 8.88 FEET; THENCE SOUTH 32°34'55" EAST 30.30 FEET; THENCE NORTH 89°54'52" EAST 16.25 FEET; THENCE NORTH 72°30'00" EAST 33.75 FEET; THENCE SOUTH 89°50'46" EAST 60.78 FEET, MORE OR LESS, TO THE WEST RIGHT-OF-WAY LINE OF TIPPETS LANE (650 WEST STREET) AND TERMINATING.

CONTAINS: 1200 SQ. FT. OR 0.027 ACRES, MORE OR LESS, (AS DESCRIBED).

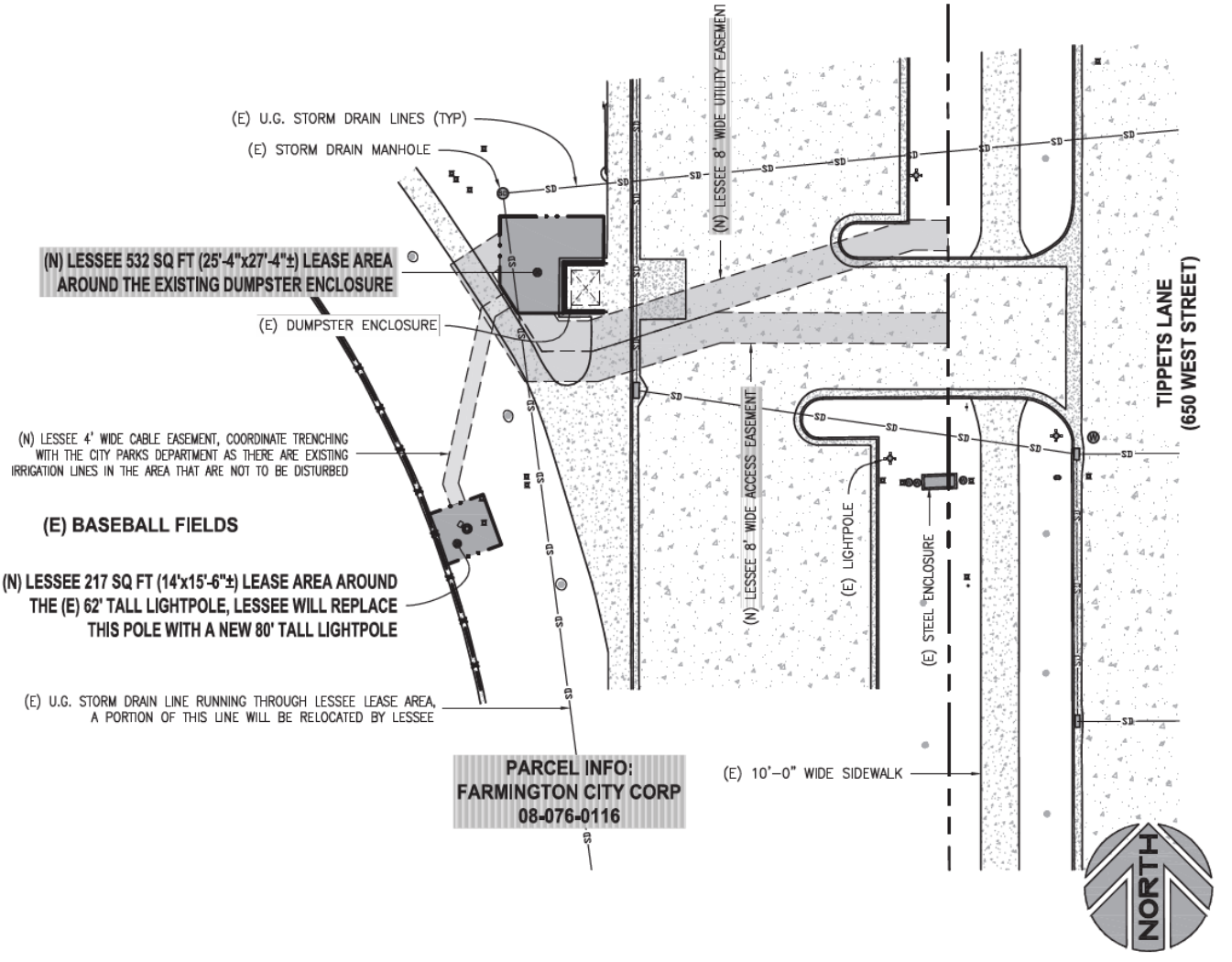
EXHIBIT "B" (Page 2 of 3)
Description of Premises

VERIZON WIRELESS UTILITY EASEMENT DESCRIPTION:
A 8 FOOT WIDE UTILITY EASEMENT FOR THE PURPOSE OF INSTALLING UNDERGROUND UTILITIES, BEING 4 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE VERIZON WIRELESS EQUIPMENT LEASE AREA, SAID POINT BEING SOUTH 89°52'28" WEST 107.44 FEET ALONG SECTION LINE AND SOUTH 706.33 FEET FROM THE CENTER OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 32°34'55" EAST 7.12 FEET; THENCE NORTH 89°54'52" EAST 10.63 FEET; THENCE NORTH 72°30'00" EAST 88.09 FEET; THENCE SOUTH 89°56'31" EAST 10.15 FEET, MORE OR LESS, TO THE WEST RIGHT-OF-WAY LINE OF TIPPETS LANE (650 WEST STREET) AND TERMINATING.

CONTAINS: 925 SQ. FT. OR 0.021 ACRES, MORE OR LESS, (AS DESCRIBED).

EXHIBIT "B" (Page 3 of 3)
Description of Premises



FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:
Tock & Corl, PLLC
Attn: S. Ward
17502 Marine Drive
Stanwood, WA 98292

Space above this line is for Recorder's use.

Memorandum of Cell Tower Lease Agreement

Grantor:	Farmington City, a Utah municipal corporation
Grantee:	Cellco Partnership d/b/a Verizon Wireless
Legal Description:	Portion of West ½ of Section 24, T3N, R1W, SLB&M, County of Davis, State of Utah **Official legal description as Exhibit "A"**
Assessor's Tax Parcel ID#:	08-076-0116
Reference # (if applicable):	N/A

MEMORANDUM OF CELL TOWER LEASE AGREEMENT

THIS MEMORANDUM OF CELL TOWER LEASE AGREEMENT evidences that a Cell Tower Lease Agreement ("Agreement") was entered into as of _____, 202__, by and between Farmington City, a Utah municipal corporation ("the City"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon"), for certain real property located at 178 S. 650 W, Farmington, County of Davis, State of Utah 84025, within the property of the City, which is described in Exhibit "A" attached hereto ("Legal Description"), together with a right of access and to install and maintain utilities, for an initial term of ten (10) years commencing as provided for in the Agreement, which term is subject to Verizon's rights to extend the term of the Agreement as provided in the Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City and Verizon have duly executed this Memorandum of Cell Tower Lease Agreement as of the day and year last below written.

CITY: Farmington City, a Utah municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

VERIZON: Cellco Partnership d/b/a Verizon Wireless

By: _____

Name:

Title:

Date: _____

Exhibit "A" – Legal Description

CITY ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 202__, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as the _____ of Farmington City, a Utah municipal corporation, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

_____
NOTARY PUBLIC in and for the State of ____,
residing at _____
My appointment expires _____
Print Name _____

VERIZON ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 202__ by _____, _____ of Cellco Partnership d/b/a Verizon Wireless, a Delaware general partnership, on behalf of the partnership.

_____
Notary Public

Notary Seal

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to herein is situated in the County of Davis, State of Utah, and is described as follows:

A part of the West 1/2 of Section 24, Township 3 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows: Beginning at a point on the section line and the West right of way line of 650 West Street, which is 1197.24 feet South 0°06'01" East along said section line and right of way line from the center of said Section 24; (Basis of bearing being a line bearing South 89°52'28" West between the center and the West 1/4 corner of Section 24) and running thence South 0°06'01" East 115.34 feet along said section line and right of way line; thence South 89°43'59" West 188.83 feet; thence North 0°06'01" West 115.34 feet; thence South 89°43'59" West 1073.09 feet to the center of North Cottonwood Creek; thence North 40°30'54" East 848.09 feet; thence South 0°06'01" East 0.66 feet; thence North 38°00'01" East 147.33 feet; thence North 27°08'33" East 98.61 feet; thence North 32°22'30" East 318.26 feet; thence North 50°30'09" East 294.54 feet along said centerline of North Cottonwood Creek to the South right of way line of Clark Lane; thence Southeasterly along said right of way line and the arc of a 475.00 foot radius curve to the left for a distance of 23.72 feet, (central angle = 02°51'40" and long chord bears South 72°01'49" East 23.72 feet) to the intersection of said right of way line of Clark Lane and a project known as Project No. 0067; thence Southeasterly one (1) course along said project as follows: along the arc of a 1915.87 foot radius curve to the left a distance of 12.45 feet, (long chord bears South 59°7'22" East 12.44 feet); thence South 45°20'11" West 122.62 feet; thence South 55°21'40" West 63.44 feet; thence South 56°01'08" West 63.21 feet; thence South 50°39'16" West 48.30 feet; thence South 36°08'11" West 57.53 feet; thence South 30°48'40" West 60.62 feet; thence South 30°33'52" West 56.47 feet; thence South 32°55'22" West 97.73 feet; thence South 25°46'40" West 66.33 feet; thence South 25°00'10" West 67.11 feet; thence South 36°12'40" West 60.76 feet; thence North 90°00'00" East 270.73 feet; thence North 0°00'00" West 26.08 feet; thence North 90°00'00" East 337.51 feet to the West line of the property conveyed in Warranty Deed recorded April 16, 2001, as Entry No. 1653828, Book 2788, Page 71; thence along said line South 4°42'24" East 44.39 feet, more or less, to the 1/4 section line; thence South 0°06'01" East 676.14 feet to the point of Beginning.

Tax ID No. 08-076-0116 (shown for informational purposes only)

FARMINGTON CITY

Brett Anderson
Mayor

Roger Child
Scott Isaacson
Melissa Layton
Alex Leeman
Amy Shumway
City Council

Brigham Mellor
City Manager

To: Mayor and City Council

From: Brigham Mellor, City Manager

Date: December 6, 2022

Subject: Franchise Agreement with Utah Broadband

RECOMMENDATION(S)

Move that the City Council approve the attached franchise agreement with Utah Broadband, as part of the summary action calendar.

BACKGROUND

Franchise Agreements allow utility provides access to city right-of-way and easements to facilitate providing services to residents. The City is required to provide access to those areas to all providers. This Agreement is substantially similar to those approved for other providers in recent months.

Supplemental Information:

1. Utah Broadband Franchise Agreement

Respectfully submitted,

Brigham Mellor
City Manager

160 S Main • P.O. Box 160 • Farmington, UT 84025
Phone (801) 451-2383 • Fax (801) 451-2747
www.farmintong.utah.gov

FARMINGTON CITY AND FIF UTAH , LLC dba UTAH BROADBAND FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Franchise" or "Agreement") is made and entered into on _____, 2022 by and between Farmington City, Utah, (hereinafter "City") and Fif Utah , LLC, a Delaware limited liability company, dba Utah Broadband (hereinafter "Company").

WITNESSETH:

WHEREAS, the City, pursuant to *Utah Code Ann.* §10-8-11, as amended, the City's inherent Police Powers, Chapter 9-4 of the Farmington City Code, and other statutory authority, regulates the use of City Right-of-Way for the benefit of its residents; and

WHEREAS, the Company desires to provide certain telecommunication services within the City and in connection therewith to establish a telecommunications network in, under, along, over, and across present and future streets, alleys, easements, and Rights-of-Way of the City, consisting of telecommunication lines, cables, and all necessary appurtenances; and

WHEREAS, the City, in exercise of its ownership rights over and in the public streets, alleys, easements, and Rights-of-Way, believes that it is in the best interest of the public to provide to the Company and its successors a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have negotiated an arrangement whereby the Company may provide its services within the City, pursuant to the terms and conditions outlined in this Agreement and in Chapter 9-4 of the Farmington City Code and other relevant sections of the Farmington City Code, and subject to the further reasonable regulation under its police and other regulatory power; and

WHEREAS, this Agreement is intended to cover all Company facilities within the City, whether existing or contemplated;

NOW, THEREFORE, in consideration of the mutual convents and agreements of the parties contained herein, and other good and valuable consideration, City and Company agree as follows:

ARTICLE I

FRANCHISE AGREEMENT AND ORDINANCE

1.1 Agreement. Upon approval by the City Council, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.

1.2 Ordinance. The City has adopted Chapter 9-4 "Franchise Rights-of-Way" (the "Ordinance"), and such Ordinance is incorporated herein by reference and made an integral part hereof.

1.3 Grant of Franchise. The City hereby grants to Company and its successors and assigns the non-exclusive right, privilege, and franchise (the "Franchise") to construct, maintain, and operate a Telecommunications System (hereinafter "Network"), in, under, along, over, and across the present and future streets, alleys, easements and Rights-of-Way of the City. The Franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business although nothing contained herein shall preclude the Company from (1) permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or (2) from providing such service if an appropriate Franchise is obtained and all other legal requirements have been satisfied.

1.4 Financial Capability. Company warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.

1.5 Relationship; Joint Facilities Agreement. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with the other. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by a separate Pole Attachment and Conduit Occupancy Agreement.

1.6 Records Inspection. The records of the Company pertaining to the reports, plans, designs, and payments required by this Franchise, including, but not limited to, any records deemed necessary or useful by the City to calculate or confirm Gross Revenues, as defined herein, shall be open for inspection by the City and its duly authorized representatives at all reasonable business hours of the Company, provided Company is given reasonable notice. Such records may be copied by the City and the copies may be removed from the premises, provided that reasonable arrangements are made to protect the confidentiality of such records.

1.7 Definitions. The words, terms, and phrases which are used herein and in the Ordinance shall have their ordinary plain meaning unless the word, term, or phrase is expressly defined herein. Words, terms, and phrases which are not specifically defined herein, but are defined in 47 U.S.C. Section 153, or its successor, shall have the technical meaning provided by that section as of the date of this agreement. The following words, terms, and phrases when used herein shall have the following meanings:

"City Council" means the City Council of Farmington City.

"Customer" means a person or user of the Company's telecommunications Network who lawfully receives telecommunications services or other services therefrom with the Company's authorized permission, including, but not limited to, other companies utilizing Company's Network to provide services to customers of those companies.

The term "Facilities" or "facilities" when used in this Agreement means all or a portion of Company's Telecommunications System.

"Gross Revenues" means gross receipts from telecommunications services attributed to customers within the City, without regard to the billing address of the customer, as more particularly set forth in the Municipal Telecommunications License Tax Act, U.C.A. §10-1-402.

"Network" means a Network of telecommunications lines and cables (including without limitation fiber-optic and copper lines and cables), together with necessary and desirable appurtenances (including underground and above-ground conduits and structures, poles, towers, wire, and cable) for its own use for the purpose of providing telecommunications services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof.

"Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water drainage, Right-of-Way improvements, poles, lines, wires, conduits, and Public Projects.

"Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Rights-of-Way" includes present and future City streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City.

ARTICLE II

TERM AND RENEWAL

2.1 Term and Renewal. The Franchise granted to Company shall be for a period of ten (10) years commencing on the date this Agreement is executed, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term the Franchise may be renewed by Company upon the same terms and conditions as contained in this Agreement, so long as Company is in compliance with the provisions of this Agreement, for an additional ten (10) year term, by providing to the City's representative, not less than ninety (90) calendar days before the expiration of the initial franchise term, written notice of Company's intent to renew. If *Utah Code Ann.* § 10-1-403, is changed,

the parties shall amend, upon its renewal, this Agreement to conform to the new statutory limit.

2.2 The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

ARTICLE III

CONSIDERATION AND PAYMENT

3.1 **Franchise Fee.** For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Rights-of-Way, the Company agrees:

a. To pay to the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, *Utah Code Annotated* 1953, as amended, and imposed and levied pursuant to Farmington City Code, Chapter 5-7, (collectively the "Municipal Telecommunications Tax Laws"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Laws, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and provisions of the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

b. Notwithstanding the provisions of Section 3.1(a) above, the Franchise Fee shall be calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, to the extent permitted by Utah law, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with

similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in the Municipal Telecommunications Tax Laws, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

3.2 Reconciliation. Within thirty (30) calendar days after the filing of any report or the making of any payment, or within such reasonable additional time as the City may request, the City shall examine such report or payment, determine the accuracy thereof, and, if the City finds any errors, report such errors to the Company for correction. If the Franchise Fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the Franchise Fee as paid shall be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest pending the resolution of the dispute between the parties or through the courts. Neither payment of the Franchise Fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. No acceptance of any payment by the City shall be construed as a release of, or an accord or satisfaction of, any claim the City might have for further or additional sums payable under the terms of this Agreement for the performance of any other obligation of the Company hereunder.

3.3 Extensions Not Statute of Limitation or Repose. The aforesaid 30-day notice period is not intended and shall not act as a statute of limitation or repose, which limitation periods shall be governed by Utah Law.

3.4 City Financial Review. The Manager or the Manager's designee, as City Representative may undertake a financial review of Company's payment of its Franchise fees and other fees and obligations under this Agreement. The failure or omission to conduct a financial review shall not constitute any waiver or estoppel.

3.5 Delinquency. Failure to make any payment within thirty (30) calendar days of the applicable payment date shall be subject to a delinquency penalty charge of ten percent (10%) of the payment, and shall constitute breach of the terms of this Agreement and constitute just cause for termination. Unpaid amounts, including penalties, shall bear interest until paid at the rate of ten percent (10%) per annum until paid.

3.6 Revenue Report Following Termination. In the event this Agreement or the Franchise should be terminated, forfeited, or determined to be void or invalid by any order or decree by a court of competent jurisdiction, the Company, not later than thirty (30) calendar days following such termination, forfeiture, or determination, shall submit to the City a report prepared as before required, showing the Gross Revenues of the Company in the City for the time elapsed since the last period for which the Company has paid the

Franchise Fee. Contemporaneously with the submission of the report, the Company shall pay to the City the Franchise Fee due and owing to the City for such period.

3.7 Audits. For the purpose of verifying the correct amount of the Franchise Fee, the books and records of Company pertaining thereto shall be open to inspection or audit by duly authorized representatives of Farmington City, during business hours, but not more than once in a twelve (12) month period, upon giving at least twenty (20) business days advance written notice of the intention to inspect or audit said books and records ; provided, however that any such inspection shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final. Upon completion of any such audit, the City shall provide to the Company a final report setting forth the City's findings in detail, including any substantiating documentation. In the event of an overpayment by the Company, the City shall refund the overpayment to the Company within thirty (30) days. In the event of an alleged underpayment, the Company shall have thirty (30) days from the date of receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports the parties shall attempt to establish a "Finally Settled Amount." For purposed of this Section, the term "Finally Settled Amount" shall mean the agreed upon underpayment which shall be paid by the Company to the City as a result of the audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within thirty (30) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law. Any Finally Settled Amount shall be paid by the Company to the City within thirty (30) days from the date the parties agree on the Finally Settled Amount. Additionally, The Company agrees to reimburse the City the reasonable costs of an audit if the audit discloses and the Finally Settled Amount reflects that the Company had paid ninety percent (90%) or less of the compensation due the City for the period of such audit. Once the Finally Settled Amount is paid by the Company, the City shall have no further rights to audit or challenge the payment for the period included in the audit.

ARTICLE IV

USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY

4.1 Franchise Rights to Use the Public Right-of-Way. The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Chapter 9-4 of the Farmington City Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across

private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.

4.2 Company Duty to Relocate; Subordination to City Use. Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than ninety (90) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City, except that the Parties may agree to abandon the facilities in place in lieu of relocation. Any relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah, the federal government, or other public funds to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. If the City has required the Company to relocate its facilities to accommodate a private third party, the Company shall be entitled, and the City shall use good faith, to require such third party to pay the costs of relocation. The Company may request payment of such costs from the third party in advance of the relocation. Notwithstanding anything to the contrary herein, the Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

4.3 Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company

facilities. However, if it becomes necessary (in the reasonable judgment of the Mayor, City Council, City Manager, City Engineer, Fire Chief, Police Chief, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. In such event, the City shall notify the Company as soon as reasonably possible of the emergency and the actions taken by the City in response thereto. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City for the repair of the Company's facilities or on behalf of Company shall be paid to the Company within thirty (30) business days.

ARTICLE V

PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF COMPANY FACILITIES

5.1 Coordination of Construction and Joint Use. On or before February 28, May 31, August 31, and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will meet (the "Quarterly Coordination Meeting") for the purpose of exchanging information and documents regarding future construction of Company's facilities within the City, with a view toward coordinating their respective activities. Documents and information to be exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, the City Engineer, and the Community Development Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Quarterly Coordination Meeting shall only be commenced upon approval of the City Manager and the Community Development Director. Information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

5.2 Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.

a. Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of Company's Network, but shall use the existing poles and facilities of the City Energy Department and other telecommunication providers under such terms as the Company negotiates with City and these other entities in separate "joint facilities" agreements. City shall cooperate with Company in its negotiating with other telecommunication providers.

b. The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, consistent with consent granted to other franchisees, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

c. No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and reviewed for approval or disapproval within a reasonable time in writing. Such approval shall not be unreasonably withheld. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

d. If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and

approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

e. The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

f. The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than five (5) business days advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

5.3 Duty to Underground. The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground lines. In addition, the Company shall comply with rules and regulations adopted by the City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places in a reasonable time as mutually agreed upon between the City and the Company. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

5.4 Company Duty to Comply with Rules and Regulations. Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may reasonably issue. Except when infeasible due to exigent circumstances related to the health, safety, and welfare of the Community, the Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance.

5.5 Compliance with Pollution Laws. Company shall ensure that its facilities within the City meet any standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

5.6 Compliance with Applicable Laws. All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

5.7 Location to Minimize Interference. All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of-Way, or public property.

5.8 Repair of Damage. If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public or private property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of-Way, sidewalk, utility, Public Improvement or other public or private property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

5.9 Guarantee of Repairs. For a period of one year following the completion of the repair work performed pursuant to Section 5.8, the Company shall maintain, repair, and keep in good condition those portions of said streets, alleys, Rights-of-Way, or public and private property restored, repaired, or replaced to the satisfaction of the City.

5.10 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law and included in the requirements of the permits issued by the City, including, but not limited

to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

5.11 Supervision by the City.

a. The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

b. The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

5.12 Notice of Closure of Streets. Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street or lane closure. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 5.10, above.

ARTICLE VI

POLICE POWER

6.1 Reservation of Police Power. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

6.2 Other Regulatory Approval. The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide, including all lawful and reasonable rules, regulations, policies, resolutions and ordinances now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this

Agreement which is not in accordance with applicable federal, state and local laws.

ARTICLE VII

CITY REPRESENTATIVES

7.1 City Manager's Duties and Responsibilities. The City Manager is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The City Manager may delegate to others, including but not limited to, the City Attorney, City Engineer, and City Finance Director, the various duties and responsibilities of City Representative. The failure or omission of the Manager or the Manager's designee(s) as City Representative to act shall not constitute any waiver or estoppel.

7.2 Company Duty to Cooperate. In order to facilitate such duties of the City Representative, the Company will allow reasonable access to the Company's Network within the City's public Rights of Way provided the City provides three (3) working days advance notice, and any such access is supervised by the Company at all times. Failure of the Company to provide supervision for all times during which the City will access the Network during access for which notice was given under this section, shall excuse the requirement that access be supervised by the Company during those times.

7.3 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any of such terms and conditions.

ARTICLE VIII

TRANSFER OF FRANCHISE

8.1 Written Approval Required. The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. Any attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law. Notwithstanding anything to the contrary herein, so long as Company is in full compliance with this Agreement, this Agreement, without any approval or consent of City, may be sold, assigned or transferred by the Company to the Company's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Company's assets in the market defined by the FCC in which the Network is located by reason of a merger, acquisition or other business reorganization.

8.2 Procedure for Obtaining Approval for Transfer. At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:

(a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
(b) qualifications of proposed assignee or transferee;
(c) legal integrity of proposed assignee or transferee;
(d) financial ability and stability of the proposed assignee or transferee;
(e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and
(f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.

8.3 Certification of Assignee. Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.

8.4 Effect of Approval. In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement until the assignment actually takes place, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

8.5 Transfer Upon Revocation by City. Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the Company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

8.6 Abandonment of Facilities by Company. The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the reasonable requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

ARTICLE IX

ACCEPTANCE BY THE COMPANY OF FRANCHISE

Company Duty to Approve Franchise Agreement. The Company shall, within sixty (60) calendar days after the approval of this Agreement by the City Council, execute this Agreement and provide a fully executed copy to the City. Execution of this Agreement by the Company shall be deemed to be an unqualified acceptance of the Agreement and acknowledgment of the provisions of Title 9 Chapter 4 of the City's Ordinances.

ARTICLE X

EXTENSION OF CITY LIMITS

Annexations. Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

ARTICLE XI

TERMINATION OR REVOCATION OF FRANCHISE

11.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

a. The Company fails to make timely payments of the Franchise Fee as required under Article III of this Agreement and does not correct such failure within thirty (30) business days after receipt of written notice by the City of such failure;

b. The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and, thereupon, after written notice giving the Company notice of such determination, the Company, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety-day period and failure to correct

such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and, provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;

c. The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) calendar days;

d. The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster; or

e. In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

11.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

11.3 Company's Duty to Remove Its Network.

a. Except as otherwise provided in Section 8 above, the Company shall within ninety (90) days remove, at its own cost and expense, from any public property within the City, all or any part of the Network when the Franchise is terminated or revoked pursuant to notice as provided herein; or the Franchise expires pursuant to this Agreement.

b. The Company's removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.

c. Immediately upon such removal of the Network, all streets, avenues, alleys, and other public ways and grounds from which the Network was removed shall be restored to as good a condition as the same were before the removal was effected.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

12.1 No City Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.

12.2 Company Indemnification of City. The Company shall indemnify, hold harmless, and at the City's option defend and hold the City, and the officers, agents, boards, and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind (including accidental death) on account of, or arising from, the exercise by the Company of the rights related to this Agreement, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement. The City shall give the Company written notice of its obligation to indemnify the City within a reasonable time of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Company shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City. In no event shall either party be liable to the other for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with, this agreement, including but not limited to loss of profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of data. If a Court of competent jurisdiction adjudges, by final decree, that the City is liable for any damages that are covered by and not excluded under this indemnity provision, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof.

12.3 Notice of Indemnification. The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. No settlement of a Claim may seek to impose any liability or obligation upon the City other

than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

12.4 Insurance. Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars ($2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.

12.5 City's Right to Intervene. In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

12.6 Own Counsel. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

12.7 No Creation of a Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City.

12.8 Performance Bonds and Other Surety. To ensure completion of the Company's performance of its obligations hereunder, Company shall furnish to the City a performance bond, that is substantially similar in form to the surety guarantee bond that is attached hereto as Exhibit 1, from an insurer or guarantor that is acceptable to the City.

ARTICLE XIII

REMEDIES

13.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

13.2 Remedies at Law. In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

13.3 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

13.4 Force Majeure. The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, pandemics, endemics, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE XIV

NOTICES

City and Company Designees and Addresses. Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise

shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:	Company:
Farmington City Attn: City Manager 160 S. Main Farmington, UT 84025	Fif Utah, LLC dba Utah Broadband Attn: _____ 14015 S. Minuteman Dr. Draper, UT 84020
With copies to (which shall not constitute notice):	**With a copy to (except for invoices) (which copy will not constitute notice):**

ARTICLE XV

CHANGING CONDITIONS

Meet to Confer. The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

ARTICLE XVI

AMENDMENT AND GENERAL PROVISIONS

16.1 Duty to Negotiate. At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s). The City shall not seek an amendment from the Company unless it is requiring a similar amendment from the other similarly-situated City franchisees.

16.2 Written Approval to Amend Agreement Required. No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the

Company, and an ordinance or resolution approving such amendments is approved by the City Council.

16.3 Entire Agreement. This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.

16.4 Governing Law. This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

16.5 Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

ARTICLE XVII

SEVERABILITY

17.1 Conditions. If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof or any provision that has a material adverse effect on the economic or legal substance of this Agreement. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

17.2 Conflicts. In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.

17.3 Fee Article Non-Severable. Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid, unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III

unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.

17.4 Waiver of Non-Severability. Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.

17.5 Lease Terms Upon Termination. In the event this Agreement is terminated pursuant to Section 17.3 hereof, to the extent allowed by law, the City grants to the Company a license for the location of facilities according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article III hereof and be bound by all other terms and conditions contained herein; provided, however, that in no event shall the Company be obligated to pay a higher percentage of Gross Revenues as rent or otherwise derived from the sale of telecommunications services within the City than is paid by other telecommunication companies serving within the City.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.

Farmington City

By: _____
Brett Anderson, Mayor

ATTEST:

_____
DeAnn Carlile, City Recorder

APPROVED AS TO FORM:

_____
City Attorney

Fif Utah, LLC

By: _____
_____,

ATTEST:

_____
Secretary

APPROVED AS TO FINANCES:

_____
Chief Financial Officer

APPROVED AS TO FORM:

_____
General Counsel

STATE OF)
)ss.
COUNTY OF)

On the _____ day of _____, 2022, personally appeared before me _____, , who being by me duly sworn did each respectively say that he/she is the _____ of Fif Utah, LLC, and that the foregoing instrument was signed in behalf of said Company by authority of its Managers; and he/she each acknowledged to me that said Company executed the same.

_____
Notary Public

Exhibit 1
Master Performance Bond Agreement

Master Performance Bond

Farmington City, Utah

Principal (legal name and business address)

Date of Franchise Agreement:

_____

Surety (name and business address)

Penal Sum of Bond:

$50,000.00

Obligation:

We, the Principal and Surety, are firmly bound to Farmington City, Utah (hereinafter referred to as the City) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. This bond is connected to the Principal's obligations under the Franchise Agreement with the City referenced above, and Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown in this Bond, should Principal breach its obligations under the Franchise Agreement and not cure them within the time provided in the Franchise Agreement.

Conditions:

1) The Principal has entered into a Franchise Agreement with the City, on the date provided above.
2) Proof of surety through this Master Performance Bond excuses the utility provider from providing individual bonding for each excavation permit, as ordinarily required by City Code.
3) The above obligation is void if:
   a) The Principal performs and fulfills all obligations under the Franchise Agreement, including applicable warranty periods; or
   b) The Franchise Agreement is terminated, and all warranty periods have expired.
4) The Surety hereby waives notice of any change in the Improvements, including changes or time, changes to the Work, and changes to the terms or conditions, of the Improvements.

Witness:

The Principal and Surety execute this master performance bond and affix their corporate seals.

Principal

_____
Signature

_____
Print Name/Title

Surety

_____
Signature

_____
Print Name/Title

PRINCIPAL ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2022, personally appeared before me, _____ _____, who being by me duly sworn, did say that he is signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

_____

NOTARY PUBLIC

My Commission Expires: Residing at:

_____ _____

SURETY ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On this ____ day of _____, 2022, before me personally appeared _____, of the _____, a _____, known to me to be the person(s) who executed the foregoing instrument herein in behalf of said company and acknowledged to me that he/she executed the same for the purposes therein stated.

_____

NOTARY PUBLIC

My Commission Expires: Residing at:

_____ _____

FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Lyle Gibson, Assistant Community Development Director

Date: December 6, 2022

SUBJECT: **Revocable License for the Use of Property.**

RECOMMENDATION

1. Move that the City Council adopt the enclosed license agreement regarding the use of city property at 120 West 600 North

   Findings

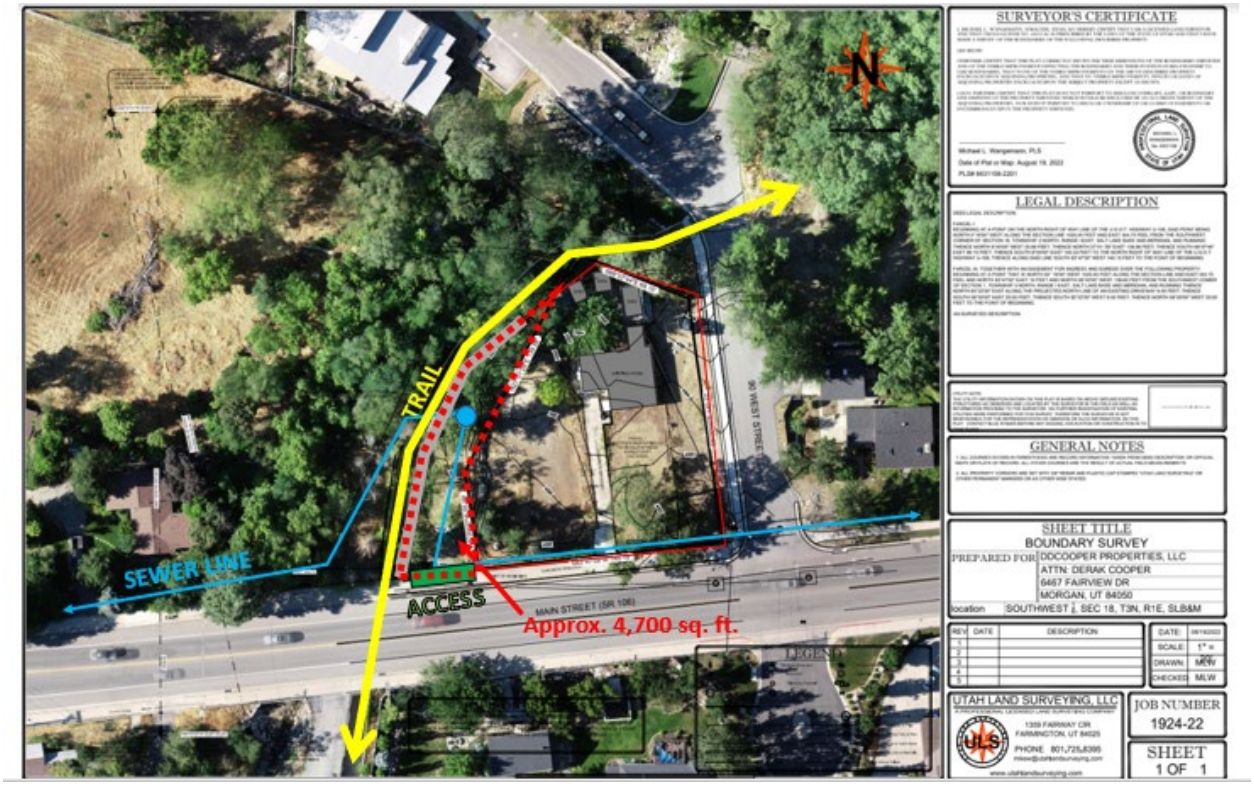
   1. The included license agreement formalizes what permissions the owner of adjacent property has over the subject property.
   2. The agreement maintains a use which has been taking place for many years giving the adjacent owner confidence and clarity on what can be done on the subject property while also maintaining expectations for the city's needs.

BACKGROUND

Upon purchasing property along the north side of 600 North Street near the Farmington Creek Trail, the new owner approached the city to understand the agreements that were in place as to the use of some city property that had basically been incorporated into the yard of the residential lot.

Unable to find any written or formal agreements, options were considered for clarifying expectations. The sale of the property was considered early on, but the potential need to maintain utilities or repair and replace retaining walls along the trail gave too much pause to sell the land and simply maintain anticipated easements. Instead the attached agreement has been put together and accepted by the adjacent resident indicating that they are allowed to access and landscape the property. Full details are included within the agreement on primarily on pages 2 and 3.

Subject Property:



SUPPLEMENTAL INFORMATION

1. Revocable License for the Use of Property

Respectfully Submitted

Lyle Gibson
Assistant Community Development Director

Concur

Brigham Mellor
Assistant City Manager

When recorded mail to:
Farmington City
160 S. Main Street
Farmington, UT 84025

REVOCABLE LICENSE FOR THE USE OF PROPERTY

WHEREAS, Farmington City, a municipal corporation (the "Licensor") owns property at approximately 120 West 600 North in Farmington, Utah (the "Licensed Premises"), and DDCooper Properties, LLC (the "Licensee") owns a parcel of land abutting the East side of the Licensed Premises; and

WHEREAS, existing vegetation and landscaping has been installed on the Licensed Premises by previous owners of the Licensee's property, including irrigation systems;

WHEREAS, the Licensee contacted the Licensor and requested permission to further improve and maintain the Licensed Premises; and

WHEREAS, the Parties will benefit from this arrangement; and

WHEREAS, the Licensor will allow the Licensee access to Licensed Premises in order to install and maintain landscaping for the Licensee's use and enjoyment, subject to the terms of this License,

NOW THEREFORE, in consideration of TEN dollars the Licensor grants to the Licensee the following:

1. **License to Install and Maintain Landscaping.**

a. **Grant of License**. FARMINGTON CITY, Licensor, hereby grants and conveys to DDCooper Properties, LLC, Licensee, in consideration of TEN DOLLARS ($10.00) and other good and valuable consideration, a perpetual and revocable license authorizing the Licensee to install and maintain landscaping and irrigation within the **non-trail portions** of the Licensed Premises in the parcel of property owned by Licensor at 120 West 600 North, Farmington, Davis County, State of Utah, (the "**Licensed Premises**") (Davis County Parcel No. 07-014-0033), which parcel is more fully described as follows:

> BEG AT PT 1.20 CHAINS E, S 71^25' E 5.50 CHAINS FR SW COR OF LOT 7, BLK 16, PLAT BC, FARMINGTON TS SURVEY; TH S 28^ W 3.97 CHAINS TO N LINE HWY 91; TH N 83^30' E ALG HWY LINE 102.73 FT; TH N 8^00'00" W 55.99 FT; TH N 27^01'29" E 138.58 FT; TH S 68^07'44" E 69.15 FT TO W LINE OF RD (33 FT WIDE); TH N 8^ W ALG RD 16.08 FT; TH N 68^53' W 104 FT TO BRIDGE; TH N 52^15' W 25 FT TO THE BEG.
>
> CONT. 0.37 ACRES.

b. **Non-Trail Portions**. A graphical depiction of the Licensed Area is attached as Exhibit A and incorporated by reference. Exhibit A includes an improvement marked "Chain Link Fence on Concrete Wall" which extends alongside the trail on the East side, and on the West side of the trail where there is a concrete wall. The "Non-Trail Portions" includes all areas to the East of the "Chain Link Fence on Concrete Wall". It also includes areas to the west of the Chain Link Fence on Concrete Wall, which exists on the West side of the trail. The Non-Trail Portions does not include the area marked as the "asphalt trail" nor any of the improvements to the trail, including lighting, concrete walls and other infrastructure designed to maintain the trail and 600 North.

c. The License hereby granted consists of a perpetual right of ingress and egress, including the right to enter, plant vegetation and install other landscaping or irrigation systems, and to perform maintenance and construction necessary to maintain such ingress and egress. This License is connected to the premises at 108 West 600 North (Davis County Parcel No. 07-014-0034) and this License will transfer along with ownership of the property at 108 West 600 North, until revoked pursuant to section 5.

d. The License is subservient to the primary uses of the Licensed Premises, which are to maintain a sewer line, a public trail and right-of-way for the benefit of the public generally. Nothing in this License prevents the Licensor or its delegates from accessing and maintaining the sewer line or trail within the Licensed Premises. Accessing the sewer line may necessitate excavation and potentially extensive work which will disrupt and damage landscaping in the area excavated.

2. **Installation and Maintenance of Landscaping and Landscaping Features**.

a. Licensee is authorized to install landscaping and irrigation systems within the Licensed Premises. No new trees may be planted within the Licensed Premises without written approval from the Licensor.

b. A trail that is open to the public runs through the Licensed Premises. Licensee may not interfere with the use of that trail. The public may continue to use the trail and access the unfenced areas as traditionally allowed previously.

c. Fencing currently exists on the Licensed Premises, and Licensee agrees not to modify that fencing without prior, written permission from Licensor. Licensee may only install additional fence on the Licensed Premises with written permission from the Licensor. Such fencing may not impede access to or use of the trail, nor impede access to the manhole or other sewer facilities within the Licensed Premises. Licensee agrees that if additional fencing is installed along 600 North, that it will include gated access of at least ten feet (10') in length, for access and maintenance of the sewer line and other facilities within the Licensed Premises.

d. Licensor is restricted from placing any structures on the Licensed Premises, unless they are readily moveable in case of emergency repairs on the line. In no case may structures requiring footings or attachment to the ground be permitted.

e. Licensee shall bear all costs of new landscaping, maintenance of landscaping, and irrigation within the Licensed Area. Licensor does not bear responsibility to replace landscaping or other features on the Licensed Premises that are removed or damaged as a result of accessing or repairing the line.

3. **No Property Transfer.** This License is not a transfer of property. If Farmington City or another government entity seeks to acquire any of the Licensor's land, this License shall not be deemed to be a property interest of any other parcel.

4. **Notice for Sewer Line Maintenance.** Licensor is permitted to enter the Licensed Premises at any time to inspect or perform routine maintenance on the facilities located on the Licensed Premises. In the case of an emergency, no notice will be provided before excavation and work to repair the sewer line occurs. Under ordinary circumstances, Licensor should provide 24 hours' notice to Licensee before engaging in excavation in the Licensed Premises. Other governmental entities, including the Central Davis Sewer District, may also access the Licensed Premises at any time; they should also provide some notice for non-emergency excavation, but are not legally obligated to do so.

5. **Transfers.**

a. Licensor may transfer this property without prior notice to or authorization from Licensee. The entity acquiring the Licensed Premises shall be governed by this License and shall have all rights and responsibilities of the Licensor.

b. Licensee may only transfer this License to a purchaser of the home at 108 West 600 North, Farmington, Utah (Davis County Parcel ID No. 07-014-0034). Licensee is not required to obtain prior written approval of the transfer, but shall notify Licensor of such a transfer within thirty days after closing.

6. **Revocation**.

a. Licensor, or Licensor's successor in interest, retains the right to revoke this License, upon thirty (30) days' written notice. If Licensee wishes to relocate installed vegetation or landscaping, then it may do so at Licensee's expense.

b. Licensee, or Licensee's successor in interest, may abandon this License at any time, upon thirty days' written notice to Licensor.

c. Licensor agrees that for three years from the effective date of this License, it may only revoke the License based upon a substantial change in circumstances.

(signatures appear on next pages)

DATED this _____ day of _____, 2022.

_____
Brett Anderson, Mayor
Licensor

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On the ____ day of _____, 2022, before me, the undersigned notary public, personally appeared Brett Anderson, personally known to the notary to be the person whose name is signed on the foregoing instrument and who acknowledged before me on this day that he executed the same voluntarily as a representative of Farmington City.

_____
NOTARY PUBLIC

AFFIX SEAL
My commission expires: _____

Licensee accepts the Revocable License described above.

LICENSEE

By: _____

Print Name: _____

STATE OF UTAH)
:ss.
COUNTY OF DAVIS)

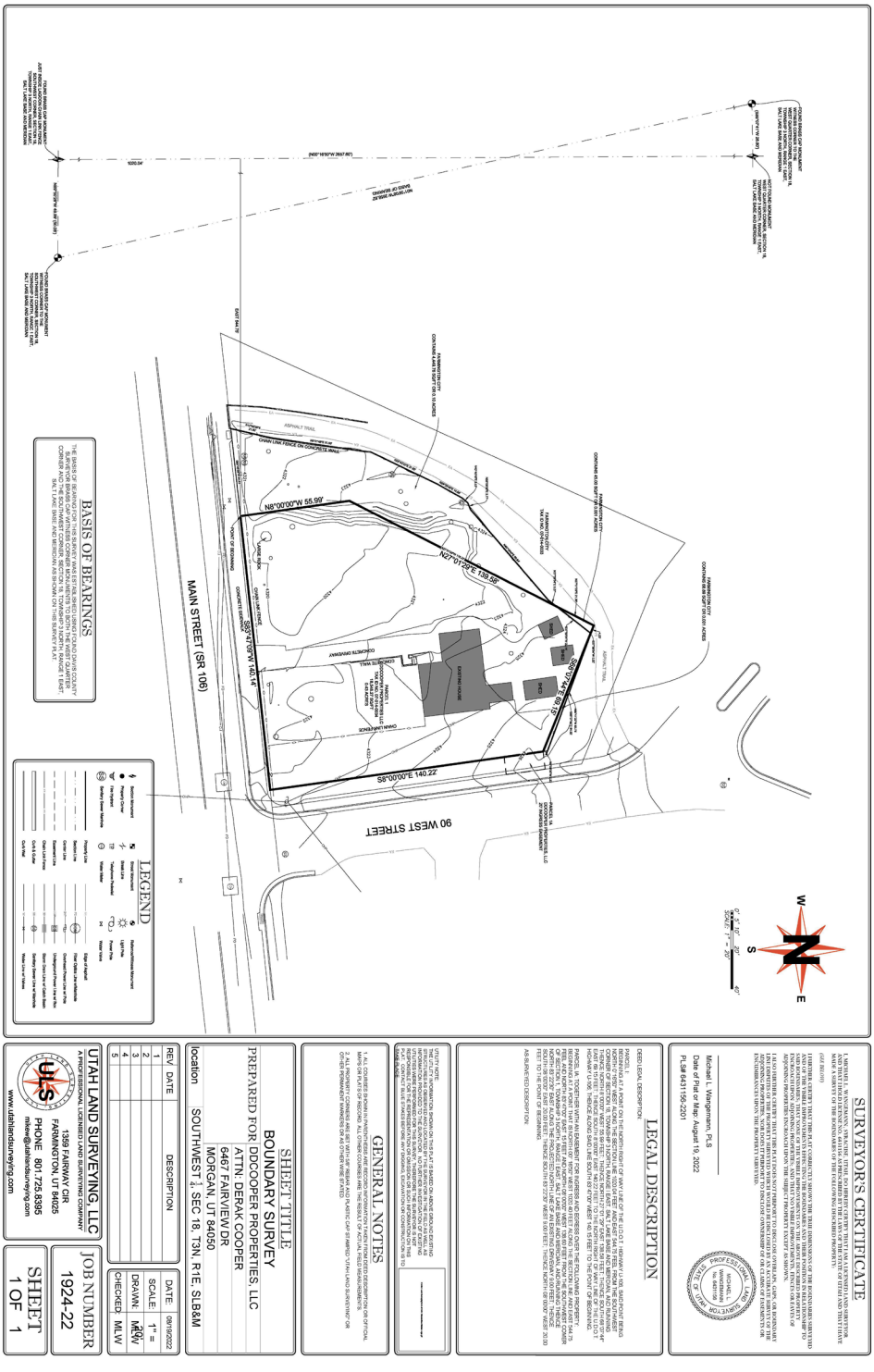
On the ____ day of _____, 2022, personally appeared before me_____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that they executed the same.

_____
NOTARY PUBLIC

AFFIX SEAL
My Commission Expires: _____

EXHIBIT A

Depiction of Licensed Area



FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Carly Rowe, Planning Secretary

Date: November 30, 2022

SUBJECT: Clark Lane Commercial Subdivision

RECOMMENDATION

Approve the Farmington City Improvements Agreement between TFC Clark Lane LLC and Farmington City for the Clark Lane Commercial Subdivision development (formerly named Farmington Retail).

BACKGROUND

The bond estimate for Clark lane Commercial Subdivision Development is $92,600.20 which includes a 10% warranty amount. TFC Clark Lane LLC., has submitted a Cash Bond with the City, which matches the bond estimate total. This bond will be released as improvements are installed by the developer and inspected by the City. Once all of the improvements are installed and inspected, the entire bond, except the warranty amount, will be released. After a warranty period of one year, the warranty bond will be released once all items are accepted as satisfactory by the City.

Respectfully Submitted,

Carly Rowe
Planning Secretary

Review and Concur,

Brigham Mellor
City Manager

160 S MAIN • P.O. BOX 160 • FARMINGTON, UT 84025
PHONE (801) 451-2383 • FAX (801) 451-2747
www.farmington.utah.gov

FARMINGTON CITY

IMPROVEMENTS AGREEMENT

(CASH FORM)

THIS AGREEMENT is made by and between TFC Clark Lane, LLC (hereinafter "Developer"), whose address is 6770 S. 900 E. #300, Midvale, UT 84047, and Farmington City Corporation, a municipal corporation of the State of Utah, (hereinafter "City"), whose address is 160 South Main, P.O. Box 160, Farmington, Utah, 84025-0160.

WHEREAS, Developer desires to subdivide and/or to receive a permit to develop certain property located within the City, said project to be known as Clark Lane Commercial Subdivision, located at approximately 1131 West Clark Lane, in Farmington City; and

WHEREAS, the City will not approve the subdivision or issue a permit unless Developer promise to install and warrant certain improvements as herein provided and security is provided for that promise in the amount of $ 92,600.20.

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

1. **Installation of Improvements.** The Developer agrees to install all improvements required by the City as specified in the bond estimate prepared by the City for Developer's project which shall be an Exhibit hereto, (the "Improvements"), precisely as shown on the plans, specifications, and drawings previously reviewed and approved by the City in connection with the above-described project, and in accordance with the standards and specifications established by the City, within 12 (twelve) months from the date of this Agreement. Developer further agrees to pay the total cost of obtaining and installing the Improvements, including the cost of acquiring easements.

2. **Dedication.** Where dedication is required by the City, the Developer shall dedicate to the City the areas shown on the subdivision or development plat as public streets and as public easements, provided however, that Developer shall indemnify the City and its representatives from all liability, claims, costs, and expenses of every nature, including attorneys fees which may be incurred by the City in connection with such public streets and public easements until the same are accepted by the City following installation and final inspection of all of the Improvements and approval thereof by the City.

3. **Cash Deposit.** The Developer has delivered to the City cash or a cashier's check in the aggregate amount of $ 92,600.20 for deposit with the City in its accounts (the "deposit"), which the Developer and the City stipulate to be a

reasonable preliminary estimate of the cost of the Improvements, together with 10% of such cost to secure the warranty of this Agreement and an additional 10% of such cost for contingencies.

4. **Progress Payments.** The City agrees to allow payments from the deposit as the work progresses as provided herein. The City shall, when requested in writing, inspect the construction, review any necessary documents and information, determine if the work completed complies with City construction standards and requirements, and review the City's cost estimate. After receiving and approving the request, the City shall in writing authorize disbursement to the Developer from the Deposit in the amount of such estimate provided that if the City does not agree with the request, the City and Developer shall meet and the Developer shall submit any additional estimate information required by the City. Except as provided in this paragraph or in paragraphs 5 through 7 inclusive, the City shall not release or disburse any funds from the Deposit.

5. **Refund or Withdrawal.** In the event the City determines it is necessary to withdraw funds from the Deposit to complete construction of Improvements, the City may withdraw all or any part of the Deposit and may cause the Improvements (or any part of them) to be constructed or completed using the funds received from the Deposit. Any funds not expended in connection with the completion of said Improvements by the City shall be refunded to Developer upon completion of the Improvements, less an additional 15% of the total funds expended by the City, which shall be retained by the City as payment for its overhead and costs expended by the City's administration in completing the Improvements.

6. **Preliminary Release.** At the time(s) herein provided, the City may authorize release of all funds in the Deposit, except 10% of the estimated cost of the Improvements, which shall be retained in the Deposit until final release pursuant to the next paragraph. Said 10% shall continue as security for the performance by the Developer of all remaining obligations of this Agreement, including the warranty, and may be withdrawn by the City as provided in paragraph 5 above for any breach of such an obligation. The release provided for in this paragraph shall occur when the City certifies that the Improvements are complete, which shall be when the Improvements have been installed as required and fully inspected and approved by the City, and after "as-built" drawings have been supplied as required.

7. **Final Release.** Upon full performance of all of Developer's obligations pursuant to this Agreement, including the warranty obligations of paragraph 26, the City shall notify the Developer in writing of the final release of the Deposit. After giving such notice, the City shall relinquish all claims and rights in the Deposit.

8. **Non-Release of Developer's Obligations.** It is understood and agreed between the parties that the establishment and availability to the City of the Deposit as

herein provided, and any withdrawals form the Deposit by the city shall not constitute a waiver or estoppels against the City and shall not release or relieve the Developer from its obligation to install and fully pay for the Improvements as required in paragraph 1 above, and the right of the City to withdraw from the Deposit shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of paragraph 1 of this Agreement. Further, the Developer agrees that if the City withdraws from the Deposit and performs or causes to be performed the installation or any other work required of the Developer hereunder, then any and all costs incurred by the City in so doing which are not collected by the City by withdrawing from the Deposit shall be paid by the Developer, including administrative, engineering, legal and procurement fees and costs.

9. **Connection and Maintenance.** Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolutions, rules, and regulations of the City, whether now or hereafter in force, including payment of all connection, review and inspection fees, the City shall permit the Developer to connect the Improvements to the City's water and storm drainage systems and shall thereafter utilize and maintain the Improvements to the extent and in the manner now or hereafter provided in the City's regulations.

10. **Inspection.** The Improvements, their installation, and all other work performed by the Developer or its agents pursuant to this Agreement shall be inspected at such times as the City may reasonably require and prior to closing any trench containing such Improvements. The City shall have a reasonable time of not less than 24 hours after notice in which to send its representatives to inspect the Improvements. Any required connection and impact fees shall be paid by the Developer prior to such inspection. In addition, all inspection fees required by the ordinances and resolutions shall be paid to the City by the Developer prior to inspection.

11. **Ownership.** The Improvements covered herein shall become the property of the City upon final inspection and approval of the Improvements by the City, and the Developer shall thereafter advance no claim or right of ownership, possession, or control of the Improvements.

12. **As-Built Drawings.** The Developer shall furnish to the City, upon completion of the Improvements, drawings showing the Improvements, actual location of water and sewer laterals including survey references, and any related structures or materials as such have actually been constructed by the Developer. The City shall not be obligated to release the Deposit until these drawings have been provided to the City.

13. **Amendment.** Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

14. **Successors.** No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

15. **Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient is sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

16. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as is this Agreement had been executed with the invalid portions eliminated.

17. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

18. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instruments, and each such counterpart shall be deemed an original.

19. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

20. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

21. **Integration.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

22. **Attorney's Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and

expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

23. **Other Bonds.** This Agreement and the Deposit do not alter the obligation of Developer to provide other bonds under applicable ordinances or rules of any other governmental entity having jurisdiction over Developer. The furnishing of security in compliance with the requirements of the ordinances or rules of other jurisdictions shall not adversely affect the ability of the City to draw on the Deposit as provided herein.

24. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

25. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

26. **Warranty.** The Developer hereby warrants that the Improvements installed, and every part hereof, together with the surface of the land and any improvements thereon restored by the Developer, shall remain in good condition and free from all defects in materials, and/or workmanship during the Warranty Period, and the Developer shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, or equipment during the Warranty Period, without charge or cost to the City. The City may at any time or times during the Warranty Period inspect, photograph, or televise the Improvements and notify the Developer of the condition of the Improvements. The Developer shall thereupon immediately make any repairs or corrections required by this paragraph. For purposes of this paragraph, "Warranty Period" means the one-year period beginning on the date on which the Improvements are certified complete by the City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this 21st day of November, 20 22

CITY:

FARMINGTON CITY CORPORATION

By: _____
Brett Anderson, Mayor

ATTEST:

_____
DeAnn Carlile, City Recorder

DEVELOPER:

TFC Clark Lane, LLC

By: _____
Elliott B. Smith

Its: Manager

DEVELOPERS ACKNOWLEDGEMENT

(Complete if **Developer** is an **Individual**)

STATE OF UTAH)
:ss.
COUNTY OF _____)

On this _____ day of _____, 20___, personally appeared before me, _____, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they executed the same.

_____
NOTARY PUBLIC
Residing in _____ County, _____.

****

(Complete if **Developer** is a **Corporation**)

STATE OF UTAH)
:ss.
COUNTY OF _____)

On this _____ day of _____, 20___, personally appeared before me, _____, who being by me duly sworn did say that he/she is the _____ of _____ a _____ corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

_____
NOTARY PUBLIC
Residing in _____ County, _____.

****

(Complete if **Developer** is a **Partnership**)

STATE OF UTAH)
:ss.
COUNTY OF _____)

On this _____ day of _____, 20___, personally appeared before me, _____, who being by me duly sworn did say that he/she/they is/are the _____ of _____, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in behalf of said partnership.

_____
NOTARY PUBLIC
Residing in _____ County, _____.

****

(Complete if **Developer** is a **Limited Liability Company**)

STATE OF UTAH)
: ss.
COUNTY OF Salt Lake)

On this 21st day of November, 2022, personally appeared before me Elliott B. Smith who being by me duly sworn did say that he or she is the Manager of TFC Clark Lane, LLC, a limited liability company, and that the foregoing instrument was duly authorized by the Members/Managers of said limited liability company.

_____
NOTARY PUBLIC
Residing in Salt Lake County, Utah.

Notary Public - State of Utah
AMY GALBRAITH
Comm. #718713
My Commission Expires
June 4, 2025

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
COUNTY OF _____)

On the _____ day of _____, 20___, personally appeared before me Brett Anderson and DeAnn Carlile who, being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of Farmington City Corporation, and said persons acknowledged to me that said corporation executed the foregoing instrument.

_____
NOTARY PUBLIC
Residing in _____ County, _____.

FARMINGTON
HISTORIC BEGINNINGS • 1847

PLANNING AND ZONING RECEIPT INFORMATION

Name Farmington Retail

Application No. S-6-22

Project Address Clark Lane

Date 11.21.22

Amount	Application	Account #
$_____	Annexation	10-340-310
$_____	Board of Adjustment	10-340-380
$92,600.20	Cash Bond	10-225-200
$_____	Conditional Use/Temporary Use	10-340-370
$_____	Street Lighting Deposit	38-390-349
$_____	Development Inspection Fee	10-340-350
$_____	Fire	43-351-180
$_____	Park Development Fee	42-351-180
$_____	Planned Unit Development	10-340-330
$_____	Professional Service Fee	10-340-301
$_____	Rezone or General Plan Amendment Application	10-340-320
$_____	Street Signs	38-390-346
$_____	Site Development Review/Lot Line Adjustment/Project Master Plan/ Special Exception/Boundary Adjustment/Administrative - Determination/Conservation Easement Amendment/ Mixed Use Development Plan Review	10-340-340
$_____	Slurry Seal	38-390-345
$_____	SPARC Fee (Site Plan & Architectural Review Committee)	10-340-303
$_____	SPARC Deposit (Site Plan & Architectural Review Committee)	10-225-400
$_____	Storm Drainage Fee (EAST)	54-351-180
$_____	Storm Drainage Fee (WEST)	54-351-190
$_____	Street Name Change/Street Vacation or Dedication	10-340-330
$_____	Subdivision/Metes and Bounds or Minor	10-340-330
$_____	Subdivision Plat Review (Schematic)	10-340-330
$_____	Subdivision/Preliminary Plat	10-340-330
$_____	Subdivision/Final Plat/Plat Amendment	10-340-330
$_____	Transportation Impact Fee	38-351-180
$_____	Water Development Fee	51-351-190
$_____	Police	37-351-180
$_____	Publications and/or Copies/GRAMA Requests	10-361-930
$_____	Other:	_____

$92,600.20 TOTAL ✓

Receipt No: 8.008601 Nov 21, 2022

TERRAFORM COMPANIES

Previous Balance:	.00
PLANNING @ ZONING	
CASH BOND/DEVELOPER	92,600.20
10-225200	
DEVELOPER BONDS HELD & PAYABLE	
Total:	92,600.20
CHECK	
Check No: 4988	92,600.20
Payor:	
TERRAFORM COMPANIES	
Total Applied:	92,600.20
Change Tendered:	.00

Duplicate Copy
11/21/2022 4:21 PM

FARMINGTON CITY CORP.
160 SOUTH MAIN
P.O. BOX 160
FARMINGTON UT 84025 801-451-2383

FARMINGTON CITY

BRETT ANDERSON
MAYOR

ROGER CHILD
SCOTT ISAACSON
MELISSA LAYTON
ALEX LEEMAN
AMY SHUMWAY
CITY COUNCIL

BRIGHAM MELLOR
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Chad Boshell, City Engineer

Date: December 1, 2022

SUBJECT: **CONSIDER APPROVAL OF RC PAVEMENT TO CONSTRUCT THE 200 E TO MAIN SIDEWALK PROJECT**

RECOMMENDATION

Approve the contract and bid from RC Pavement for the construction of 200 E and Main sidewalk improvements in the amount of $159,865.00 to be paid from various street maintenance funds.

BACKGROUND

The City received 4 bids for the 200 E and Main Sidewalk Project ranging from $256,880.00 to $159,865.00 and will begin construction in January. The project includes removing and replacing sidewalk, a storm drain system install and ADA ramp replacements. City staff recommends awarding RC Pavement the project. Attached is the contract between the City and the Contractor to do the work.

SUPPLEMENTAL INFORMATION

1. Bid Summary
2. Contract

Respectively Submitted

Chad Boshell, P.E.
Assistant City Manager

Reviewed and Concur

Brigham Mellor
City Manager

Bid Tabulation

Project: 200 E to Main Sidewalk Project
Account #
Engineer: Farmington City

				RC Pavement		Jordan Valley Const.		Leon Poulsen		ACME	
		TOTAL		UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
ITEM	DESCRIPTION	QUANTITY	UNIT	COST	AMOUNT	COST	AMOUNT	COST	AMOUNT	COST	AMOUNT
1	Mobilization	1	LS	$12,000.00	$12,000.00	$18,000.00	$18,000.00	$22,182.00	$22,182.00	$54,500.00	$54,500.00
2	Traffic Control	1	LS	$4,500.00	$4,500.00	$14,000.00	$14,000.00	$12,000.00	$12,000.00	$14,500.00	$14,500.00
3	Curb and Gutter Remove and Replace	170	SY	$52.00	$8,840.00	$90.00	$15,300.00	$90.00	$15,300.00	$48.00	$8,160.00
4	Sidewalk Removal	6,760	SY	$2.50	$16,900.00	$1.00	$6,760.00	$3.25	$21,970.00	$7.50	$50,700.00
5	Sidewalk Install	7,955	LF	$9.00	$71,595.00	$9.00	$71,595.00	$12.00	$95,460.00	$9.50	$75,572.50
6	ADA Ramp	8	SY	$2,750.00	$22,000.00	$3,000.00	$24,000.00	$5,000.00	$40,000.00	$2,500.00	$20,000.00
7	Asphalt Patching	30	EA	$22.00	$660.00	$50.00	$1,500.00	$60.00	$1,800.00	$60.00	$1,800.00
8	SD Inlet Box	1	EA	$2,775.00	$2,775.00	$4,800.00	$4,800.00	$5,500.00	$5,500.00	$8,750.00	$8,750.00
9	Dipstone	1	EA	$2,775.00	$2,775.00	$6,200.00	$6,200.00	$6,500.00	$6,500.00	$4,125.00	$4,125.00
10	15" RCP	25	EA	$170.00	$4,250.00	$200.00	$5,000.00	$165.00	$4,125.00	$400.00	$10,000.00
11	Tree Root Removal	330	EA	$6.00	$1,980.00	$5.00	$1,650.00	$15.00	$4,950.00	$6.00	$1,980.00
12	Sod Replacement	129	EA	$50.00	$6,450.00	$18.00	$2,322.00	$10.00	$1,290.00	$9.50	$1,225.50
13	3 Tier Old Wood Fence Rel-aligment	50	SY	$66.00	$3,300.00	$30.00	$1,500.00	$50.00	$2,500.00	$21.00	$1,050.00
14	Remove Asphalt Driveway	201	SY	$5.00	$1,005.00	$10.00	$2,010.00	$7.00	$1,407.00	$7.50	$1,507.50
15	Remove Concrete Driveway	70	SY	$5.50	$385.00	$12.00	$840.00	$5.00	$350.00	$9.35	$654.50
16	Grind Sidewalk Edge	3	SY	$150.00	$450.00	$650.00	$1,950.00	$350.00	$1,050.00	$785.00	$2,355.00
					$159,865.00		**$177,427.00**		**$236,384.00**		**$256,880.00**

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between Farmington City Corporation ("Owner") and R Cherrington Enterprises LLC dba RC Enterprise Paving & Construction ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

A. concrete remove and replace, asphalt removal, saw cutting, excavating, digging, forming, and installing a new sidewalk product according to ADA standards.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: 200 E to Main Sidewalk Project

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Chad Boshell P.E.

3.02 The Owner has retained Chad Boshell, ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work shall be substantially completed and billed by May 30, 2023

Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions by May 30, 2023

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the

delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner $ 500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $ 500 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in the amount of $ 159,865.00

A. Contractor's Bid is attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. _95_ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to _100_ percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _200_ percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of _5_ percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 23 to 28 inclusive).
2. Performance bond (pages 30 to 32 , inclusive).
3. Payment bond (pages 33 to 35, inclusive).
4. Other bonds.
   a. NA (pages ___ to ___ , inclusive).

NOTE(S) TO USER:

Such other bonds might include maintenance or warranty bonds intended to manage risk after completion of the Work.

5. General Conditions (pages 41 to 110, inclusive).
6. Supplementary Conditions (pages 111 to 118, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings (not attached but incorporated by reference) consisting of 6 sheets with each sheet bearing the following general title: 200 East to Main Sidewalk Project **[or]** the Drawings listed on the attached sheet index.
9. Addenda (numbers 1 to 1, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid (pages 12 to 19, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed.
    b. Work Change Directives.
    c. Change Orders.
    d. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:	CONTRACTOR:
Farmington City	R Cherrington Enterprises LLC dba RC Enterprise Paving & Construction
By: _____	By: _____
Title: _____	Title: _____
	(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)
Attest: _____	Attest: _____
Title: _____	Title: _____
Address for giving notices:	Address for giving notices:
_____	_____
_____	_____
_____	_____
	License No.: _____ *(where applicable)*

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

BID FORM

200 E TO MAIN SIDEWALK PROJECT

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Farmington City Public Works Department; 720 West 100 North, Farmington, UT, 84025

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date
#1	11/29/22

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance

of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

K. Bidder is aware of items included in the basis of bid as described in the measurement and payment.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the e execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization	LS	1	12,000.00	12,000.00
2	Traffic Control	LS	1	4,500.00	4,500.00
3	Curb and Gutter Remove and Replace	LF	170	52.00	8,840.00
4	Sidewalk Removal	SF	6,760	2.50	16,900.00
5	Sidewalk Install	SF	7,955	9.00	71,595.00
6	ADA Ramp	EA	8	2,750.00	22,000.00
7	Asphalt Patching	SF	30	22.00	660.00
8	SD Inlet Box	EA	1	2,775.00	2,775.00
9	Dipstone	EA	1	2,775.00	2,775.00
10	15" RCP	LF	25	170.00	4,250.00
11	Tree Root Removal	SF	330	6.00	1,980.00
12	Sod Replacement	SF	129	50.00	6,450.00
13	3 Tier Old Wood Fence Rel-aligment	LF	50	66.00	3,300.00
14	Remove Asphalt Driveway	SF	201	5.00	1,005.00
15	Remove Concrete Driveway	SF	70	5.50	385.00
16	Grind Sidewalk Edge	EA	3	150.00	450.00
17					
18					
19					
Total of All Unit Price Bid Items					$159,865.00

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

A. Required Bid security;

B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;

C. Contractor's License No.: 9751052-5501 - E100 / B100

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

R Cherrington Enterprises, LLC / DBA - RC Enterprise Paving & Construction

By:
[Signature] 

[Printed name] Riley R Cherrington
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] 

[Printed name] Riley R Cherrington

Title: Owner / President

Submittal Date: 11/30/2022

Address for giving notices:

1700 S. State Street, Springville, UT 84663

Telephone Number: (801) 420-1233

Fax Number: (801) 841-4728

Contact Name and e-mail address: riley@rcecon.com

Bidder's License No.: 9751052-5501 - E100 / B100

(where applicable)

Month of October 2022	BUILDING ACTIVITY REPORT - JULY 2022 THRU JUNE 2023				
RESIDENTIAL	**PERMITS THIS MONTH**	**DWELLING UNITS THIS MONTH**	**VALUATION**	**PERMITS YEAR TO DATE**	**DWELLING UNITS YEAR TO DATE**
NEW CONSTRUCTION **********					
SINGLE FAMILY	5	5	$1,489,390.71	189	189
DUPLEX	0	0	$0.00	0	0
MULTIPLE DWELLING	0	0	$0.00	5	355
CARPORT/GARAGE	0		$0.00	126	
OTHER RESIDENTIAL	2	0	$13,921.06	26	
SUB-TOTAL	7	5	$1,517,232.83	346	544
REMODELS / ALTERATION / ADDITIONS **********					
BASEMENT FINISH	2		$9,965.00	85	
ADDITIONS/REMODELS	4		$18,641.75	91	
SWIMMING POOLS/SPAS	2		$61,108.16	85	
OTHER	17		$301,199.00	381	
SUB-TOTAL	25		$390,913.91	642	
NON-RESIDENTIAL - NEW CONSTRUCTION **********					
COMMERCIAL	0		$0.00	18	
PUBLIC/INSTITUTIONAL	0		$0.00	1	
CHURCHES	0		$0.00	0	
OTHER	4		$44,659.00	54	
SUB-TOTAL	4		$44,659.00	73	
REMODELS / ALTERATIONS / ADDITIONS - NON-RESIDENTIAL **********					
COMMERCIAL/INDUSTRIAL	4		$1,328,278.00	74	
OFFICE	0		$0.00	2	
PUBLIC/INSTITUTIONAL	0		$0.00	2	
CHURCHES	0		$0.00	0	
OTHER	1		$14,255.00	25	
SUB-TOTAL	5		$1,342,533.00	103	
MISCELLANEOUS - NON-RESIDENTIAL **********					
MISC.	0		$0.00	9	
SUB-TOTAL	0		$0.00	0	
TOTALS	41	5	$3,295,338.74	1173	539