



## CITY COUNCIL AGENDA

**Wednesday, March 22, 2023**

**NOTICE IS HEREBY GIVEN** that the Herriman City Council shall assemble for a meeting in the City Council Chambers, located at **5355 WEST HERRIMAN MAIN STREET, HERRIMAN, UTAH**

**5:30 PM – WORK MEETING: (Fort Herriman Conference Room)**

**1. Council Business**

- 1.1. Review of this Evening's Agenda
- 1.2. Future Agenda Items
- 1.3. Council discussion of future citizen recognitions

**2. Administrative Reports**

- 2.1. 2022-2023 Snow Report – Justun Edwards, Public Works Director & Ed Blackett, Streets Manager
- 2.2. A discussion regarding current city ordinance(s) related to parking, winter on street parking and side walk snow removal
- 2.3. City Dumpster Rental Program Discussion – Justun Edwards, Public Works Director
- 2.4. Discussion Regarding Changes to the City's Policy on Public Infrastructure

Districts – Blake Thomas, Community Development Director

- 2.5. Request from Olympia Development Team to amend PID Governing Document to allow the imposition of up to 4 mills to pay for certain public infrastructure
- 2.6. Legislative Update – Todd Sheeran, City Attorney

### **3. Adjournment**

**7:00 PM – GENERAL MEETING:**

#### **4. Call to Order**

- 4.1. Invocation/Thought/Reading and Pledge of Allegiance
- 4.2. City Council Comments and Recognitions

#### **5. Public Comment**

Audience members may bring any item to the City Council's attention. Comments will be limited to two minutes. State Law prohibits the Council from acting on items that do not appear on the agenda. Public comments for this meeting will also be conducted electronically. Any person interested in addressing the Council may submit a comment by emailing [recorder@herriman.org](mailto:recorder@herriman.org) or by visiting [Herriman.org/agendas-and-minutes](http://Herriman.org/agendas-and-minutes), where there is a link to fill out an online public comment form. Your statement will be incorporated into the public record.

#### **6. City Council Reports**

- 6.1. Councilmember Jared Henderson
- 6.2. Councilmember Teddy Hodges
- 6.3. Councilmember Sherrie Ohrn
- 6.4. Councilmember Steven Shields

#### **7. Mayor Report**

#### **8. Reports, Presentations and Appointments**

- 8.1. Introduction of the Justice Court Judge Lisa Garner
- 8.2. ESGR Award Recognition for Police Chief Troy Carr and Commander Brent Adamson – Kim Watts, State Chairman

## **9. Public Hearing**

- 9.1. Public Hearing and consideration of a resolution to approve filing eminent domain action – Bryce Terry, Assistant City Engineer

## **10. Consent Agenda**

- 10.1. Review and consideration of proposed amendments to the Herriman City Planning Commission Rules of Procedure and Ethical Conduct – Michael Maloy, City Planner
- 10.2. Request to Amend the Governing Documents for the Auto Mall and Retail Public Infrastructure District
- 10.3. Consideration of a Master Services Agreement with STRATA Networks – Blake Thomas, Community Development Director
- 10.4. Discussion on Interlocal Agreement with Salt Lake County Regarding Corridor Preservation Reimbursement – Bryce Terry, Assistant City Engineer
- 10.5. Review and consider a participation agreement with Wasatch Front Regional Council to develop a Southwest Waterways Visioning Plan

## **11. Discussion and Action Items**

- 11.1. Consideration of a Resolution approving the advance of funds for the purpose of purchasing two (2) dump trucks and a hydro excavator truck, and adopting official intent to reimburse said funds at a later date through financing – Kyle Maurer, Finance Director
- 11.2. Discussion and consideration to award the construction contract for Hamilton Farms Storm Drain Improvements – Jonathan Bowers, Public Utilities Engineering Manager

11.3. Discussion and Consideration of an Amendment to the Olympia Master Development Agreement – Blake Thomas, Community Development Director

## **12. Future Meetings**

12.1. Next Planning Commission Meeting: April 5, 2023

12.2. Next City Council Meeting: April 12, 2023

## **13. Events**

13.1. April 1 – Herriman City Basket Dash; Crane Park; 10:00 a.m.

13.2. April 3 – Hungry Herriman; Crane Park 5:00 p.m.

## **14. Closed Session**

The Herriman City Council may temporarily recess the City Council meeting to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, pending or reasonable imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205

## **15. Adjournment**

## **16. Recomence to Work Meeting (If Needed)**

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. Request assistance by contacting Herriman City at (801) 446-5323 and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members of the City Council may participate electronically via telephone, Skype, or other electronic means during this meeting.

PUBLIC COMMENT POLICY AND PROCEDURE: The purpose of public comment is to allow citizens to address items on the agenda. Citizens requesting to address the Council will be asked to complete a written comment form and present it to Jackie Nostrom, City Recorder. In general, the chair will allow an individual two minutes to address the Council. A spokesperson, recognized as representing a group in attendance, may be allowed up to five minutes. At the conclusion of the citizen comment time, the chair may direct staff to assist the citizen on the issue presented; direct the citizen to the proper administrative department(s); or take no action. This policy also applies to all public hearings. Citizens may also submit written requests (outlining their issue) for an item to be considered at a future council meeting. The chair may place the item on the agenda under citizen comments; direct staff to assist

the citizen; direct the citizen to the proper administrative departments; or take no action.

I, Jackie Nostrom, certify the foregoing agenda was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body, at the principal office of the public body, on the Utah State Public Notice website [www.utah.gov/pmn/index.html](http://www.utah.gov/pmn/index.html) and on Herriman City's website at [www.herriman.org](http://www.herriman.org), Posted and dated this . /s/ Jackie Nostrom, City Recorder



## STAFF REPORT

**DATE:** March 09, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Ed Blackett

**SUBJECT:** 2022-2023 Snow Report

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**RECOMMENDATION:**

No action, presentation only.

**ISSUE BEFORE COUNCIL:**

Report to City Council on this year's snow removal season.

**BACKGROUND/SUMMARY:**

Around this time of year we like to provide the City Council with an up-date as to where we are financially and statistically in the current snow removal season.

**DISCUSSION:**

The relentless nature of this snow season has led to many hours in snowplow seats and behind snow shovels for not only city staff, but also our residents.

**Statistics**

	20/21	21/22	22/23	FY23 % of budget
Regular Time	\$8,145	\$8,337	\$16,097	64%
Overtime	\$25,295	\$16744	\$50,959	204%
Snow Event	19	11	38	
Plowed Miles	9,880	5,950	20,140	
Salt	\$45,361 (1,817 tons)	\$30,896 (1,280 tons)	\$91,967 (3,395 tons)	91%
Brine Salt	\$1,851 (121 tons)	\$1,800 (tons 107 tons)	\$2,624 (99 tons)	Included w/salt
Equipment Maintenance	\$24,336	\$10,497	\$38,024	98%

This has been an abnormal year that has stretched our employees and budget. We greatly appreciate the efforts of our snow fighters who have responded to the late night and early morning calls. Our Customer Service staff also need to be commended for the way they address the many calls from residents with concerns.

The FY23 snow removal budget is \$211,000. To date we have spent \$257,000 which is 122% of the overall budget.

**ALTERNATIVES:**

- Continue our current level of service.
- Reduce our current level of service (i.e. don't plow cul-de-sac's)
- Increase level of service (would require additional employees and equipment)



## STAFF REPORT

**DATE:** March 08, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Brent Adamson

**SUBJECT:** A discussion regarding current city ordinance(s) related to parking, winter on street parking and side walk snow removal

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### **RECOMMENDATION:**

Recommending an amendment to Herriman City Municipal Code 6-5-1 Parking Prohibited in Specific Areas

Recommending an amendment to Herriman City Municipal Code 6-5-5 Parking Prohibited When

Recommending and amendment to Herriman City Municipal Code 7-6-6 Snow Removal

### **ISSUE BEFORE COUNCIL:**

Amending Herriman Municipal Code 6-5-1 Parking In Specific Areas

Amending Herriman Municipal Code 6-5-5 Parking Prohibited When;

Amending Herriman Municipal Code 7-6-6 Snow Removal

### **BACKGROUND/SUMMARY:**

The Community Services Unit which is an arm of the Herriman Police Department Traffic Unit has now worked through its first full winter reason. They have recognized several areas for improvements in effectiveness and efficiencies, the areas up for discussion tonight are parking, on street parking during winter months specifically snow events, and removal of snow requirements follow an snow storm.

### **DISCUSSION:**

The Herriman City Police Department, specifically the traffic and community services unit having now worked through a full winter season would like to review and discuss the current Herriman City Municipal Codes related to parking and on street parking during a snow event as well as the Herriman City Municipal Code related to removal of snow from side walks.

The current municipal code is overly restrictive in its definition of a snow event and it does not give

the residents who are dependent on street parking access any alternatives during a snow event. We are recommending a change to the ordinance that would clarify the definition so residents can remain on the street if a storm is not likely to produce a measurable amount of snow fall. Additionally we are recommending an ordinance change that would allow some limited street parking, the proposed change is intended to give residents some parking while maintaining access for plows and emergency vehicles.

A review of the Herriman City Municipal Code regarding the removal of snow specifically from side walks has shown the current ordinance is unrealistic in its requirements of residents. While we all agree it is an important safety concern the requirements of the current code are not realistic for residents or city staff. We are recommending a modification to the ordinance to allow a larger window for this task to be completed for both the residents and city staff.

## Current Municipal Codes:

### **6-5-1: Parking Prohibited In Specified Areas**

It shall be a violation of this title for any person to stop, stand, or park a vehicle, or to permit another person to do the same, in any of the following:

- In front of or within five feet (5') of a private driveway or alley;
- In front of or within ten feet (10') of a mailbox between the hours of eight o'clock (8:00) A.M. and five o'clock (5:00) P.M., on days that mail is delivered;
- Within twenty feet (20') of a crosswalk;
- Within thirty feet (30') of an intersection;
- In front of or within fifteen feet (15') of a fire hydrant;
- On or across a sidewalk;
- Within thirty feet (30') from the approach to any traffic control device;
- Within fifty feet (50') of the nearest rails of any railroad crossing;
- Within twenty feet (20') of the entrance to a fire station, or on the street opposite of the entrance to a fire station;
- At any place where traffic-control devices, including temporary devices, prohibit parking;
- In any location or in any manner that the vehicle is parked opposite of the flow of traffic on the street; or
- At any place marked with a red curb. (Ord. 2021-10, 4-14-2021)

### **6-5-5: Parking Prohibited When**

It is unlawful for any person who owns or has possession, custody or control of any vehicle or trailer to park or knowingly allow to be parked any vehicle or trailer on any street or highway: When it is snowing or snow is on the street during the months of November, December, January, February, March, and April; or

For a period longer than twenty-four (24) consecutive hours; or

For any period longer than that allowed by appropriate signs, markings or parking meters giving notice of such parking time limitation. (Ord. 2021-10, 4-14-2021)

### **7-6-6: Snow Removal**

Required: It is unlawful for the owner, occupant, lessor or agent of property abutting on a paved

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sidewalk to fail to remove or cause to be removed from such paved sidewalk and any existing curb ramp all hail, snow or sleet falling thereon within one hour after the hail, snow or sleet has ceased falling; provided, that in case of a storm between the hours of five o'clock (5:00) P.M. in the afternoon and six o'clock (6:00) A.M. in the morning, the sidewalk and any existing curb ramp shall be cleaned before eight o'clock (8:00) A.M. the morning following the storm. (Ord. 99-05 § 14.32.100, 5-26-1999, eff. 6-1-1999)

Clogging Gutter Prohibited: It is unlawful for any person removing snow from a sidewalk or curb ramp to deposit snow, dirt or other material in a gutter so as to clog the same, or prevent the free flow of water therein. (Ord. 99-05 § 14.32.110, 5-26-1999, eff. 6-1-1999)

## Sample Codes:

### **Snow Parking Ordinance City of South Jordan**

#### 8-5-1: SNOW REMOVAL:

A. Snow Removal from Sidewalks Required: It is unlawful for the owner, occupant, lessor or agent of any property abutting any paved sidewalk to fail to remove or cause to be removed from the length and breadth of the entire sidewalk abutting such property all hail, snow or sleet falling thereon, within twenty four (24) hours after such hail, snow or sleet has ceased falling. Each day such sidewalk is not so cleared shall constitute a new violation.

B. Placement of Snow Removed from Sidewalks: Snow removed from sidewalks shall be placed on private property or in the park strip between the sidewalk and curb. It is unlawful to place snow in drive aprons, the gutter or traveled portion of the public right-of-way.

C. Removal of Snow from Private Property: Snow removed from private parking lots, private streets, private sidewalks or other private property shall be stored on private property. The owner of the property from which snow is removed shall be responsible for the following: 1) identifying appropriate snow storage areas on the private property; and 2) instructing any person who performs snow removal on the property that snow shall be stored in the identified areas. It is unlawful for the property owner to cause or allow snow from the private property to be placed within any public right-of-way by an owner, agent, employee, contractor or any person performing snow removal on the property. It shall be unlawful for any person removing snow from private property to place such snow in the public right- of-way. (2009 Code; amd. Ord. 11-36, 12-7-2011; Ord. 19-48, 12-11-2019, Effective at 12 noon on January 6, 2020)

#### 10.20.010: PARKING DURING A SNOW EVENT

- 1.Parking Restrictions: The accumulation of one inch (1") or more of snow upon the public right of way shall be considered a "snow event". During the period from November 1 through March 1, parking in the public right-of-way is only allowed on the side of the street with even building numbers during a snow event and for a period of twenty-four (24) hours after the end of a snow event.
- 2.Exceptions To Parking Restrictions: The parking restrictions shall not apply in the following circumstances:
  - 1.Where "no parking" signs are posted on the allowable side (even building numbers), cars will be allowed to park on the opposite side of the road, unless no parking signs are located on both sides of the road.
  - 2.Where a public road is divided by a landscaped meridian with one-way travel in each direction.

- 3. Vehicles may park for not more than five (5) minutes on the restricted side of the road when loading or unloading passengers.
- 4. Vehicles may park for not more than thirty (30) minutes when loading on the restricted side of the road, when unloading or delivering property or supplies.
- 5. Medical, fire, police, city maintenance, or other emergency vehicles during emergency response shall not be limited by parking restrictions.
- 6. A person may apply to the city for authorization for all night parking on the restricted side when the same is required by emergency or other unusual circumstances. The chief of police shall be the sole judge as to the necessity and requirement for the authorized all night parking.

### **Snow Removal Ordinance City or South Jordan**

- 12.04.100: REMOVAL OF SNOW
- It is unlawful for the owner, occupant, lessor, or agent of any property abutting on any sidewalk or stairs, to fail to remove from such sidewalk or stairs all hail, snow, or sleet falling down thereon within a reasonable time after such snow, hail, or sleet has fallen. In case of a storm between the hours of five o'clock (5:00) P.M. and six o'clock (6:00) A.M., such hail, snow, or sleet shall be cleared before eight o'clock (8:00) A.M. in the morning following such storm.
- It shall be unlawful for any owner, occupant, lessor, or agent of any property to push, throw, blow or plow snow, hail, or sleet onto any city street or alley.
- In the case of a snow event, the director of operations or his designee shall initiate the snow removal program as referenced in section 10.20.010 of this code.
- (Ord. 2011-08, 4-5-2011)

### **Snow Parking Ordinance City of West Jordan**

#### 7-3-10: PROHIBITED PARKING FOR SNOW REMOVAL:

Specified: No person shall park a vehicle or semitrailer upon a street when it is snowing or snow is on the street from November 1 and ending April 30 of the following year.

- Obstructing Snow Removal; Impoundment: It shall be unlawful to park any vehicle or semitrailer, or permit a vehicle or semitrailer owned by that person to park in a manner that obstructs snow removal by failing to leave adequate room for passage of plows and other removal equipment. Vehicles and semitrailers so parked are subject to impoundment as detailed in Utah Code Annotated section 41-6a-1408.
- Snowbound Vehicles and Semitrailers; Removal: It shall be unlawful for the owner of a vehicle or semitrailer to allow such vehicle or semitrailer to remain standing upon any public street for longer than forty eight (48) consecutive hours after such vehicle has become snowbound due to snowplows plowing around the vehicle or semitrailer. Such vehicles and semitrailers shall be determined abandoned. Abandoned vehicles and semitrailers shall be subject to removal and impoundment as detailed in Utah Code Annotated section 41-6a-1408. (2009 Code)

### **Snow Removal Ordinance City of West Jordan**

- 8-5-1: SNOW REMOVAL:
- A. Snow Removal from Sidewalks Required: It is unlawful for the owner, occupant, lessor or agent of any property abutting any paved sidewalk to fail to remove or cause to be removed from the length and breadth of the entire sidewalk abutting such property all hail, snow or sleet falling thereon, within twenty four (24) hours after such hail, snow or sleet has ceased falling. Each day such sidewalk is not so cleared shall constitute a new violation.

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- B. Placement of Snow Removed from Sidewalks: Snow removed from sidewalks shall be placed on private property or in the park strip between the sidewalk and curb. It is unlawful to place snow in drive aprons, the gutter or traveled portion of the public right-of-way.
- C. Removal of Snow from Private Property: Snow removed from private parking lots, private streets, private sidewalks or other private property shall be stored on private property. The owner of the property from which snow is removed shall be responsible for the following: 1) identifying appropriate snow storage areas on the private property; and 2) instructing any person who performs snow removal on the property that snow shall be stored in the identified areas. It is unlawful for the property owner to cause or allow snow from the private property to be placed within any public right-of-way by an owner, agent, employee, contractor or any person performing snow removal on the property. It shall be unlawful for any person removing snow from private property to place such snow in the public right- of-way. (2009 Code; amd. Ord. 11-36, 12-7-2011; Ord. 19-48, 12-11-2019, Effective at 12 noon on January 6, 2020)

### **Recommended Code(s) Amendments:**

#### **6-5-1: Parking Prohibited In Specific Areas**

It shall be a violation of this title for any person to stop, stand, or park a vehicle, or to permit another person to do the same, in any of the following:

- In front of or within five feet (5') of a private driveway or alley;
- In front of or within ten feet (10') of a mailbox between the hours of eight o'clock (8:00) A.M. and five o'clock (5:00) P.M., on days that mail is delivered;
- Within twenty feet (20') of a crosswalk;
- Within thirty feet (30') of an intersection;
- In front of or within fifteen feet (15') of a fire hydrant;
- On or across a sidewalk;
- Within thirty feet (30') from the approach to any traffic control device;
- Within fifty feet (50') of the nearest rails of any railroad crossing;
- Within twenty feet (20') of the entrance to a fire station, or on the street opposite of the entrance to a fire station;
- At any place where traffic-control devices, including temporary devices, prohibit parking;
- In any location or in any manner that the vehicle is parked opposite of the flow of traffic on the street; or
- At any place marked with a red curb. (Ord. 2021-10, 4-14-2021)
- **Disabled Parking Stalls:** Parked vehicles must properly display a valid permit to be allowed to park in the designated disabled parking space as well as the diagonal striped loading and unloading access aisle; or
- **Public Parking Lot:** Outside a standard parking space and into the traffic way; if vehicle is creating a hazard the vehicle may be impounded as detailed in Herriman City Code 6-5-11: Removal of Illegally Parked Vehicles.
- A vehicle stopped or parked shall be parallel to and within 12 inches of the right-hand curb - or- as close as practicable and parallel to the edge of the right-hand shoulder when no curb and gutter is present.

- Vehicle Insurance Required - Leaving a motor vehicle without owners or operators security.
- Vehicle Registration Required -

#### **6-5-5: Parking Prohibited When**

- **Parking Restrictions:** Any accumulation of snow upon the public street will be considered a "snow event". To provide adequate parking during a snow event, it is unlawful for any person who owns or has possession, custody or control of any vehicle or trailer to park, or knowingly allow to be parked, any vehicle or trailer on any street or highway from November 1 through April 30.
- During a snow event, parking in the public right-of-way is only allowed on the side of the street with even building numbers and for a period of twenty-four (24) hours after the end of a snow event.
  - **Obstructing Snow Removal; Impoundment:** It shall be unlawful to park any vehicle or permit a vehicle owned by that person to park in manner that obstructs snow removal by failing to leave adequate room for passage of plows, emergency vehicles, utility vehicles, maintenance vehicles and other removal equipment; vehicles so parked are subject to impoundment as detailed in Herriman City Code 6-5-11: Removal of Illegally Parked Vehicles.
  - **Snowbound Vehicles; Removal:** It shall be unlawful for the owner of a vehicle to allow such vehicle to remain standing upon a public street for longer than 48 hours after the vehicle has become snowbound due to snowplows plowing around the vehicle. Such vehicles shall be determined abandoned. Abandoned vehicles shall be subject to removal and impoundment as detailed in Utah Code Annotated section 41-6a-1408.
  - **Exceptions To Parking Restrictions:** The parking restrictions shall not apply in the following circumstances:
    - Vehicles being parked must still adhere to all parking rules described in Herriman City Ordinance 6-5-1: Parking Prohibited in Specified Areas.
    - Where "no parking" signs are posted on the allowable side (even building numbers), cars will be allowed to park on the opposite side of the road, unless no parking signs are located on both sides of the road.
    - Where a public road is divided by a landscaped meridian with one-way travel in each direction.
    - Medical, fire, police, city maintenance, or other emergency vehicles during emergency response shall not be limited by parking restrictions.

#### **7-6-6: Snow Removal**

**Required:** It is unlawful for the owner, occupant, lessor or agent of property abutting on a paved sidewalk to fail to remove or cause to be removed from such paved sidewalk and any existing curb ramp all hail, snow or sleet falling thereon within 24 hours after the hail, snow or sleet has ceased falling. (Ord. 99-05 § 14.32.100, 5-26-1999, eff. 6-1-1999)

**Clogging Gutter Prohibited:** It is unlawful for any person removing snow from a sidewalk or curb ramp to deposit snow, dirt or other material in a gutter so as to clog the same, or prevent the free flow of water therein. (Ord. 99-05 § 14.32.110, 5-26-1999, eff. 6-1-1999)

#### **ALTERNATIVES:**

- Make No changes to the current Municipal Codes.
- Research additional sample ordinances

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**FISCAL IMPACT:**

**ATTACHMENTS:**



## STAFF REPORT

**DATE:** March 09, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Justun Edwards

**SUBJECT:** City Dumpster Rental Program

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### **RECOMMENDATION:**

Eliminate the city operated dumpster rental program.

### **ISSUE BEFORE COUNCIL:**

Should the city eliminate the city operated dumpster rental program?

### **BACKGROUND/SUMMARY:**

The city offered dumpster rental program has been in place in some capacity since the city has owned the equipment to provide this service. Prior to July 2021, the program was not very popular and rarely used. In July of 2021, we updated the program information on the website providing our residents the ability to submit applications and make payments through the website which has increased the number of rentals. The service is generally provided May through October outside of winter months when our trucks are not equipped with snowplow equipment. In 2022, 29 dumpsters were rented. Scheduling of delivery and pickup are done as efficiently as possible, but there are impacts to daily scheduling of crews. Each dumpster rental requires approximately 3 hours of staff and equipment time.

Labor-3 hours @ \$45/hr (delivery, pickup, and landfill)	\$135
Equipment- 3 hours @ \$90/hr (fuel, wear & tear, maint.)	\$270

### **DISCUSSION:**

With multiple other waste disposal options (see table below) provided by Herriman and or Wasatch Front Waste & Recycling District, this may be an opportunity to eliminate a duplication of service and recoup staff time and city funds.

Agency	Provided Service	Fee
WFWRD	Trailer Rental Program	Bulk Waste \$190 – Green Waste \$55
WFWRD	Landfill Voucher	Free
WFWRD	Season Container Reservation Program	Free
Herriman	Spring & Fall Cleanup	Free
Herriman	Dumpster Rental Program	*\$150

\*\$290 fee includes a \$140 deposit this is refunded. Additional dump fees are charge if over 2 tons.

The current fee generally covers the cost of labor to provide the service. If equipment costs are included, it is costing the city approximately \$270 per rental.

### **ALTERNATIVES:**

- Continue to provide the service. (no change)
- Continue to provide the service but evaluate the fee.
- Eliminate the service and promote the other available services.



## STAFF REPORT

**DATE:** 3/14/2023

**TO:** The Honorable Mayor and City Council

**FROM:** Blake Thomas, Community Development Director

**SUBJECT: Discussion Regarding the City's Public Infrastructure District (PID) Policy**

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### **RECOMMENDATION:**

Staff recommends that the City Council discuss the current Public Infrastructure District (PID) policy and determine if they should modify it to allow PID's in other areas of Herriman.

### **ISSUE BEFORE COMMISSION:**

Should the City Council consider changes to their policy regarding PID?

### **BACKGROUND/SUMMARY:**

The current PID policy only allows PID's to be created in the Auto Mall and Olympia developments in Herriman.

### **DISCUSSION:**

Other developments have expressed interest in pursuing the creation of a PID to help fund the public infrastructure improvements required by their development.

### **ALTERNATIVES:**

The City Council can direct staff to:

- 1) Amend the PID Policy to allow PID's in other areas of Herriman and bring the updated policy to a future City Council meeting for adoption.
- 2) Make no changes to the PID policy.

### **FISCAL IMPACT**

There are no fiscal impacts anticipated with changes to the PID policy.

### **ATTACHMENTS:**

- 1) Current PID Policy

**HERRIMAN, UTAH**  
**RESOLUTION NO. R25-2021**

**A RESOLUTION OF THE CITY COUNCIL OF HERRIMAN APPROVING AN  
AMENDMENT TO THE COUNCIL POLICY REGARDING PUBLIC  
INFRASTRUCTURE DISTRICTS**

**WHEREAS**, the Herriman City Council met in regular meeting on August 11, 2021 to consider, among other things, approving an amendment to a Council policy regarding the procedure for processing requests for public infrastructure districts within Herriman City boundaries; and

**WHEREAS**, the City is authorized by State law and City ordinance to exercise all administrative powers by resolution, including the establishing of policies and guidelines to direct staff on the administration of the City's business; and

**WHEREAS**, the continued rapid growth and development within the City has prompted requests from development partners for the City to create public infrastructure districts as the same are authorized by Utah Code Ann. § 17D-4-101, *et seq.*; and

**WHEREAS**, the City Council, as the legislative body for Herriman City, is authorized to review and subsequently approve or deny such requests regarding the creation of public infrastructure districts within the boundaries of the City; and

**WHEREAS**, the City Council, desires to establish a standardized procedure whereby staff may receive, process, and administer such requests of the City; and

**WHEREAS**, the Council finds that establishing a policy governing the matters described herein will contribute to the effective administration of the City's business.

**NOW, THEREFORE, BE IT RESOLVED** by the Herriman City Council that requests for creation of public infrastructure districts within the boundaries of the City shall be administered as directed in the attached policy.

This resolution assigned no. R26-2021, shall take effect immediately upon passage and acceptance as provided herein.

**PASSED AND APPROVED** by the Herriman City Council this 11th day of August 2021.

*[signatures on following page]*

**HERRIMAN**

*Clint Smith*  
\_\_\_\_\_  
**Clint Smith, Mayor Pro Tempore**

**ATTEST**

*Jackie Nostrom*  
\_\_\_\_\_  
**Jackie Nostrom, MMC**  
City Recorder



## **CP-Administration-003**

### **Establishing Public Infrastructure Districts**

- 1. Purpose and Introduction.** The magnitude of local and regional infrastructure needed in Herriman City (the “City”) development and redevelopment areas requires that a broad range of financing tools be available to finance public infrastructure. This policy addresses the minimum criteria under which the City will consider applications for proposed Public Infrastructure Districts (“PID”). The standards and procedures contained herein may be modified by the Herriman City Council (“Council”) at any time. Additional requirements may be imposed by the Council during any of the stages described below. Compliance with these criteria shall not obligate the City Council to approve formation of a PID. Final approval of a PID, in the form of a governing document, is subject to approval by the Council in both form and substance. The criteria contained herein are intended to serve as guidelines for the review of letters of intent and PID governing documents (“Governing Document”). This policy has four sections:
  - 1.1. Application Process (Section 2)
  - 1.2. Fees (Section 3)
  - 1.3. The Council’s decision-making criteria (Section 4)
  - 1.4. Governing Document requirements (Section 5)
  - 1.5. Submittal and Reporting Instructions (Section 6)
- 2. Application Process ~~and Fees~~**A proposed PID will be considered in relation to the best interests of the City. Such interests include using the most appropriate financing mechanism for the type and magnitude of the public improvements to be financed. The following process shall be required for all PID applications.
  - 2.1. Letter of Intent Required. An applicant desiring to create a PID shall submit a letter of intent (“LOI”) to the Herriman City Community Development Director. The LOI will be used, as set forth herein, by staff to make a preliminary and non-binding determination about the appropriateness of a PID. A positive CDC response recommendation to the LOI does not assure approval of a governing document. The LOI must contain the following:
    - 2.1.1. Description of PID area including size (acreage), location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development;
    - 2.1.2. Summary of needed infrastructure, services, and facilities to include:
      - 2.1.2.1. Currently expected development scenario;
      - 2.1.2.2. Required local and regional infrastructure and facilities for such development;
      - 2.1.2.3. Regional and local infrastructure the PID will provide;
      - 2.1.2.4. Estimated construction costs for the public improvements;

- 2.1.2.5. General description and phasing of construction based on development projections; and
- 2.1.2.6. A sample finance plan depicting the possible sources and uses of funds for the PID;
- 2.1.3. Proposed timeline for creation of the PID;
- 2.1.4. Acknowledgement that a consent must be signed prior to the hearing date for the governing document which consent must be signed by all property owners and registered voters, if any, within the proposed PID boundaries approving of the creation of the PID and consenting to the issuance of debt in an amount sufficient for the proposed plan of financing;
- 2.1.5. Disclosure of any conflicts of interest between the applicant and the officers and employees of the City and
- 2.1.6. Copies of signed engagement letters between the applicant and applicable consultants and legal counsel retained by the PID whereby applicant agrees to pay fees related to the review of the application and governing document.

- 2.2. LOI Review Process. The ~~District Advisory Committee~~Community Development Committee (“CDC”) is the City’s committee that advises the City Council on ~~district development-related matters~~issues. ~~The Community Development Director will schedule and hold a CDC meeting to review a PID LOI within 14 days of receipt of such LOI~~. The CDC will review the LOI utilizing the criteria contained herein to determine whether or not to direct the applicant to proceed with preparation of a draft Governing Document for submittal to the Council. A positive CDC recommendation does not assure approval of the Governing Document by the Council.
- 2.3. Submission of Governing Document
  - 2.3.1. If the concept for the PID as contained in the letter of intent is approved ~~by the CDC~~, the applicant shall submit a draft Governing Document to ~~Herriman~~the Community Development Director and City Attorney.
  - 2.3.2. The draft Governing Document will be reviewed by the CDC for compliance with the criteria and requirements contained herein. The CDC will discuss with ~~appropriate policy makers~~Council's issues that arise during this drafting period to have such issues resolved.
  - 2.3.3. The final Governing Document will be forwarded to ~~Creating Entity Council~~the Council for ~~action consideration~~ through the standard ~~Creating Entity and statutory legislative approval~~ processes.
3. Fees. No PID LOI, Governing Document, or application shall be processed or reviewed until the appropriate fee(s) set forth herein are paid to the City. The fees for a PID application are as follows:

- 3.1. **Letter of Intent.** A non-refundable fee of \$100 shall be paid for each PID LOI submitted by an applicant. This fee is reasonable and appropriate to cover the cost of staff and CDC review.
- 3.2. **Governing Document.** A non-refundable fee of \$1,000 shall be paid for each governing document submitted in accordance with this policy. This fee is reasonable and appropriate to cover legal and other staff review.
- 3.3. **Other Expenses.** In the event the cost of review for the City exceed the application fees, the Applicant for shall pay all reasonable consultant, legal, and other fees and expenses incurred by the City in the process of reviewing the LOI, draft Governing Document, documents related to a bond issue, and other such fees and expenses as may be necessary to interface with the proposed PID. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.

4. **Council's Criteria for Evaluating Proposed PIDs.** The following criteria provide thresholds for consideration. Compliance with some or all of these criteria is desired; however, alternative approaches may be considered.
  - 4.1. **Public Benefit.** Formation of a PID must bestow certain benefits on the PIDs proponents and each PID is expected to provide public benefit consistent with the City's public policy goals. Components of public benefit to be considered may include:
    - 4.1.1. Resulting development that is in conformance with the City's Comprehensive Plan and all applicable supplements;
    - 4.1.2. Provision of and/or contribution to needed regional and sub-regional infrastructure;
    - 4.1.3. Sustainable design including multimodal transportation, water conserving landscape design, thoughtful development phasing, green building design, street connectivity, pedestrian-friendly design, and formation of and participation in transportation management programs;
  - 4.2. **Evaluation of Applicant.** The following criteria relating to the applicant and the development being served by the PID will be considered:
    - 4.2.1. Historical performance of the applicant (within and outside of the City);
    - 4.2.2. The current proposed financing plan for the PID;
    - 4.2.3. Credit worthiness of the applicant;
    - 4.2.4. The current development plans relationship to the master plans of the City; and
    - 4.2.5. The regional or overall benefits to the City from the proposed finance plan.
  - 4.3. **Other Evaluation Criteria and Consideration.**
    - 4.3.1. PIDs should not include land that is already included within the boundaries of another PID without express provision in an adopted Governing Document. In

such cases, the relationship with the existing PID must be addressed in the Governing Document.

- 4.3.2. A PID planning to levy more than 10 mills of tax for repayment of limited tax bonds will not be considered without sufficient justification as to why additional mills are necessary and reasonable for the development.
- 4.3.3. There must be a demonstrated public benefit directly resulting from the creation of the PID and its undertakings as described in the Governing Document.
- 4.3.4. PIDs shall only be considered for the Area depicted in the following Exhibit 1 (the "Automall"). The City may also consider the creation of one or more PIDs in the proposed annexation area known as Olympia and depicted in Exhibit 2 so long as the financing mechanism for such PIDs are based upon a contract fee and not a mill levy assessed against the property owners located within the PID.

5. **Governing Document Requirements.** In addition to the requirements of state law, a Governing Document should memorialize the understandings between the PID and the City as well as the considerations that compelled the City to authorize the formation of the PID. The Governing Document for the proposed PID shall be reviewed by the City's legal department, CDC, and other staff for compliance with the following policies and requirements.

#### 5.1. Description of PID.

- 5.1.1. Description of PID area including size (acreage), location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development scenario (land uses by type and intensity and general urban design character);
- 5.1.2. Description of the public benefit resulting from the creation of the PID;
- 5.1.3. Description of proposed development within the boundaries of the PID including general distribution of land uses and densities and phasing of development;
- 5.1.4. If the PID boundaries overlap with another PID, an explanation of the relationship between the two PIDS;
- 5.1.5. Itemization and description of all needed infrastructure (both regional and local) and facilities in the PID's area;
- 5.1.6. Estimated construction costs of such infrastructure;
- 5.1.7. General description of phasing of construction based on development projections;
- 5.1.8. Description of the ultimate ownership and provision for the ongoing operating and maintenance costs for infrastructure;
- 5.1.9. Description of any proposed divisions and an inclusion/exclusion process as appropriate; and

- 5.1.10. Proposed governance plan, including initial Board structure and transition from appointed Board to elected Board.

**5.2. Financial plan information**

- 5.2.1. Proforma financial overview of total costs and revenues from all revenue sources;
- 5.2.2. An example financial plan showing a proposal of how the financing might take place, recognizing that the actual financing terms and structure will be approved by the board of trustees of the PID (the “Board”) within the parameters of this Governing Document;
- 5.2.3. Anticipated maximum or fixed maximum mill levy required to meet debt service of the PID;
- 5.2.4. Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area;
- 5.2.5. Comparison of the mill levies of similar taxing entities in the area;
- 5.2.6. Proposed operating budgets for the PID’s first three years of existence; and
- 5.2.7. Any other forms of public financing and assistance being sought.

**5.3. Other Requirements and Expectations.**

- 5.3.1. Only public improvements may be funded with the PID funds.
- 5.3.2. All debt issued by the PID for which a tax is pledged to pay the debt service shall meet the requirements of all applicable statutes.
- 5.3.3. Land, easements, or improvements to be conveyed or dedicated to the City and any other local government entity shall be conveyed in accordance with the related standards at no cost to receiving governmental entity.
- 5.3.4. All public infrastructure within the PID shall be subject to all design and inspection requirements and other standards of such public entity.
- 5.3.5. The PID shall not pledge as security any land, assets, or funds to be transferred to the City.
- 5.3.6. The PID shall be subject to City zoning, subdivision, building codes, and all other applicable City ordinances and regulations. Approval of the Governing Document shall not bind the City to approve other matters which the PID or developer may request that are otherwise governed by state law or local ordinance.
- 5.3.7. The PID shall pay all fees and expenses as provided in the Governing Document.
- 5.3.8. The PID may not double tax, whether by mill levy, assessment, impact fees, or any combination thereof; any end user for the costs of public improvements.

5.3.9. The PID may be required to follow approved City procurement standards for infrastructure construction.

5.4. Disclosure and Reporting Requirements.

5.4.1. Disclosure of the existence of the PID to property owners and potential property owners within the PID area is of high importance to the Council and, as such, the following disclosures are to be made by each PID and shall be included in the Governing Document.

5.4.1.1. Within 30 days after the formation of a PID, the Board shall record a notice with the county recorder containing the following:

5.4.1.1.1. a description of the boundaries of the PID;

5.4.1.1.2. a notice stating that a copy of the Governing Document is on file at the office of City;

5.4.1.1.3. a notice Stating that the PID may finance and repay infrastructure and other improvements through the levy of a property tax or via other means (with the other means to be described in detail);

5.4.1.1.4. the maximum rate the PID may levy; and

5.4.1.1.5. if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion.

5.4.2. At least annually following the formation of the PID, the PID shall notify (by mail, e-mail, or posting to the PID's website) property owners in the PID of the existence of the PID and of the next scheduled meeting of the Board. Such meeting shall occur at least 30 days and not more than 60 days following the date of the notice. Such notification shall include names and addresses of the Board of Directors and officers, the address, telephone and fax numbers, and e-mail address of the PID, and shall include reference to the existence of a Governing Document and general file, as described below, maintained by the City.

5.4.3. The PID shall provide the following information to the City on an annual basis, and the PID shall create and maintain a file for public review of the following information.

5.4.3.1. Annual PID budget;

5.4.3.2. Annual audited financial statements of the PID;

5.4.3.3. Total debt authorized and total debt issued and presently planned debt issuances;

- 5.4.3.4. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
- 5.4.3.5. Rules and regulations of the PID regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
- 5.4.3.6. List of current interlocal agreements, if changed (to be delivered to City upon request);
- 5.4.3.7. List of all current contracts for services or construction (to be delivered to City upon request);
- 5.4.3.8. Official statements of current outstanding bonded indebtedness, if not previously received by the City;
- 5.4.3.9. Current approved Governing Document, if changed; and
- 5.4.3.10. PID contact information.

5.5. Amendment Provision. Each governing document shall include a provision regarding the procedures for amending or modifying the Governing Document. The following shall be considered significant changes to the Governing Document, thereby requiring approval by Herriman the Council:

- 5.5.1. Exclusion or inclusion of property without Governing Document and Statute required approvals;
- 5.5.2. Change in the maximum mill levy, contract fee, or other source of security;
- 5.5.3. Consolidation with any other district; and
- 5.5.4. Change in the dissolution date.

## 6. Submittal and Reporting Instructions.

6.1. Annual Financial Information: Submit one copy of each of the annual financial information, as described in the Governing Document to:

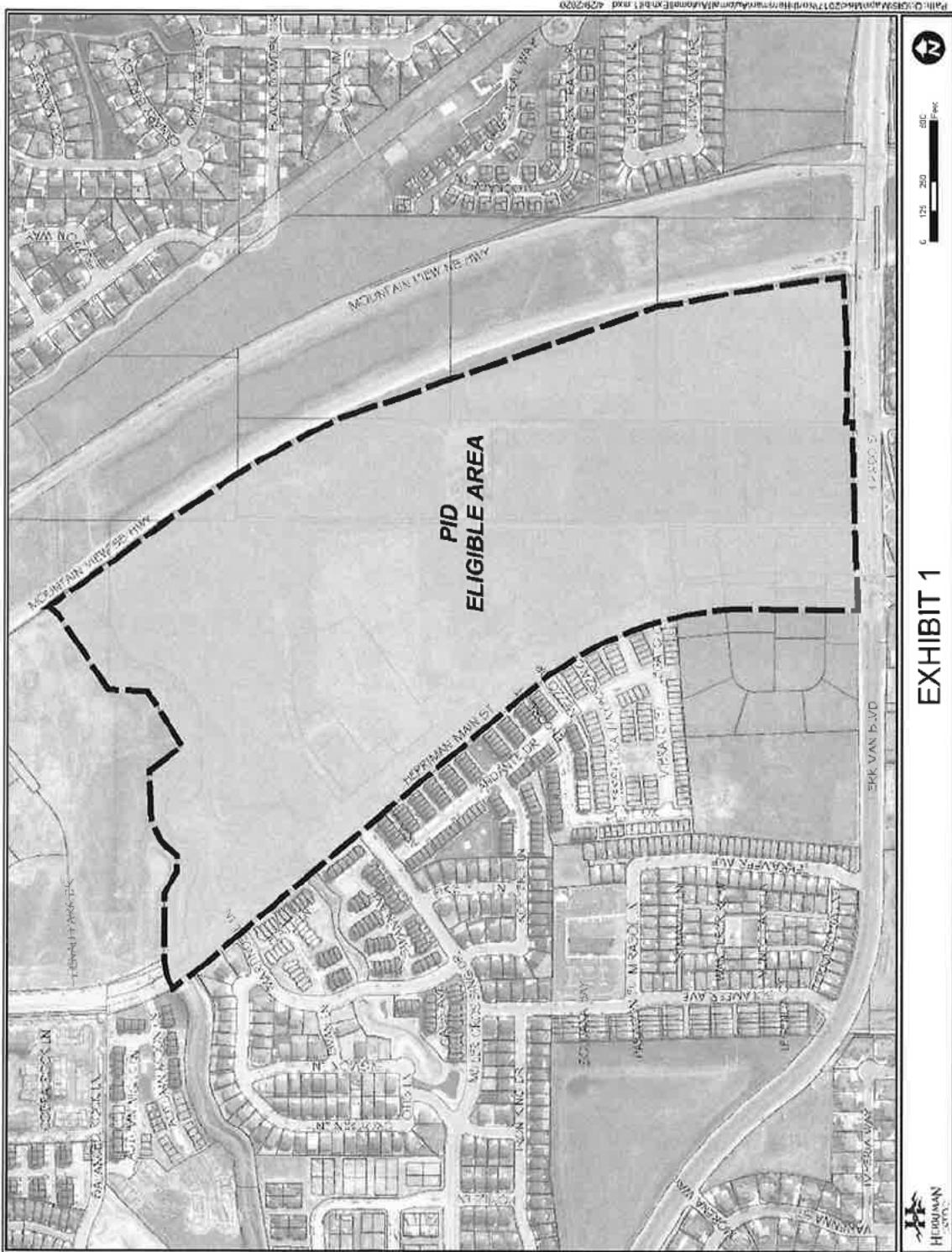
City Manager  
5355 W Herriman Main Street  
Herriman, Utah 84096  
[ncherveski@herriman.org](mailto:ncherveski@herriman.org)

6.2. All other documents: Submit LOIs, draft Governing Documents, and all other documents (with the required number of copies) to:

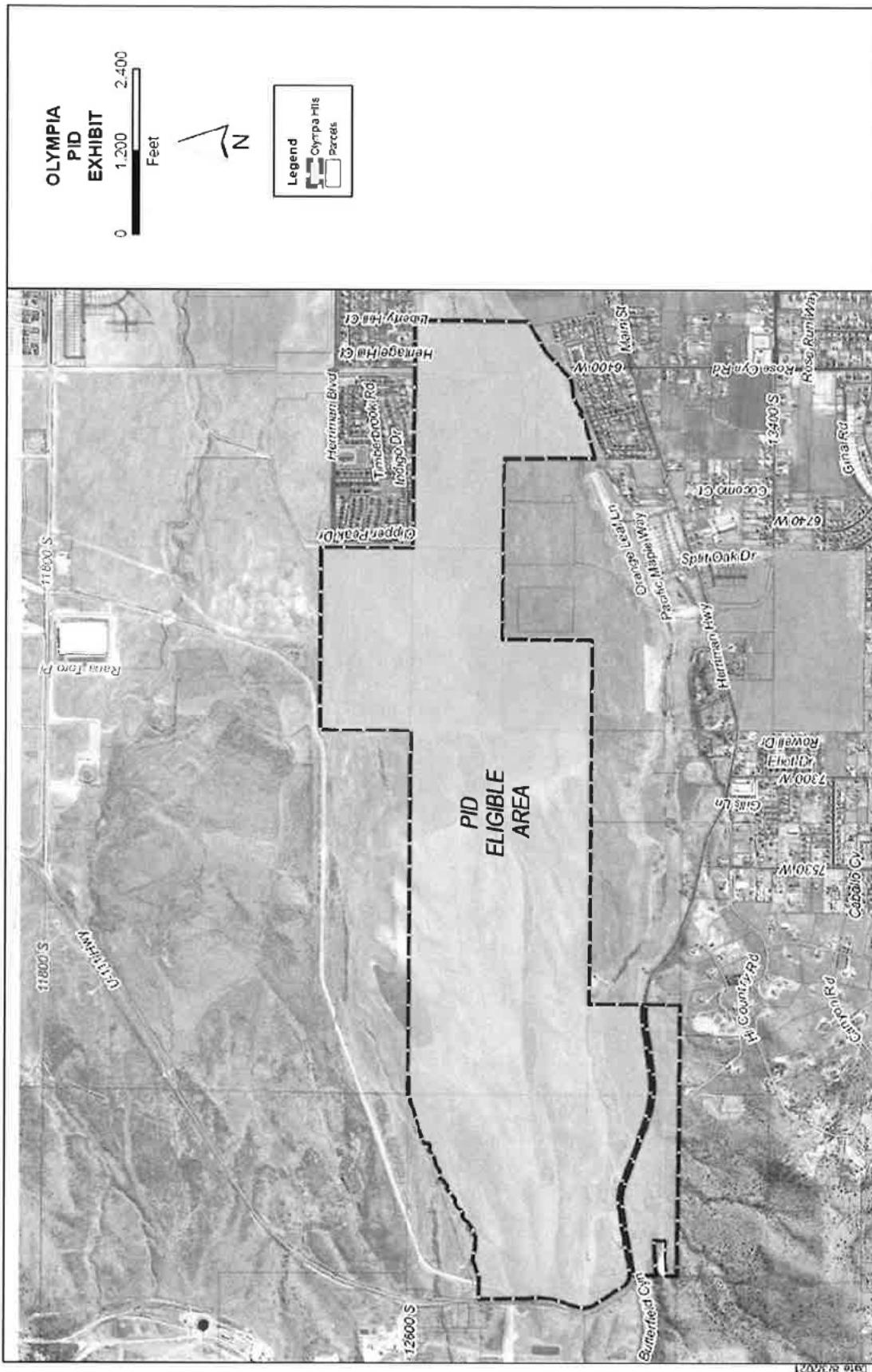
Community Development Director  
5355 W Herriman Main Street  
Herriman, Utah 84096  
[bthomas@herriman.org](mailto:bthomas@herriman.org)

City Attorney  
5355 W. Herriman Main Street  
Herriman, Utah 84096  
[candrizzi@herriman.org](mailto:candrizzi@herriman.org)

**EXHIBIT 1**  
*Automall PID Area*



**EXHIBIT 2**  
*Olympia PID Are*



## **Herriman City**

**RESOLUTION NUMBER: R25-2021**

**SHORT TITLE: RESOLUTION APPROVING AN AMENDMENT TO THE PUBLIC INFRASTRUCTURE DISTRICT POLICY**

### **PASSAGE BY THE CITY COUNCIL OF HERRIMAN CITY ROLL CALL**

NAME	MOTION	SECOND	FOR	AGAINST	OTHER
David Watts					X
Jared Henderson		X	X		
Sherrie Ohrn			X		
Steve Shields	X		X		
Clint Smith			X		
	<b>TOTALS</b>		4		1

This resolution was passed by the City Council of Herriman City, Utah on the 11<sup>th</sup> day of August, 2021, on a roll call vote as described above.



## STAFF REPORT

**DATE:** March 8, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Nathan Cherveski

**SUBJECT:** Request from Olympia Development Team to amend PID Governing Document to allow the imposition of up to 4 mills to pay for certain public infrastructure.

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### **RECOMMENDATION:**

Staff recommends discussing the concepts outlined and forwarding to a regular Council meeting for a decision.

### **ISSUE BEFORE COUNCIL:**

Should the City Council agree to amend the PID governing documents for Olympia to allow up to a 4 mill levy to pay for certain public infrastructure?

### **BACKGROUND/SUMMARY:**

During the MDA negotiation process, the City Council created 7 Public Infrastructure Districts to finance certain public infrastructure in the Olympia development. Financing obtained by those districts were envisioned to be paid for solely by a contract fee. The development team is asking for reconsideration of that approach to include the additional option of assessing a levy of up to 4 mills for this purpose.

### **DISCUSSION:**

The proposed PIDs would allow for financing of certain infrastructure by the imposition of up to 4 mills. The PIDs would not pay for infrastructure that is typically covered within the cost of lot, such as local roads or standard water lines. The list of ineligible projects follows. The eligible projects are found in the attachments.

#### **Ineligible Improvement List**

##### **Water System**

Any waterline 8" or smaller

##### **Storm Drain System**

Any storm drain system only benefiting a single subdivision.

**Park/Trail System**

Any park less than 2 acres in size

**Transportation System**

Any road ROW 55' wide or narrower

**Sewer System**

Any sewer lines 8" or smaller

**ALTERNATIVES:**

1. Discuss the proposal and direct staff to return it to a Council meeting for a decision
2. After discussion, direct staff to make changes to the proposal and return it to a Council meeting for decision.
3. Decline to act and give staff further direction.

**FISCAL IMPACT:**

The cost of infrastructure is only increasing. The legislature introduced two bills this last session aimed at addressing similar concerns. In those bills, the determination would rest solely with the developer and the City would have no say in the matter. If a PID is formed and projects eligible for impact fees per the current adopted Impact Fee Facilities Plan (IFFP) are built by the PID, the City will need to amend its IFFP and Impact Fee Analysis accordingly.

**ATTACHMENTS:**

PID Request and Amended Governing Documents

March 7, 2023

VIA EMAIL

Herriman City  
Attn: Blake Thomas, Community Development Director  
5355 West Herriman Main Street  
Herriman, Utah 84096

**Re: *Proposed amendments to the Governing Document for Olympia PID Nos. 1-7***

## **INTRODUCTION**

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Olympia Land, LLC, (the “Applicant”) hereby submit the following information to the Herriman City Community Development Director (the “CDD”) for consideration to amend the Governing Document for Olympia Public Infrastructure District Nos. 1-7 (collectively the “Districts”). The Districts were approved September 29, 2021 by the City of Herriman (the “City”) to facilitate the construction of public infrastructure in connection with the Olympia project (the “Development”). Specifically, the Applicant is requesting that City staff and community development committee (the “CDC”) return a positive recommendation to the City Council regarding the amendment to the Governing Document of the Districts as proposed herein.

## **OVERVIEW**

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The Applicant is requesting an amendment to the Governing Document of the Districts to cover the entirety of the Development. The Districts are controlled by a single Governing Document approved by the City Council September 29, 2021. The Districts will provide important financing for public infrastructure for the Development including major arterial, minor and major collector roads; parks, trails, and other recreational improvements; culinary water systems; sewer; and/or storm drain improvements as well as required off-site improvements. The development costs for these public improvements are estimated to be in the hundreds of millions of dollars.

**Description of PIDs.** The Districts include approximately 939 acres of unimproved real property located on the west side of Herriman City. The District area is located near existing residential development and immediately adjacent to Herriman Boulevard. The Applicant is committed to developing the project area in a unified manner. Accordingly, there will be major public backbone infrastructure that will need to be installed in connection with the overall development of this area.

### ***Olympia***

**Size.** Approximately 939 acres as depicted in the attached Exhibit A.

**Location.** The Olympia PID Area (the “Olympia PID Boundaries and Annexation Area” as more accurately depicted in Exhibit A) is located south of Herriman Blvd. and to the south and east of the current U-111 highway. It extends from there eastward past the proposed 6400 West where it abuts currently developed neighborhoods.

**Proposed Uses.** The Developer within the Olympia PID Area intend to construct a variety of residential uses ranging from single-family neighborhoods to multi-family projects. The

Olympia PID Area will also include commercial uses that vary in scope from small retail to office uses. There are also public schools planned within the Olympia PID Area.

Development History. The Olympia PID Area is currently undeveloped.

**Regional and Local Infrastructure the Districts will Provide.** Development within the Districts requires substantial local and regional (both public and private) infrastructure. Specifically, the needed infrastructure to support these intended uses will include roadways, culinary and possibly secondary water systems, storm drain, and regional detention/retention facilities. The Applicant acknowledges that all public improvements will be designed and constructed in accordance with the standards and specifications of the City and other controlling public entities having proper jurisdiction. The Applicant is requesting that the Districts fund, in part, the Required Local and Regional Public Infrastructure (the scope of which is set forth in greater detail in the attached Exhibit B) to ensure the Development has a cohesive and timely phasing, construction, and financing plan.

**Estimated Construction Costs for the Public Improvements.** Estimated Costs for the public infrastructure within the Development are constantly changing. As of the date of this letter, estimated hard costs (not including design and engineering costs or other administration/legal/management costs) for the public infrastructure for the intended uses within the Development are estimated to be in excess of \$300,000,000. It is anticipated that both the needs of the City as well as the Olympia community will change as the Development progresses. The Development intends to reduce citywide impacts and provide regional amenities upfront, however, it is certain that there will be additional needs in all phases to create a vibrant and successful community. The Districts, with the addition of the mill rate described below, provide the flexibility to adapt when unpredicted needs occur by providing a more efficient financing mechanism. Exhibit B lists the eligible regional improvements anticipated to be financed by the PID as well as ineligible local improvements.

## **PROPOSED GOVERNING DOCUMENT AMENDMENTS**

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The proposed Amended and Restated Governing Document (the “Governing Document”) is attached in its entirety as Exhibit C. A summary of the proposed amendments is detailed as follows:

- Allow for a mill levy to be added as a repayment source for any PID bonds issued to fund public infrastructure associated with the Olympia Project
- The mill levy would be capped at 4 mills as further detailed in the next section
- Language was added to provide additional disclosure of the mill levy to future homebuyers
- Infrastructure allowed to be paid for with the PID will be limited to infrastructure that is regional in nature and will not be used on local infrastructure (See Exhibit B as noted above). Commercial uses are exempt from the ineligible improvement list.

## **PROPOSED MILL LEVY AND POTENTIAL BONDING CAPACITY**

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Proposed Mill Levy. To help service the debt obligation necessary to finance some of the needed public infrastructure within the Development, the Applicant is requesting the City authorize the Districts to levy up to four mills (.004 or an annual District tax of approximately \$1,100 for a primary home of \$500,000 after the primary home exemption of 45%). The Act permits public infrastructure districts to levy up to 15 mills (.015 or approximately \$4,125 annual tax for a primary home of \$500,000 after the primary home exemption of 45%). Additionally, the Act authorizes the

Districts to levy assessments or other fees collected by the Districts to repay any bonds. It is anticipated that the Districts will levy assessments and previously approved contract fees to help pay for the full cost of the proposed public infrastructure although these additional assessments and/or contract fees will be fully paid prior to transfer to a third party buyer with only the mill levy of up to 4 mills remaining.

## **BENEFITS OF DISTRICTS AND THE PROPOSED AMENDMENTS**

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The Districts will allow for more efficient phasing of development by providing tax-exempt public infrastructure financing for the Development. Infrastructure costs have significantly increased in past years due to notable macroeconomic conditions, thereby resulting in development costs that question overall feasibility of all aspects of the Development. Accordingly, the use of the Districts will help ensure that the Development (which will provide a variety commercial, residential housing types, and a range of employment opportunities) will be financially viable. Mixed-use master developments of this nature and scope are typically more difficult to finance and to construct than typical single-use developments. The Districts help alleviate some of those funding constraints and thereby promote timely development within the City (which development brings additional employment opportunities, property and sales tax benefits, as well as orderly and financially stable industrial/commercial/residential communities). In addition, due to the rising interest rate environment, heavy offsite infrastructure, and the upfront need to provide amenities and reduce citywide impacts, it is critical that the mill levy be added as a source of bond repayment to allow for more efficient financing costs as well as help secure overall feasibility in executing the PID plan of finance.

Applicant  
Olympia Land, LLC

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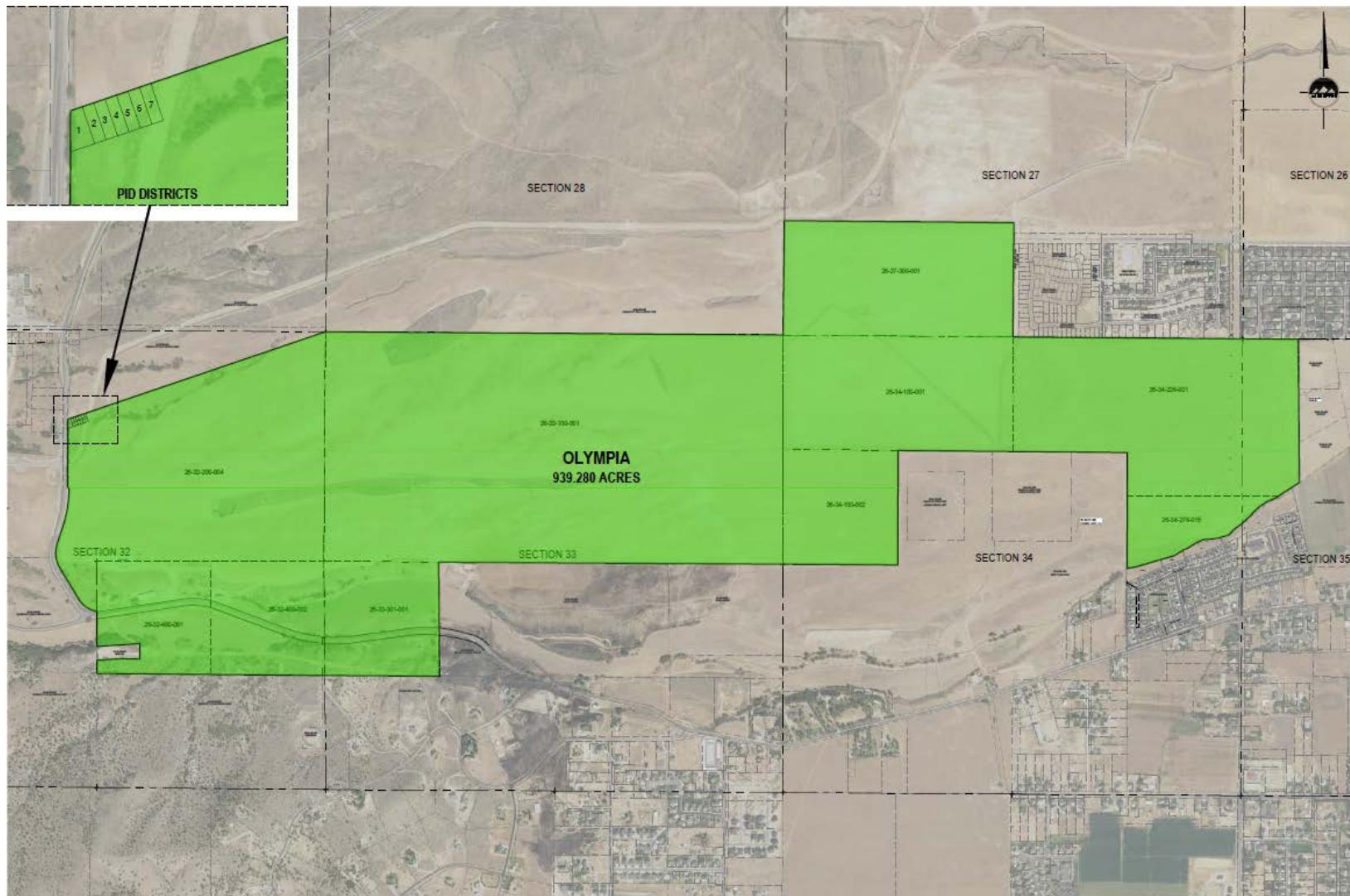
Ryan Button, Manager

## **ATTACHMENTS**

Exhibit A	Initial Boundaries and Proposed Annexation Area
Exhibit B	Required Local and Regional Infrastructure
Exhibit C	Amended and Restated Governing Document

**EXHIBIT A**

## *Initial District and Annexation Area Boundaries Map*



## EXHIBIT B

### Anticipated Improvement List

#### **Water System**

Zone 3 water tank, pump station, valve vault, PRV, transmission and supply lines and related facilities  
Zone 4 water pump station, PRV, transmission and supply lines  
Zone 5/6 water tank, pump station, valve vault, PRV, transmission and supply lines and related facilities  
Easement/ROW/Site Acquisition

#### **Storm Drain System**

Regional detention/retention facilities  
Stormwater transmission infrastructure and collection systems  
Regional Drainage improvements  
Drainage/creek crossings  
Easement/ROW/Site Acquisition

#### **Park/Trail System**

Parks sized 2 acres or larger (neighborhood, greenway and regional parks per approved Olympia Design Standards)  
All public trails throughout project including related amenities and signage  
Easement/ROW/Site Acquisition  
K-Park contribution

#### **Transportation System**

All offsite road improvements as required by MDA/traffic study analysis  
Herriman Boulevard  
6400 West  
Silver Sky Drive  
7300 West  
All onsite roads greater than a 55' ROW  
Easement/ROW/Site Acquisition

#### **Sewer System**

Upsized trunklines and manholes throughout project  
Easement/ROW/Site Acquisition

#### **Environmental**

Eligible environmental remediation

#### **Dry Utilities**

Eligible dry utilities

## Ineligible Improvement List

### **Water System**

Any waterline 8" or smaller

### **Storm Drain System**

Any storm drain system only benefiting a single subdivision

### **Park/Trail System**

Any park less than 2 acres in size

### **Transportation System**

Any road ROW 55' wide or narrower

### **Sewer System**

Any sewer lines 8" or smaller

**EXHIBIT C**  
*Amended and Restated Governing Document*

**AMENDED AND RESTATED GOVERNING DOCUMENT  
FOR  
OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NOS. 1 THROUGH 7  
HERRIMAN, UTAH**

Prepared

by

Gilmore & Bell, P.C.  
Salt Lake City, Utah

\_\_\_\_\_, 2023

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#### LIST OF EXHIBITS

<b>EXHIBIT A</b>	Legal Descriptions
<b>EXHIBIT B</b>	Herriman City Vicinity Map
<b>EXHIBIT C</b>	Initial District and Annexation Boundaries Map
<b>EXHIBIT D</b>	Interlocal Agreement between the District and Herriman City

## **I. INTRODUCTION**

### **A. Purpose and Intent.**

The Districts are independent units of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, their activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the Districts will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the Districts. The primary purpose of the Districts will be to finance the construction of these Public Improvements. The Districts are not being created to provide any ongoing operations and maintenance services.

### **B. Need for the Districts.**

There are currently no other governmental entities, including the City, located in the immediate vicinity of the Districts that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the Districts are therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

### **C. Objective of the City Regarding Districts' Governing Document.**

This Governing Document amends and restates the Governing Document for the City approved on September 29, 2021 in its entirety.

The City's objective in approving the Governing Document for the Districts is to authorize the Districts to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by one or both of the Districts (or interlocal entity formed by the Districts). All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy, and/or fees and Assessments. Debt which is issued within these parameters will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the Districts and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational activities are allowed, but only through an Interlocal Agreement with the City or other relevant public entity with written consent of the City.

It is the intent of the Districts to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt of such District, collected or assigned all Fees payable to such District, disbursed of all

assets of such District, and if the District has authorized operating functions under an Interlocal Agreement, to retain only the power necessary to impose and collect Fees to pay for these costs.

The Districts shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties (or repaid from a combination of Fees, Assessments or a mill levy). It is the intent of this Governing Document that Fees be paid at or before the issuance of a building permit by the City and to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the Districts.

## **II. DEFINITIONS**

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation into or withdrawal from any of the District upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit C**, describing the property proposed for annexation into or withdrawal from any of the Districts.

Assessment: means (i) the levy of an assessment secured by a lien on property within a District to pay for the costs of Public Improvements benefitting such property or (2) an assessment by a District levied on private property within such District to cover the costs of an energy efficient upgrade, a renewable energy system, or an electric vehicle charging infrastructure, each as may be levied pursuant to the Assessment Act.

Assessment Act: means collectively, (i) Title 11, Chapter 42, Utah Code as may be amended from time to time and (ii) the C-PACE Act.

Board: means the board of trustees of one District or the boards of trustees of all Districts, in the aggregate.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which any District has promised to impose an ad valorem property tax mill levy, impose Fees, and/or collect Assessments.

C-PACE Act: means title 11, Chapter 42a of the Utah Code, as amended from time to time.

C-PACE Bonds: means bonds, loans, notes, or other structures and obligations of the District issued pursuant to the C-PACE Act, including refunding C-PACE Bonds.

C-PACE Assessments: means assessments levied under the C-PACE Act.

City: means Herriman, Utah.

City Code: means the City Code of Herriman, Utah.

County Council: means the City Council of Herriman, Utah.

District: means any one of the Olympia Public Infrastructure District Nos. 1 through 7.

District Act: means the Local District Act and the PID Act.

District No. 1: means the Olympia Public Infrastructure District No. 1.

District No. 2: means the Olympia Public Infrastructure District No. 2.

District No. 3: means the Olympia Public Infrastructure District No. 3.

District No. 4: means the Olympia Public Infrastructure District No. 4.

District No. 5: means the Olympia Public Infrastructure District No. 5.

District No. 6: means the Olympia Public Infrastructure District No. 6.

District No. 7: means the Olympia Public Infrastructure District No. 7.

Districts: means District No. 1, District No. 2, District No. 3, District No. 4, District No. 5, District No. 6, and District No. 7.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

End User: means any owner, or tenant of any owner, of any improvement within the Districts, who is intended to become the ultimate user of such improvement. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means one or more fees imposed by any District for the payment of costs of administering the Districts, acquiring, improving, constructing, enlarging, or extending improvements, facilities, or property or issuing bonds and paying debt service on district bonds pursuant to Section 17D-4-302 of the PID Act or Section 17B-1-103(j) of the Local District Act.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the

Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes or Fees for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by a District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the Districts approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Boards in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C**, describing the initial boundaries of the Districts.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Project: means the development or property commonly referred to as Olympia.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as

generally described in the Local District Act to serve the future property owners and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

### **III. BOUNDARIES**

The area of the Initial District Boundaries includes approximately 0.537 acres, comprised of 0.111 acres for District No. 1 and 0.071 acres for District Nos. 2 through 7. The Annexation Area Boundaries includes approximately 939.283 acres and includes the Initial District Boundaries. A legal description of the Initial District Boundaries and the Annexation Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries and Annexation Area Boundaries is attached hereto as **Exhibit C**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

### **IV. PROPOSED LAND USE**

The District Area consists of approximately 939 acres of undeveloped land. Approval of this Governing Document by the City does not imply approval of the development of a specific area within the Districts, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is separately approved by the City in accordance with the City Code.

### **V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

#### **A. Powers of the Districts and Governing Document Amendment.**

The Districts shall have the power and authority to provide the Public Improvements within and without the boundaries of the Districts as such power and authority is described in the District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The Districts shall dedicate the Public Improvements to the City or other

appropriate public entity or owners association in a manner consistent with the development agreement and other rules and regulations of the City and applicable provisions of the City Code. The Districts shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

2. Reserved.

2. Ineligible Improvements. Notwithstanding anything contained elsewhere in this Governing Document, a District which is anticipated at the time of issuance of Debt to include residential uses shall not be permitted to finance the following improvements (the “Ineligible Improvements”):

- (i) Any waterline or sewer line 8” or smaller in diameter;
- (ii) Any storm drain system only benefiting a single subdivision;
- (iii) Any park less than 2 acres in size; or
- (iv) Any road right of way 55’ wide or narrower.

4.3. Construction Standards Limitation. The Districts will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The Districts will obtain the City’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Public Improvements shall be subject to the ordinary inspection and approval procedures of the City and other governmental entities having proper jurisdiction.

5.4. Procurement. The Districts shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the Districts may acquire completed or partially completed improvements for fair market value as reasonably determined by any one of a surveyor or engineer that such District employs or engages to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

6.5. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, a District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District’s Governing Document.

We [II] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed

appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7.6. Annexation and Withdrawal.

(a) The Districts shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. The City, by approval of this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into any of the Districts. Such area may only be annexed upon such District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of such District's Board approving such annexation.

(b) The City, by approval of this Governing Document, has consented to the withdrawal of any area within the District Boundaries from any of the Districts. Such area may only be withdrawn upon such District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of such District's Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, such District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8.7. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate mill levy for payment of Debt of the overlapping Districts will not at any time exceed the Maximum Debt Mill Levy of the Districts. Additionally the Districts shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the Districts unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the Districts.

9.8. Initial Debt. Upon the issuance of a certificate of creation of a District issued by the Office of the Lieutenant Governor of the State of Utah, such District shall be permitted to: (a) issue Debt and/or (b) impose a mill ~~-~~levy for the payment of Debt and collect Fees and Assessments for the purpose of repayment of Debt.

10.9. No Debt Issuance Limitation. So long as Debt is issued in accordance with the provisions of this Governing Document, there is no limit to the amount of Debt that may be issued by any District.

**11.10. Bankruptcy Limitation.** All of the limitations contained in the Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

**12.11. Governing Document Amendment Requirement.**

(a) This Governing Document has been designed with sufficient flexibility to enable the Districts to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the Districts which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the Districts.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the Districts approving such amendment.

**B. Preliminary Engineering Survey.**

The Districts shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the Districts, as specified application materials relating to the Districts and as may be further defined in a development agreement. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately Three Hundred Ninety-Six Million Dollars (\$396,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other

applicable public entity. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

C. Multiple District Structure.

It is anticipated that the Districts, collectively, will undertake the financing and construction of the Public Improvements. The nature of the functions and services to be provided by each District may be clarified in an interlocal agreement between and among the Districts. All such agreements will be designed to help assure the orderly development of the Public Improvements and essential services in accordance with the requirements of this Governing Document. Said interlocal agreement may be amended by mutual agreement of the Districts without the need to amend this Governing Document.

**VI. THE BOARD OF TRUSTEES**

A. Board Composition. Each Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. All Trustees shall be at large seats. Trustee terms for each District shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of such District.

B. Future Board Composition.

1. Districts without Registered Voters. So long as there are no registered voters within a District, the respective board seats for such District shall continue to be appointed by the City from the candidates recommended by owners of land within such District and comprised of owners of land or their agents and officers who are registered voters at their principal residence.

2. Districts with Registered Voters: Prior to the issuance of Bonds by a District anticipated to have Registered Voters, such District shall estimate the number of certificates of occupancy to be issued by the City within such District (the "Estimated COO"). Upon attainment of the Estimated COO, the respective board seats for such District's Board shall transition from appointed to elected seats following the expiration of the then current term for such Board member. Seats on the Board may transition prior to attainment of the Estimated COO if approved in a resolution adopted by such Board.

C. Reelection and Reappointment. Upon the expiration of a Trustee's respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Unless otherwise permitted by the PID Act, only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

## **VII. REGIONAL IMPROVEMENTS**

The Districts shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

## **VIII. FINANCIAL PLAN**

### **A. General.**

The Districts shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from their revenues and by and through the proceeds of Debt to be issued by such District. In addition, the Districts shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the Districts shall be to issue such Debt as the Districts can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments, ~~or both Fees~~, and other legally available revenues. So long as Debt is issued in accordance with the provisions of this Governing Document, there is no limit to the amount of Debt that may be issued by any District. The total Debt shall be permitted to be issued on a schedule and in such year or years as the Districts determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. All bonds and other Debt issued by the Districts may be payable from any and all legally available revenues of the Districts, including general ad valorem taxes to be imposed upon all Taxable Property within the District, Fees, and Assessments. The District may also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

### **B. Maximum Voted Interest Rate and Maximum Underwriting Discount.**

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this

Governing Document, State law and Federal law as then applicable to the issuance of public securities.

**C. Limitations on Fees and Assessments.**

(a) All Fees and Assessments (other than C-PACE Assessments) imposed by any District on a parcel shall be payable at or before the issuance of a building permit by the City with respect to such Parcel. So long as Fees are not passed on to End Users, there is no maximum amount of Fees that may be imposed by a District, provided that all such fees shall be related to administrative expenses of the District, the provision of Public Improvements, and debt service on Bonds relating thereto.

(b) Any Assessments issued under the C-PACE Act may be repayable in accordance with the provisions of such statute.

(c) The City agrees to collect Fees and remit such Fees to the Districts on at least a monthly basis and further agrees that any building permit issued within the boundaries of a District will require proof of payment of Fees and sign off by such District. Additional procedures regarding the collection and remittance of Fees may be established by interlocal agreement between the City and such District(s).

**D. Maximum Debt Mill Levy.**

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the Districts are permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.004 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

**E. Maximum Debt Mill Levy Imposition Term.** Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding Forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

**F. Debt Repayment Sources.**

The Districts may impose a mill levy on taxable property within its boundaries and Fees as primary sources of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the Districts’ discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the Districts shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The Districts shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Fees, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Fees, Assessments, or impact fees, but is intended to prevent double charging of End Users for the costs of Public Improvements.

**G. Debt Instrument Disclosure Requirement.**

In the text of each Bond and any other instrument representing and constituting Debt, the Districts shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the Districts.

**H. Security for Debt.**

The Districts shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the Districts' obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the Districts in the payment of any such obligation.

**I. Districts' Operating Costs.**

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the Districts' organization and initial operations, are anticipated to be [Two Hundred Fifty Thousand Dollars (\$250,000)], which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the Districts will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's operating budget is estimated to be approximately [Fifty Thousand Dollars (\$50,000)] which is anticipated to be derived from property taxes and other revenues.

**J. Bond and Disclosure Counsel.**

It is the intent of the City that the Districts shall use competent and nationally recognized bond and disclosure counsel with respect to District Bonds to ensure proper issuance

and compliance with this Governing Document. The Districts have agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel with respect to District Bonds.

## **IX. ANNUAL REPORT**

### **A. General.**

Each of the District shall be responsible for submitting an annual report to the City Manager's Office no later than 210 days following the end of such District's fiscal year, beginning with fiscal year 2023.

### **B. Reporting of Significant Events.**

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of the last day of the prior fiscal year, if changed.

2. List of current interlocal agreements, if changed (to be delivered to the Creating Entity upon request);

3. Names and terms of Board members and officers; the Estimated COO for such District, if changed; and progress towards milestones required for transition to elected Board;

4. District office contact information, if changed;

5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;

6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year, if any;

7. Status of the District's construction of the Public Improvements as of December 31 of the prior year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;

8. A list or table of all Fees or Assessments imposed by the District, if changed;

9. A table summarizing total debt issued by the District as well as any presently planned debt issuances;

10. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

11. Current year budget including a description of the Public Improvements to be constructed in such year;

12. Financial statements of the District for the most recent completed fiscal year (such statements shall be audited if required by bond documents or statute);

13. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

14. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

## **X. DISSOLUTION**

Upon an independent determination of each District Board that the purposes for which such District was created have been accomplished, the District shall file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until such District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes, collected or assigned all Fees payable to such District, and disbursed of all assets of such District.

## **XI. DISCLOSURE TO PURCHASERS**

Within thirty (30) days of the ~~Office effective date adoption of the Lieutenant Governor of the State of Utah issuing a certificate of creation this Amended and Restated Governing Document~~, each Board shall record a notice with the recorder of ~~Herriman City Salt Lake County~~. Such notice shall (a) contain a description of the boundaries of the District; (b) state that a copy of this Governing Document is on file at the office of the City; (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (e) if applicable, state that the debt may convert to general obligation debt and outline the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial developers, and commercial lessors, as applicable, disclose the following information to End Users:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

**“Under the maximum property tax rate of the District, for every \$100,000 of taxable value, there would be an additional annual property tax of \$400 for the duration of the District’s Bonds.”**

(3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

## **XII. INTERLOCAL AGREEMENT**

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the Districts' activities, is attached hereto as **Exhibit D**. The Districts shall approve the Interlocal Agreement in the form attached as **Exhibit D** at their first Board meeting after its creation. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit D** at the public hearing approving the Governing Document.

## EXHIBIT A

### Legal Descriptions

#### **Olympia Public Infrastructure District No. 1**

Beginning at a point being South 00°24'18" West 1,004.67 feet along the section line and West 2,949.22 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 65.40 feet to the Northeast Right-of-Way Line of State Route-111 (SR-111), also known as Bacchus Highway;  
thence North 00°09'20" East 105.71 feet along said Northeast Right-of-Way Line of SR-111;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 4,826 Square Feet or 0.111 Acres

#### **Olympia Public Infrastructure District No. 2**

Beginning at a point being South 00°24'18" West 994.66 feet along the section line and West 2,919.83 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

#### **Olympia Public Infrastructure District No. 3**

Beginning at a point being South 00°24'18" West 984.64 feet along the section line and West 2,890.44 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

#### **Olympia Public Infrastructure District No. 4**

Beginning at a point being South 00°24'18" West 974.63 feet along the section line and West 2,861.05 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

**Olympia Public Infrastructure District No. 5**

Beginning at a point being South 00°24'18" West 964.62 feet along the section line and West 2,831.67 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

**Olympia Public Infrastructure District No. 6**

Beginning at a point being South 00°24'18" West 954.61 feet along the section line and West 2,802.28 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

**Olympia Public Infrastructure District No. 7**

Beginning at a point being South 00°24'18" West 944.60 feet along the section line and West 2,772.89 feet from the Northeast Section of 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence South 18°46'09" East 100.00 feet;  
thence South 71°13'51" West 31.11 feet;  
thence North 18°46'09" West 100.00 feet;  
thence North 71°13'51" East 31.11 feet to the point of beginning.

Contains 3,111 Square Feet or 0.071 Acres

**Annexation Area**

**Olympia Property – Overall Parcel**

A parcel of land, situate in parts of Sections 27, 32, 33 and 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at the Northeast Corner of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence North 00°41'26" East 1,324.02 feet along the section line to the Northeast Corner of the Southwest Quarter of the Southwest Quarter of Section 27, Township 3 South, Range 2 West, Salt Lake Base and Meridian;

thence South 89°30'42" East 2,657.98 feet along the 1/16 section line to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of said Section 27;

thence South 00°28'09" West 1,324.47 feet along the quarter section line to the South Quarter Corner of said Section 27;

thence South 89°30'06" East 2,664.00 feet along the section line to the Southeast Corner of said Section 27;

thence South 89°48'53" East 641.53 feet along the section line;

thence South 00°30'22" East 1,659.00 feet to the extension of the Northerly Boundary Line of Blackhawk Estates Plat "C", recorded as Entry No. 11719743 in Book 2013P at Page 178 in the Office of the Salt Lake County Recorder;

thence along the extension of and said Northerly Boundary Line of Blackhawk Estates Plat "C" the following nine (9) courses:

(1) South 56°51'10" West 333.22 feet;

(2) South 68°38'27" West 95.94 feet;

(3) South 56°30'13" West 98.90 feet;

(4) South 51°26'05" West 67.14 feet;

(5) South 41°54'31" West 111.54 feet;

(6) South 48°31'38" West 142.42 feet;

(7) South 54°24'10" West 87.46 feet;

(8) South 44°19'04" West 94.58 feet;

(9) South 72°52'33" West 99.94 feet to the Northerly Boundary Line of Blackhawk Estates Plat "B", recorded as Entry No. 11386427 in Book 2012P at Page 53 in the Office of the Salt Lake County Recorder;

thence along said Northerly Boundary Line of Blackhawk Estates Plat "B" the following six (6) courses:

(1) South 72°52'34" West 12.55 feet;

(2) South 82°11'10" West 94.89 feet;

(3) South 86°16'00" West 83.86 feet;

(4) South 66°09'21" West 95.83 feet;

(5) South 58°13'58" West 137.09 feet;

(6) South 78°13'01" West 40.13 feet along said Northerly Boundary Line of Blackhawk Estates Plat "B" to the Northwest Corner of said Blackhawk Estates Plat "B";

thence South  $12^{\circ}44'34''$  East 10.64 feet along said Westerly Boundary Line of Blackhawk Estates Plat "B" to the Northerly Boundary Line of Western Creek PUD Plat A, recorded as Entry No. 10946923 in Book 2010P at Page 76 in the Office of the Salt Lake County Recorder;

thence along said Northerly Boundary Line of said Western Creek PUD Plat A the following three (3) courses:

(1) South  $78^{\circ}07'21''$  West 16.66 feet;

(2) South  $57^{\circ}11'41''$  West 95.42 feet;

(3) South  $73^{\circ}50'10''$  West 172.86 feet along said Northerly Boundary Line of Western Creek PUD Plat A to the Northerly Boundary Line of Western Creek Plat B, recorded as Entry No. 11429199 in Book 2012P at Page 92 in the Office of the Salt Lake County Recorder;

thence along said Northerly Boundary Line of Western Creek Plat B the following two (2) courses:

(1) South  $73^{\circ}27'12''$  West 291.53 feet;

(2) South  $80^{\circ}15'09''$  West 106.84 feet to the 1/16 section line;

thence North  $00^{\circ}10'31''$  East 1,342.34 feet along the 1/16 section line to the Southeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 34, monumented with a rebar and cap stamped "5251295";

thence North  $89^{\circ}31'41''$  West 2,661.50 feet along the 1/16 section line to the Southwest Corner of the Northeast Quarter of the Northwest Quarter of said Section 34, monumented with a Salt Lake County monument;

thence South  $00^{\circ}02'54''$  West 1,325.66 feet along the 1/16 section line to the quarter section line;

thence North  $89^{\circ}35'51''$  West 1,329.44 feet along the quarter section line to the East Quarter Corner of said Section 33, monumented with a Salt Lake County monument;

thence North  $89^{\circ}38'37''$  West 3,990.98 feet along the quarter section line to the Southwest Corner of the Southeast Quarter of the Northwest Quarter, monumented with a rebar and cap stamped "5251295";

thence South  $00^{\circ}20'42''$  East 1,323.10 feet along the 1/16 section line to the Southeast Corner of the Northwest Quarter of the Southwest Quarter of said Section 33, monumented with a rebar and cap stamped "5251295";

thence North  $89^{\circ}38'31''$  West 1,327.74 feet along the 1/16 section line to the Southeast Corner of the Northeast Quarter of the Southeast Quarter of Section 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian;

thence North  $89^{\circ}29'26''$  West 2,641.53 feet along the 1/16 section line to the Southwest Corner of the Northwest Quarter of the Southeast Quarter of said Section 32;

thence North  $00^{\circ}09'01''$  East 149.81 feet along the 1/16 section line;

thence North  $86^{\circ}15'53''$  East 292.00 feet;

thence South 88°11'07" East 207.61 feet;

thence North 00°09'01" East 185.12 feet;

thence South 86°15'53" West 500.00 feet to the 1/16 section line;

thence North 00°09'01" East 405.38 feet along the 1/16 section line to the Northeast Right-of-Way Line of State Route-111 (SR-111), also known as Bacchus Highway;

thence Northwesterly and Northerly along said Northeasterly said right of way line of State Route-111 (SR-111) the following seven (7) courses:

(1) Northwesterly 246.50 feet along the arc of a 268.31 foot radius curve to the right (center bears North 05°49'12" East and the chord bears North 57°51'41" West 237.92 feet with a central angle of 52°38'15");

(2) North 31°32'34" West 437.23 feet;

(3) Northwesterly 288.95 feet along the arc of a 331.97 foot radius curve to the right (center bears North 58°27'27" East and the chord bears North 06°36'27" West 279.91 feet with a central angle of 49°52'13");

(4) North 18°19'39" East 201.90 feet;

(5) Northeasterly 470.16 feet along the arc of a 1,482.39 foot radius curve to the left (center bears North 71°40'21" West and the chord bears North 09°14'30" East 468.19 feet with a central angle of 18°10'19");

(6) North 89°50'40" West 17.00 feet;

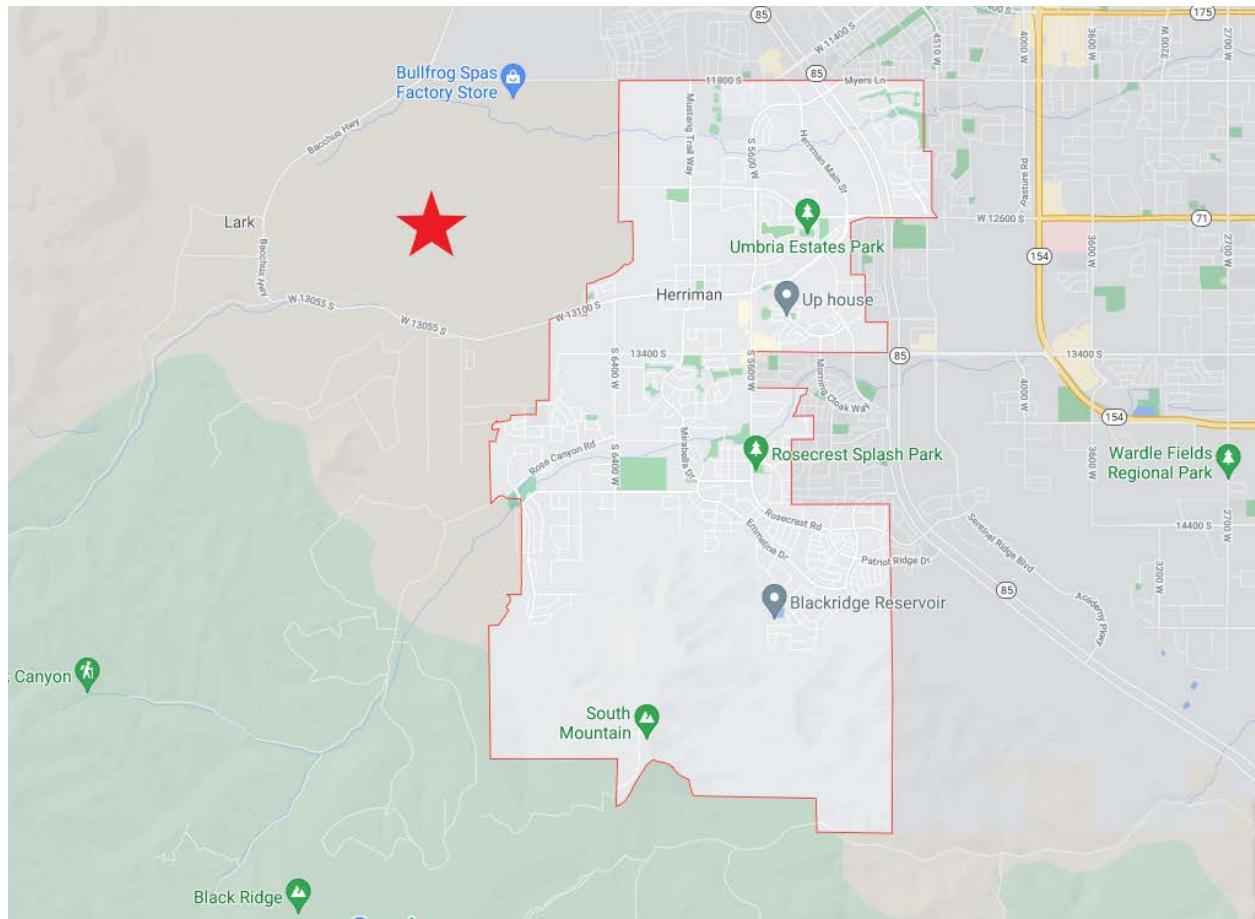
(7) North 00°09'20" East 792.30 feet;

thence North 71°13'51" East 3,153.48 feet to the Northwest Corner of said Section 33, monumented with a Salt Lake County monument;

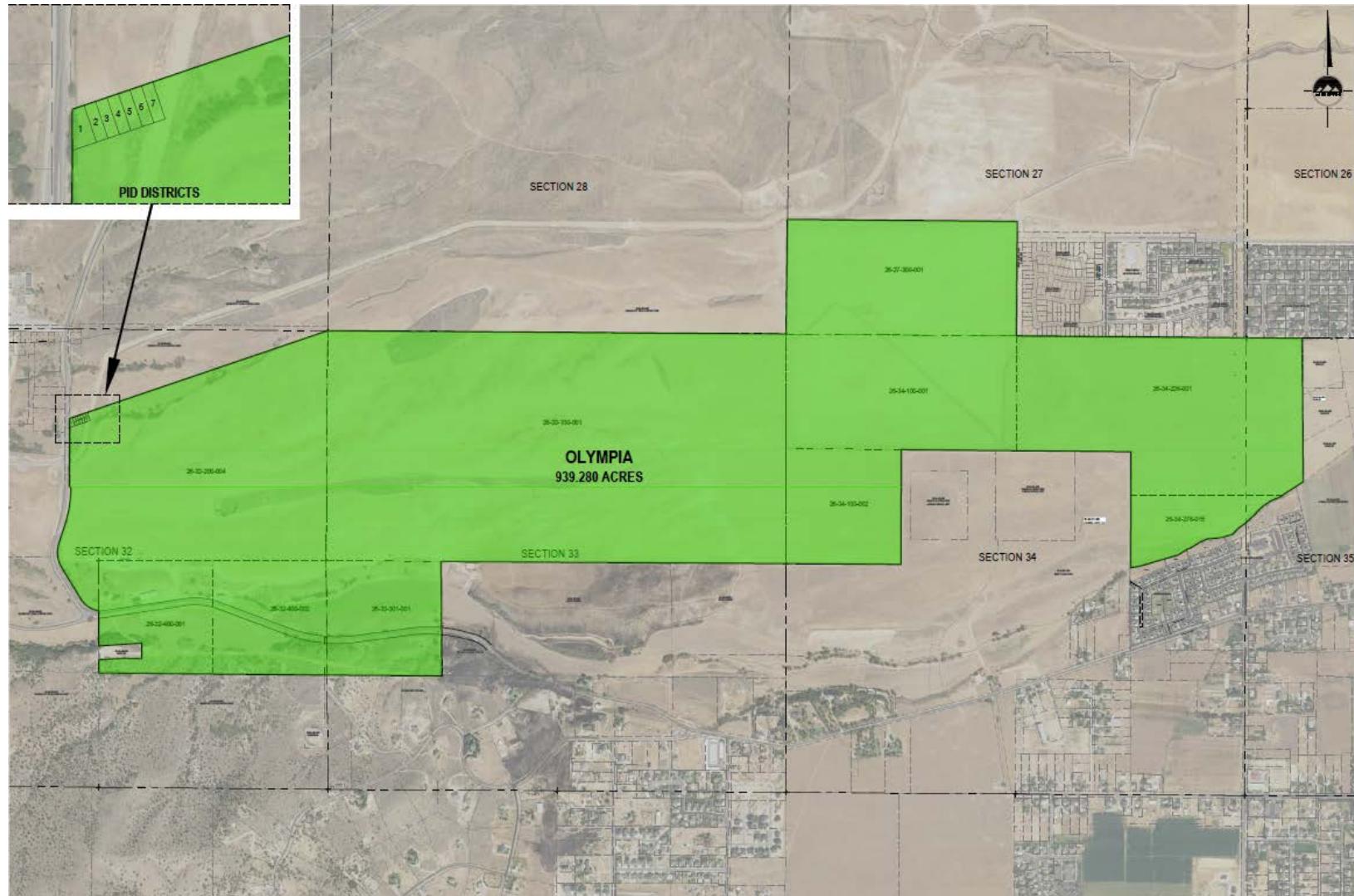
thence South 89°35'41" East 5,303.20 feet along the section line to the point of beginning.

Contains 40,915,169 Square Feet or 939.283 Acres

**EXHIBIT B**  
**Herriman City Vicinity Map**



**EXHIBIT C**  
**Initial District and Annexation Area Boundaries Map**



## **EXHIBIT D**

### **Interlocal Agreement between the Districts and Herriman City**

**AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN**

**HERRIMAN CITY, UTAH**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 1**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 2**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 3**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 4**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 5**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 6**

**AND**

**OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 7**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between HERRIMAN CITY, a political subdivision of the State of Utah (“City”), OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a political subdivision of the State of Utah (“District No. 1”), and OLYMPIA PUBLIC INFRASTRUCTURE DISTRICT NO. 2, a political subdivision of the State of Utah (“District No. 2” and together with District No. 1, the “Districts”). The City and the Districts are collectively referred to as the Parties.

**RECITALS**

WHEREAS, the Districts were organized to provide to exercise powers as are more specifically set forth in the Districts’ Amended and Restated Governing Document approved by the City on \_\_\_\_\_, 2023 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the Districts; and

WHEREAS, the City and the Districts have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

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

**COVENANTS AND AGREEMENTS**

1. Operations and Maintenance. The purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The Districts shall dedicate the Public Improvements (as defined in the Governing Document) to the

City or other appropriate public entity or owners association in a manner consistent with the rules and regulations of the City and applicable provisions of the City Code and any development agreement. The Districts shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

2. Reserved.

2. Ineligible Improvements. Notwithstanding anything contained in the Governing Document, a District which is anticipated at the time of issuance of Debt to include residential uses shall not be permitted to finance Ineligible Improvements.

3. Construction Standards. The Districts will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The Districts will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Public Improvements shall be subject to the ordinary inspection and approval procedures of the City and other governmental entities having proper jurisdiction.

4. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the Districts shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Inclusion Limitation. The Districts shall not include or withdrawal into or from their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area Boundaries into or from any of the Districts. The Districts shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

6. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate mill levy for payment of Debt of the overlapping Districts will not at any time exceed the Maximum Debt Mill Levy of the Districts. Additionally, the Districts shall not consent to the organization of any other public infrastructure district organized under the PID Act within the

District Area which will overlap the boundaries of the Districts unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the Districts.

7. Initial Debt. Upon the issuance of a certificate of creation of a District issued by the Office of the Lieutenant Governor of the State of Utah, such District shall be permitted to: (a) issue Debt and/or (b) impose a mill levy for the payment of Debt and collect Fees and Assessments for the purpose of repayment of Debt.

8. No Debt Issuance Limitation. So long as Debt is issued in accordance with the provisions of this Governing Document, there is no limit to the amount of Debt that may be issued by any District.

9. Bankruptcy. All of the limitations contained in the Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of the Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of each District Board that the purposes for which such District was created have been accomplished, the District shall file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until such District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes, collected or assigned all Fees payable to such District, and disbursed of all assets of such District.

11. Disclosure to Purchasers. Within thirty (30) days of the ~~Offieeffective date adoption~~ of the ~~Lieutenant Governor of the State of Utah issuing a certificate of creation~~Amended and Restated Governing Document, each Board shall record a notice with the recorder of ~~Herriman City~~Salt Lake County. Such notice shall (a) contain a description of the boundaries of the District; (b) state that a copy of this Governing Document is on file at the office of the City; (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the

District; and (e) if applicable, state that the debt may convert to general obligation debt and outline the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial developers, and commercial lessors, as applicable, disclose the following information to End Users:

(1) All of the information in the first paragraph of Section XI of the Governing Document;

(2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$400** for the duration of the District’s Bonds.”

(3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the Districts which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the Districts. Additionally, subject to the limitations and exceptions contained in the Governing Document, the Governing Document may be amended by passage of a resolutions of the City and the Districts approving such amendment.

13. Annual Report. Each District shall be responsible for submitting an annual report to the City Manager’s Office no later than 210 days after the close of the District’s fiscal year, commencing fiscal year 2023, containing the information set forth in Section IX of the Governing Document.

14. Regional Improvements. The Districts shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

15. Limitations on Fees and Assessments.

(a) All Fees and Assessments (other than C-PACE Assessments) imposed by any District on a parcel shall be payable at or before the issuance of a building permit by the City with respect to such Parcel. So long as Fees are not passed on to End Users, there is no maximum amount of Fees that may be imposed by a District, provided that all such fees shall be related to administrative expenses of the District, the provision of Public Improvements, and debt service on Bonds relating thereto.

(b) Any Assessments issued under the C-PACE Act may be repayable in accordance with the provisions of such statute.

(c) The City agrees to collect Fees and remit such Fees to the Districts on at least a monthly basis and further agrees that any building permit issued within the boundaries of a District will require proof of payment of Fees and sign off by such District. Additional procedures regarding the collection and remittance of Fees may be established by interlocal agreement between the City and such District(s).

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding Forty (40) years from the first date of imposition of the mill levy for such bond (the "Maximum Debt Mill Levy Imposition Term").

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts: Olympia Public Infrastructure District Nos. 1-7

Attn: c/o Olympia Land, LLC  
527 E. Pioneer Road, #200  
Draper, UT 84020

Phone:  
(801) 910-6206

With a Copy to: Snow Jensen & Reece  
912 West 1600 South  
Suite B200  
St. George, UT 84770  
Attn: Matt Ence  
Phone: (435) 250-3860

To the City: Herriman City  
5355 West Herriman Main Street  
Herriman, UT 84096  
Attn: Planning and Zoning  
Phone: (801) 446-5323

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after

deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

19. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

20. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

21. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the Districts or fifty (50) years from the date hereof.

22. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

23. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

25. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Districts and the City shall be for the sole and exclusive benefit of the Districts and the City.

26. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

28. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

29. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

**[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]**

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 1

By: \_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 2

By: \_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 3

By: \_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 4

By: \_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 5

By: \_\_\_\_\_  
Chair

Attest:

Secretary \_\_\_\_\_  
APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 6

By: \_\_\_\_\_  
Chair

Attest:

Secretary \_\_\_\_\_  
APPROVED AS TO FORM: \_\_\_\_\_

OLYMPIA PUBLIC INFRASTRUCTURE  
DISTRICT NO. 7

By: \_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

Herriman, Utah

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_



## STAFF REPORT

**DATE:** March 9, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Bryce Terry, Assistant City Engineer

**SUBJECT:** Consideration to Approve Filing Eminent Domain Action

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### **RECOMMENDATION:**

It is recommended that the City Council vote to approve Eminent Domain Action as described in the report.

### **ISSUE BEFORE COUNCIL:**

Should the City use Eminent Domain Action on properties that have had unsuccessful negotiations as part of the Herriman Main Street Widening Project?

### **BACKGROUND/SUMMARY:**

The City has been working on acquiring property for the Herriman Main Street Widening project. This project is to widen Herriman Main Street (Herriman Highway) from 6250 West to 7300 W. The project includes rebuilding and widening the roadway to include three lanes, bike lanes, curb, gutter, sidewalk, landscaped park strips, water lines, irrigation lines, storm drain infrastructure streetlights, and relocated power lines. Earlier in the process, the City Council decided to narrow the right-of-way where possible to limit the impact on adjacent properties.

As part of the project's design, a professional surveyor was hired to determine the existing Right-of-Way. This surveyor also worked with our design engineers to determine which properties would require additional property to accommodate the project. Then, legal descriptions, deeds,

and property exhibits were created by the Wall Consultant Group for the City to use to acquire property for the project.

During this time a Right of Way agent was hired to help the City manage the process of these property acquisitions. This process required three types of agreements the City was seeking as part of the project, as follows:

- **Right of Way Acquisition** – The city offers to buy the land based at fair market value.
  - This includes areas where the city would need to acquire land to build the road (as designed) outside of the existing right of way. It is an area where the sidewalk and park strip will be installed.
- **Perpetual Easement** – The city offers to buy an easement on the existing property owner's land.
  - This includes an area that is not part of the roadway improvements, but where power poles could be relocated to. (Generally, from the back of the sidewalk, 10 feet into the property)
  - Generally, this area is an additional offer on the same property as a Right of Way acquisition.
- **Permit to Enter & Construct** – The city seeks a permit for the contractor to slope roadway project grades back into private property.
  - Generally, this includes tying driveways from the sidewalk back toward homes, and gradual slopes off the sidewalk back toward private property.

The project status for each of those is as follows:

*Table 1. Status of Agreements (as of March 9, 2023)*

Type of Acquisition	Total Agreements Needed	Agreement Signed	In Current Negotiations	Considered for Eminent Domain
Right of Way	22	10	4	8
Perpetual Easement	12	7	3	2
Permit Only	36	32	4	-

## **DISCUSSION:**

As shown in *Table 1*, there are 8 properties in which negotiations of been unsuccessful up to this point. This is for one of two reasons, the property owner has been unresponsive to the City's efforts to negotiate, or the property owner and the City cannot agree on the acquisition price/area. Those properties are described below in *Table 2*:

Table 2. Properties Considered for Eminent Domain

Parcel Address	Owner	ROW Area (SF)	PE Area (SF)	Original Offer Date
7214 W 13320 S	Gabriela Martinez	96	1668	25-Jan-23
7202 W 13320 S	Nick & Misty Mitchell	179	256	25-Jan-23
7150 W Herriman Hwy	Boyd & Claudia Dansie	1187	-	18-Jan-23
7075 W Herriman Hwy	Boyd & Claudia Dansie	211	-	18-Jan-23
7037 W Herriman Hwy	Boyd & Claudia Dansie	576	-	18-Jan-23
7041 W Herriman Hwy	Boyd & Claudia Dansie	41	-	18-Jan-23
6607 W Herriman Hwy	Boyd & Claudia Dansie	278	-	18-Jan-23
7005 W Herriman Hwy	Chad Dansie	1095	-	18-Jan-23

To use Eminent Domain Action, the city must fulfill the following obligations:

- Provide written notice as per Utah Code § 78B-6-505.
- Provide property brochure to property Owner titled *Your Guide to Just Compensation*.
- Seek a minimum of 30 days of negotiation.
- Provide 4-Options Letter for property owners during Eminent Domain process.
- Provide Public Hearing Notice.
- Provide an opportunity for property owners to be heard (Public Hearing Meeting).
- A final vote to take action.

Additionally, this project has time constraints that make it so the contractor will need access to properties to make certain deadlines. Therefore, further delayed acquisitions could have a major impact on the project. Two major milestone deadlines are required of the contractor, but if these properties aren't solved soon, this will likely make it impossible to accomplish these deadlines:

1. Private Irrigation Company work needs to be completed by **April 15**, before the Irrigation season begins to prevent users from being impacted.
2. Safe Walk Route to School – A major component of this project is to improve the walkability in West Herriman. Specifically, those walking to the elementary (Oak Leaf Elementary). The contractor is to provide a safe walk route to the school by August 1. If the property acquisition for this project is further delayed, it would likely cause major concerns for students walking to school.

## **ALTERNATIVES:**

1. **Vote to approve filing Eminent Domain on the properties listed in this report. [Recommend]**
  - a. This option will allow the City to access these properties to keep the project from stalling and missing its deadlines.

- b. This option will require the City to provide fair market value to property owners and settle what fair compensation should be.
- c. Depending on the outcome, this option may incur minor costs to the City due to outside attorney fees and possible additional appraisals.
- d. City would not be reimbursed with Corridor Preservation funds on properties listed.

2. Vote to deny filing Eminent Domain on the properties listed in this report.

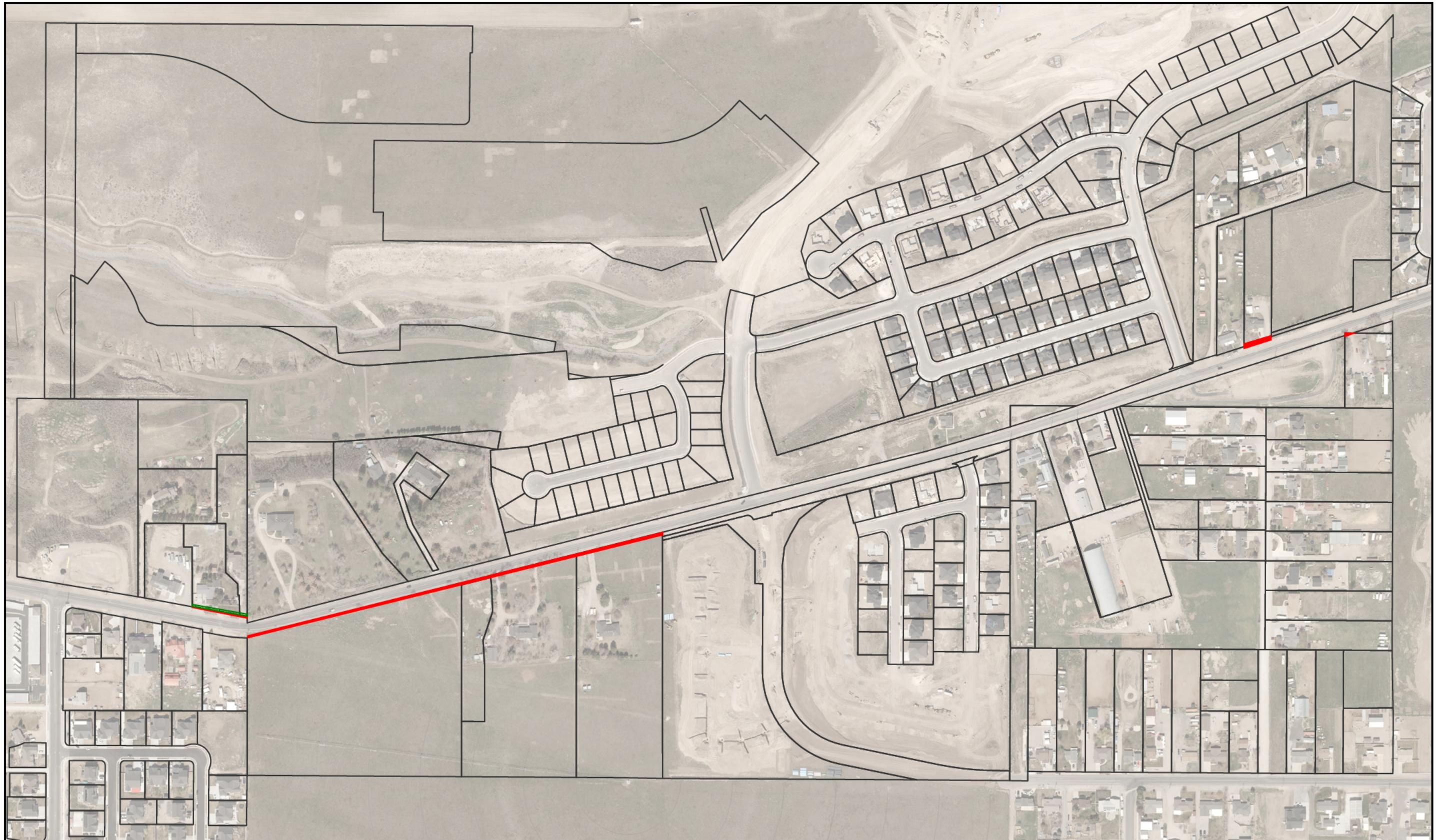
- a. This option would likely be more appealing to the property owners.
- b. This option would likely cause delays to the project.
- c. In this case, negotiations would restart.
- d. In this case, it is possible that the City may not ever reach an agreeable compensation for some property owners. If this is the case, sections of the project would have to be altered to remove the curb, gutter, sidewalk, and landscaping from the areas that could not be acquired.

**FISCAL IMPACT:**

As mentioned in the alternatives section, those properties that go through the Eminent Domain process would not be eligible for Corridor Preservation Reimbursement. In the same token, only the appraised value of the property can be reimbursed by Salt Lake County, which is much lower than what some of the property owners are seeking.

**ATTACHMENTS:**

Parcel Acquisition Map.pdf



Parcel Acquisition Map

0 145 290 580 870 1,160  
Feet



## STAFF REPORT

**DATE:** March 9, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Michael Maloy, City Planner

**SUBJECT:** Review and consider proposed amendments to the Planning Commission Rules of Procedure and Ethical Conduct

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### **RECOMMENDATION:**

Staff recommends the City Council adopt the proposed “Planning Commission Rules of Procedure” and “Planning Commission Rules of Ethical Conduct” amendments.

### **ISSUE BEFORE COMMISSION:**

Does the City Council support the draft amendments in the adopted “Planning Commission Rules of Procedure” and “Planning Commission Rules of Ethical Conduct” for Herriman City?

### **BACKGROUND & SUMMARY:**

The Planning Commission is an appointed administrative and advisory body governed by Utah Code and Herriman City Code (see Attachment A – Planning Commission Ordinance). The Commission is also subject to additional procedural and ethical policies adopted by the City Council in 2017.

Due to recent changes in the Planning Commission meeting schedule, as well as the administration of the periodic joint work meeting with the City Council, staff recommends the Council review and consider the proposed amendments to the “Planning Commission Rules of Procedure” and “Planning Commission Rules of Ethical Conduct” for Herriman City (see Attachment B – Planning Commission Rules of Procedure and Attachment C – Planning Commission Rules of Ethical Conduct).

For reference purposes only, staff attached the approved “Electronic Board Meeting and Procedures” policy, which the City Council approved in 2020 (in response to the COVID-19

pandemic). Staff is not recommending any amendments to this policy (see Attachment D – Electronic Meeting Policy).

### **DISCUSSION:**

Section IX of the attached policy, which is entitled Adoption and Amendment, states:

These Rules of Procedure must be reviewed and approved by the Council before they become effective and may be amended upon approval by the Council.

As per the adopted City policy, the Planning Commission reviewed the proposed amendments on March 1, 2023, and voted 6-0 to recommend approval (see Attachment E – Draft Resolution).

### **ALTERNATIVES:**

The City Council may consider the following alternatives:

Alternatives	Recommendation	Reasons For Proposal	Reasons Against Proposal
Approve proposal as submitted	Yes	Approval resolves conflicts between adopted policy and current practice	None identified by staff
Modify proposal		Modification(s) may improve the proposal	Modification(s) may have unintended consequences
Postpone proposal (with or without date)		Postponing the proposal would allow the Council additional time to consider and revise the policies if needed	Postponement would extend the current conflict between policy and practice
Deny proposal		None identified by staff	Denial would maintain the current conflict between policy and practice

### **ATTACHMENTS:**

- A. Planning Commission Ordinance
- B. Planning Commission Rules of Procedure
- C. Planning Commission Rules of Ethical Conduct
- D. Electronic Meeting Policy
- E. Draft Resolution

**Attachment A**  
**Planning Commission Ordinance**

## **10 4 5: Planning Commission**

- A. Established: Pursuant to the terms of the Municipal Land Use, Development, and Management Act, Utah Code section 10-9a-101, et seq., a Planning Commission is hereby established to exercise the powers and duties specified in this title.
- B. Appointment And Term Of Office: The Planning Commission shall consist of seven (7) persons who shall be appointed by the City Council.
  - 1. It is the intent of the City Council that the Planning Commission will represent diverse citizen groups, as well as the broad interests of the City as a whole; that membership should include balanced representation in geographic, professional, neighborhood and community interest; and that a wide range of expertise relating to development of a healthy and well planned community should be sought when appointing commission members. Interests from which expertise might be selected include banking, development, contracting, engineering, geology and seismology, law, ecology, behavioral sciences, historic preservation, architecture, and landscape architecture. It is not, however, intended that Planning Commission members be limited to professionals, but rather, that members represent a cross section of the community.
  - 2. Planning Commission members shall be bona fide City residents and qualified electors of the City.
  - 3. Each Planning Commission member shall be appointed for a term of three (3) years which shall begin upon appointment.
  - 4. Planning Commission members may be reappointed for successive terms.
  - 5. The City Council may remove any member of the Planning Commission whenever it appears that such removal would be in the best interests of the City, as determined by the City Council.
  - 6. Any vacancy occurring on the Planning Commission by reason of death, resignation, or removal shall be promptly filled by the City Council, for the unexpired term of such member.
  - 7. Any vacancy occurring on the Planning Commission by reason of expiration of term shall be promptly filled by the City Council.
  - 8. The City Council, may appoint three (3) alternate Planning Commission members who shall serve terms of one year. The reappointment, removal, and vacancy of alternate Planning Commission members shall be the same as for regular Planning Commission members. Alternate members of the Planning Commission may serve on the Planning Commission in the absence of a Planning Commission member.
  - 9. Members and alternate members of the Planning Commission shall be deemed "volunteers" for purposes of City ordinances, rules, regulations, and policies concerning personnel; provided, however, they shall be included in the definition of "employee" for purposes of the Utah Governmental Immunity Act, Utah Code section 63G-7-101, et seq.
  - 10. Planning Commission and alternate members may be compensated for performing their duties as may be approved by the City Council.
- C. Powers And Duties: The Planning Commission shall have the following powers and duties which shall be exercised pursuant to the provisions of this title:

1. Prepare and recommend a General Plan and General Plan amendments to the City Council as provided in section 10 5 7 of this title;
2. Recommend land use regulations to the City Council as provided in section 10 5 8 of this title;
3. Act as a Land Use Authority as provided in this title; and
4. Advise the City Council on matters requested by the Council, including but not limited to, programs for public improvements and the financing thereof

D. Organization And Procedure: The Planning Commission shall be organized and exercise its powers and duties as follows

- 1 The Planning Commission shall select one member as Chair to oversee the proceedings and activities of the Planning Commission and one member as Vice-Chair to act in the absence of the Chair. The Chair and Vice Chair shall serve for a term of one year and may be reelected for successive terms.
2. The Planning Commission shall adopt policies and procedures, consistent with the provisions of this title and applicable law, to govern the conduct of its meetings, the processing of applications, and for any other purpose considered necessary for the functioning of the Planning Commission. Such policies and procedures shall be approved by the City Council before taking effect.
3. The Planning Commission shall hold regular meetings and any necessary public hearings each month as specified in Title 2 of this Code, in the Herriman Community Center Building located at 5355 W. Herriman Main Street, Herriman, Utah, unless otherwise changed by the Planning Commission as the need may arise and permitted by law
  - a All Planning Commission meetings and public hearings shall be held after regular working hours of the City.
  - b. Such meetings and public hearings shall be noticed and held in accordance with the Open and Public Meetings Act, Utah Code section 52-4-1, et seq., and section 10-5-5 of this title.
- 4 No official business shall be conducted by the Planning Commission unless a quorum of its members is present.
  - a. Four (4) members of the Planning Commission shall constitute a quorum.
  - b. The minimum number of yes votes required for the Planning Commission to take any action shall be the majority of members present, unless otherwise prescribed by law.
- 5 The Planning Commission shall transmit reports of its official acts to the City Council
- 6 Written minutes and a recording of Planning Commission meetings which are required by the Utah Open and Public Meetings Act, Utah Code section 52-4-1, et seq., shall be filed in the Office of the City Recorder. Such records shall be available for public review and access in accordance with the Government Records Access and Management Act, Utah Code section 63G-2-101, et seq.
- 7 The City and its authorized agents may enter upon any land at reasonable times to make examinations and surveys pertinent to the:
  - a. Preparation of the General Plan; or

## **Attachment B**

### **Planning Commission Rules of Procedure Amendments**



## **HERRIMAN PLANNING COMMISSION RULES OF PROCEDURE**

These Rules and Procedures (“Rules of Procedure”) shall govern the proceedings of the Herriman Planning Commission (“Commission”) ~~and, They~~ shall be consistent with applicable provisions of the Utah Code (“Utah Code”) and Herriman Code of Ordinances ~~2017~~ (“Herriman Ordinances”).

### **I. Authority and Duties**

The Commission shall act on all planning matters that arise within the jurisdiction of Herriman (“City”) as required or permitted by the Utah Code ~~and~~ or Herriman Ordinances.

### **II. Membership**

Section 1. Appointment of Members and Participation– Regular and ~~alternative~~ Alternate Members of the Commission (“Members”) shall be appointed as provided in the Herriman Ordinances. ~~Alternative~~ Alternate Members may participate as a voting Member of the Commission upon the request of the Chair on a rotation basis when a ~~regular~~ Regular Member is absent ~~and the term~~ Members shall also include any alternative Member who is thus participating. Alternate Members may fully participate in all matters before the Commission, whether in a voting or non-voting capacity, during all meetings.

Section 2. Rights of Members– All Members, including the Chair, shall be entitled to one vote on all matters properly brought before the Commission for action unless otherwise restricted by Herriman Ordinances or these rules. Proxy votes shall not be permitted, and Members must be present to vote unless otherwise allowed by a duly adopted policy on electronic meetings.

Section 3. Secretary - City Staff (i.e., City Recorder or designee) shall serve as secretary of the Planning Commission.

Section 4. Members’ Terms– The terms of ~~regular~~ Regular and ~~alternate~~ Alternate Members shall be as set forth in the Herriman Ordinances.

Section 5. Training – Within three (3) months of being first appointed, newly appointed Members should meet with City Staff to review, among other things, the Rules of Procedure and the General Plan. All new members shall also be required to attend a Land Use 101 training with the Utah League of Cities and Towns within the first six (6) months of being appointed.

All Members should attend any additional training sessions as scheduled from time to time by City Staff. This should shall include a minimum of four (4) hours of training each year, including a minimum of one (1) hour of annual training on the general powers and duties of the Commission in Title 10 of City Code and the Municipal Land Use, Development, and Management Act in State Code. Failure to comply with attending any required training may result in the removal of the Member from the Commission.

Section 6. Attendance – Members shall regularly attend Commission meetings.



Section 7. Member Responsibilities – As a Member of the Commission, each ~~member~~Member shall be responsible to:

1. Read and study the agenda, staff reports, and all attached documents prepared by City Staff so that they are fully informed about each application prior to the scheduled Commission meeting.
2. Act in a courteous and respectful manner to their fellow Members, City Staff, applicants, and the public, during all meetings.
3. Attend Commission meetings, including any joint work meetings, and arrive on time.

Section 8. Removal Proceedings – Removal from the Commission shall be as set forth in the Herriman Ordinances.

Section 9. Vacancies – A Member may resign at any time by giving written notice of such resignation to the Mayor, Chair, and City Staff. Resignations shall be recorded in the meeting minutes. Any vacancy during a Member's term shall be filled as set forth in Herriman Ordinances.

Section 10. Compensation and Reimbursement – Members shall receive compensation for their services and reimbursement for expenses as determined by City Council.

Section 11. Annual Review – The Mayor and Planning Commission Chair may meet annually with each Member for a performance evaluation.

### III. Officers

Section 1. Election of Officers – As the first order of business at the first regularly scheduled Commission meeting held in August, the Commission shall hold elections for the positions of Chair and Vice Chair from among ~~regular~~Regular Members by a majority vote of the Members<sup>2</sup> present.

Section 2. Officer Terms – Officers may serve successive terms.

Section 3. Officers Duties

1. The Chair Shall:
  - a. Serve as the Presiding Officer of the Commission
  - b. Implement the Rules of Procedure
  - c. Coordinate with ~~the Supporting Agency~~ staff City Staff to provide an agenda for each public meeting; and ensure the timely delivery of reports and other relevant information to the Commission for review
  - d. Execute all official documents and letters of the Commission
  - e. Identify and bring before the Commission such policy matters as are within the purview of the Commission
  - f. Conduct Attend and participate in joint work meetings with the City Council
2. The ~~Vice~~Vice-Chair Shall:
  - a. Assist the Chair in all necessary capacities



- b. Assume the duties and responsibilities for the Chair in all instances where the Chair is ~~not un~~available or unable to carry out the duties and responsibilities.
- 3. The Secretary Shall:
  - a. Take written minutes, and post all agendas and meeting activities as required by Utah Code. ~~The Secretary in consultation with the Chair shall create the agenda for each meeting and shall~~ In consultation with City Staff, the Secretary shall create the agenda for each meeting and send ~~an~~the agenda to the Members of the Commission. Additional items may be placed on the business meeting section of the agenda by Members of the Commission or City Staff, as provided below.

Section 4. Chair *pro tempore* – In the absence or incapacity of both the Chair and the Vice Chair for a Commission meeting, the Members present at the meeting shall elect a Chair *pro tempore* to serve as Presiding Officer only for that meeting. Alternate Members shall not serve as Chair *pro tempore*.

#### **IV. Meetings of Members**

Section 1. A Quorum shall consist of a majority of its Members and shall be necessary to conduct any business of the Commission.

Section 2. Adherence to City, State, and Federal Law – Except as provided herein, all meetings shall be generally guided by Robert's Rule of Order-Simplified. With respect to matters of interpretation or applicability of these Rules of Procedure, or ~~the~~ applicability of ~~the~~ Robert's Rules of Order-Simplified, a determination by a majority of the Commission in attendance shall control. All meetings shall adhere to the Utah Open Meetings Act, and the Government Records Access Management Act.

Section 3. Regular Meetings – Meeting locations shall be publicly noticed and held each month. Annual notice of meeting dates shall be noticed as required by Utah Code. In addition, dates and times of the meeting shall be posted as required by Utah Code.

Section 4. Special Meetings – Special meetings may be called by the Chair or City Staff, with the consent of the Chair, at any time, provided that a preferred seventy-two (72) hour is given to each Member before the meeting is held and notice is given as required by Utah Code. If permissible by Utah Code and Herriman Ordinances, a shorter notice may be considered when the Chair or City Staff determines a special meeting is in the best of the City and its residents. If needed, the Commission may also conduct site visits or field research during a special meeting.

Section 5. Meeting Cancellation – Notice of cancellation of a meeting shall be posted as required by Utah Code. If a meeting is rescheduled, the new meeting time, date, and location shall be posted as required by Utah Code.

#### **V. Subcommittees**

The Chair may create subcommittees as deemed necessary. Members of subcommittees shall be Commission Members.



## VI. Meeting Notice and Agenda

Section 1. The Planning Commission, through the City Planning Staff, shall, insofar as practical, mail notices of the first meeting at which ~~an application for a conditional use or the first a~~ public hearing for a ~~general plan subdivision or~~ zoning amendment is to be considered to all property owners appearing on the latest plat ~~data received from in~~ the Salt Lake County Recorder's Office ~~for lots or parcels located~~ within a 300-foot radius ~~(or larger if deemed necessary by City Staff)~~ of the premises affected by the application. Compliance with this subparagraph shall not be a "condition precedent" ~~to for~~ proper legal notice, and no hearing or action taken thereon shall be deemed invalid or illegal because of ~~the failure to an error in mailing~~ the notices provided for in this paragraph.

Section 2. Whenever a public hearing is held on any ~~subdivision ordinance change or~~ general plan ~~or zoning~~ amendment, ~~or other applicable land use request application~~, notice shall be published in accordance with Utah law and the requirements of the Herriman City Land ~~Use Regulations Development Code~~.

~~Section 3. Applicants or interested parties should submit written materials on the Thursday by noon, prior to the scheduled meeting to allow the Planning Commission adequate time to review the materials.~~

~~Section 3. Applicants should submit a completed land use application and all required electronic or physical materials at least twenty-one (21) days before a regularly scheduled public meeting to allow City Staff and the Planning Commission adequate time to process and review the information. However, due to project complexity or administrative requirements, a completed application does not guarantee placement on the next meeting agenda.~~

~~Section 4. Interested parties should submit written public comments on an agenda item at least seven (7) days before a regularly scheduled public meeting to allow City Staff time to process and review the comments. However, all public hearing comments received by City Staff before the meeting will be forwarded to the Planning Commission for consideration and included in the public record.~~

## VII. Procedures

### A. Business Work Meeting

Section 1. The Commission shall conduct a ~~business work~~ meeting as a component of each regularly scheduled meeting. The City Staff, or the Commission, by a majority vote, may adjust the scheduled time as needed. Members of the public may attend such meetings, but will not participate unless invited to do so by the Chair. ~~If needed, the Commission may also conduct site visits or field research during a work meeting.~~

Section 2. The Commission shall review ~~and discuss the meeting agenda; however, Members should refrain from stating a conscious decision on a pending land use application during the work meeting, correct, and approve of the minutes from the previous meeting.~~ Additional ~~work meeting~~ items may be added to the ~~business meeting section of the~~ agenda by City Staff, ~~the~~ Chair, or ~~Members of~~ the Commission, by a majority vote. The Commission may also discuss and render decisions on policy issues and administrative matters that do not require public input.



Special presentations, reports, and updates from ~~the~~ City Staff that do not require a decision may also be made discussed during the work meeting. ~~During a business meeting, there shall be no discussion of an application, request, or approval scheduled for the regular meeting.~~

## B. Regular Meeting Procedures

Section 1. Order – The order of business at the regular meeting shall follow the noticed agenda, which may contain a consent agenda. ~~The~~ However, the Chair, with the consent of the Commission, by a majority vote, or upon recommendation of City Staff, may consider amending matters out of the agenda order.

Section 2. Decisions – A matter for decision will be placed before the Commission by motion made by any Member present at the meeting. The Chair shall not make motions before the Commission except in the absence of a response from other Members to an invitation by the Chair that a motion on a pending matter would be in order. Any Member may second a motion. Alternates may make motions and second motions only if they are serving as an acting Member of the Commission at the meeting because of the absence of a ~~regular~~ Regular Member.

Section 3. ~~No Member shall be permitted to vote on any question unless the Member is present when the vote is taken and when the result is announced, and no member shall give their vote to any other person by proxy. A majority vote by the present Members in favor of a motion shall carry the motion. A majority vote by the present Members in favor of a motion shall carry the motion. No member of the Commission shall be permitted to vote on any question unless the member shall be present when the vote is taken and when the result is announced. No member shall give his/her proxy to any other person.~~

Section 4. Any member abstaining from a vote may remain seated at the table and participate in the discussion. ~~- Reasons for abstention must be stated at the time of the abstention, and such reason shall not be considered a conflict of interest.~~

Section 5. The Chair, or Vice-Chair in the absence of the Chair, shall vote only in case of a tie on rezone, conditional use, and subdivision matters unless his or ~~her~~ presence at the meeting is required to constitute a quorum in which case he or ~~she~~ shall be a voting member on such matters. ~~- The Chair shall be a voting member vote~~ on all other matters before the Planning Commission.

Section 6. Following a seconded motion, the Chair may ask each Member by name to verbally pronounce their ~~name and~~ vote, and the Secretary shall record each ~~individual~~ vote in the written minutes as an “aye” for “yes” and a ~~or~~ “nay” for “no.”

Section 7. No Member shall be permitted to change ~~his/her~~ their vote after the decision is announced by the Chair.

## C. Procedures for Applications

### Section 1. Application Public Hearing Procedure

1. Any person or entity may appear in person or be represented by an authorized agent at any meeting of the Commission



2. Unless altered by the Chair, the order of the procedure at a public hearing on an application shall be:

- a. Presentation of the application by City Staff, including its recommendations and a summary of pertinent written comments and reports concerning the application
- b. The applicant's presentation, not to exceed fifteen (15) minutes
- c. Any group representing the area in which the subject property is located, not to exceed five (5) minutes
- d. Persons other than the applicant in favor of, or not opposed to, or in opposition to, the application, not to exceed three (3) minutes per person
- e. Rebuttal by the applicant as necessary to respond to new issues raised by other parties, not to exceed five (5) minutes
- f. Surrebuttal may be allowed at the discretion of the Chair.

## Section 2. Application Public Hearing Rules

1. Each speaker, before talking, shall give his their name and if desired his, if desired, their address.
2. Except for requested accommodations for accessibility or interpretation, Only one speaker is permitted before the Commission at a time unless otherwise permitted by the Chair.
3. The discussion must be confined to essential points stated in the application bearing on the desirability or undesirability of the application and is not a time for debate regarding the applications.
4. The Chair may cease any presentation or information that has already been presented and acknowledge that it has been noted in the public record.
5. No personal attacks shall be indulged in by either side, and such action shall be sufficient cause for stopping the speaker from proceeding.
6. No applause or public outbursts shall be permitted.
7. The Chair or City Staff may request police support to remove offending individuals who refuse to abide by these rules.

Section 3. Discussion and Vote – After all the presentations have been made, the Chair may shall request or entertain a motion to close the public hearing or agenda item. Members may continue to discuss the application among the Commission. Following this discussion on the application, a motion must be made and seconded, which may include; Approval, Approval with Conditions, Denial, a Recommendation to the Council (as appropriate), or Continuation of the item with or without a future meeting date.



Section 4. Decisions – A decision of the Commission on an application shall be documented in writing by the Secretary and City Staff and shall include reasons for the decision.

### **VIII. Ethics and Conflicts of Interest**

Section 1. Compliance -All Members shall abide by Utah Code and, annually complete any necessary volunteer forms, documents, and training.

Section 2. Voting and Recusal – A member of the Commission who has a conflict of interest as defined by Utah Code and/or Herriman Ordinances shall declare the conflict of interest as required by Utah Code and recuse themselves from the agenda item relating to the conflict of interest. The Chair shall announce the recusal for the record. After declaring a conflict of interest, a Planning Commission member shall leave the room and not participate in the discussion andor vote on the matter, nor attempt to use his/hertheir influence with other Commissioners before, during, or after the meeting.

Section 3. - Ex Parte Communications – No member of the Commission shall have any ex parte discussion regarding any administrative or legislative land use application or re-zone application pending before the Commission.

1. Ex parte communication means any communication, including but not limited to electronic or social media communication, with interested parties of an administrative or legislative land use application or re-zone application pending before the Commission prior to the Commission reaching a final decision.
2. An administrative land use application means any land use application where-by Utah Code or Herriman Ordinances recognizes the Commission is-as the final decision-maker.
3. A re-zone legislative land use application means any land use application where-by Utah Code or Herriman Ordinance recognize the City Council is-as the final decision-maker and is regulatory in nature or when adopting or amending a general plan and related elements.

### **IX. Amendments and Adoption**

#### A. Adoption and Amendment Procedure

These Rules of Procedure must be reviewed and approved by the City Council before they become effective and may be amended upon approval by the Council.

Approved by the Council this \_\_\_\_\_ day of March 2023.

HERRIMAN

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Mayor Lorin Palmer

ATTEST:

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Jackie Nostrum, City Recorder

## **Attachment C**

### **Planning Commission Rules of Ethical Conduct Amendments**

# **HERRIMAN CITY PLANNING COMMISSION**

## **RULES OF ETHICAL CONDUCT**

### **I. Conflict of Interest**

A Planning Commissioner to whom some private benefit may come as the result of a Planning Commission action should not participate in~~should not be a participant in the~~that same action. Furthermore, all Members of the Planning Commission shall ensure compliance with the following rules of ethical conduct:

- A. The private benefit may be direct or indirect; create a material or personal gain; or provide an advantage to relations, friends, or ~~to~~ groups and associations ~~which that~~ hold some share of a person's loyalty. However, membership ~~itself~~ in a group or organization shall not be considered a conflict of interest as to Planning Commission action concerning such group or association unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.
- B. A Planning Commissioner experiencing, in his or~~or~~ her opinion, a conflict of interest, should declare his or~~or~~ her interest publicly, abstain from voting on the action, and excuse themselves from the room during consideration of the action. They should not discuss the matter privately with any other Commissioner. The vote of the Planning Commissioner experiencing a conflict of interest who fails to disqualify themselves shall be disallowed.
- C. A conflict of interest may exist under these rules, although a Planning Commissioner may not believe ~~he has~~they have an actual conflict; therefore, a Planning Commissioner who has any question as to whether a conflict of interest exists under these rules should raise the matter with the other Planning Commissioners and the City Attorney ~~in order~~so that a determination may be made as to whether a conflict of interest exists.
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### **II. Gifts and Favors**

Gifts, favors, or advantages must not be accepted if ~~they are~~ offered because the receiver holds a position of public responsibility.

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lunches, calendars, or office bric-a-brac are often, but not always, acceptable. In cases of doubt, refuse. In cases of marginal doubt, refuse.

### III. Treatment of Information

It is important to discriminate between planning information that belongs to the public and planning information that does not.

- A. Reports and official records of a public planning agency must be open on an equal basis to all inquiries. Planning advice should not be furnished to some unless it is available to all.
- B. Information ~~of on~~ private affairs that is learned in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action -- such as a change in zone classification or approval of a plan -- is requested with respect to them. Only then is a disclosure of relevant information proper.
- C. Information contained in studies that are in progress in a planning agency should not be divulged except in accordance with established agency policies on the release of its studies. A public planning agency is not required to do its thinking out loud in public.
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### IV. Political Activity

Membership in a political party and contributions to its finances or activities are matters of individual decision that should neither be required of, nor prohibited to, Planning Commissioners.

- A. The extent of participation in political activities should be governed by professional judgment as well as limited by an applicable civil service law or regulation.
- B. The powers of Planning Commissioners must not be exercised, nor their duties performed, in any way that will create special advantages for a political party. The special position of a Planning Commissioner should not be used to obtain contributions or support for a political party and should not be used to obtain partisan favors.
- C. Partisan debate of a community's planning program, and the consideration of planning in a party's platform is proper. Planning officials should, however, give all political parties equal access to information.

## **Attachment D**

### **Electronic Meeting Policy**

## ELECTRONIC BOARD MEETING POLICIES AND PROCEDURES

- I. **Policy:** This shall be known as the Herriman City (the “City”) Electronic Board Meeting Policy (the “Policy”). This policy shall cover the City Council, Planning Commission and/or other City Boards and Commissions (the “Board”)
- II. **Electronic Meetings:**
- A. **General:** A Board meeting may be convened and conducted by means of telephonic, telecommunications, or computer conference by satisfying the requirements of Utah Code Ann. § 52-4-207.
- B. **Participation:** The primary purpose for holding electronic meetings is to enable members of the Board to participate in the meeting electronically. Nevertheless, provision may be made for a member of the public to monitor an open meeting of the Board through electronic means provided that the member of the public so requests in writing at least three days prior to the meeting, and further provided that the City will not be required to acquire any equipment, facilities or expertise which the City does not already possess in order to accommodate the request. Notwithstanding anything to the contrary in this Policy, with the exception of a public hearing, the general public and other interested persons need not be provided an opportunity to participate in, as opposed to attend and monitor, an electronic meeting.
- C. **Anchor Location:** The Anchor Location will be designated at the City Council Chambers located in the City Offices located at 5355 West Herriman Main Street, additional anchor location(s) may be established as needed. A quorum of the Board need not be present at the anchor location for an electronic meeting to be held. As few as one Board Member may be present at the anchor location, as long as all other requirements of this Policy and of Utah Code Ann. §52-4-207 are satisfied for a meeting to be held electronically. The Board Member who would chair the meeting shall be physically present at the anchor location. Space, facilities, and/or other electronic means must be provided so that all interested persons may attend and/or monitor the open portions of the meeting. In addition, if the meeting is a public hearing or allows for public comment, space, facilities and/or electronic means must be provided so that interested persons and the public may attend, monitor and participate in the hearing or comment portion of the meeting.
- D. **Notice:** Not less than 24 hours’ advance public notice, including the agenda, date, time, location, and a description of how the Board Members will be connected to the electronic meeting, will be given for each electronic meeting of the Board by posting a written notice at the principal office of the City and providing written or electronic notice to at least one newspaper of general circulation in the City and by posting the notice on the Utah Public Notice Website created under Utah Code Ann. § 63F-1-701. In addition, the notice must be posted at the anchor location and must be provided to all Board Members at least 24 hours before the meeting. These notice requirements are minimum requirements and are

not to be construed as precluding such additional postings and notifications as may be directed by the Board. In an emergency situation, the requirement to post written notice at the building where the meeting is to be held and/.or at the anchor location may be waived.

- E. **Logistical Considerations:** The Chair, or the Appointed-Chair in the Chair's absence, may determine, based upon logistical considerations that it is not in the best interest of the City to hold an electronic meeting, in which event the meeting will not be held as an electronic meeting. The Chair, or the Appointed-Chair in the Chair's absence, may also restrict the number of separate electronic connections that are allowed for an electronic meeting based on available equipment capacity. The request from a member of the public to participate in a meeting electronically may be denied by the Chair, or Appointed-Chair in the Chair's absence, based on budget, public policy or logistical considerations deemed sufficient by the Chair or Appointed-Chair.
- F. **Conduct of Meeting:** No action may be taken and no business may be conducted at a meeting of the Board unless a quorum, consisting of a simple majority of the members of the Board, is present. A Board Member who is not physically present may nevertheless participate in the meeting through electronic means and be counted toward the required quorum in accordance with Utah Code Ann. § 52-4-207. Any Board Member participating via electronic means may make, second and vote on all motions and participate in the discussion as though present, except that the Board Member who chairs the meeting must be present at the anchor location. If neither the Chair nor the Appointed-Chair is physically present at the anchor location (but there is still a quorum) a Board Member who is physically present at the anchor location will preside over the meeting.

## **Attachment E**

### **Draft Resolution**

**HERRIMAN, UTAH RESOLUTION NO. R -2023**

**A RESOLUTION AMENDING  
THE ADOPTED RULES OF PROCEDURE AND ETHICAL CONDUCT FOR  
THE PLANNING COMMISSION**

**WHEREAS**, the Herriman City Planning Commission (“Commission”) met in a regular work meeting on January 18, 2023, to review the adopted policies of the Commission; and

**WHEREAS**, upon review of the policies, the Commission requested staff to draft policy amendments that reflect recent administrative and legislative changes approved by the City Council (“Council”); and

**WHEREAS**, the Commission met in a regular meeting on March 1, 2023, to consider, among other things, a recommendation to amend the rules of procedure and ethical conduct for the Commission; and

**WHEREAS**, the Commission voted 6-0 on March 1, 2023, to recommend the Council approve amendments to the rules of procedure and ethical conduct for the Commission; and

**WHEREAS**, the Council met in a regular meeting on March 22, 2023, to consider, among other things, a resolution to amend the rules of procedure and ethical conduct for the Commission; and

**WHEREAS**, a copy of the amended rules of procedure and ethical conduct for the Commission is attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that the attached Planning Commission Rules of Procedure and Ethical Conduct as amended be adopted as the rules governing the Commission.

This Resolution assigned no. R \_\_\_\_-2023 shall take effect immediately.

**PASSED AND APPROVED** this 22<sup>nd</sup> day of March 2023.

**HERRIMAN CITY COUNCIL**

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**Lorin Palmer, Mayor**

**ATTEST:**

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**Jackie Nostrom, MMC**  
City Recorder



## **HERRIMAN PLANNING COMMISSION RULES OF PROCEDURE**

These Rules and Procedures (“Rules of Procedure”) shall govern the proceedings of the Herriman Planning Commission (“Commission”). They shall be consistent with applicable provisions of the Utah Code (“Utah Code”) and Herriman Code of Ordinances (“Herriman Ordinances”).

### **I. Authority and Duties**

The Commission shall act on all planning matters that arise within the jurisdiction of Herriman (“City”) as required or permitted by the Utah Code or Herriman Ordinances.

### **II. Membership**

Section 1. Appointment of Members and Participation – Regular and Alternate Members of the Commission (“Members”) shall be appointed as provided in the Herriman Ordinances. Alternate Members may participate as a voting Member of the Commission upon the request of the Chair on a rotation basis when a Regular Member is absent. Alternate Members may fully participate in all matters before the Commission, whether in a voting or non-voting capacity, during all meetings.

Section 2. Rights of Members – All Members, including the Chair, shall be entitled to one vote on all matters properly brought before the Commission for action unless otherwise restricted by Herriman Ordinances or these rules. Proxy votes shall not be permitted, and Members must be present to vote unless otherwise allowed by a duly adopted policy on electronic meetings.

Section 3. Secretary City Staff (i.e., City Recorder or designee) shall serve as secretary of the Planning Commission.

Section 4. Members’ Terms – The terms of Regular and Alternate Members shall be as set forth in the Herriman Ordinances.

Section 5. Training – Within three (3) months of being first appointed, newly appointed Members should meet with City Staff to review, among other things, the Rules of Procedure and the General Plan. All new members shall also be required to attend a Land Use 101 training with the Utah League of Cities and Towns within the first six (6) months of being appointed.

All Members should attend any additional training sessions as scheduled from time to time by City Staff. This shall include a minimum of four (4) hours of training each year, including a minimum of one (1) hour of annual training on the general powers and duties of the Commission in Title 10 of City Code and the Municipal Land Use, Development, and Management Act in State Code. Failure to comply with attending any required training may result in the removal of the Member from the Commission.

Section 6. Attendance – Members shall regularly attend Commission meetings.



Section 7. Member Responsibilities – As a Member of the Commission, each Member shall be responsible to:

1. Read and study the agenda, staff reports, and all attached documents prepared by City Staff so that they are fully informed about each application prior to the scheduled Commission meeting.
2. Act in a courteous and respectful manner to their fellow Members, City Staff, applicants, and the public, during all meetings.
3. Attend Commission meetings, including any joint work meetings, and arrive on time.

Section 8. Removal Proceedings – Removal from the Commission shall be as set forth in the Herriman Ordinances.

Section 9. Vacancies – A Member may resign at any time by giving written notice of such resignation to the Mayor, Chair, and City Staff. Resignations shall be recorded in the meeting minutes. Any vacancy during a Member's term shall be filled as set forth in Herriman Ordinances.

Section 10. Compensation and Reimbursement – Members shall receive compensation for their services and reimbursement for expenses as determined by City Council.

Section 11. Annual Review – The Mayor and Planning Commission Chair may meet annually with each Member for a performance evaluation.

### **III. Officers**

Section 1. Election of Officers – As the first order of business at the first regularly scheduled Commission meeting held in August, the Commission shall hold elections for the positions of Chair and Vice Chair from among Regular Members by a majority vote of the Members present.

Section 2. Officer Terms – Officers may serve successive terms.

Section 3. Officers Duties

1. The Chair Shall:
  - a. Serve as the Presiding Officer of the Commission
  - b. Implement the Rules of Procedure
  - c. Coordinate with City Staff to provide an agenda for each public meeting and ensure the timely delivery of reports and other relevant information to the Commission for review
  - d. Execute all official documents and letters of the Commission
  - e. Identify and bring before the Commission such policy matters as are within the purview of the Commission
  - f. Attend and participate in joint work meetings with the City Council
2. The Vice-Chair Shall:
  - a. Assist the Chair in all necessary capacities



- b. Assume the duties and responsibilities for the Chair in all instances where the Chair is unavailable or unable to carry out the duties and responsibilities.
- 3. The Secretary Shall:
  - a. Take written minutes, and post all agendas and meeting activities as required by Utah Code. In consultation with City Staff, the Secretary shall create the agenda for each meeting and send the agenda to the Members of the Commission. Additional items may be placed on the business meeting section of the agenda by Members of the Commission or City Staff, as provided below.

Section 4. Chair *pro tempore* – In the absence or incapacity of both the Chair and the Vice Chair for a Commission meeting, the Members present at the meeting shall elect a Chair *pro tempore* to serve as Presiding Officer only for that meeting. Alternate Members shall not serve as Chair *pro tempore*.

#### **IV. Meetings of Members**

Section 1. A Quorum shall consist of a majority of its Members and shall be necessary to conduct any business of the Commission.

Section 2. Adherence to City, State, and Federal Law – Except as provided herein, all meetings shall be generally guided by Robert's Rule of Order-Simplified. With respect to matters of interpretation or applicability of these Rules of Procedure, or the applicability of Robert's Rules of Order-Simplified, a determination by a majority of the Commission in attendance shall control. All meetings shall adhere to the Utah Open Meetings Act and the Government Records Access Management Act.

Section 3. Regular Meetings – Meeting locations shall be publicly noticed and held each month. Annual notice of meeting dates shall be noticed as required by Utah Code. In addition, dates and times of the meeting shall be posted as required by Utah Code.

Section 4. Special Meetings – Special meetings may be called by the Chair or City Staff, with the consent of the Chair, at any time, provided that a preferred seventy-two (72) hour is given to each Member before the meeting is held and notice is given as required by Utah Code. If permissible by Utah Code and Herriman Ordinances, a shorter notice may be considered when the Chair or City Staff determines a special meeting is in the best of the City and its residents. If needed, the Commission may also conduct site visits or field research during a special meeting.

Section 5. Meeting Cancellation – Notice of cancellation of a meeting shall be posted as required by Utah Code. If a meeting is rescheduled, the new meeting time, date, and location shall be posted as required by Utah Code.

#### **V. Subcommittees**

The Chair may create subcommittees as deemed necessary. Members of subcommittees shall be Commission Members.



## **VI. Meeting Notice and Agenda**

Section 1. The Planning Commission, through the City Planning Staff, shall, insofar as practical, mail notices of the first meeting at which a public hearing for a general plan zoning amendment is to be considered to all property owners appearing on the latest plat data received from the Salt Lake County Recorder's Office for lots or parcels located within a 300-foot radius (or larger if deemed necessary by City Staff) of the premises affected by the application. Compliance with this subparagraph shall not be a "condition precedent" for proper legal notice, and no hearing or action taken thereon shall be deemed invalid or illegal because of an error in mailing the notices provided for in this paragraph.

Section 2. Whenever a public hearing is held on any general plan or zoning amendment, or other applicable land use request, notice shall be published in accordance with Utah law and the requirements of the Herriman City Land Development Code.

Section 3. Applicants should submit a completed land use application and all required electronic or physical materials at least twenty-one (21) days before a regularly scheduled public meeting to allow City Staff and the Planning Commission adequate time to process and review the information. However, due to project complexity or administrative requirements, a completed application does not guarantee placement on the next meeting agenda.

Section 4. Interested parties should submit written public comments on an agenda item at least seven (7) days before a regularly scheduled public meeting to allow City Staff time to process and review the comments. However, all public hearing comments received by City Staff before the meeting will be forwarded to the Planning Commission for consideration and included in the public record.

## **VII. Procedures**

### **A. Work Meeting**

Section 1. The Commission shall conduct a work meeting as a component of each regularly scheduled meeting. The City Staff, or the Commission, by a majority vote, may adjust the scheduled time as needed. Members of the public may attend such meetings but will not participate unless invited to do so by the Chair. If needed, the Commission may also conduct site visits or field research during a work meeting.

Section 2. The Commission shall review and discuss the meeting agenda; however, Members should refrain from stating a conscious decision on a pending land use application during the work meeting. Additional work meeting items may be added to the agenda by City Staff, the Chair, or Members of the Commission by a majority vote. The Commission may also discuss and render decisions on policy issues and administrative matters that do not require public input. Special presentations, reports, and updates from City Staff that do not require a decision may also be discussed during the work meeting.



## B. Regular Meeting

Section 1. Order – The order of business at the regular meeting shall follow the noticed agenda, which may contain a consent agenda. However, the Chair, with the consent of the Commission, by a majority vote, or upon recommendation of City Staff, may consider amending the agenda order.

Section 2. Decisions – A matter for decision will be placed before the Commission by motion made by any Member present at the meeting. The Chair shall not make motions before the Commission except in the absence of a response from other Members to an invitation by the Chair that a motion on a pending matter would be in order. Any Member may second a motion. Alternates may make motions and second motions only if they are serving as an acting Member of the Commission at the meeting because of the absence of a Regular Member.

Section 3. No Member shall be permitted to vote on any question unless the Member is present when the vote is taken and when the result is announced, and no member shall give their vote to any other person by proxy. A majority vote by the present Members in favor of a motion shall carry the motion.

Section 4. Any member abstaining from a vote may remain seated at the table and participate in the discussion. Reasons for abstention must be stated at the time of the abstention, and such reason shall not be considered a conflict of interest.

Section 5. The Chair, or Vice-Chair in the absence of the Chair, shall vote only in case of a tie on rezone, conditional use, and subdivision matters unless his or her presence at the meeting is required to constitute a quorum in which case he or she shall be a voting member on such matters. The Chair shall vote on all other matters before the Planning Commission.

Section 6. Following a seconded motion, the Chair may ask each Member by name to verbally pronounce their vote, and the Secretary shall record each vote in the written minutes as an “aye” for “yes” and a “nay” for “no.”

Section 7. No Member shall be permitted to change their vote after the decision is announced by the Chair.

## C. Procedures for Applications

### Section 1. Application Public Hearing Procedure

1. Any person or entity may appear in person or be represented by an authorized agent at any meeting of the Commission
2. Unless altered by the Chair, the order of the procedure at a public hearing on an application shall be:



- a. Presentation of the application by City Staff, including its recommendations and a summary of pertinent written comments and reports concerning the application
- b. The applicant's presentation, not to exceed fifteen (15) minutes
- c. Any group representing the area in which the subject property is located, not to exceed five (5) minutes
- d. Persons other than the applicant in favor of, or not opposed to, or in opposition to, the application, not to exceed three (3) minutes per person
- e. Rebuttal by the applicant as necessary to respond to new issues raised by other parties, not to exceed five (5) minutes
- f. Surrebuttal may be allowed at the discretion of the Chair.

## Section 2. Application Public Hearing Rules

1. Each speaker, before talking, shall give their name and, if desired, their address.
2. Except for requested accommodations for accessibility or interpretation, only one speaker is permitted before the Commission at a time unless otherwise permitted by the Chair.
3. The discussion must be confined to essential points stated in the application bearing on the desirability or undesirability of the application and is not a time for debate regarding the applications.
4. The Chair may cease any presentation or information that has already been presented and acknowledge that it has been noted in the public record.
5. No personal attacks shall be indulged in by either side, and such action shall be sufficient cause for stopping the speaker from proceeding.
6. No applause or public outbursts shall be permitted.
7. The Chair or City Staff may request police support to remove offending individuals who refuse to abide by these rules.

Section 3. Discussion and Vote – After all the presentations have been made, the Chair shall request or entertain a motion to close the public hearing or agenda item. Members may continue to discuss the application among the Commission. Following this discussion on the application, a motion must be made and seconded, which may include; Approval, Approval with Conditions, Denial, a Recommendation to the Council (as appropriate), or Continuation of the item with or without a future meeting date.

Section 4. Decisions – A decision of the Commission on an application shall be documented in writing by the Secretary and City Staff and shall include reasons for the decision.



## **VIII. Ethics and Conflicts of Interest**

Section 1. Compliance – All Members shall abide by Utah Code and annually complete any necessary volunteer forms, documents, and training.

Section 2. Voting and Recusal – A member of the Commission who has a conflict of interest as defined by Utah Code or Herriman Ordinances shall declare the conflict of interest as required by Utah Code and recuse themselves from the agenda item relating to the conflict of interest. The Chair shall announce the recusal for the record. After declaring a conflict of interest, a Planning Commission member shall leave the room and not participate in the discussion or vote on the matter, nor attempt to use their influence with other Commissioners before, during, or after the meeting.

Section 3. Ex Parte Communications – No member of the Commission shall have any ex parte discussion regarding any administrative or legislative land use application pending before the Commission.

1. Ex parte communication means any communication, including but not limited to electronic or social media communication, with interested parties of an administrative or legislative land use application pending before the Commission prior to the Commission reaching a final decision.
2. An administrative land use application means any application whereby Utah Code or Herriman Ordinances recognizes the Commission as the final decision-maker.
3. A legislative land use application means any application whereby Utah Code or Herriman Ordinances recognize the City Council as the final decision-maker and is regulatory in nature or when adopting or amending a general plan and related elements.

## **IX. Amendments and Adoption**

### A. Adoption and Amendment Procedure

These Rules of Procedure must be reviewed and approved by the City Council before they become effective and may be amended upon approval by the Council.

Approved by the Council this \_\_\_\_\_ day of March 2023.

HERRIMAN

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Mayor Lorin Palmer

ATTEST:

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Jackie Nostrum, City Recorder

## **HERRIMAN CITY PLANNING COMMISSION**

### **RULES OF ETHICAL CONDUCT**

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## STAFF REPORT

**DATE:** March 9, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Nathan Cherpesci

**SUBJECT:** Request to Amend the Governing Documents for the Auto Mall and Retail Public Infrastructure District

---

### **RECOMMENDATION:**

Staff Recommends approving the proposed amendment as requested by the Developer.

### **ISSUE BEFORE COUNCIL:**

Does the Council wish to amend the Governing Documents for the Auto Mall and Retail Public Infrastructure District (PID) as requested?

### **BACKGROUND/SUMMARY:**

Last year, the City approved an MDA and PID for the Auto Mall area. At the time the Governing Documents set a maximum amount of debt at \$18,300,000. With increased rates and construction costs, the PID Board requests that we amend the Governing Documents to allow them to incur up to \$28,000,000. In a recent work meeting, the City Council directed staff to return with this item to a regular meeting.

### **DISCUSSION:**

This PID may assess a special tax on participating properties to cover the infrastructure necessary to develop the location. The debt is not an obligation of the City and is the responsibility of the PID. Per the Governing Documents, any amendments must be approved by the City Council. The obligation is only on those properties within the PID.

### **ALTERNATIVES:**

1. Approve the requested amendment to the PID governing document
2. Decline to act and give staff further direction.

**FISCAL IMPACT:**

N/A

**ATTACHMENTS:**

Red Line Version of the Amended Governing Documents.

**AMENDED GOVERNING DOCUMENT  
FOR**

## Prepared

by

Gilmore & Bell, P.C.  
15 West South Temple, Suite 1450  
Salt Lake City, Utah 84101

October 12, 2022

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## **I. INTRODUCTION**

### **A. Purpose and Intent.**

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

### **B. Need for the District.**

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

### **C. Objective of the City Regarding District's Governing Document.**

This Governing Document is an amended version of the governing document originally approved by the City, and is intended by the City and the District to supersede and replace any prior version of the District's Governing Document.

The City's objective in approving ~~the~~this amended Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected on commercial properties for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate commercial property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational activities are allowed, but only through an Interlocal Agreement with the City or other relevant public entity with written consent of the City.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties (or repaid from a combination of Assessments and a mill levy). It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

## II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map and as particularly described in **Exhibit A-2** which are approved by the City for annexation or withdrawal from or into the District upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit C-2**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan, Development Agreement, or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. An infrastructure plan approved by the City Manager or Planning Director shall constitute an Approved Development Plan for purposes of Section V.A.8. For purposes of this Governing Document, the Master Development Agreement dated \_\_\_\_\_, 2022 shall constitute an Approved Development Plan.

Assessment: means (i) the levy of an assessment secured by a lien on property within a District to pay for the costs of Public Improvements benefitting such property or (2) an assessment by a District levied on private property within such District to cover the costs of an energy efficient upgrade, a renewable energy system, or an electric vehicle charging infrastructure, each as may be levied pursuant to the Assessment Act.

Assessment Act: means collectively, (i) Title 11, Chapter 42, Utah Code as may be amended from time to time and (ii) the C-PACE Act.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an *ad valorem* property tax mill levy, and/or collect Assessments.

City: means Herriman City, Utah.

City Code: means the City Code of Herriman City, Utah.

City Council: means the City Council of the City.

C-PACE Act: means title 11, Chapter 42a of the Utah Code, as amended from time to time.

C-PACE Bonds: means bonds, loans, notes, or other structures and obligations of the District issued pursuant to the C-PACE Act, including refunding C-PACE Bonds.

C-PACE Assessments: means assessments levied under the C-PACE Act.

District: means the Auto Mall and Retail Public Infrastructure District.

District Act: means the Local District Act and the PID Act.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a commercial property owner or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map and as particularly described in **Exhibit A-1**.

Initial District Boundary Map: means the map attached hereto as **Exhibit C**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Project: means the development or property commonly referred to as the Herriman Auto Mall Commercial Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

### **III. BOUNDARIES**

The area of the Initial District Boundaries includes approximately 69.3 acres and the total area proposed to be included in the Annexation Area Boundaries is approximately 18.9 acres. A legal description of the Initial District Boundaries and the Annexation Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries and Annexation Area Boundaries is attached hereto as **Exhibit C**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17D-4-201, Utah Code, subject to Article V below.

### **IV. PROPOSED LAND USE**

The District Area consists of mostly undeveloped land. The 2022 estimated assessed valuation of the District Area within the Initial District Boundaries was \$21,253,737. This valuation is solely for purposes of this Governing Document, and at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The District is not anticipated to have any residents at buildout.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is separately approved by the City in accordance with the City Code.

### **V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

#### **A. Powers of the District and Governing Document Amendment.**

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the District Act and other applicable statutes, common law and the Constitution, subject to any limitations set forth herein.

##### **1. Improvements.**

(a) The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

(b) Notwithstanding the foregoing, prior to or contemporaneous with providing for the planning, design, acquisition, construction, installation, relocation, maintenance, and financing of any other Public Improvements the District must have arranged for the financing of the Public Improvements relating to the proposed Herriman Auto Row and Miller Crossing

Drive within the Project, as further identified and described as the Automall Infrastructure Improvements in **Exhibit E** (the “Auto Mall Improvements”).

(c) The estimated costs for the Public Improvements described in **Exhibit E** do not include any costs associated with raising the debt and/or equity required to fund such expenses and are estimates only. These estimates are subject to change based on the final construction plans approved by the City and so long as financing sufficient to build such improvements as set forth the plans approved by the City has been arranged, then the District’s obligation with respect to the Auto Mall Improvements shall be considered satisfied.

2. Reserved.

3. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Public Improvements shall be subject to the ordinary inspection and approval procedures of the City and other governmental entities having proper jurisdiction.

4. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the Districts may acquire completed or partially completed improvements for fair market value as reasonably determined by any one of a surveyor or engineer that such District employs or engages to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

5. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District’s Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Annexation and Withdrawal.

(a) The District shall not include within its boundaries any property outside the District Area without the prior written consent of the City. The City, by approval of this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent

of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, approval of this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

7. Overlap Limitation. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

8. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

9. Total Debt Issuance Limitation. The District shall not issue Debt in excess of an aggregate amount of ~~Eighteen~~Twenty-eight~~three~~ Million Dollars (\$~~18283~~,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District. In addition, any C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the C-PACE Act.

10. Bankruptcy Limitation. All of the limitations contained in the Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under

applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

**11. Governing Document Amendment Requirement.**

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City Council and the District Board approving such amendment.

**B. Preliminary Engineering Survey.**

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, as specified application materials relating to the District and as may be further defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately **FourteenSeventeen** Million **ThreeNine** Hundred **Sixty-eight** Thousand Dollars (**\$14,30017,968,000**).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

**VI. THE BOARD OF TRUSTEES**

A. Board Composition. The Board shall be composed of three Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall be at large seats. Trustee terms shall be staggered with initial terms as follows: Trustees 1 and 3 shall serve an initial term of six (6) years; Trustee 2 shall serve an initial term of four (4) years. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Because there are not anticipated to be any residents within the District, the Board shall continue to be appointed by the City Council and comprised of owners of land or agents and officers of an owner of land within the boundaries of the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee's respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled pursuant to the Local District Act and in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act and in accordance with the PID Act.

E. Compensation. Unless otherwise permitted by the PID Act, only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

## **VII. REGIONAL IMPROVEMENTS**

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

## **VIII. FINANCIAL PLAN**

### **A. General.**

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments, or both, and other legally available revenues. The District shall not issue Debt in excess of an aggregate amount of EighteenTwenty-eighththree Million Dollars (\$~~18238~~,000,000). The total Debt shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. In addition, any C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the C-PACE Act. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon

all Taxable Property within the District and Assessments. The District may also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Voted Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.010 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding Forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

**G. Security for Debt.**

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

**H. District's Operating Costs.**

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Two Hundred Thousand Dollars (\$200,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's operating budget is estimated to be approximately Fifty Thousand Dollars (\$50,000) which is anticipated to be derived from property taxes and other revenues.

**I. Bond and Disclosure Counsel.**

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel with respect to District Bonds.

**IX. ANNUAL REPORT**

**A. General.**

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 210 days following the end of the District's fiscal year.

**B. Reporting of Significant Events.**

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of last day of the prior fiscal year, if changed.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information, if changed;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year, if any;
7. Status of the District's construction of the Public Improvements as of December 31 of the prior year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;
10. Current year budget including a description of the Public Improvements to be constructed in such year;
11. Financial statements of the District for the most recent completed fiscal year (such statements shall be audited if required by bond documents or statute);
12. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and
13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

**X. DISSOLUTION**

Upon an independent determination of each District Board that the purposes for which such District was created have been accomplished, the District shall file petitions for dissolution,

pursuant to the applicable State statutes. In no event shall a dissolution occur until such District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes and disbursed of all assets of such District.

## **XI. DISCLOSURE TO PURCHASERS**

Within thirty (30) days of the Office of the Lieutenant Governor of the State of Utah issuing a certificate of creation, each Board shall record a notice with the recorder of Herriman City, Salt Lake County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (e) if applicable, state that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial developers, and commercial lessors, as applicable, disclose the following information to End Users:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$1,000** for the duration of the District’s Bonds.”

- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

## **XII. INTERLOCAL AGREEMENT**

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District’s activities, is attached hereto as **Exhibit D**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit D** at its first Board meeting after its creation. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit D** at the public hearing approving the Governing Document.

## EXHIBIT A

### Legal Description of the Initial District Boundaries

#### **AMSD: Herriman 73 Partners, LLC Parcel**

**A parcel of land situate within the East half (E-1/2) of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian, located in Herriman City, County of Salt Lake, State of Utah, being more particularly described as follows:**

Beginning at the Northwest corner of Midas Crossing Retail Center Subdivision, said Northwest corner also being a point of intersection with the North line of Myler Crossing Street and the Easterly line of Herriman Main Street, said point being South 89°36'54" East, along the South line of the Southeast Quarter, a distance of 1128.25 feet and North 0°23'06" East, perpendicular to said section line, a distance of 666.60 feet, from the South Quarter corner of said Section 25; and running thence Northwesterly along the arc of a Non-Tangent Curve, said curve turning to the left through an angle of 32° 35' 31", having a radius of 1593.00 feet, and whose long chord bears N 22° 43' 50" W, for a distance of 893.99 feet; thence departing said Easterly line of Herriman Main Street bearing N 51° 06' 17" E, a distance of 284.58 feet; thence S 89° 54' 40" E, a distance of 332.40 feet; thence N 00° 21' 49" E, for a distance of 974.98 feet, to the East-West Center Quarter Line; thence S 89° 38' 17" E for a distance of 197.89 feet, more or less, to a point on the Westerly line of Mountainview, said point being on the arc of a non-tangential curve; thence, more or less, along the arc of said curve turning to the right through an angle of 19° 10' 13", having a radius of 5634.47 feet, and whose long chord bears S 21° 56' 22" E, a distance of 1876.43 feet; thence S 07° 05' 16" E, more or less continuing along said Westerly line, a distance of 100.13 feet; thence S 11° 46' 12" E, more or less, continuing along said Westerly line, a distance of 200.78 feet, to the Northeast corner of Midas Crossing Retail Center Subdivision Phase 1; thence along the lines of said Midas Crossing Retail Center Phase 1 & 2 the following Five (5) Courses: (1) N 89° 59' 56.9" W, a distance of 502.81 feet to the beginning of a non-tangential curve; (2) along the arc of said curve turning to the left through an angle of 03° 42' 26", having a radius of 987.00 feet, and whose long chord bears N 09° 22' 10" W, a distance of 63.85 feet to a point of intersection with a non-tangential line; (3) N 89° 59' 57" W, a distance of 83.63 feet to the beginning of a non-tangential curve; (4) along the arc of said curve turning to the right through an angle of 00° 11' 00", having a radius of 959.00 feet, and whose long chord bears S 11° 56' 27" E, a distance of 3.07 feet to a point of intersection with a non-tangential line; thence N 89° 59' 57" W, a distance of 570.71 feet to the point of beginning.

Contains: 1,663,677 Sq. Ft., or 38.193 Ac.

#### **Midas Crossing Phase 1 & 2:**

**MIDAS CROSSING RETAIL CENTER SUBDIVISION PHASE 1, LOT 2 AND 3**  
LOCATED IN THE SOUTHEAST QUARETER OF SECTION 25 TOWNSHIP 3 SOUTH,  
RANGE 2 WEST, SALT LAKE BASE & MERIDIAN

**LOT 2 AND 3, MIDAS CROSSING RETAIL CENTER SUBDIVISION PHASE 1, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.**

**MIDAS CROSSING RETAIL CENTER SUBDIVISION PHASE 2, LOT 6, 7, 8, 10, 11, AND 12**

LOCATED IN THE SOUTHEAST QUARETER OF SECTION 25 TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN

**LOT 6, 7, 8, 10, 11, AND 12, MIDAS CROSSING RETAIL CENTER SUBDIVISION PHASE 2, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.**

Contains: 358,164 Sq. Ft., or 8.22 Ac.

**Garden Plot:**

**Proposed (LOT 16-17 combined):**

**A parcel of land Situate within the Southeast Quarter of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian, located in Herriman City, County of Salt Lake State of Utah and being more particularly described as follows:**

Beginning at a point in the Northerly line of 12600 South Street, said point being South 89°36'54" East, along the South line of the Southeast quarter, a distance of 745.98 feet and North 0°23'06" East, perpendicular to said section line, a distance of 61.49 feet, from the South Quarter Corner of said Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running S 89° 27' 22" W, along said Northerly line, a distance of 243.84 feet, to the East line of MD&L LLC Parcel 26-25-400-004; thence N 02° 20' 31" W, along said East line, a distance of 702.34 feet, more or less, to the Southerly line of Encore at Miller Crossing Phase 2B, Recorded in Book 2019P, at Page 151 of official records; thence North 83°52'06" East, along said Southerly line, a distance of 487.49 feet, more or less, to a point in the Westerly line of Herriman Main Street, said point being on the arc of a 1447.00 foot non-tangent curve to the right; thence southeasterly along the arc of said curve and said Westerly line of Herriman Main Street, through a central angle of 13°27'49", a distance of 340.02 feet, subtended by a long chord bearing South 6°20'56" East, a distance of 339.24 feet, to a point of tangency; thence South 0°23'43" West, continuing along said Westerly line, a distance of 233.84 feet; thence departing said Westerly line bearing S 89°27'22" W, a distance of 249.58 feet; thence S 0°29'50" E, a distance of 178.15 feet, to the point of beginning.

Contains: 320,928 Sq. Ft., or 7.367 Ac.

**Crescent Piece:**

**MILLER CROSSING HERRIMAN COMMERCIAL LOT 2**

~~LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH,  
RANGE 2 WEST, SALT LAKE BASE & MERIDIAN HERRIMAN CITY, SALT LAKE  
COUNTY, UTAH~~

~~MILLER CROSSING HERRIMAN COMMERCIAL, LOT 2 ACCORDING TO THE  
OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE  
COUNTY RECORDER'S OFFICE.~~

~~Contains: 675,180 Sq. Ft., or 15.50 Ac.~~

## EXHIBIT A-2

### Annexation Area Boundaries

#### Herriman City Parcel

**A parcel of land situate within the East half (E-1/2) of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian, located in Herriman City, County of Salt Lake, State of Utah, being more particularly described as follows:**

Beginning at a point South  $89^{\circ}36'45''$  East, along the South line of the Southeast Quarter, a distance of 1329.95 feet and North  $0^{\circ}23'06''$  East, perpendicular to said section line, a distance of 1670.71 feet, from the South Quarter corner of said Section 25; and running thence N  $89^{\circ} 54' 40''$  W, a distance of 332.40 feet; thence S  $51^{\circ} 06' 17''$  W, a distance of 284.58 feet, more or less, to the Northeasterly line of Herriman Main Street; thence N  $39^{\circ} 35' 19''$  W, more or less along said Northeasterly line, a distance of 442.81 feet, more or less, to the South corner of the Game Pointe Subdivision; thence along the lines of said subdivision the following Four (4) courses: (1) N  $54^{\circ} 11' 11''$  E, a distance of 560.07 feet to the beginning of a non-tangential curve; (2) along the arc of said curve turning to the right through  $01^{\circ} 43' 49''$ , having a radius of 3041.5 feet, and whose long chord bears N  $25^{\circ} 40' 45''$  W, a distance of 91.85 feet to the beginning of a curve; (3) along the arc of said curve turning to the right through an angle of  $17^{\circ} 48' 22''$ , having a radius of 391.50 feet, and whose long chord bears N  $15^{\circ} 54' 38''$  W, for a distance of 121.18 feet; (4) N  $07^{\circ} 00' 26''$  W, a distance of 95.36 feet to the beginning of a non-tangential curve; thence along the arc of said curve turning to the left through an angle of  $33^{\circ} 46' 01''$ , having a radius of 500.00 feet, and whose long chord bears N  $70^{\circ} 52' 13''$  E, a distance of 290.43 feet; thence N  $53^{\circ} 59' 12''$  E, a distance of 245.95 feet; thence S  $00^{\circ} 40' 39''$  W, for a distance of 49.59 feet; thence S  $00^{\circ} 21' 49''$  W, a distance of 974.98 feet to the point of beginning.

Contains: 529,892 Sq. Ft., or 12.165 Ac.

#### 13AC Parcel

**A parcel of land situate within the East half (E-1/2) of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian, located in Herriman City, County of Salt Lake, State of Utah, being more particularly described as follows:**

Beginning at a point South  $89^{\circ}36'54''$  East, along the South line of the Southeast Quarter, a distance of 1330.64 feet and North  $0^{\circ}23'06''$  East, perpendicular to said section line, a distance of 858.23 feet, and North  $0^{\circ}21'05''$  East, a distance of 1787.47 feet from the South Quarter corner of said Section 25; and running thence S  $53^{\circ} 59' 12''$  W, a distance of 245.9462 feet to the beginning of a curve; thence along the arc of said curve turning to the right through  $33^{\circ} 46' 01''$ , having a radius of 500.00 feet, and whose long chord bears S  $70^{\circ} 52' 13''$  W, a distance of 290.43 feet to the beginning of a non-tangential curve; thence along the arc of said curve turning to the right through an angle of  $02^{\circ} 30' 52''$ , having a radius of 500.00 feet, and whose long chord bears S  $89^{\circ} 00' 39''$  W, a distance of 21.94 feet; thence N  $89^{\circ} 43' 56''$  W, a distance of 197.83 feet, to the beginning of

a curve; thence along the arc of said curve turning to the left through an angle of  $39^{\circ} 51' 09''$ , having a radius of 500.00 feet, and whose long chord bears S  $70^{\circ} 20' 30''$  W for a distance of 340.81 feet; thence S  $50^{\circ} 24' 56''$  W, a distance of 191.54 feet, to the Easterly line of Herriman Main Street; thence N  $39^{\circ} 35' 19''$  W, along said Easterly line, a distance of 190.00 feet; thence N  $48^{\circ} 23' 28''$  E, a distance of 662.90 feet, more or less, to a point in the Southerly line of Midas Creek, said point being to the beginning of a non-tangential curve; thence along said Southerly line the following Four (4) courses: (1) the arc of said curve turning to the left through an angle of  $59^{\circ} 43' 49''$ , having a radius of 279.45 feet, and whose long chord bears N  $44^{\circ} 07' 41''$  E, a distance of 278.32 feet to a point of intersection with a non-tangential line; (2) N  $15^{\circ} 57' 39''$  E, a distance of 98.23 feet to the beginning of a non-tangential curve; (3) along the arc of said curve turning to the right through an angle of  $46^{\circ} 15' 37''$ , having a radius of 31.14 feet, and whose long chord bears N  $40^{\circ} 01' 19''$  E for a distance of 24.47 feet to a point of intersection with a non-tangential line; (4) N  $63^{\circ} 40' 47''$  E, a distance of 146.59 feet; thence S  $89^{\circ} 49' 27''$  E, a distance of 243.10 feet; thence S  $35^{\circ} 57' 21''$  E, a distance of 304.58 feet; thence S  $00^{\circ} 39' 24''$  W, a distance of 241.34 feet to the point of beginning.

Contains: 561,647 Sq. Ft., or 12.894 Ac.

**Crescent Piece:**

**MILLER CROSSING HERRIMAN COMMERCIAL LOT 2**

**GAME POINTE SUBDIVISION**

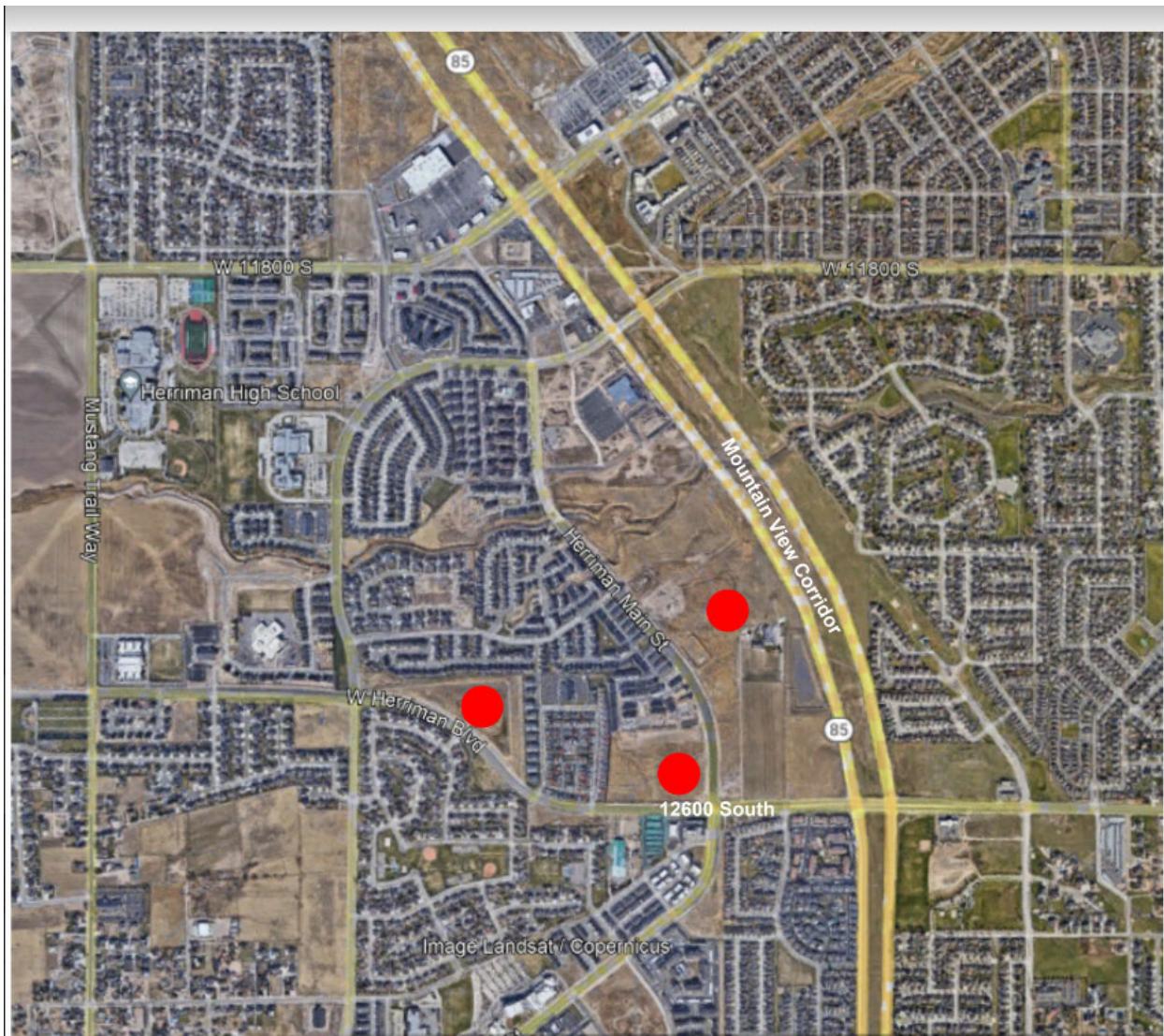
LOCATED IN THE ~~SOUTHEAST QUARETER~~~~SOUTHWEST QUARTER~~ OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, HERRIMAN CITY, ~~E~~SALT LAKE COUNTY, UTAH

**GAME POINTE SUBDIVISION, MILLER CROSSING HERRIMAN COMMERCIAL, LOT 2** ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

Contains: ~~261,385~~675,180 Sq. Ft., or 615.50 Ac.

## EXHIBIT B

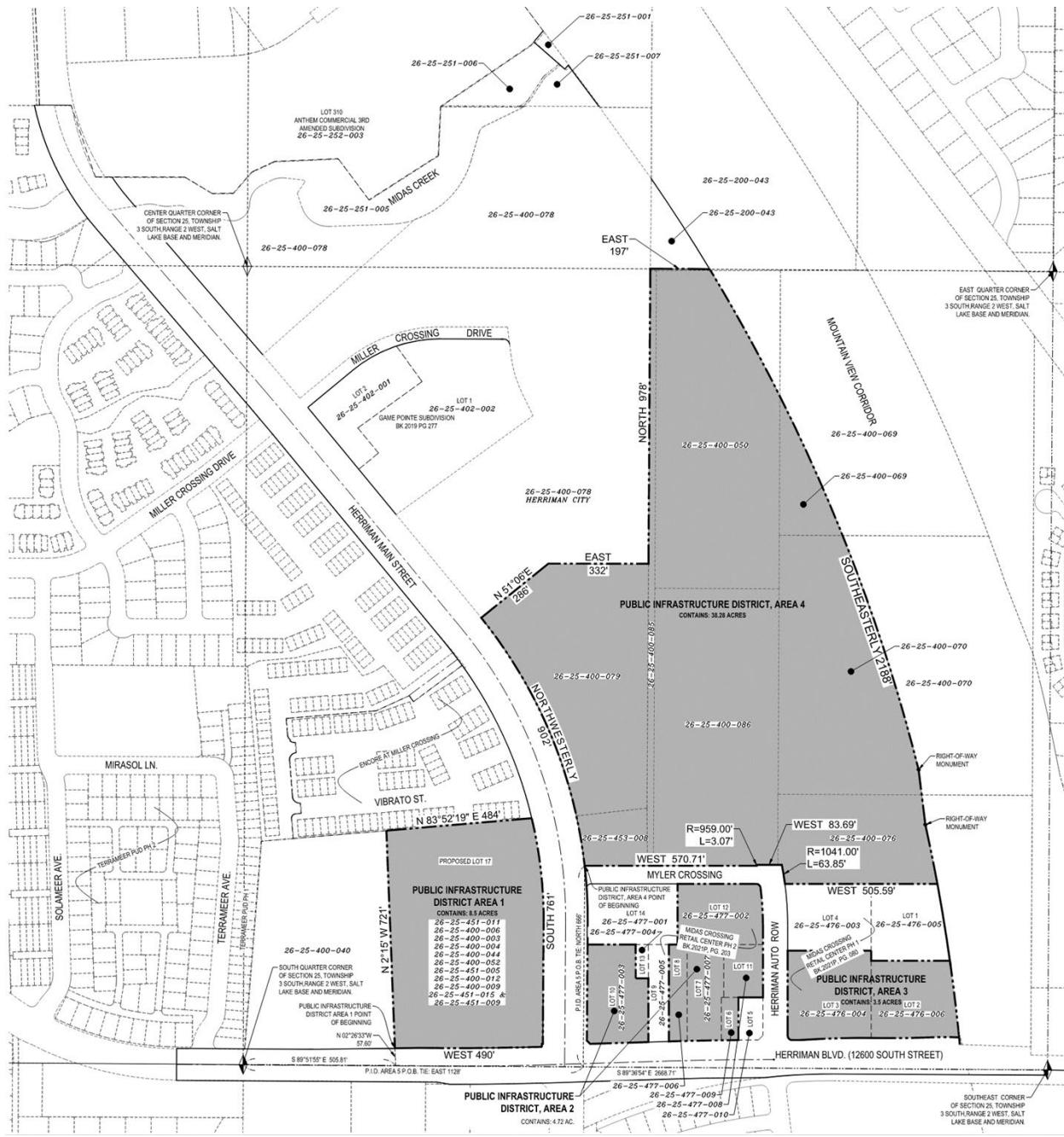
### Herriman City Vicinity Map

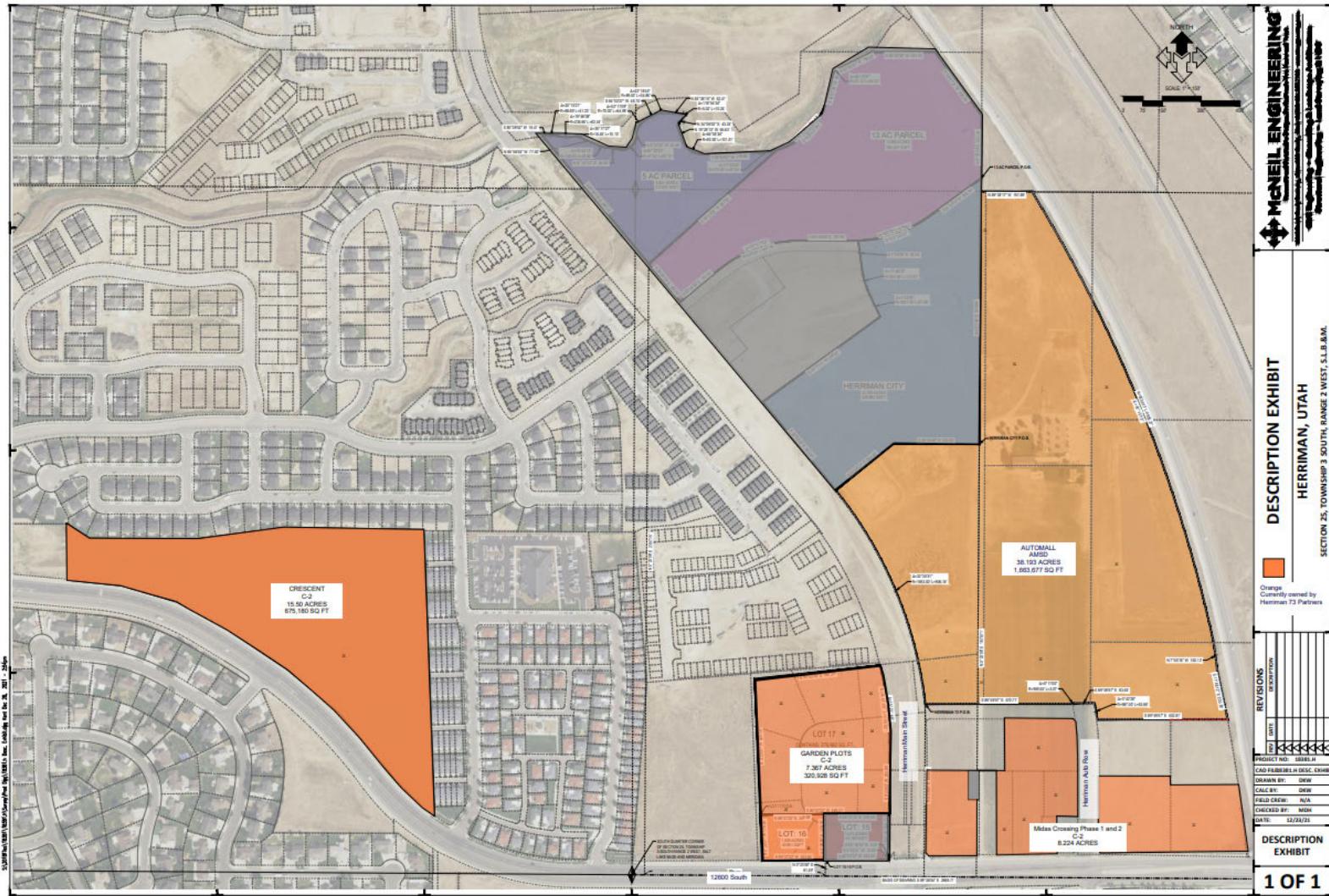


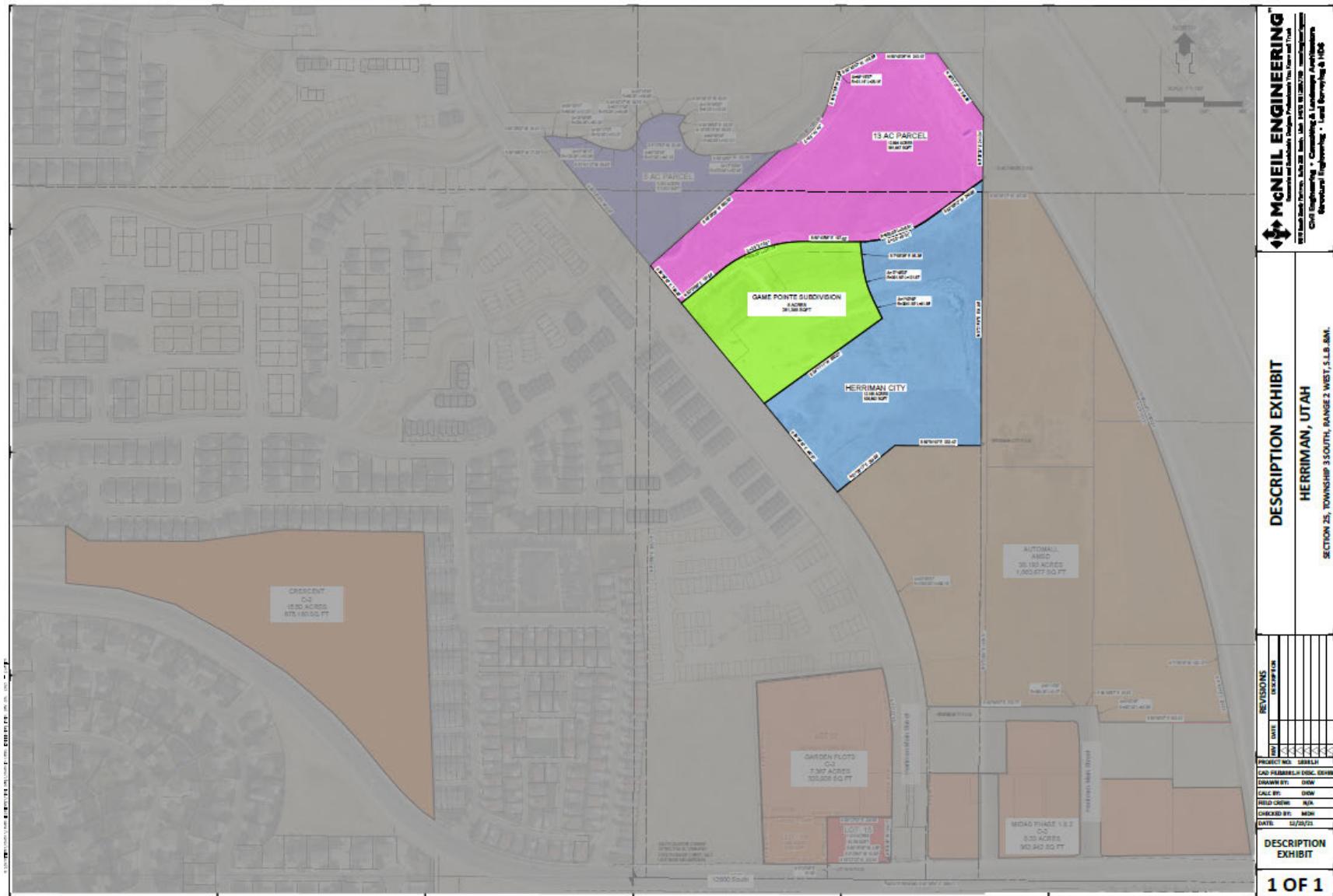
## EXHIBIT C

### Initial District and Annexation Area Boundary Map

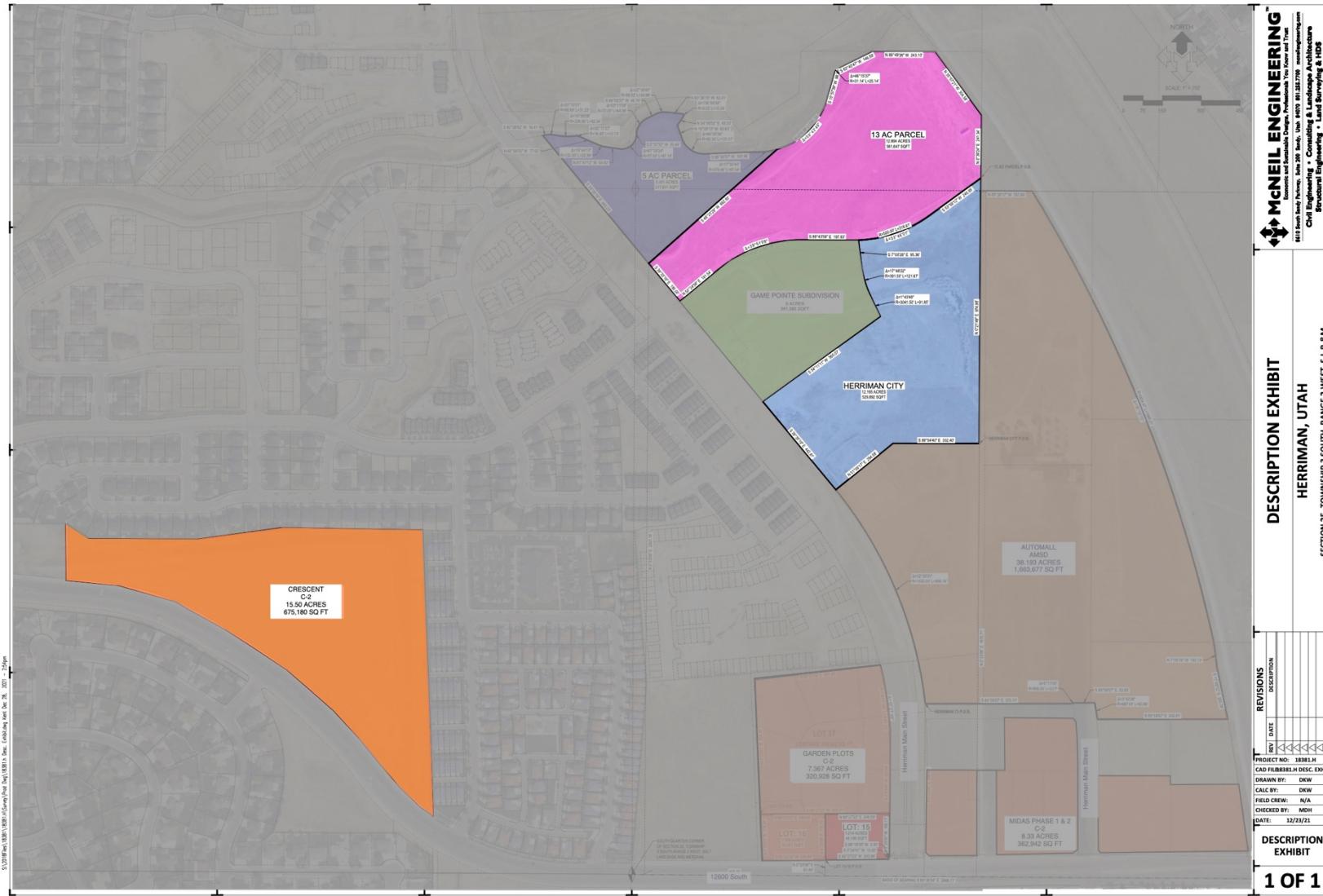
#### Initial District Boundary Map







## Annexation Area Boundary Map



## EXHIBIT D

### INTERLOCAL AGREEMENT BETWEEN THE HERRIMAN CITY, UTAH AND AUTO MALL AND RETAIL PUBLIC INFRASTRUCTURE DISTRICT

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the HERRIMAN CITY, a political subdivision of the State of Utah (“City”), and AUTO MALL AND RETAIL PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

#### RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Amended Governing Document approved by the City on \_\_\_\_\_, 20223 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

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

#### COVENANTS AND AGREEMENTS

##### 1. Improvements.

(a) The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

(b) Notwithstanding the foregoing, prior to or contemporaneous with providing for the planning, design, acquisition, construction, installation, relocation, maintenance, and financing of any other Public Improvements the District must have arranged for the financing of the Public Improvements relating to the proposed Herriman Auto Row and Miller Crossing

Drive within the Project, as further identified and described as the Automall Infrastructure Improvements in **Exhibit E** of the Governing Document (the “Auto Mall Improvements”).

(c) The estimated costs for the Public Improvements described in **Exhibit E** of the Governing Document do not include any costs associated with raising the debt and/or equity required to fund such expenses and are estimates only. These estimates are subject to change based on the final construction plans approved by the City and so long as financing sufficient to build such improvements as set forth the plans approved by the City has been arranged, then the District’s obligation with respect to the Auto Mall Improvements shall be considered satisfied.

2. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

3. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the Districts may acquire completed or partially completed improvements for fair market value as reasonably determined by any one of a surveyor or engineer that such District employs or engages to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

4. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District’s Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Annexation and Withdrawal.

(a) The District shall not include within its boundaries any property outside the District Area without the prior written consent of the City. The City, by approval of the Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, approval of the Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of the Governing Document.

6. Overlap Limitation. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

7. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

8. Total Debt Issuance Limitation. The District shall not issue Debt in excess aggregate amount of ~~Eighteen~~Twenty-~~eight~~thre Million Dollars (\$~~182~~38,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District. In addition, any C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the C-PACE Act.

9. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of each District Board that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes and disbursed of all assets of such District.

11. Disclosure to Purchasers. Within thirty (30) days of the Office of the Lieutenant Governor of the State of Utah issuing a certificate of creation, each Board shall record a notice with the recorder of ~~Herriman City~~Salt Lake County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (e) if applicable, state that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial developers, and commercial lessors, as applicable, disclose the following information to End Users:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$1,000** for the duration of the District’s Bonds.”

(c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 210 days following the end of the District’s fiscal year, containing the information set forth in Section IX of the Governing Document.

14. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

## 15. Maximum Debt Mill Levy.

(a) The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.010 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding Forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Auto Mall and Retail Public Infrastructure District  
10771 South Rippling Bay  
South Jordan, Utah 84009  
Attn: Larry Myler  
Phone:

To the City: Herriman City  
5355 West Herriman Main Street  
Herriman, UT 84096  
Attn: Planning and Zoning  
Phone: (801) 446-5323

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

19. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

20. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

21. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

22. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

23. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

25. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

26. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

28. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

29. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

**[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]**

Auto Mall and Retail PUBLIC  
INFRASTRUCTURE DISTRICT

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM: \_\_\_\_\_

HERRIMAN CITY, UTAH

By: \_\_\_\_\_  
\_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_

## **EXHIBIT E**

### Estimated Costs and Description of Public Improvements



## STAFF REPORT

**DATE:** 3/14/2023

**TO:** The Honorable Mayor and City Council

**FROM:** Blake Thomas, Community Development Director

**SUBJECT: Discussion and Consideration of a Master Services Agreement with STRATA Networks**

---

### **RECOMMENDATION:**

Staff recommends that the City Council authorize the City Manager to sign the Master Services Agreement (MSA) once the City Attorney is satisfied with the agreement.

### **ISSUE BEFORE COMMISSION:**

Should the City Council consider entering into an MSA with STRATA Networks?

### **BACKGROUND/SUMMARY:**

The Broadband Task Force has reported to the city council on several occasions. The task force has discussed Herriman City's goals of how to best implement a fiber optic network that would help the city to operate more efficiently and prepare for future needs as well as provide the residents with another option for high-speed internet. A solicitation was publicly advertised requesting proposals from qualified companies with the intent to negotiate terms of an agreement to become the partner company to design, construct, and operate a top-tier fiber optic network in Herriman. STRATA Networks was the winning proposer in this process. The City Council directed staff at the November 9, 2022 City Council work meeting to work with STRATA networks to prepare a scope, schedule, and fee for the preliminary design work of a city-wide fiber optic network.

### **DISCUSSION:**

The MSA defines the general terms and conditions between Herriman and STRATA and provides a framework under which all other agreements that the City may enter into with STRATA can utilize. This MSA does not commit the city to expending any funds nor does it create obligations for work to be completed in regard to a city-wide fiber optic network.

The City Attorney requested some changes from STRATA. Because of the timeliness of the issue, staff recommends allowing staff to finalize negotiations on indemnity language. The recommended motion would allow that to occur.

### **ALTERNATIVES:**

The City Council may take any of the following actions, pros and cons for each alternative are provided:

Alternative	Pros	Cons
Approve the MSA and allow the City Attorney the ability to make language changes to protect the city's interests. <i>(Recommended Alternative)</i>	Provides the overarching terms and conditions for other agreements that will outline a scope of work, schedule, and fee.  Allows the agreement to be finalized with the approval of the City Attorney.	None identified.
Approve the MSA with additional conditions	Additional conditions could address a concern that the city council has about the project.	May require the contractor to spend additional time addressing the new conditions.
Decline to approve the MSA	None identified	Does not allow the project to move forward.

### **FISCAL IMPACT**

There are no fiscal impacts anticipated with the MSA.

### **ATTACHMENTS:**

- 1) Draft Master Services Agreement

## **MASTER SERVICES AGREEMENT**

This Master Services Agreement (“Master Agreement”) is between the Herriman City (the “City”), whose principal address is 5355 West Herriman Main Street, Herriman, UT 84096 and Uintah Basin Electronic Telecommunications, LLC dba STRATA Networks whose principal address is 211 E 200 N, Roosevelt, UT 84066 (“Contractor”) (Each a “Party” and together, the Parties”). This Agreement is effective on the date that the last party executes this Agreement as indicated by the date stated under that party’s signature line (“Effective Date”). Collectively, The City and Contractor shall be referred to herein as the “Parties.”

## **MASTER AGREEMENT**

This Master Agreement defines the terms and conditions between the Parties, however, from time-to-time additional agreements may be related to this Master Agreement, defining additional terms and conditions, rates, statements of work, services, including warranty services and construction agreements. These additional agreements may be incorporated to this Master Agreement by reference. All terms, conditions, rates, work, etc. in all related agreements may override this Master Agreement if dated after the Effective Date; however, if all incorporated agreements to this Master Agreement are terminated, then this Master Agreement will also terminate.

## **RECITALS**

WHEREAS, the City finds Contractor qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of the City’s business; and

WHEREAS, the City desires to engage Contractor to perform the work as defined in separate agreements between the Parties and Contractor desires to provide certain consulting, construction services, network operation services, city infrastructure and design of the City owned fiber network;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **TERMS AND CONDITIONS**

### **1.0 SERVICES**

Contractor shall provide the professional services (“Services”) set forth in the Design and Construction Agreement, Network Operation Agreement (collectively, “Agreement(s”), and other agreements that may be entered into between the parties subsequent to the execution of this Master Agreement to accomplish the design, construction and operation of a fiber to the home network in Herriman City (“Project”). The provisions of this Master Agreement will apply to all agreements entered into between the parties. In the event of a conflict between the provisions of this Master Agreement and any other agreement, the more specific provision will apply.

### **2.0 CITY REPRESENTATIVE**

The City shall designate in writing a person to act as the City’s representative (“City’s Representative”) with respect to the Services to be performed by Contractor. Such person shall have authority to transmit instructions, receive information, and render decisions relative to the Project.

### **3.0 ACCESS AND APPROVALS**

The City shall provide Contractor with access to the Project location as required for its performance of Services, where required.

- 3.1 With respect to the responsibilities of the City regarding the Project, the City shall coordinate the services of its staff, consultants and contractors with those Services performed by Contractor.
- 3.2 The City shall make decisions and carry out its responsibilities in a timely manner so as not to delay Contractor's performance of Services.
- 3.3 The City shall provide written notice to Contractor if the City becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in Contractor's Services by providing a notice of defect ("Notice of Defect"). Contractor shall correct, at its expense, all errors in the work that may be disclosed during the City's review of the Contractor's report or plans. Should the Contractor fail to make such correction in a reasonably timely manner, such correction may be made by the City, and the cost thereof shall be charged to the Contractor.

### **4.0 TIME FOR PERFORMANCE**

- 4.1 Contractor shall commence the performance of the Services for the Project upon the effective date of each Agreement and if applicable, receipt of an official Notice to Proceed ("NTP") for each Agreement and perform its Services as expeditiously as is consistent with the reasonable skill and care that is typically exercised in the industry to effect the orderly progress of the Project.
- 4.2 If Contractor's services for the Project are delayed through no fault of Contractor, the compensation provided for herein and the time for performance shall be subject to equitable adjustment. If the City requests changes in the scope, extent or character of the Project, Contractor's time for performance shall be equitably adjusted.

### **5.0 COMPENSATION AND PAYMENT**

The City shall pay Contractor for the performance of its Services as set forth in each applicable Agreement.

- 5.1 Terms, amounts and invoicing processes may be defined in each applicable Agreement. If such terms are included in the Agreement, they shall supersede the terms that follow. Contractor shall prepare invoices in accordance with its standard invoicing practices and submit them to the City on a monthly basis. Invoices are due and payable within 30 days of receipt and acceptance of invoice by the City. If the City fails to make any payment due within 30 days after receipt and acceptance of invoice, the amounts due to Contractor will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from the thirtieth day.
- 5.2 Acceptance of an invoice by the City is to be given to Contractor within fifteen (15) days from the City receipt of invoice from the Contractor. If no acceptance is given within fifteen (15) days of the City receipt of invoice or any correspondence on invoice, Contractor will assume invoice is accepted and payment terms will go into effect. If the City disputes portions of an invoice, only that portion contested may be withheld from payment, and the undisputed portion paid.

### **6.0 STANDARD OF CARE**

Contractor represents that its services shall be performed with the skill and care which would be exercised by comparable qualified professionals performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in its Services, Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information provided by the City.

## **7.0 INDEMNITYU**

7.1 Each Party ("Indemnitor") shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the other Party and its officers, board members, employees, agents and representatives, ("Indemnitees"), from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or relating to the acts or omissions of the Indemnitor or those for whom the Indemnitor is responsible, but only to the extent caused by the negligent acts or omissions of the Indemnitor (or anyone for whom Indemnitor is responsible). This indemnification obligation shall survive termination of this Agreement. The Indemnitee shall, at its own expense, have the right to choose its own counsel to represent it in connection with any claim arising from this Master Agreement.

To the fullest extent of the law, each party shall indemnify, defend and hold harmless the other Party and any subsidiary or affiliate, and its past, present and future agents, representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, directly or indirectly arising out of or based in whole or in part upon:

- A. The Indemnitor's breach of any covenant or warranty of this Agreement.
- B. Any damage or loss to any property caused in whole or in part by the Indemnitor, any Subcontractor, any Sub-subcontractor or any one directly or indirectly employed by the Indemnitor, or by anyone for whose acts the Indemnitor may be liable, except damages or loss attributable solely to acts or omissions of the Indemnitee or its agents or employees and not attributable to the fault or negligence of the Indemnitor.
- C. The Indemnitor's failure to comply with any applicable law, rule or ordinance.

## **8.0 INSURANCE**

The Contractor shall purchase and maintain at its own expense at least the minimum coverages, limits and terms of insurance set forth below, as will protect the City and the Contractor from claims that may arise out of or result from the Contractor's construction and installation of the Project by the Contractor, its employees, subcontractors, consultants, or other parties, if any, for whom Contractor is responsible.

Workers Compensation	Statutory Requirement
Commercial General Liability (each occurrence)	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal Injury (with Employment Exclusion Deleted) and Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000
Damages to Rented Premises	\$100,000

Coverage provided by this policy shall include contractual coverage for liability assumed by contract. Products/Completed Operations Coverage shall be maintained for two (2) years following the end of the term of this Agreement and each Party shall provide a Certificate of Insurance showing that this coverage remains in effect at the execution of this Master Agreement and periodically during the following two (2) year period as requested by either Party.

Automobile (for all owned, non-owned and hired vehicles, as well as uninsured and underinsured vehicles)  
Combined Single Limit \$1,000,000.

Umbrella/Excess Separate Umbrella policy (written in excess of the Commercial General Liability, Employer's Liability and Auto policies on a follow form basis).

General Aggregate	\$4,000,000
Each Occurrence	\$4,000,000

Errors and Omissions Policy providing coverage for claims arising out of the performance of this Master Agreement and caused by any error, omission or negligent act for which Contractor is liable, with a per claim limit of \$3,000,000, an aggregate limit of \$3,000,000. If written on a "claims made" basis the coverage shall be maintained not only throughout the term of this Agreement, but also for a minimum of three (3) years following termination. Contractor shall provide a Certificate of Insurance showing that the coverage remains in effect.

## **9.0 DISPUTE RESOLUTION**

- 9.1 The parties agree that dispute resolution should be prompt and structured. The parties shall follow the following mandatory dispute resolution procedures, provided that the parties may mutually agree to change any prescribed time period or to eliminate any prescribed step. In the event that the parties are unable to reach agreement on any issue, either party (the "declarant") may declare such issue in dispute by written notice to the other party. In the event a dispute is declared, the Project representatives of the parties shall have a period of fifteen (15) calendar days from such notice to negotiate a resolution.
- 9.2 If the parties are unable to resolve the dispute at the Project level within such fifteen calendar (15) day period, the issue in dispute shall be referred for resolution by the declarant in writing to the designated executive management representative(s) of each party who are not directly involved in the Project on a day-to-day basis.

The parties designate the following executive management representatives for this purpose:

Contractor:	Bruce H. Todd, CEO/General Manager 211 E. 200 N. Roosevelt, UT 84066	Copy to: Dave Ryan, COO 211 E. 200 N. Roosevelt, UT 84066
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City:	Nathan Cherpesci, City Manager 5355 West Herriman Main Street Herriman, UT 84065	Copy to: Todd Sheeran, City Attorney 5355 West Herriman Main Street Herriman, UT 84065
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- 9.3 In the event such executive management representatives are unable to resolve the dispute by negotiation within fifteen calendar (15) days of such automatic referral, the City may issue a notice

of default/cure. Upon the Contractor's failure to cure the default within the applicable cure period, the City may issue a written termination notice any time thereafter.

If the parties are unable to resolve a dispute within the time periods described above, and a default remains uncured, either party may refer the dispute to non-binding mediation. The parties shall share the cost of the mediation equally. The mediation shall be held in City, Utah. Unless otherwise permitted by this Agreement, neither party shall initiate any legal action to resolve any disputed matter until the foregoing dispute resolution procedures have been completed, provided that either party may initiate such action to preserve a right threatened by a statute of limitations, provided further that any such legal adjudication of the matter shall be stayed pending the parties' compliance with the above dispute resolution procedure.

9.4 All disputes shall be resolved in accordance with the procedures set forth in this Master Agreement, except that the City may file with any court having jurisdiction a request for a temporary restraining order, stay, preliminary injunction or other provisional remedy to which the City would be entitled in the absence of the mediation clause contained herein.

## **10.0 GENERAL CONSIDERATIONS**

10.1 On completion of the Project and final payment by the City, or any time prior to if reasonably necessary for the City's use, copies of some or all data, reports, drawings, specifications, record drawings, and other deliverables, whether in printed or electronic media format, provided or furnished by Contractor under this Master Agreement ("the Documents") will be delivered to the City in their original form, or in a format reasonably acceptable to the City.

All prior works developed by Contractor including but not limited to, data, specifications, drawings, records, reports, proposals, spreadsheets and/or related documentation, research, or other information used to perform services shall remain the property of the City..

10.2 Relationship of the Parties. The City and the Contractor agree that the Master Agreement is not a contract of employment, but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Master Agreement shall be deemed to constitute any other relationship between the City and the Contractor. Each Party shall be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any party as a result of this Master Agreement. This Master Agreement does not constitute a partnership, joint venture, agency or contract of employment between the City and Contractor.

10.3 Disclosure of Prior Relationship. Contractor acknowledges that neither the Contractor nor Contractor's workers have any personal or family relationships at the City. If any such relationship exists, Contractor is obligated to disclose this relationship to the City prior to start of Contractor's workers assignment and obtain written prior permission to perform services under this Master Agreement.

10.4 Recruiting. Contractor will not become a party, directly or indirectly, to any efforts to solicit away from the City other contractors or employees engaged by the City or clients at which Contractor is engaged, without the express written permission of the City. The City will not become a party, directly or indirectly, to any efforts to solicit away from the contractor its employees or its

contractors engaged by the Contractor without the express written permission of the Contractor. This restriction shall apply from the effective date of this Master Agreement and continue for a period of three (3) years from the termination date of this Master Agreement, regardless of the reason for termination.

- 10.5 Safety. Contractor shall take all necessary precautions for the safety of its employees and shall comply with applicable laws and regulations pertaining to the occupational safety and health of its personnel. Contractor agrees to provide appropriate training for any of its personnel assigned to the City's location, including specific hazards that may be encountered and information concerning hazardous materials under applicable right to know provisions of the law.
- 10.6 Governing Law. This Master Agreement shall be governed by and construed in accordance with the procedural and substantive laws of the State of Utah without regard to its conflict-of-laws provisions. The City and the Contractor specifically acknowledge and agree that the sole and exclusive venue for any lawsuit filed as a result of a dispute related to this Master Agreement shall be the [court], Utah. The prevailing party in any action to enforce the terms of this Master Agreement shall be entitled to recover its reasonable attorney's fees, expert costs, witness fees, court costs and other litigation expenses incurred in the enforcement of this Master Agreement. If any provision hereof is finally held to contravene that jurisdiction's law, that provision will be deemed deleted but will not affect any other provision's validity.
- 10.7 Assignment. Neither Party shall assign this Master Agreement without the written consent of the other Party, except that Contractor may assign claims for monies due or to become due from the City under the Master Agreement to a bank, trust company, or other financial institution. Consent to any assignment shall be at the sole discretion of the consenting Party. The Parties acknowledge and agree that the Contractor's use of subcontractors for any part of the Project shall not constitute an assignment.
- 10.8 Notices. All notices and submissions required under this Master Agreement shall be delivered to the respective party in writing and shall be personally delivered, sent by next day express delivery service, or certified mail, so that delivery may be confirmed. Notice shall be sent to the Parties as follows:

Contractor	City
Uintah Basin Electronic Telecommunications, L.L.C. Attn: Bruce H. Todd 211 East 200 North Roosevelt, UT 84066	Herriman City Attn: Nathan Cherpesci 5355 West Herriman Main Street Herriman, UT 84065
With a copy to:	With a copy to:
Beau Hancock 211 East 200 North Roosevelt, UT 84066	City Recorder 5355 West Herriman Main Street Herriman, UT 84065

- 10.9 Severability. Whenever possible, each provision of this Master Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Master Agreement is determined by any court or any other governmental authority to be invalid, illegal or incapable of being enforced, all other provisions will nevertheless remain in full force and effect so

long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party.

10.10 **Waiver.** Either party's failure or delay to enforce any provision hereof will not waive that party's rights. The City has the right to specifically enforce any provision of this Master Agreement. Any dispute, controversy, claim and/or disagreement concerning the interpretation, application or enforcement of or in any way arising under this Master Agreement or breach of this Master Agreement must be brought to the attention of the City by written notice by the Contractor within 90 days of occurrence. Contractor waives the right to dispute any charges not disputed within 90 days of Contractor's awareness.

10.11 **Force Majeure.** Excusal of Performance. Neither Party will be deemed in violation of this Master Agreement if the Party is prevented from performing any of the obligations under this Master Agreement in whole or in part by reason of any unforeseeable event or circumstance, or combination of events or circumstances, arising after the Master Agreement effective date and beyond the reasonable control of, and not the result of the negligent or intentional actions or omissions of, or caused by, the Party that seeks to excuse, in whole or in part, that Party's performance of this Master Agreement and its obligations hereunder, and that is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence (a "Force Majeure Event").

**Force Majeure Events.** Events that may give rise to a Force Majeure Event may include acts of God, natural disasters, extreme weather and storms, lightning, floods, fires, earthquakes, pandemics or other natural occurrences; civil disturbances; strikes or other labor unrest or shortage (unless they only concern the Party claiming Force Majeure); material shortages (caused by no fault of the Parties), catastrophic power failures; terrorist activity, riots, war, nuclear, or other civil or military emergencies; acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided.

**Exclusion From Force Majeure.** A Force Majeure Event shall not, however, include actions of a government authority with respect to Contractor's compliance with applicable laws or permits; any failure by the Contractor to obtain or maintain any permit it is required to obtain or maintain; and any act, omission, delay, default, or failure (financial or otherwise) of a subcontractor to a Party.

**Notification.** In the event of a Force Majeure Event, the Party who first becomes aware of the event shall promptly give written notice to the other Party of such event. When either Party becomes aware of the end of the Force Majeure event, it shall give notice to the other Party.

10.12 **Amendment.** Any waiver, amendment, or modification of any right or remedy under this Master Agreement is not effective unless it is in writing and signed by an authorized person of the party against whom enforcement is sought. Neither party shall be bound by typographical errors in this Master Agreement.

10.13 **Headings.** Any headings used in this Master Agreement are solely for reference purposes and shall not be considered in the interpretation of this Master Agreement.

10.14 **Interpretation.** No rule of construction requiring interpretation against the drafter of this Master Agreement shall apply in the interpretation of this Master Agreement.

- 10.15 No Third Party Beneficiary. The provisions of this Master Agreement are for the sole benefit of the parties to this Master Agreement, and no third party may seek to enforce or benefit from these provisions.
- 10.16 Entire Agreement: This Master Agreement (including recitals and Master Agreement section heading) and all related and incorporated agreements state the entire agreement between the parties and supersede all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersede any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Contractor and City respecting the subject matter hereof.
- 10.17 Execution. This Master Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronic or facsimile signature of any party shall be considered to have the same binding effect as an original signature.
- 10.18 Authority to Execute. The individuals executing this Master Agreement on behalf of the City and the Contractor represent they have the legal power, right, and actual authority to bind their respective Parties to the terms and conditions of this Master Agreement.
- 10.19 Counterparts or PDF Signatures. This Master Agreement may be executed in counterparts, each of which shall be considered an original, and together shall be one and the same Master Agreement. A PDF copy of this Master Agreement and any signature(s) thereon will be considered for all purposes as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Master Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Master Agreement.

**Owner:**

By:

Name: Nathan Cherpesci  
Title: City Manager

Attest:

(Corporate Seal)

Name: Jackie Nostrom  
Title: City Recorder

**Contractor:**

UINTAH BASIN ELECTRONIC TELECOMMUNICATIONS, L.L.C.  
DBA STRATA NETWORKS

By:

Name: Bruce H. Todd  
Title: CEO/General Manager

Attest:

(Corporate Seal)

Name: M. Jason McKee  
Title: CFO



## STAFF REPORT

**DATE:** March 9, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Bryce Terry, Assistant City Engineer

**SUBJECT:** Discussion on Interlocal Agreement with Salt Lake County Regarding Corridor Preservation Reimbursement

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### **RECOMMENDATION:**

It is recommended that the City Council approve the Interlocal Agreement

### **ISSUE BEFORE COUNCIL:**

Should the City approve the Interlocal Agreement with Salt Lake County?

### **BACKGROUND/SUMMARY:**

The City applied and was awarded funds through the Corridor Preservation Fund to acquire Right-of-Way (ROW) for the future roadway 6400 W. This included multiple sections as shown in the attached exhibit.

Since then, the City has acquired the property for **\$2,088,671** and submitted for reimbursement through Salt Lake County. Salt Lake County is now proposing a reimbursement of **\$2,088,671** to be transferred to the City.

### **DISCUSSION:**

The Interlocal Agreement is attached for review. If Council approves the agreement, Salt Lake County can then transfer the funds to Herriman City.

Table 1. Properties Considered for Eminent Domain

### **ALTERNATIVES:**

1. **Approve Interlocal Agreement with Salt Lake County [Recommend]**
  - a. City to be reimbursed for purchase of ROW for 6400 W
2. Do not approve Interlocal Agreement

- a. No benefit

**FISCAL IMPACT:**

As mentioned above, approving this agreement will offset the cost of purchase of 6400 West ROW.

**ATTACHMENTS:**

Interlocal Agreement\_Salt Lake County\_Corridor Preservation.pdf  
6400 West\_Right of Way\_Purchase Map.pdf



January 21, 2023

**COUNTY COUNCIL**

**Aimee Winder Newton,**  
**Chair**  
District #3

**Laurie Stringham**  
At-Large A

**Sheldon Stewart**  
At-Large B

**Jim Bradley**  
At-Large C

**Arlyn Bradshaw**  
District #1

**Dave Alvord**  
District #2

**Aimee Winder Newton**  
District #3

**Ann Granato**  
District #4

**Suzanne Harrison**  
District #5

**Dea Theodore**  
District #6

Ms. Antigone Carlson  
Contracts Coordinator  
Contracts & Procurement Division  
Rm. N4-600, Government Center  
Salt Lake City, Utah 84190

Dear Ms. Carlson:

The Salt Lake County Council, at its meeting held this day, approved the attached RESOLUTION NO. 6060 authorizing execution of an INTERLOCAL AGREEMENT between Salt Lake County for its Planning and Transportation Division and **Herriman City** – Transfer of Salt Lake County Corridor Preservation Funds.

Salt Lake County will transfer \$2,088,671 from its Corridor Preservation Funds to Herriman City to acquire properties located at 6401 West Herriman Boulevard, 12250 South Mustang Trail Way, and 12308 South Mustang Trail Way, in accordance with Utah Code and all other applicable federal, state, and local laws, rules, and regulations.

The agreement will terminate upon the earlier of the date the parties have performed all the material obligations described in the interlocal agreement, or three years from the date the agreement is executed by both parties.

Pursuant to the above action, you are hereby authorized to effect the same.

Respectfully yours,

SALT LAKE COUNTY COUNCIL

SHERRIE SWENSEN, COUNTY CLERK

By   
Deputy Clerk

ks

pc: Darrin Casper/Mayor Finance  
Helen Peters/Planning & Transportation Division  
Shawna Soliz/Contracts & Procurement Division

## SALT LAKE COUNTY RESOLUTION

RESOLUTION NO. 6060 February 21, 2023

RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING THE RECOMMENDATION OF THE SALT LAKE COUNTY COUNCIL OF GOVERNMENTS AND AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT PROVIDING FOR THE TRANSFER OF \$2,088,671 OF COUNTY CORRIDOR PRESERVATION FUNDS TO HERRIMAN CITY TO BE USED BY THE CITY TO ACQUIRE CERTAIN PROPERTIES FOR TRANSPORTATION PURPOSES.

### RECITALS

WHEREAS, Salt Lake County (the “County”) and Herriman City (the “City”) are “public agencies” as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13-101 to -608, and as such, are authorized to enter into an interlocal cooperation agreement to act jointly and cooperatively on the basis of mutual advantage;

WHEREAS, during the 2015 General Session, the State Legislature amended Section 72-2-117.5 of the Utah Transportation Code, UTAH CODE §§ 72-1-101 to -16-402, to provide corridor preservation funds to local counties for disbursement to various cities and governmental entities, as recommended and endorsed by a council of governments (hereinafter “Corridor Preservation Funds”);

WHEREAS, on November 11, 2021, the Salt Lake County Council of Governments (“COG”), an association of local governments in Salt Lake County, requested that the County Council approve its recommended distribution to the City from the Salt Lake County Corridor Preservation Fund to enable the City to acquire properties needed for a transportation project considered and approved by COG at approximately 6401 West Herriman Boulevard, 12250 South Mustang Trail Way, and 12308 South Mustang Trail Way, Herriman, Utah, consistent with the purpose and requirements of Utah Code § 72-2-117.5. A copy of the COG recommendation letter, dated December 20, 2021, is attached hereto as **ATTACHMENT “A”**; and

WHEREAS, the County and the City now desire to enter into the interlocal cooperation agreement attached hereto as **ATTACHMENT “B”** (the “Interlocal Agreement”) providing for the transfer of Two Million Eighty-Eight Thousand Six Hundred Seventy-One Dollars (\$2,088,671) of Corridor Preservation Funds to the City to be used by the City as described in the Interlocal Agreement and in accordance with Utah Code § 72-2-117.5.

### RESOLUTION

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the County Council of Salt Lake County:

1. That the recommendation of the Salt Lake County Council of Governments to transfer County Corridor Preservation Funds to Herriman City for the project described in its recommendation letter is approved.
2. That the Interlocal Agreement between Salt Lake County and Herriman City is approved, in substantially the form attached hereto as **ATTACHMENT "B"**, and that the Salt Lake County Mayor is authorized to execute the same.
3. That the Interlocal Agreement will become effective as stated in the Interlocal Agreement.

APPROVED and ADOPTED this 21<sup>st</sup> day of February, 2023.

SALT LAKE COUNTY COUNCIL

By: Aimee Winder Newton  
Aimee Winder Newton, Chair

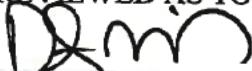
Date: \_\_\_\_\_

ATTEST:

Lannie K. Chapman

Lannie Chapman  
Salt Lake County Clerk

REVIEWED AS TO FORM:



Adam Miller

2023.01.20 13:14:03  
-07'00'

Adam Miller  
Deputy District Attorney

Date: \_\_\_\_\_

Council Member Alvord voting  
Council Member Bradley voting  
Council Member Bradshaw voting  
Council Member Granato voting  
Council Member Harrison voting  
Council Member Stewart voting  
Council Member Stringham voting  
Council Member Theodore voting  
Council Member Winder Newton voting

"Aye"  
"Aye"  
"Aye"  
"Aye"  
"Aye"  
"Aye"  
"Aye"  
"Aye"  
"Aye"

## **ATTACHMENT A**

Recommendation Letter from the Salt Lake County Council of Governments

# Salt Lake County Council of Governments

*AN ASSOCIATION OF LOCAL GOVERNMENTS IN SALT LAKE COUNTY, UTAH*

December 20, 2021

Councilmember Steven L. DeBry  
Chair and District 5 Representative  
Salt Lake County Council  
2001 South State Street Suite N2-200  
Salt Lake City, Utah 84114

***Re: Salt Lake County Corridor Preservation Fund***

Dear Chair DeBry:

At the November 11, 2021 meeting of the Salt Lake County Council of Governments (COG), the following corridor preservation projects were considered and approved:

<b><u>Cottonwood Heights:</u></b>	<b>\$214,500</b>
Portions of 1720, 1760, 1770, 1790 East Fort Union Blvd	
<b><u>Kearns:</u></b>	<b>\$56,471</b>
Portions of 5405, 5295, 5267, 5225 W 4700 South; 4801, 4785, 4775, 4765, 4191, 4165, 4155, 4135, 4095, 4050 W 4715 South; 4731 S 4300 W	
<b><u>Herriman:</u></b>	<b>\$2,361,644</b>
7066, 7075, 7150, 7198, 7235, 6401 W Herriman Main Street; 12308 and 12250 S Mustang Trail Way	
<b><u>Riverton:</u></b>	<b>\$50,288</b>
4311 W 12600 South	
<b><u>Salt Lake City:</u></b>	<b>\$650,000</b>
400 South (frontage road on north side of 400 South) between 550 West and 600 West	
<b><u>West Jordan:</u></b>	<b>\$146,600</b>
8600 South; SR-111 to 5600 West	

**Total Funding Approved: \$3,479,503**

Once each municipality has completed the real estate transaction and a fully signed Settlement Statement is sent to the County, indicating the amount of the requested reimbursement along with other necessary documentation, a Interlocal Cooperation Agreement (ILA) will be presented to the County Council seeking approval for the distribution of funds from the Salt Lake County Corridor

Preservation Fund for specific cities. From there, notice of such approval will be forwarded to the Salt Lake County Mayor Jenny Wilson for disbursal of the funds noted.

Please reach out to Vanessa Nelson ([vmnelson@slco.org](mailto:vmnelson@slco.org)) or Helen Peters ([hpeters@slco.org](mailto:hpeters@slco.org)) if you have any questions or need more information

Sincerely,



Kristie S. Overson  
Mayor, Taylorsville  
Chair, Salt Lake County Council of Governments

## **ATTACHMENT B**

Interlocal Cooperation Agreement Between Salt Lake County and Herriman City

## INTERLOCAL COOPERATION AGREEMENT

between

**SALT LAKE COUNTY**

and

**HERRIMAN CITY**

*6401 West Herriman Boulevard  
12250 South Mustang Trail Way  
12308 South Mustang Trail Way*

This Interlocal Cooperation Agreement (this “Agreement”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”); and **HERRIMAN CITY**, a municipal corporation of the State of Utah (the “City”). The County and the City may each be referred to herein as a “Party” and collectively as the “Parties.”

### **R E C I T A L S:**

A. The County and the City are “public agencies” as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13-101 to -608 (the “Interlocal Act”), and as such, are authorized to enter into agreements to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers. Additionally, Utah Code § 11-13-215 authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.

B. During the 2015 General Session, the State Legislature amended Section 72-2-117.5 of the Utah Transportation Code, UTAH CODE §§ 72-1-101 to -16-402, to provide corridor preservation funds to local counties for disbursement to various cities and governmental entities, as recommended and endorsed by a council of governments (hereinafter “Corridor Preservation Funds”).

C. By letter dated December 20, 2021 the Salt Lake County Council of Governments (COG), an association of local governments in Salt Lake County, requested that the County Council approve its recommended distribution to the City from the Salt Lake County Corridor Preservation Fund to enable the City to acquire property needed for certain future road construction projects.

D. The County and the City now desire to enter into this Agreement providing for the transfer of Two Million Eighty-Eight Thousand Six Hundred Seventy-One Dollars (\$2,088,671) of Corridor Preservation Funds to the City to be used by the City as provided in this Agreement and in accordance with Utah Code § 72-2-117.5.

## **A G R E E M E N T:**

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

### **ARTICLE 1 -DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS**

1.1. County Transportation Funds. The County shall allocate and disburse Two Million Eighty-Eight Thousand Six Hundred Seventy-One Dollars (\$2,088,671) of Corridor Preservation Funds to the City from the Salt Lake County Corridor Preservation Fund, all on the terms and subject to the conditions of this Agreement.

1.2. City. The City shall use the Corridor Preservation Funds allocated and disbursed to it under this Agreement: a) for the purpose of acquiring properties located at 6401 West Herriman Boulevard, 12250 South Mustang Trail Way, and 12308 South Mustang Trail Way; and b) in accordance with Utah Code § 72-2-117.5 and all other applicable federal, state and local laws, rules and regulations.

### **ARTICLE 2 – COVENANTS AND AGREEMENTS**

#### **2.1. Indemnification and Liability.**

(a) Liability. Both Parties are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE §§ 63G-7-101 to -904 (the “Immunity Act”). Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(b) Indemnification. The City agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third Parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of: i) the City’s breach of this Agreement; ii) any acts or omissions of or by the City, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or iii) any improper use of the Corridor Preservation Funds. The City agrees that its duty to defend and indemnify the County under this Agreement includes all attorney’s fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the County. The City further agrees that the City’s indemnification obligations in this Section 2.1 will survive the expiration or termination of this Agreement.

2.2. Recordkeeping. The City agrees to maintain its books and records in such a way that any Corridor Preservation Funds received from the County will be shown separately on the City’s books. The City shall maintain records adequate to identify the use of the Corridor

Preservation Funds for the purposes specified in this Agreement. The City shall make its books and records available to the County at reasonable times.

2.3. Assignment and Transfer of Corridor Preservation Funds. The City shall not assign or transfer its obligations under this Agreement nor its rights to the Corridor Preservation Funds under this Agreement without prior written consent from the County. The City shall use the Corridor Preservation Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

### **ARTICLE 3 —DEFAULTS AND REMEDIES**

3.1. City Event of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” as such term is used herein:

(a) Failure of the City to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the City on or before the expiration of a sixty (60) day period (or, if the County approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such longer period as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon the County’s written notice to the City of the occurrence thereof.

3.2. County’s Remedies in the Event of Default. Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all other remedies conferred upon the County by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold disbursement of Corridor Preservation Funds to the City; and/or
- (b) Reduce the amount of any future disbursement of Corridor Preservation Funds to the City by the amount incurred by the County to cure such default; and/or
- (c) Terminate this Agreement.

### **ARTICLE 4 — MISCELLANEOUS**

4.1. Interlocal Cooperation Act. For the purpose of satisfying specific requirements of the Interlocal Act, the Parties agree as follows:

- (a) This Agreement shall be approved by each Party pursuant to Utah Code § 11-13-202.5.
- (b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Utah Code § 11-13-202.5.

(c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code § 11-13-209.

(d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(e) No separate legal entity is created by the terms of this Agreement. Pursuant to Utah Code § 11-13-207, to the extent this Agreement requires administration other than as set forth herein, the County Mayor and the City Mayor are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

4.2. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: a) the approval of the Agreement by the governing bodies of the County and the City, including the adoption of any necessary resolutions or ordinances by the County and the City authorizing the execution of this Agreement by the appropriate person or persons for the County and the City, respectively; b) the execution of this Agreement by a duly authorized official of each of the Parties; c) the submission of this Agreement to an attorney for each Party that is authorized to represent said Party for review as to proper form and compliance with applicable law, pursuant to Utah Code § 11-13-202.5, and the approval of each respective attorney; and d) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate upon the earlier of: y) the date the Parties have performed all of the material obligations described herein; or z) three (3) years from the date the Agreement is executed by both Parties. The Parties intend that the distribution described herein will be made promptly following execution of this Agreement and that the City will expend such distribution for the purposes stated in this Agreement promptly following receipt.

4.3. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Corridor Preservation Funds to be paid to the City for the purposes set forth in this Agreement. If Corridor Preservation Funds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to contribute Corridor Preservation Funds to the City under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to Contribute Corridor Preservation Funds to the City in succeeding fiscal years. The County's obligation to contribute Corridor Preservation Funds to the City under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Paragraph will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Paragraph will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the City, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Corridor Preservation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify the City of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the City of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Corridor Preservation Funds were last appropriated for contribution to the City under this Agreement.

4.4. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. "Event of Force Majeure" means an event beyond the control of the County or the City that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: a) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); b) war, acts or threats of terrorism, invasion, or embargo; or c) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this Agreement without liability or penalty, effective upon written notice to the City.

4.5. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received: a) upon personal delivery or actual receipt thereof; or b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed to the Parties at their respective addresses.

4.6. Ethical Standards. The City represents that it has not: a) provided an illegal gift in connection with this Agreement to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; b) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; c) breached any of the ethical standards in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07, Salt Lake County Code of Ordinances; or d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

4.7. Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

4.8. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

4.9. Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

4.10. No Obligations to Third Parties. The Parties agree that the City's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to the City. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

4.11. Agency. No officer, employee, or agent of the City or the County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the officers, employees, or agents of the other Party. The City and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

4.12. No Waiver. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

4.13. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

4.14. Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

4.15. Counterparts. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties execute this Agreement as of the latest date indicated below.

**SALT LAKE COUNTY:**

Erin Litvack Digitally signed by Erin  
Litvack  
Date: 2023.03.02  
15:01:38 -07'00'

Mayor or Designee

Date: \_\_\_\_\_

Recommended for Approval:

By: Helen Peters  
Department Director  
Date: \_\_\_\_\_

Reviewed as to Form: Adam Miller  
By:  2023.01.20 11:27:51  
-07'00'  
Deputy District Attorney  
Date: \_\_\_\_\_

**HERRIMAN CITY:**

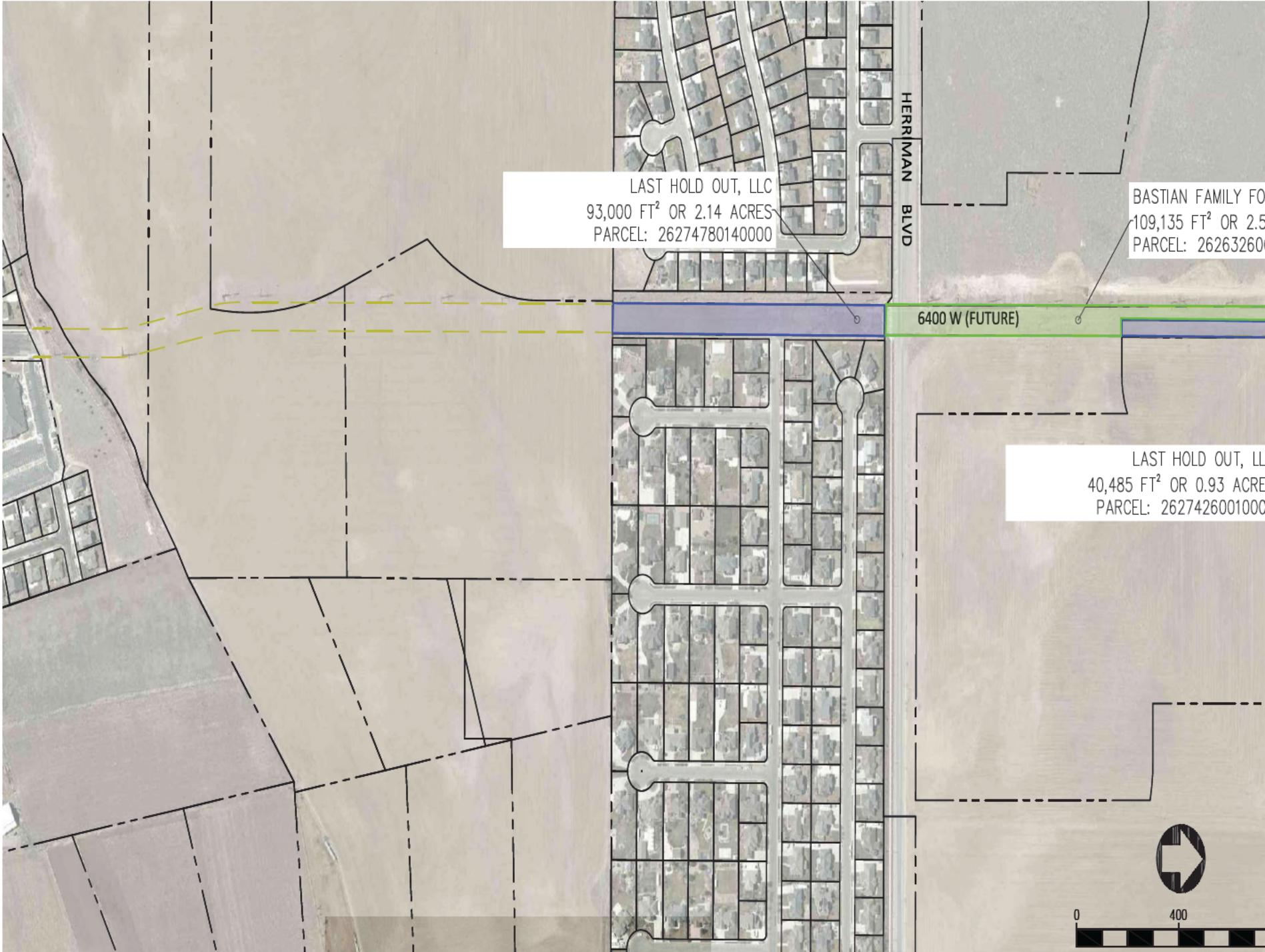
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

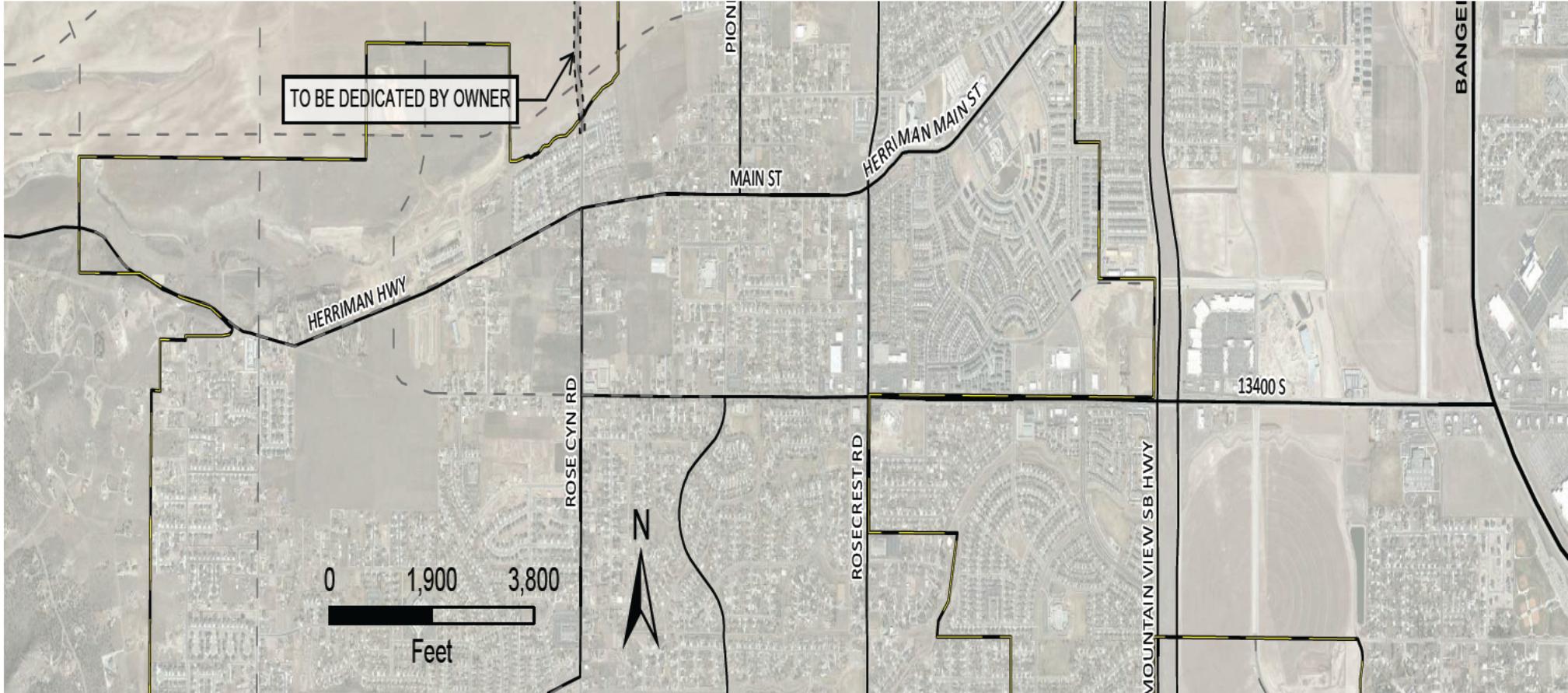
Attest:

City Recorder  
Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_







## STAFF REPORT

**DATE:** March 9, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Michael Maloy, City Planner

**SUBJECT:** Review and consideration of a participation agreement with Wasatch Front Regional Council for the Southwest Waterways Visioning Plan

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### **RECOMMENDATION:**

Staff recommends the City Council review the proposed participation agreement request and provide direction.

### **ISSUE BEFORE COUNCIL:**

Should the City Council authorize Mayor Palmer to sign a participation agreement with Wasatch Front Regional Council to produce a Southwest Waterways Visioning Plan?

### **BACKGROUND & SUMMARY:**

*The following text is an excerpt from Attachment A – Southwest Waterways Scope.*

The purpose of the Southwest Waterways Visioning Plan is to facilitate and guide long-term improvements of the perennial and intermittent waterways flowing out of the Oquirrh Range in Salt Lake County. These include Bingham Creek, Midas Creek, Rose Creek, Butterfield Creek, Copper Creek, and Barneys Creek.

The Southwest Waterways Visioning Plan process will produce an existing conditions report, a public engagement strategy, and a final Visioning Plan document. The Visioning Plan will highlight areas of opportunity in each of the waterways, recommend best management practices, possible policies for implementation, and include a toolbox of design concepts and guidelines. This process will offer each municipality concepts and resources for implementation of the Southwest Waterways Visioning Plan and may be included as part of future general plans, park and trails plans, economic and capital improvement plans, and new or modified ordinances in each respective municipality.

**DISCUSSION:**

In 2021, Herriman City agreed to support a Wasatch Front Regional Council (WFRC) grant application led by Salt Lake County to develop a Southwest Waterways Visioning Plan. However, the project stalled due to administrative changes in Salt Lake County's Planning and Transportation Department. In lieu of these changes, WFRC has opted to renew this project and participation agreements with communities in the southwest quadrant of Salt Lake County (see Attachment B – Southwest Participation Agreement).

**ALTERNATIVES:**

The City Council may or may not decide to support the development of the Southwest Waterways Visioning Plan by the Wasatch Front Regional Council. Participation would improve coordination and participation in the development of the plan.

**FISCAL IMPACT:**

\$2,000.00 (FY 2022-2023)

**ATTACHMENTS:**

- A. Southwest Waterways Scope
- B. Southwest Waterways Participation Agreement

## **Attachment A**

## **Southwest Waterways Scope**

# Southwest Waterways Visioning

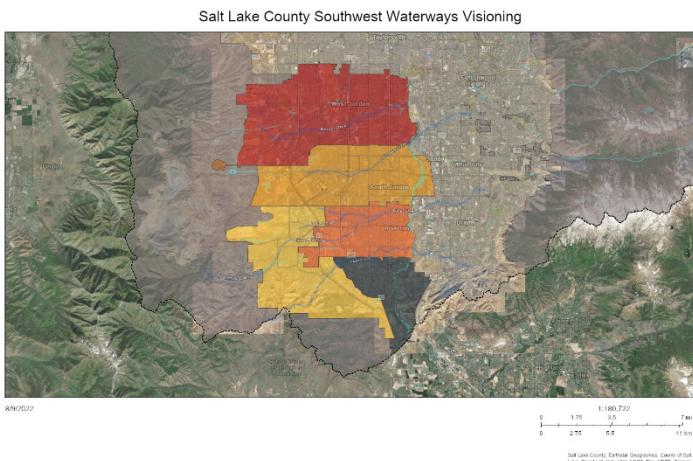
## Project Purpose and Description:

The purpose of the Southwest Waterways Visioning Plan is to facilitate and guide long-term improvements of the perennial and intermittent waterways flowing out of the Oquirrh Range in Salt Lake County. These include Bingham Creek, Midas Creek, Rose Creek, Butterfield Creek, Copper Creek, and Barneys Creek.

The Seven Waterways Visioning Plan process will produce an existing conditions report, public engagement strategy, and a final Visioning Plan document. The Visioning Plan will highlight areas of opportunity in each of the waterways, recommend best management practices, possible policies for implementation, and include a toolbox of design concepts and guidelines. This process will offer each municipality concepts and resources for implementation of the Southwest Waterways Visioning Plan and may be included as part of future general plans, park and trails plans, economic and capital improvement plans, and new or modified ordinances in each respective municipality.

## Project Area:

The area for this project will include the urban corridors, from head of the waterways to the Jordan River, of the perennial and intermittent waterways flowing out of the Oquirrh Range in Salt Lake County, including Bingham Creek, Midas Creek, Rose Creek, Butterfield Creek, Copper Creek, and Barneys Creek.



Governmental partners are those with boundaries near or contiguous to the creeks, including West Jordan, South Jordan, Herriman, Riverton, Bluffdale, and Copperton.

## Project Participants

**Steering Committee** (one representative from each City and selected stakeholders):

- Provide guidance throughout the project and connect city resources, staff, residents, and elected officials.

- Commit approximately 5 hours per month (0-3 hours per week) to the visioning project.
- Present the *Southwest Waterways Visioning Plan* document to their respective planning commissions, city councils and elected officials (as needed throughout the timeframe of the project).

**Project Management Group** (Salt Lake County, Wasatch Front Regional Council, and Consultant[s])

- Lead out and direct each phase of the project.

**Public** (property owners, residents, business owners, general population)

- Engaged via city communication networks, social media, and other mediums as recommended by the consultant(s) and Project Management Group.
- Participate via online surveys, workshops, and other engagement strategies through project area.
- Invited to final celebration to learn ways their community can begin the implementation process.
- Property owners involved through the visioning process

**Stakeholders** (Municipal staff, businesses, elected officials, non-profit groups, and other interested parties)

- Meet with the Project Management Group to provide input and feedback.
- Chosen based on criteria developed by Project Management Group and Steering Committee.

## Phase 1: Existing Conditions (October 2022 – January 2023)

30%

**Description:** Compile into one location data on current conditions as well as local/regional plans. The existing conditions should also include a summary for each of the waterway corridors. Data resources to consider include:

- Public and private land ownership data
- Land-use (General Plans, existing land use data, existing zoning)
- Housing (Moderate Income Housing Plans, recommendations and plans for future, current housing stock and demand)
- Transportation (Regional Transportation Plan (RTP), STIP and other UDOT projects, scheduled city roadway improvement projects, Street & Intersection Typologies Design Guide)
- Active Transportation (trails, on-road bicycle routes, sidewalk data)
- Parks and open space plans
- Stormwater management plans and utility data
- Watershed management and riparian corridor plans
- Activity centers and destinations
- Population demographic and projections
- Economic centers
- Tax increment/Opportunity zones financing areas
- Other data and studies as relevant

**Tasks:**

- Meet individually with Municipalities and identified stakeholders to inventory existing conditions, previously completed studies, and relevant data. Meetings will include discussion of project goals, potential recommendations, and opportunity areas for the Plan.
- Conduct site tour of key points throughout the project area

- Analyze and perform additional research as needed.
- Review and refine the scope and goals.

**Deliverables:**

- An existing conditions summary report and supporting associated data and maps to be used as a standalone document and to facilitate workshops, surveys, and the final document.
- Finalize project scope, goals, processes, and milestones.

## Phase 2: Community Visioning (February 2023 – September 2023) 50%

**Description:** Southwest Waterways Visioning Workshops will be planned and carried out to engage community members, municipal partners, elected officials, and stakeholders in concept planning and visioning exercises to understand restraints and identify opportunities, recommendations, best management practices, and creative solutions.

**Tasks:**

- Conduct a preliminary workshop for the Steering Committee and stakeholders.
- Conduct flexible community engagement strategies to reach all communities throughout project area.
- Publish online survey(s) and publicize through robust communication strategy (coordinated with communication efforts of stakeholders)
- Develop a vision statement and goals for the *Southwest Waterways Visioning Plan*.

**Deliverables:**

- Produce a report of possible improvements including locations, types of improvements, and projected benefits of implementation.
- Summary of results from the workshops and online survey(s).
- Publish draft vision statement and goals for Plan.

## Phase 3: Southwest Waterways Visioning Plan (September 2023 - November 2023) 20%

**Description:** Ideas and concepts generated from the workshops, survey(s), Steering Committee meetings, and individual stakeholder meetings will be used to generate a Southwest Waterways Visioning Plan draft document. The final Visioning Plan should consider the following: goals, partner roles, opportunities areas, recommendations, best management practices, precedents, funding mechanisms and policy tools to perpetuate progress.

**Tasks:**

- Review and update with input from the Steering Committee and other stakeholders.
- Publish and present draft Plan for further comment and refinement.

- City representatives will present the final document to respective planning commissions and city/county councils.
- Host a final celebration of the visioning document for the public and partners.

**Deliverables:**

- *Southwest Waterways Visioning Plan* document
- Project website summary

## Budget:

Total project value is \$145,000

**Grant:**

WFRC TLC Program \$118,000

Local Match (Salt Lake County): \$20,000 cash; In-Kind Match Salt Lake County Assessor's Office – Drone imagery

*Subtotal:* \$138,000

Participating Municipalities at \$2,000 each:

West Jordan

Bluffdale

Herriman

Riverton

South Jordan (no funding participation)

Copperton

*Subtotal:* \$10,000

**Total Project Value: \$148,000**

**Attachment B**

**Southwest Waterways Participation Agreement**



## LETTER OF CONCURRENCE AND MATCH AGREEMENT

This Letter of Concurrence represents a formal agreement between the Wasatch Front Regional Council and Herriman for the information below, consistent with the application submitted by Salt Lake County to WFRC for assistance through Transportation and Land Use Connection.

### PROJECT INFORMATION

Project Title: Southwest Waterways Visioning  
Project Manager: Jason Wolf (SLCo); Clinton Spencer (Herriman)  
City Address: 2001 State St, Salt Lake City, UT 84190;  
5355 West Herriman Main Street, Herriman, UT 84096  
Manager Email: [REDACTED] [cspencer@herriman.org](mailto:cspencer@herriman.org)  
Manager Phone: [REDACTED]

### LOCAL GOVERNMENT MATCH AGREEMENT

Cash Amount: \$2,000 from Herriman  
(\$30,000.00 additional from SLCo and other municipalities)

*Note: There is a minimum expectation that local government representatives are responsive to WFRC staff, participate and help to coordinate all project meetings, fulfill local government obligations in consultant advertisement and selection, accomplish necessary public noticing, and guide the project to a product that is to be awarded community's satisfaction within scope limits, and ultimately support the adoption process if eligible.*

### TRANSPORTATION AND LAND USE CONNECTION RESOURCES

Financial Contributions: \$118,000.00 (\$68,000.00 from TLC & \$50,000.00 from IHC+Zion's Bank funds)  
Consultant Budget Total: \$150,000.00

### GENERAL TIMELINE

Start Date: January 2023  
End Date: January 2025

### DELIVERABLES

A visioning plan for selected riparian corridors, including the following elements: existing conditions research, barriers, public involvement, visioning, goals, strategies, toolkit, resources for implementation, and next steps.

*As part of this agreement, it is understood that the governing body of Herriman will in earnest consider the final work products for adoption. Herriman will work with the Wasatch Front Regional Council on all matters of procurement; any consultant services procured independently by Herriman will not be eligible for reimbursement of project funding.*



## STAFF REPORT

**DATE:** February 28, 2023

**TO:** The Honorable Mayor and City Council

**FROM:** Kyle Maurer

**SUBJECT:** Consideration of a Resolution approving the advance of funds for the purpose of purchasing two (2) dump trucks and a hydro excavator truck, and adopting official intent to reimburse said funds at a later date through financing.

---

### **RECOMMENDATION:**

Staff recommends approval of the Resolution.

### **ISSUE BEFORE COUNCIL:**

Should the Council approve the Resolution allowing the City to reimburse itself through tax-exempt financing at a later date?

### **BACKGROUND/SUMMARY:**

The fiscal year 2023 budget authorized the purchase of two dump trucks (with an approximate purchase price of \$300,000 each) and a hydro excavator truck for the water department (with an approximate purchase price of \$600,000). With the uncertainty of when the City would receive the vehicles and the final price, the Finance Director elected to not execute the lease agreement in advance. Instead, the lease will be executed once the vehicles are purchased and paid for. The Internal Revenue Services requires official action by the City Council to allow reimbursement of expenses with tax-exempt financing.

### **DISCUSSION:**

Due to the uncertainty regarding vehicle purchases, the Finance Director did not execute the vehicle financing prior to purchase of the vehicles (since the amount of financing was not known). Rather, he chose to wait until the vehicles are purchased to execute financing. In order to be reimbursed via tax-exempt financing, official action of the Council is required. The proposed resolution is included for consideration.

### **ALTERNATIVES:**

The City Council may choose to not approve the resolution. If this is chosen, however, the City will not be able to finance the vehicles with tax-exempt financing, and another funding source would need to be used to accomplish the purchase. The City has active purchase orders for the vehicle purchases.

**FISCAL IMPACT:**

The City anticipated receiving \$1.2 million in financing proceeds in the fiscal year 2023 budget. All three vehicles are currently budgeted.

**ATTACHMENTS:**

Resolution authorizing the advance of funds for the purchase of financing vehicles.

**HERRIMAN, UTAH**

**RESOLUTION NO. R -2023**

**A RESOLUTION OF THE HERRIMAN CITY COUNCIL APPROVING THE ADVANCE OF FUNDS FOR THE PURPOSE OF PURCHASING TWO (2) DUMP TRUCKS AND A HYDRO EXCAVATOR VACTOR TRUCK, AND ADOPTING OFFICIAL INTENT TO REIMBURSE SAID FUNDS AT A LATER DATE THROUGH FINANCING.**

**WHEREAS**, the Herriman City Council (“Council”) met in regular meeting on March 22, 2023, to consider, among other things, approving the advance of funds for the purchase of purchasing two (2) dump trucks and a hydro excavator vactor truck with an estimated purchase price of \$1,200,000; and

**WHEREAS**, Herriman City has entered into an agreement to purchase the Trucks and must submit payment to the vendor (the “Advance”) for the purchase of said Trucks.

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

**SECTION 1.** The Advance is hereby approved.

**SECTION 2.** The City hereby adopts official intent to reimburse the Advance with proceeds from a lease purchase agreement or other financing which will close at a later date.

**SECTION 3.** The Officers and Officials of the City are hereby authorized and directed to take any action to effectuate the intent of this Resolution.

This Resolution, shall take effect immediately upon passage and acceptance as provided herein.

**PASSED AND APPROVED** by the Council of Herriman, Utah, this 22nd day of March, 2023.

**HERRIMAN CITY COUNCIL**

By: \_\_\_\_\_  
Mayor Lorin Palmer

ATTEST: \_\_\_\_\_  
Jackie Nostrom, MMC  
City Recorder



## STAFF REPORT

**DATE:** **March 9, 2023**

**TO:** The Honorable Mayor and City Council

**FROM:** Jonathan Bowers, Engineer of Public Utilities

**SUBJECT:** Consideration to Award the Construction Contract for Hamilton Farms Storm Drain Improvements

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### **RECOMMENDATION:**

It is recommended to award the construction contract to low bidder, J&B Excavating, Inc.

### **ISSUE BEFORE COUNCIL:**

Should the City Council award the construction contract for this project?

### **BACKGROUND/SUMMARY:**

The Hamilton Farms Storm Drain Improvements consists of approximately 4,000 linear feet of new storm drain pipe along McCuiston Ave, Erin Loop Rd., and Gina Road as shown below in Figure 1. This project will also include approximately 3,000 linear feet of storm drain pipe removal of undersized pipe.

This project is identified on the currently adopted and past Storm Drain Master Plans. Since this project is intended to cure existing deficiencies, it is not eligible to be paid with Storm Drain Impact Fee funds. It is proposed to pay for the project with funds allocated to Herriman City from the American Rescue Plan Act (ARPA).

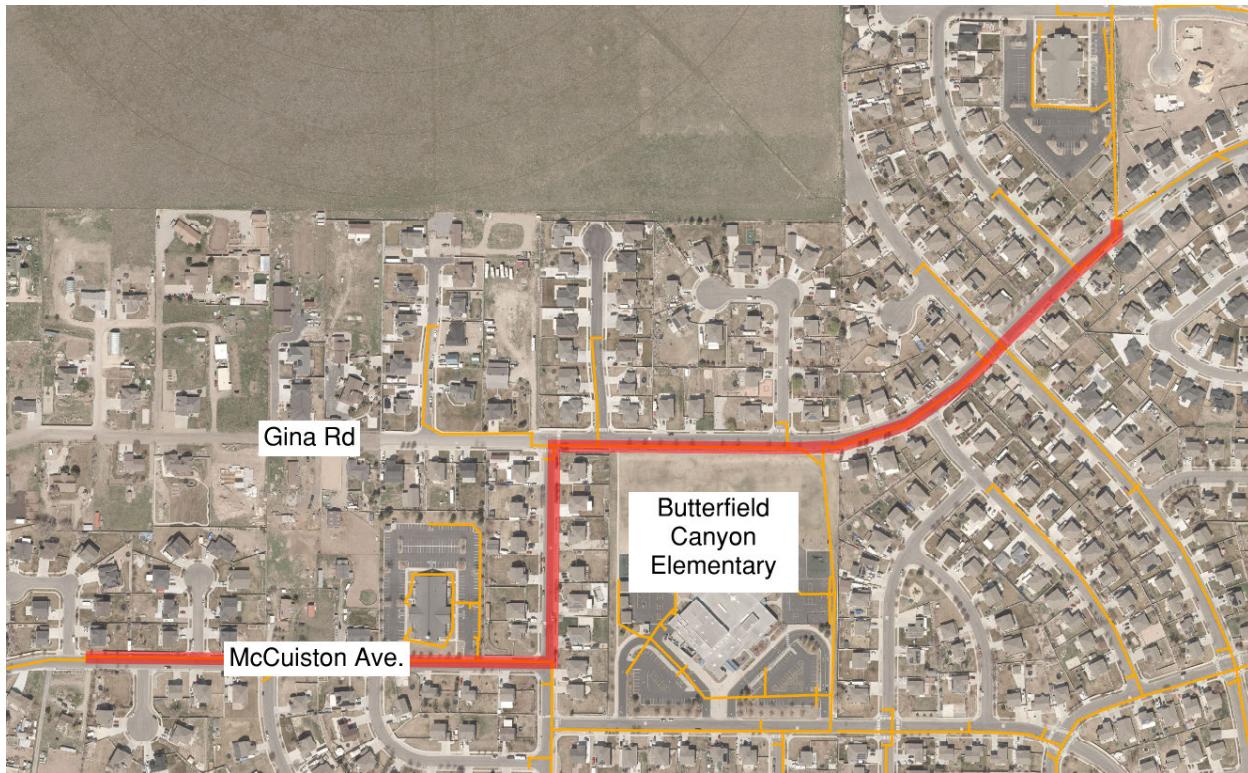


Figure 1. Project Overview (new lines shown in red)

## **DISCUSSION:**

The project was bid on March 8<sup>th</sup>, 2023 at Herriman City Hall. Seven bids were received and tabulated as shown below in Table 1.

Table 1. Bid Results for 2022 City Striping Contract

<b>Contractor</b>	<b>Bid Amount</b>
J&B Excavating Inc	\$1,430,705.50
Newman Construction Inc	\$1,597,200.00
BD Bush Excavation Inc	\$1,755,167.00
Landmark Excavating	\$1,942,672.50
Silver Spur Construction LLC	\$2,012,641.00
Red Pine Construction	\$2,145,365.00
Beck Construction and Excavation Inc	\$2,210,773.00

J&B Excavating Inc provided the lowest bid for the project. A due diligence review of J&B Excavating Inc is on-going to verify they meet the requirements and expectations of the city. It is anticipated that if they pass the due diligence review, it is recommended they be awarded the contract.

**FISCAL IMPACT:**

As shown and outlined in the Capital Project Budget Analysis Form, provided in Exhibit A, the total cost of the project is **\$1,808,305.50**, whereas the total funds budgeted for the project is **\$1,810,000**, which includes approximately 20% “Owner’s Contingency.” Furthermore, funds in the amount of \$113,273 from the Rosecrest/Sentinel Ridge Pond & Park Improvements, which are budgeted but will not be used for that project, are included in the funds budgeted for this project as noted above.

**ALTERNATIVES:**

**Option 1** - Award the construction contract to the low bidder, J&B Excavating Inc, contingent upon the city’s due diligence review.

**Option 2** – Reject all current bids for the project and defer bidding for a later time. This would allow the City Council to determine other expenditure options with unused budget from the Rosecrest/Sentinel Ridge Pond & Park improvements.

**Herriman City**  
**Capital Project Budget Analysis Form**



**Date:** March 8, 2023

**Project Name:** Hamilton Farms Storm Drain Improvements

		Current Expenditure 11/23/2021	Future Projected Expenditure	Total Expenditure
<b>Design Phase</b>				
Design Engineer:	BT Engineering	\$ 39,325.00	\$ 48,175.00	\$ 87,500.00
<b>Construction Phase</b>				
Contractor:	J&B Excavating Inc.	\$ 1,430,705.50	\$ 1,430,705.50	
Owners Contingency (~20%)		\$ 290,000.00	\$ 290,000.00	
<b>Miscellaneous Costs</b>				
Advertisement	Public Notification (approx.)	\$ 100.00		\$ 100.00
	TOTAL	\$ 39,425.00	\$ 1,768,880.50	\$ 1,808,305.50
<b>Budgeted Funds</b>				
FY 2022/23	ARPA Funds - Hamilton Farms Storm Drain Improvements		\$ 1,636,727.00	
FY 2022/23	ARPA Funds - McCuiston Storm Drain		\$ 60,000.00	
FY 2022/23	*ARPA Funds - Rosecrest/Sentinel Ridge Pond Improvements		\$ 113,273.00	
		<b>Total =</b>	<b>\$ 1,810,000.00</b>	



## STAFF REPORT

**DATE:** 3/14/2023

**TO:** The Honorable Mayor and City Council

**FROM:** Blake Thomas, Community Development Director

**SUBJECT: Discussion and Consideration of a Proposed Amendment to the Olympia Master Development Agreement**

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**RECOMMENDATION:**

Approve the amendment to the Olympia Master Development Agreement (MDA).

**ISSUE BEFORE COMMISSION:**

Should the City Council approve an amendment to the Olympia Master Development Agreement?

**BACKGROUND/SUMMARY:**

The Olympia Master Development Agreement was recorded November 16, 2021. The project encompasses 933 acres including 100 acres owned by the Jordan School District (JSD), who is identified as the Special Owner in the MDA. Currently, all amendments to the MDA require approval from the JSD.

Section 2.10 of the MDA contemplates two scenarios regarding the location of the future intersection of 12600 South and U-111, each of which provides guidance on commercial development requirements within the development.

Section 2.18 of the MDA requires the Master Developer to install secondary water infrastructure for all areas of the development within water pressure zones 3 and 4.

Section 5.3.1 of the MDA outlines requirements for the Public Infrastructure District (PID).

**DISCUSSION:**

The Master Developer proposes to make 4 adjustments to the MDA, as follows:

1. The Master Developer requests to amend the MDA by adding section 7.2 to the MDA, which is a provision to not require future MDA amendments to obtain approval from the Special Owner (JSD) if the amendment does not impact property owned by the Special Owner. This will allow future amendments that are unrelated to JSD school sites to move forward without full board approval. (The JSD Board approved this change at the December 13, 2022 Board Meeting). The proposed text addition is provided below:

***7.2 Special Owner Consent Provision. Special Owner shall not be required to execute any Amendment to this MDA that does not affect the School District property.***

2. Section 2.10.1 of the MDA addresses the amount of commercial development required in the Olympia development based on the configuration of the intersection of Herriman Boulevard and the future alignment of U-111. The MDA requires that 300,000 gross leasable square feet of commercial uses shall be developed if at least half of the intersection is aligned in the Olympia development (this can be reduced to 200,000 square feet after 15 years). It is possible that the alignment of U-111 will be configured such that less than half of the intersection at Herriman Boulevard will be within the Olympia development. The developer is proposing to address this issue with amended text as follows:

*2.10.1 If at least half one quarter (1/4) of the intersection of 12600 South and U-111 is located within the Planned Community, then Master Developer shall develop commercial uses, as permitted by the Design Guidelines as follows:*

*[the amount or required gross leasable commercial area will not be amended, see section 2.10.1.1 of the MDA]*

3. The Master Developer is exploring different financing options for the PID in addition to the one-time contract fee. The proposed amended text is as follows:

***5.3.1 One-Time Contract Fee Public Infrastructure Financing. The Parties hereby acknowledge that the collateral for securing public financing through the Public Infrastructure Districts shall be the One-Time Contract Fee and/or such other security as may be provided by the Governing Documents of the Public Infrastructure Districts. Special Owner shall not be required to pay the One-Time Contract Fee so long as the School District Property is developed for school purposes. The Parties acknowledge that the One-Time Contract Fee contemplated hereunder is not being assessed as an “impact fee” as that term is defined in Utah Code Ann § 11-36a-102(9)(2021).***

4. Remove the requirement for providing dry secondary water lines in Olympia. The developer is requesting that section 2.18 of the MDA be deleted in its entirety. Section 2.18 states:

***2.18 Secondary Water.*** *Master Developer shall install secondary water infrastructure within the City's water zones 3 and 4 as required by the City's Vested Laws. The Administrator may modify these requirements, pursuant to the Administrative Modification procedures of Section 7.1, where there are similar or equivalent means and costs of providing water service in zones 3 and 4.*

### **ALTERNATIVES:**

It is recommended by staff that the MDA amendment be approved by the City Council as proposed. Each of the items being amended has its own alternatives and pros/cons associated with the requested change as follows:

Item	Pros	Cons
Amend Section 7.2-JSD Approval of Future Amendments	Does not burden the school district board with making formal motions on items that do not affect their property.	None identified
Amend Section 2.1.10-Commercial Development Requirements	Addresses a scenario that was not contemplated in the MDA.  Provides the maximum amount of commercial contemplated in the MDA with one corner of the intersection in Olympia.	Does not address concerns with reducing the amount of required commercial development if it takes over 15 years to develop.
Amend Section 5.3.1-Public Infrastructure Financing	Provides a mechanism for the City Council and Developer to discuss and explore other options besides the One-Time Contract Fee to fund the Public Infrastructure Districts.  Does not commit the City Council to allow other financing options, it only provides an opportunity to discuss them. Any changes	None identified

	would require a change to the PID Governing Document	
Amend Section 2.18- Secondary Water Requirements	<p>Could provide a long-term financial savings to Herriman in regard to maintenance of the secondary water system.</p> <p>Due to average of lot sizes in subdivisions, much of the Olympia development will not be required to install secondary water.</p> <p>Due to water-wise landscaping requirements, this could reduce the maintenance required for irrigation system spray heads, drip lines, etc.</p>	Requires landscaping areas that would normally require secondary water to be watered with culinary water.

## **FISCAL IMPACT**

The fiscal impact of each MDA item being amended is addressed below:

- 1) Section 7.2: Special Owner Provision
  - a. This item has no fiscal impact.
- 2) Section 2.1.10: Commercial Development Requirements
  - a. This item could ultimately provide Herriman with a significantly increased sales tax revenue since there will be more commercial development constructed with the Olympia project provided there is at least one-quarter of the intersection located within the project area.
- 3) Section 2.18: Removal of Secondary Water Requirement
  - a. This item will reduce the operation and maintenance costs incurred by the city associated with the secondary water system.
- 4) Section 5.3.1: PID Requirements
  - a. This item will have no fiscal impact on the City.

## **ATTACHMENTS:**

- 1) MDA Amendment Application
- 2) Draft MDA Amendment



## Master Development Agreement Application

PROPERTY INFORMATION			
Request: <i>TO AMEND THE OLYMPIA MDA</i>			
Property Address: <i>13000 S. 6400 W.</i>			
Parcel Numbers: <i>2634226 0030000 + OTHERS</i>			
Acres: <i>9.33</i>			
APPLICANT INFORMATION			
Name of Applicant: <i>OLYMPIA LAND, LLC</i>			
Address of Applicant: [REDACTED]			
Email of Applicant: [REDACTED]		Phone: [REDACTED]	
Applicants Affiliation with the Subject Property:			
<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Engineer	<input type="checkbox"/> Architect	<input type="checkbox"/> Other
Attorney: <i>BRUCE BAIRD</i>			
Email of Attorney: [REDACTED]		Phone of Attorney: [REDACTED]	
Engineer: (if not listed above) <i>ENSIGN ENGINEERING</i>			
Email of Engineer: [REDACTED]		Phone of Engineer: [REDACTED]	
Property Owner: (if not listed above)			
Email of Owner: [REDACTED]		Phone of Owner: [REDACTED]	
OFFICE USE ONLY			
Date Received:	Received By:	File Number:	Fee:
	Assigned Staff:		Receipt #

**WHEN RECORDED, RETURN TO:**

Herriman City Recorder  
5355 West Herriman Main Street  
Herriman, Utah 84096

**DRAFT**  
10/27/22

**AMENDMENT #2**

**MASTER DEVELOPMENT AGREEMENT**

**FOR**

**OLYMPIA**

Approved: \_\_\_\_\_

**SECOND AMENDMENT  
TO  
THE MASTER DEVELOPMENT AGREEMENT FOR OLYMPIA**

THIS SECOND AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR OLYMPIA (the “Second Amendment”) is made and entered as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between HERRIMAN CITY, a political subdivision of the State of Utah, by and through its City Council, THE LAST HOLDOUT, L.L.C., a Utah limited liability company, JORDAN SCHOOL DISTRICT, a Utah school district, and OLYMPIA LAND, LLC, a Utah limited liability company.

**RECITALS**

A. The Parties entered into a Master Development Agreement for Olympia which was recorded on November 16, 2021 as Entry No. 13825061 in the official books and records of the Salt Lake County Recorder (the “MDA”).

B. The Parties entered into a First Amendment for Olympia which was recorded on September 20, 2022 as Entry No. 14018093 in the official books and records of the Salt Lake County Recorder.

C. The Parties desire to further amend the MDA to account for certain changes that have occurred to the proposed Project since the adoption of the MDA.

D. Specifically, the City desires for certain of the Public Infrastructure to be completed in early phases and one time to save costs and increase efficiencies and the City recognizes that the requirement of secondary water for certain areas of the Project no longer makes any practical sense.

E. The parties have cooperated in the preparation of this Second Amendment.

**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, Owner and Master Developer and Special Owner hereby agree to the following:

**AMENDMENTS**

1. **Effect of this Second Amendment.** Other than a specifically amended herein by the First Amendment and this Second Amendment, the MDA shall remain in full force and effect.

2. **Secondary Water.** The provisions of Section 2.18 are hereby deleted. Any reference in the MDA to secondary water is also deemed deleted.

3. **Intersection of 12600 South and U-111 within the Planned Community.** Section 2.10.1 is hereby amended to read:

2.10.1 If at least one quarter (1/4) of the intersection of 12600 South and U-111 is located within the Planned Community, then Master Developer shall develop commercial uses, as permitted by the Design Guidelines, as follows:

4. **Public Infrastructure Financing.** Section 5.3.1 is hereby amended to read:

**Security for Public Infrastructure Districts.** The Parties hereby acknowledge that the collateral for securing public financing through the Public Infrastructure Districts shall be the One-Time Contract Fee and/or such other security as may be provided by the Governing Documents of the Public Infrastructure Districts. The Parties acknowledge that the One-Time Contract fee contemplated hereunder is not being assessed as an “impact fee” as that term is defined in Utah Code Ann § 11-36a-102(9) (2021).

5. **Special Owner Consent to Amendment.** Section 7.2 is hereby added to read as follows:

7.2. **Special Owner Consent Provision.** Special Owner shall not be required to execute any Amendment to this MDA that does not affect the School District Property.

**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 herein above written.

*[signatures on following pages]*

**CITY**  
Herriman City

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NATHAN CHERPESKI, City Manager

ATTEST

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JACKIE NOSTROM, City Recorder

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Todd Sheeran, City Attorney  
*Approved as to form and legality*

STATE OF UTAH

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:ss.  
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COUNTY OF SALT LAKE

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, NATHAN CHERPESKI personally appeared before me, who being by me duly sworn, did say that they are the City Manager of Herriman City, a political subdivision of the State of Utah, and that the foregoing Master Development Agreement was signed on behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same for the purposes described therein.

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NOTARY PUBLIC

**OWNER**  
The Last Holdout, LLC

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF UTAH

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:ss.

COUNTY OF SALT LAKE

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On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, \_\_\_\_\_ personally appeared before me, who being by me duly sworn, did say that they are the \_\_\_\_\_ of The Last Holdout, L.L.C, a Utah limited liability company, and that the foregoing Master Development Agreement was signed on behalf of the Owner by authority of its governing board and acknowledged to me that the Owner executed the same for the purposes described therein.

\_\_\_\_\_  
NOTARY PUBLIC

**MASTER DEVELOPER**  
Olympia Land, LLC

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RYAN BUTTON, Manager

STATE OF UTAH

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COUNTY OF SALT LAKE

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On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, RYAN BUTTON personally appeared before me, who being by me duly sworn, did say that they are the Manager of Olympia Land, LLC, a Utah limited liability company, and that the foregoing Master Development Agreement was signed on behalf of the Master Developer by authority of its governing board and acknowledged to me that the City executed the same for the purposes described therein.

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NOTARY PUBLIC

**SPECIAL OWNER**  
Jordan School District

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF UTAH

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COUNTY OF SALT LAKE

:ss.

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On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, \_\_\_\_\_ personally appeared before me, who being by me duly sworn, did say that they are the \_\_\_\_\_ of Jordan School District, and that the foregoing Master Development Agreement was signed on behalf of the Owner by authority of its governing board and acknowledged to me that the Owner executed the same for the purposes described therein.

\_\_\_\_\_  
NOTARY PUBLIC