

HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032
Heber City Council Meeting **AMENDED AGENDA**

December 17, 2024

4:00 p.m. Work Meeting
6:00 p.m. Regular Meeting

TIME AND ORDER OF ITEMS ARE APPROXIMATE AND MAY BE CHANGED AS TIME PERMITS

I. WORK MEETING - 4:00 P.M.

1. Request from Jordanelle Ridge to Modify Upper Village Transportation Master Plan (Russ Funk, City Engineer) - *30 min*
2. Vacant properties surrounding Timpanogos Middle School and Old Mill Elementary School (Ginny Tuite, Bill Coleman) - *30 min*
3. Ordinance 2024-24 North Village Development Annexation (aka Resort-Crossings/Harvest Village) Annexation located at the intersection of Highway 40 and Highway 32 (Tony Kohler, Community Development Director, Jeremy Cook, City Attorney) - *50 min*

II. BREAK - 10 MIN

III. REGULAR MEETING - 6:00 P.M.

1. Call to Order
2. Pledge of Allegiance (Yvonne Barney, Council Member)
3. Prayer/Thought by Invitation (Mike Johnston, Council Member)

IV. AWARDS, RECOGNITION, and PROCLAMATIONS:

1. Nomination of Steve Simpson and Russ Coleman for the Mayor's Award

V. CONFLICT OF INTEREST DISCLOSURE:

VI. CONSENT AGENDA:

1. Approval of November 19, 2024, City Council Meeting Minutes and the December 3, 2024, City Council Meeting Minutes (Trina Cooke, City Recorder)
2. Contract Award for Construction of the Heber City 2024 Hospital Well Backup Generator Project (Russ Funk, City Engineer)

VII. PUBLIC COMMENTS: (3 min per person/20 min max)

VIII. GENERAL BUSINESS ITEMS:

1. Utah Department of Transportation (UDOT) Update (Craig Hancock) - *20 min*

IX. ACTION ITEMS: (Council can discuss; table; continue; or approve items)

1. Public Hearing and Possible Council Action on Resolution 2024-21 to Amend the FY 2025 Budget for City-wide Capital Improvement Projects (Sara Nagel, Finance Manager) -
2. Ordinance 2024-24 North Village Development Annexation (aka Resort-Crossings/Harvest Village) Annexation located at the intersection of Highway 40 and Highway 32 (Tony Kohler, Community Development Director, Jeremy Cook, City Attorney) - *60 min*
3. Central Heber Replacements Project – Phase 1C - Construction Change Orders 1 & 2 (Russ Funk, City Engineer) - *10 min*
4. Jordanelle Ridge Upper Village Transportation Master Plan (Scott Phillips, Council Member) - *15 min*

X. COMMUNICATION:

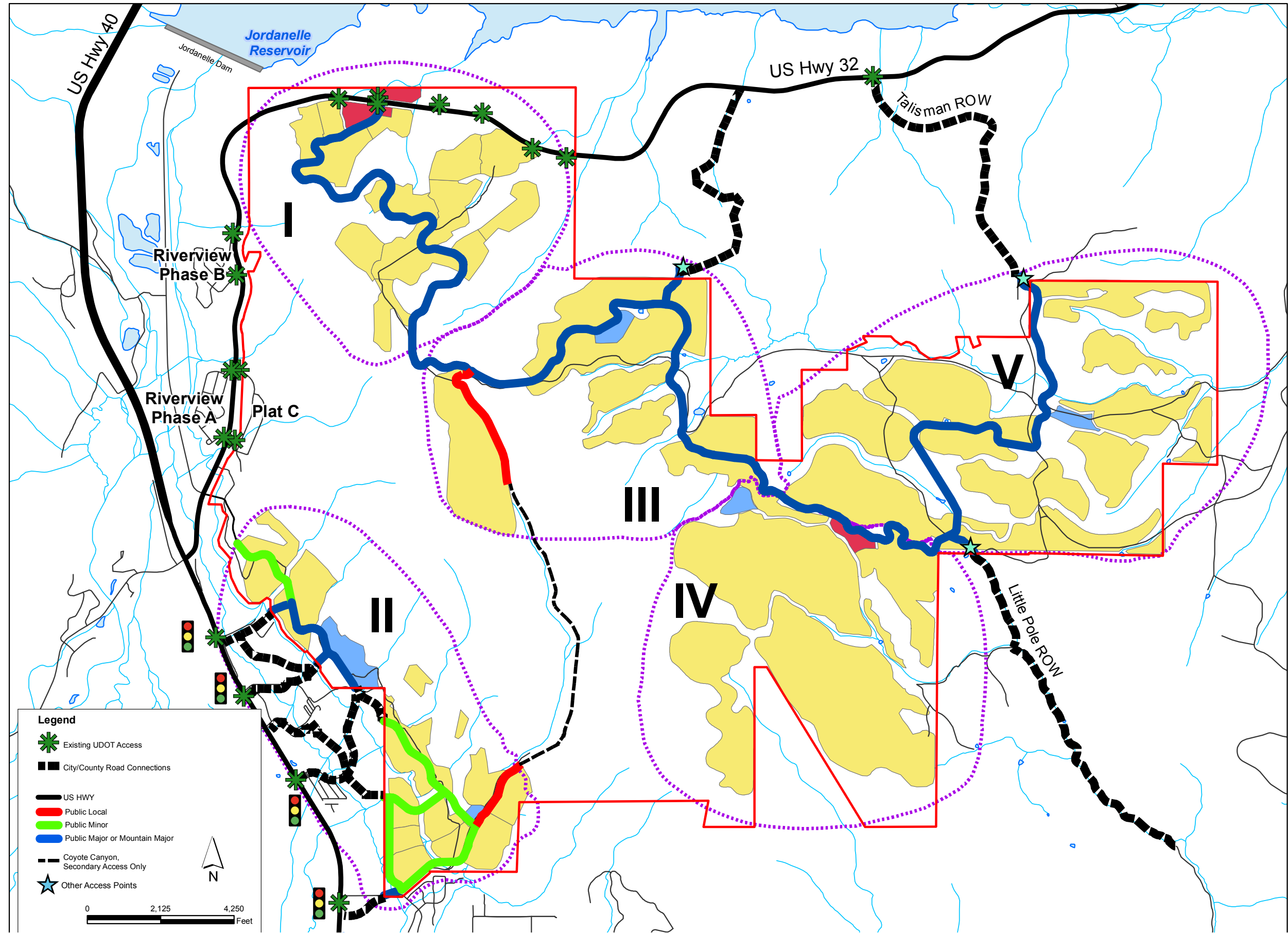
XI. CLOSED MEETING:

1. Discuss the Purchase, Exchange, or Lease of Real Property (Matt Brower, City Manager)

XII. ADJOURNMENT:

Ordinance 2006-05 allows Heber City Council Members to participate in meetings via telecommunications media. In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact Trina Cooke at the Heber City Offices 435.657.7886 at least eight hours prior to the meeting.

Posted on December 12, 2024, in the Heber City Municipal Building located at 75 North Main, the Heber City Website at www.heberut.gov, and on the Utah Public Notice Website at <http://pmn.utah.gov>. Notice provided to the Wasatch Wave.



RE INVESTMENT
HOLDINGS
JORDANELLE
PROPERTY

TRANSPORTATION
PLAN



Legend

 Existing UDOT Access

 Approved UDOT Access

 Other Access Points

 City/County Road Connections

 Unpaved City/County Road Connections

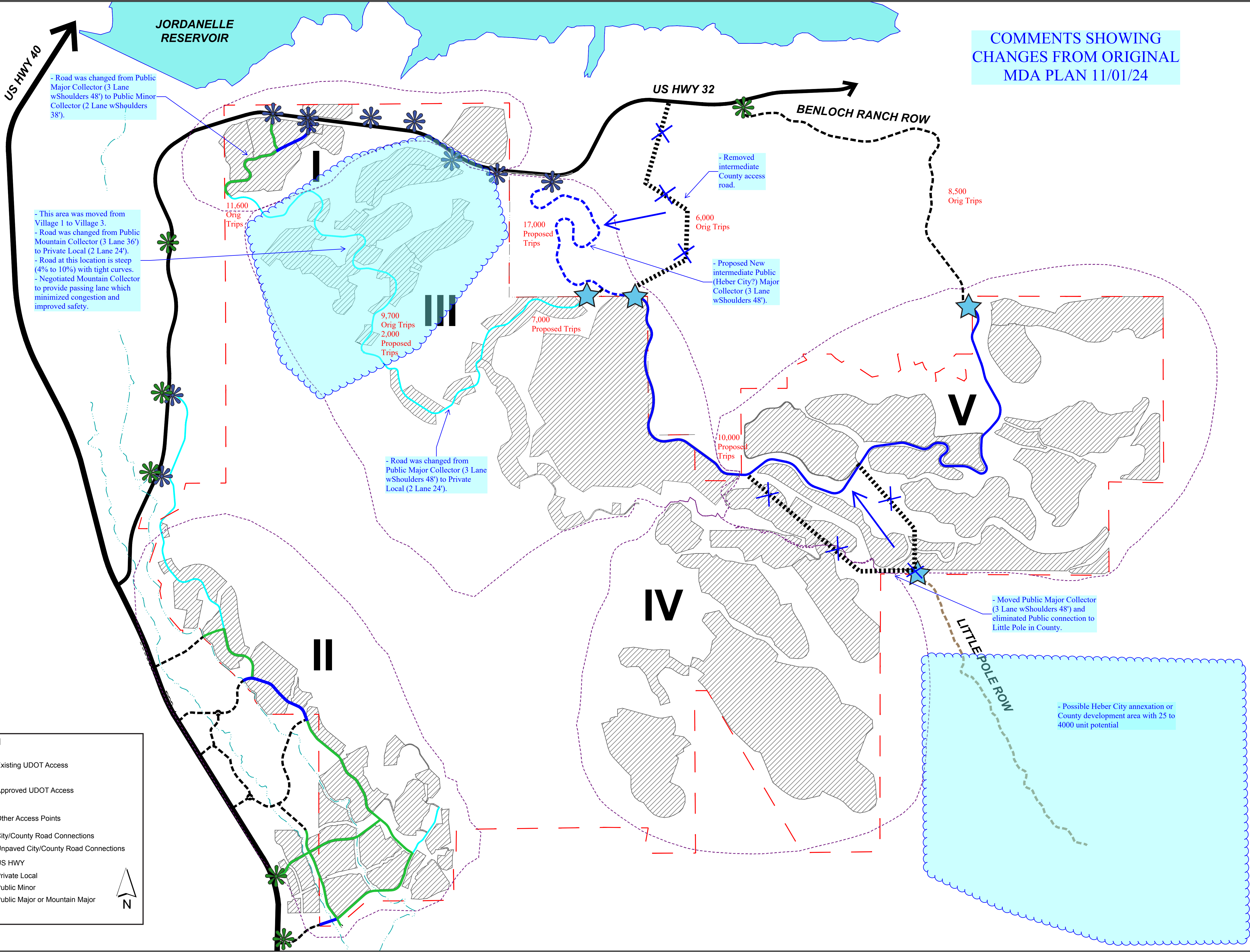
 US HWY

 Private Local

 Public Minor

 Public Major or Mountain Major





JORDANELLE RIDGE

TRANSPORTATION MASTER PLAN

JORDANELLE RIDGE

10421 S. JORDAN GATEWAY, SUITE 200, SOUTH JORDAN, UTAH 84095

DATE SUBMITTED: 08-12-2024

PREPARED FOR: JORDANELLE REF ACQUISITION

SHEET NUMBER

1

SCALE

HORIZONTAL: 1"=NTS

VERTICAL: 1"=

JOB NUMBER

47-100

CAUTION

The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.

November 4, 2024

Heber City Corporation
Attn: Russell Funk P.E.
75 North Main
Heber City, Utah 84032

Subject: Jordanelle Ridge MDA Amendment - Village 1, 3-5 Roads

Dear Russ:

Horrocks Engineers recently reviewed the concept plan for the Jordanelle Ridge MDA amendment for roads located south of SR32 in Villages 1, 3-5. The following items need to be considered in discussing the approval of this amendment. Conceptual drawings are attached at the end of this report showing the original and proposed road plans, along with comments describing the changes mentioned below.

Comparison of Original / Proposed Plans

1. Moved half of Village 1 into Village 3.
2. Changed half of the Village 1 public Major Collector, to a public Minor Collector.
3. Changed the Village 1/Village 3 public Mountain Collector, to private Local road.
4. Changed the Village 3 public Major Collector, to private Local road until it connects to the intermediate SR32 access road.
5. Reduced the trips through Village 3 from 9,700 ADT to 2000 - 7000 ADT.
6. Moved the intermediate SR32 access through the County further west, and designated it a public Major Collector potentially owned by City.
7. Increased the trips on the new intermediate SR32 public Major Collector from 6,000 ADT to 17,000 ADT.
8. Identified trips through Villages 4 & 5 as $\pm 10,000$ ADT.
9. Removed the public Major Collector connection to the County road in Little Pole Canyon.
10. Did not update the original traffic studies for the proposed plan.

Considerations

1. The City needs to understand the nature of any land use and density changes proposed in Village 1, 3-5, and any changes to public/private responsibilities and ownerships. The Villages were originally planned as private developments with some retail, office, and public / school space included. **If the plan for the area is being changed the City needs to determine if the changes are acceptable.**
2. The original plan envisioned a looped Major Collector or Mountain Collector public road through Villages 1, 3-5, providing multiple points of public access, and serving development Pods which would have private roads. The proposed plan envisions a more limited public road with one access off SR32 that loops through Villages 4 and 5 and ties into a County road to the northeast. All other roads would be private. **The City needs to determine if it wants to maintain the looped road system originally planned, if the proposed partial public road system is acceptable, or if there is little or no need for public access to the area, and all roads can be private.**

3. The original looped public road through all the Villages is proposed to be downsized in some areas from either a public Major Collector (3 Lane with shoulders, 48' Asphalt) or Mountain Collector (3 Lane, 36' Asphalt), to public Minor Collector (2 Lanes with shoulders, 38' Asphalt) and private Local roads (2 Lanes, 24' Asphalt). The original road sizes were minimums agreed to, based on estimated traffic volumes from traffic studies (Horrocks 3/2/20 & Hales 5/26/17 and 1/20/20), topography, steep slopes, and curves. **The City needs this same information to evaluate the capacity, safety, congestion, emergency service needs, etc. on the proposed reduced road sizes.**
4. The original plan estimated Village 1 could have 16,250 trips starting at SR32, reducing to 11,600 trips, and then to 9,700 trips traveling up into Village 3. The proposed plan projects only 2000 trips in the Village 1 / Village 3 area. **The City needs to understand why the trips have dropped significantly and have the traffic study for the area confirm the numbers are accurate.**
5. The original Village 1 / Village 3 public road had steep grades (4% to 10%) and tight curves. The Mountain Collector road cross section was developed to allow for a 3rd passing lane that minimized congestion created by slow moving vehicles and construction traffic. **The City needs to understand how making this road a smaller private Local road will eliminate the congestion and safety concern.**
6. The original plan estimated the intermediate access into Villages 3-5 could have 6,000 trips coming off SR32. The new plan proposes an estimated 17,000 trips along this same road and that it be constructed as a public Major Collector or Mountain Collector. Per the 3/2/20 Horrocks capacity report, the maximum traffic capacity of a 3-lane road is 14,000 trips. **The City needs to understand how this road can function as the main public access into the development if it is only a 3-lane road, and if should be upsized to a 4-lanes. The topography constraints also need to be provided for this access, e.g. alignment, grades, curves, walls, etc.**
7. The proposed plan eliminates the original public road connection between Villages 4 & 5 and Little Pole Canyon. This road connection could significantly influence where traffic from development in the Little Pole / County area is routed in the future. Without a connection through the Jordanelle Ridge Villages to SR32, the only traffic route for future development or annexations would be down Lake Creek road and onto Heber City's Center Street. **The City needs to determine how their decisions on the Villages 1, 3-5 roads will affect off-site traffic and Central Heber traffic congestion in the future.**

Please call our office with any additional questions or concerns regarding this project.

Sincerely,

HORROCKS ENGINEERS

Bart Mumford, P.E.

Attachments: Original and Proposed Road Drawings

cc: File



Heber City Council Staff Report

MEETING DATE: 12/17/2024
SUBJECT: Vacant properties surrounding Timpanogos Middle School and Old Mill Elementary School
RESPONSIBLE: Ginny Tuite, Bill Coleman
DEPARTMENT: Planning
STRATEGIC RELEVANCE: Community Development

SUMMARY

Ginny Tuite and Bill Coleman are seeking input from the Council on potential annexations east of Mill Road. This would require an amendment to the Annexation Policy Plan.

The policy questions are

1. Should the City amend the Annexation Policy Plan beyond Mill Road (1200 East)?

RECOMMENDATION

BACKGROUND

There are multiple properties east of mill road near Timpanogos Middle School and Old Mill Elementary that are currently being used for agricultural purposes. The Mr. Coleman and Ms. Tuite are wanting to annex these properties into the City to facilitate affordable housing. This area is not in the annexation policy plan boundaries. During the amendment to the annexation policy plan boundaries for the Jordanelle Ridge project, the City moved the boundary line from 2400 East to Mill Road (1200 East) given the feedback from the property owners in the area and the County Council.

DISCUSSION

N/A

FISCAL IMPACT

N/A

CONCLUSION

N/A

ALTERNATIVES

Not an Action Item

POTENTIAL MOTIONS

Not an Action Item

ACCOUNTABILITY

Department: Planning
Staff member: Tony Kohler, Community Development Director

EXHIBITS

1. Mill Road Area Review
2. Wasatch County MOU for Heber City Expansion Area

Mill Road Area Density and Use Review Proposal

March 13, 2024

County Council Work Session

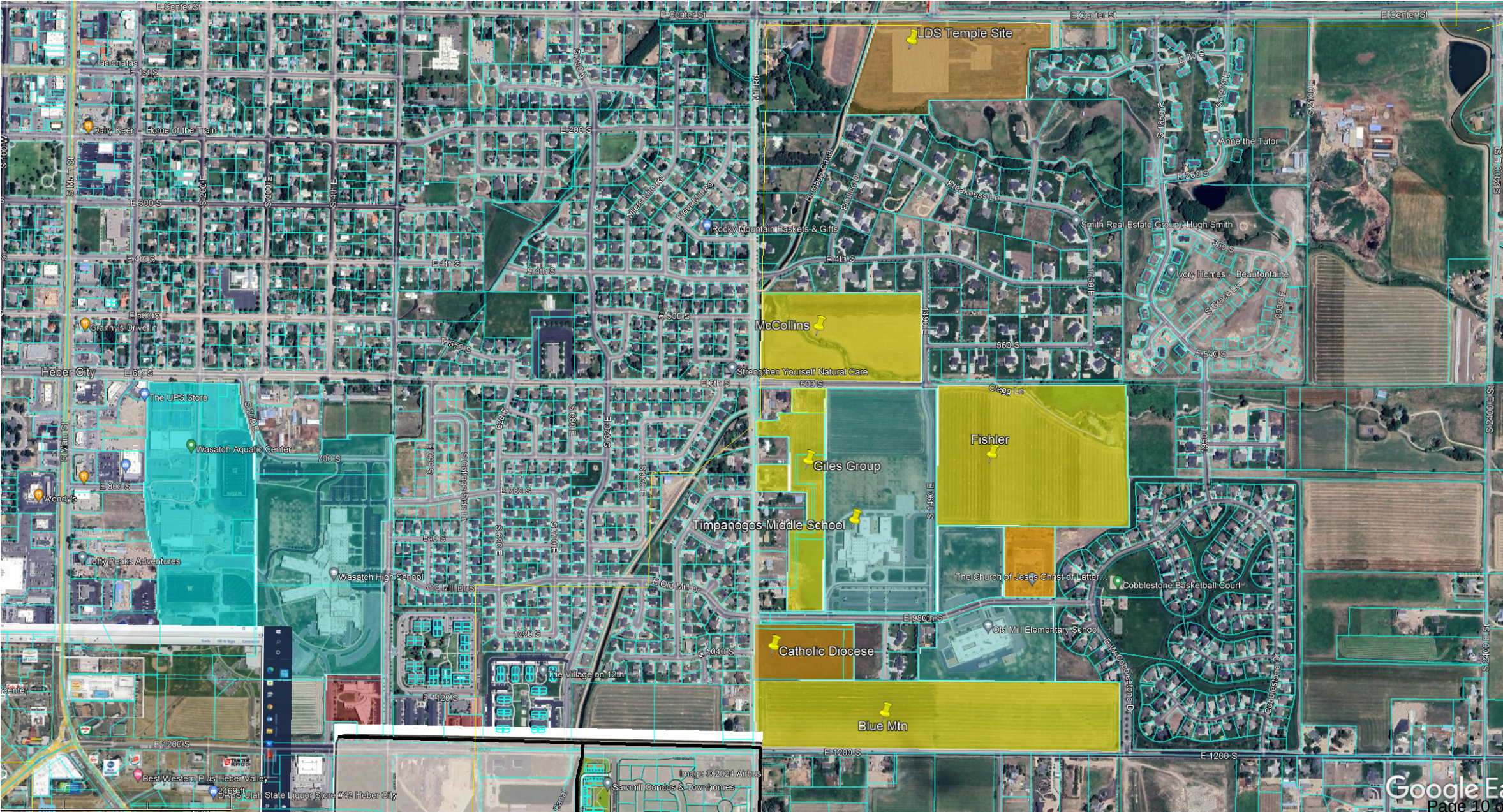
Bill Coleman and Ginny Tuite

A review of the Wasatch County General Plan regarding the Density, Density Bonuses and Uses of lands in and around public facilities such as Churches, Schools, or Other Civic Properties like the Mill Road area within the Eastern Planning Area, and to consider doing so in other similar properties within the County. It is the intention to show that interpretations of this request are consistent with the existing General Plan and its vision and detail for the future.

In particular, this review intends to offer and interpret the General Plan as an aid for producing Moderate Income Housing opportunities for Wasatch County and Heber City. The need for housing of public employees and local citizens is paramount now in the Heber Valley. In particular, the County should consider the unique assets and opportunities that these vacant lands produce for the working public and general populace proximate to public facilities.

This information is intended to also open further discussions with Heber City to aid in the transition of the Mill Road area for transportation, circulation, and the future needs of growth as have been anticipated in the Heber City and the Wasatch County General Plan.

Primary Area of Discussion in and around Mill Road (1200 East)



General Plan Purpose, Intent, and Use pp. 2

Chapter Purpose, Intent, and Use of the General Plan The purpose, intent, and use of this general plan is to provide a comprehensive approach to the coordination of development, natural resources and open space in such a way as to provide a harmonious relationship that meets the needs of present and future residents and also promotes the health, safety and general welfare of the residents of the County. The general plan is not meant to be a static document and should be updated and amended as needed and used as a template against which planning decisions, changes to the land use and development code, and zoning are made.

Specifically, the purposes, intent and uses of the general plan are:

1. To promote the most acceptable type of development within each planning area of the County.
2. To ensure the orderly growth of urbanizing areas and reduce the haphazard scattering of development that has occurred since the first plan became outdated.
3. To foster commercial and light industrial development, where appropriate, that will strengthen the economic base of the County.
4. To protect the natural and cultural resources of the County.
5. To ensure that geologic hazards, flood plains, wetlands, ridgelines, view sheds and other physical constraints are adequately considered in each planning area.
6. To promote the social and economic well-being of the people of the County.
7. To ensure that growth does not over tax the water resources and degrade the clean air of the County.
8. To be used as a guide to the Planning Commission and County legislative body as they review requests for the approval of development projects.
9. To be used as a framework which guides the establishment of policies regarding: zoning, the development code, and capital improvement programming.
10. To be used as a source of information with regards to public policies useful in making decisions concerning plans for future development.
11. To be used as a source of information with regards to public policies that may have any impact on a single parcel of property.

General Plan Reference: Heber City Annexation-Policy-Plan pp. 16

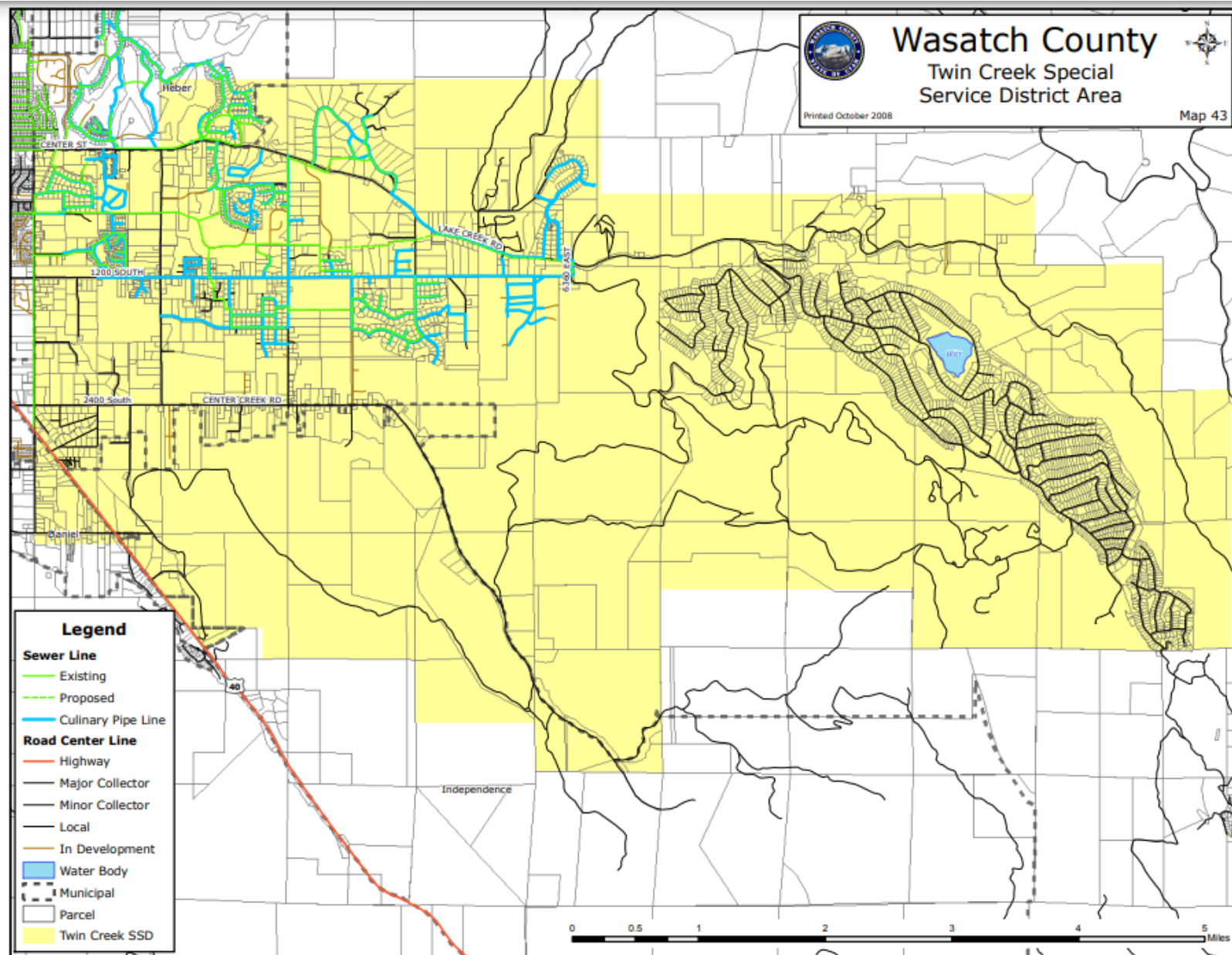
East of Mill Road, the County has formed the Twin Creeks Special Service District to provide sanitary sewer service. The zoning in the unincorporated County in the area permits lots of 1 acre in size and larger. The area has a mixture of lot sizes and has some non-conforming lots less than five acres in size that are serviced with septic tanks and drain fields. Given availability of the Twin Creek's Special Service District (TCSSD) sewer system, Heber City will not need to provide sanitary sewer service for the area. The City is capable in servicing portions of the TCSSD. The City could offer service to areas that contain existing homes or in areas where it is infeasible for the TCSSD to provide sanitary sewer service. However, the City will need to carefully coordinate such effort with the TCSSD to ensure that financing for the district is not harmed by providing that service. It is generally understood that the primary sewer provider for this area will be the TCSSD.

General Plan Reference Heber City Annexation Policy Plan

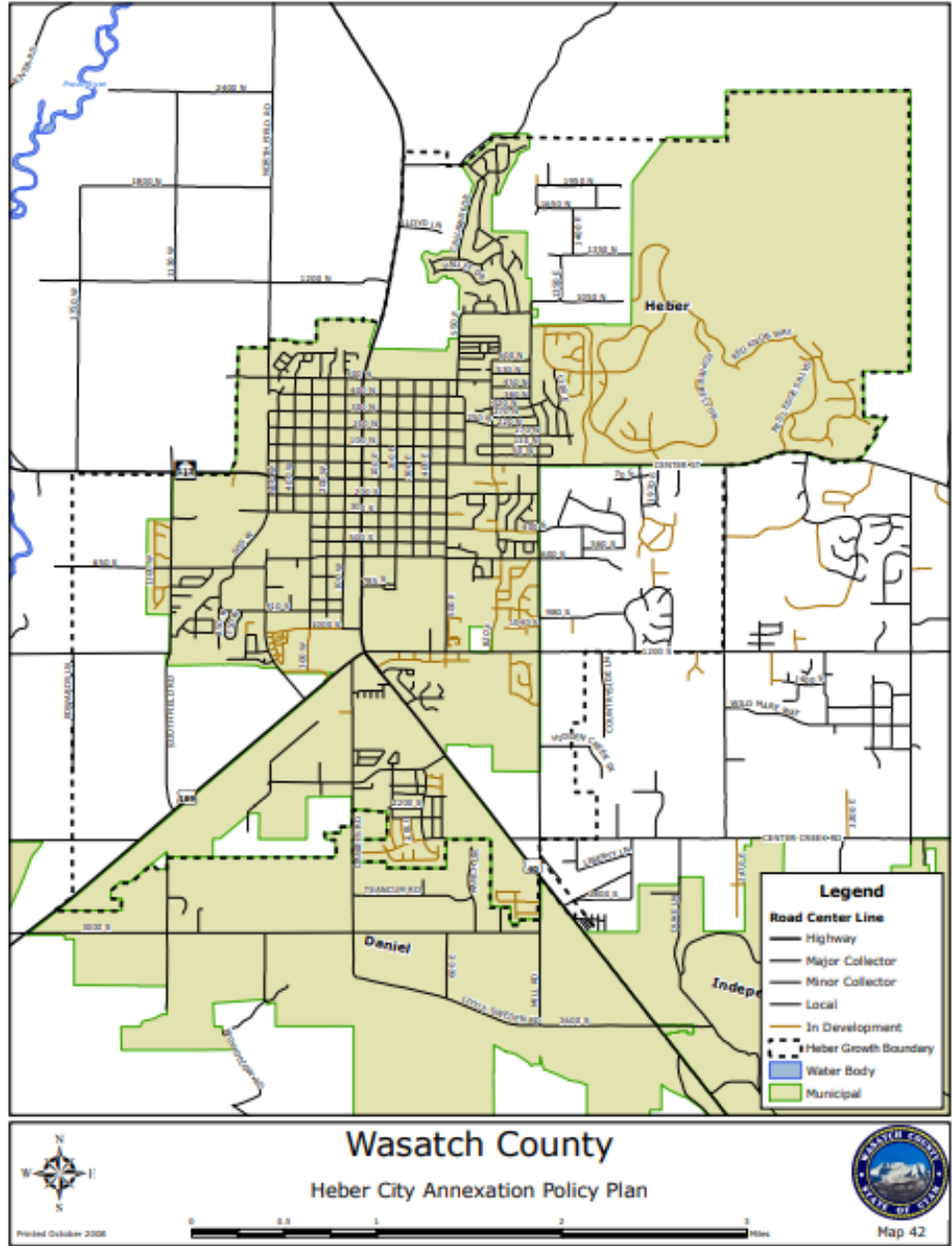
pp. 10

Twin Creeks Area The area between 1200 East 2400 East serves as a suburban transition zone to the lower agricultural densities envisioned east of 2400 East. A significant part of that area is contained within a master planned subdivision, the Crossings at Lake Creek. It is unlikely there would be any interest in annexing that area, as it is already developed. South of 1200 South, some large lot agricultural subdivisions exist that should remain as agricultural lots. East of the City's expansion area should remain as an agricultural area, decreasing in density as one travels away from the City. Greener Hills Subdivision exists to the east of Red Ledges and this area should remain at a lower density, as it has been developed. Much of the area east of 1200 East and North of 1200 South has already been developed in the unincorporated County at suburban style densities, and much of the area is therefore unlikely to be annexed into the City.

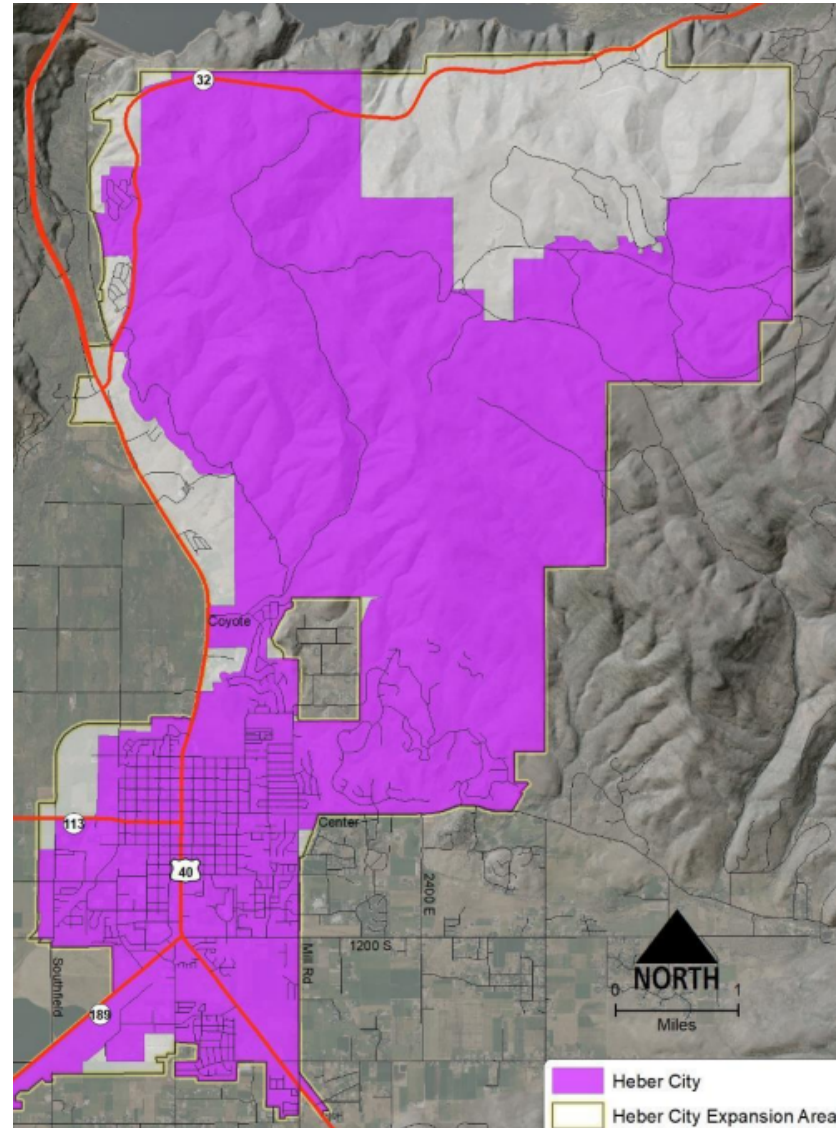
Twin Creeks Special Service District



Wasatch County Current General Plan Exhibit of Heber City Annexation Policy Plan



Heber City Present Map of Expansion Area from 2018+ Document



Chapter 3: Land Use Goals and Policies of General Plan pp. 2-19 Selected

1.1.4 POLICY: Preserve low density land use/zoning in geographically or ecologically sensitive areas and discourage modifications that would permit greater density.

3. GOAL: Review the land use portion of this plan on a regular basis to determine if the land use policies are being adhered to and changing conditions are addressed.

4. GOAL: The lot sizes of permitted development shall increase as the distance from population centers increase.

4.1 OBJECTIVE: Develop land use policies that allow smaller lots for developments adjacent to municipalities.

4.1.1 POLICY: The Development Code shall provide for development options next to centers of population that would allow for smaller lot sizes with open space as compared to the more rural parts of the County.

Chapter Three Wasatch County General Plan 6 Wasatch County

9. GOAL: Develop a connected multi-modal transportation infrastructure that will meet the travel requirements of existing and future residents and visitors; is compatible with the mountain and rural characteristics of Wasatch County; improves mode choice for Wasatch County residents and visitors; and promotes environmental preservation, consistent with County goals.

9.1 OBJECTIVE: Design a continuous and connected major road network that is based on improvements to the existing road system and allows for multiple transportation options.

9.1.1 POLICY: Establish the alignment of the Heber City bypass route and oppose proposals that encourage incompatible development within the corridor.

9.1.2 POLICY: As maintenance and upgrades are done, improve existing roads to meet the road standards established in this plan.

9.1.3 POLICY: Collector and arterial roadway rights-of way shall include adequate space for roadways and safe and comfortable bike and pedestrian facilities; active transportation facility types should respond to the location context and be consistent with Federal Highway Administration guidance. 9.1.4 POLICY: Develop network typologies that respond to land use context, topography, and other elements that may affect the implementation of complete, connected transportation networks. Within each typology, define the associated context, transportation network objectives, and considerations for facility selection. Update Wasatch County standards to reflect these typologies.

9.1.5 POLICY: Access to major collector and arterial roads shall be from cross streets for all new developments. Access from driveways that requires motor vehicles to back onto the collector or arterial roads shall be prohibited.

9.1.6 POLICY: To the extent possible, streets shall form a continuous network to enhance interaction and service between subdivisions and improve transportation system performance and safety for all modes. Streets should also reduce fiscal impact by reducing need for street widening and expansion; and improved transportation choice for all residents.

Goals and Policies Chapter Three Wasatch County – State of Utah

Complete and continuous networks that provide for easy and direct travel for all modes should be defined through use of network typologies that identify transportation elements.

9.1.7 POLICY: Development shall incorporate traffic management and subdivision design features that help reduce speed and calm traffic with the intent of improving safety for all roadway users, including but not limited to motor vehicles, pedestrians, and bicyclists, on collector and local streets.

9.1.8 POLICY: Maintain collector roads as through roads but encourage corridor design that supports reduced speeds. Design of the collector roadways should respond to area context, including land use, demand, and development type.

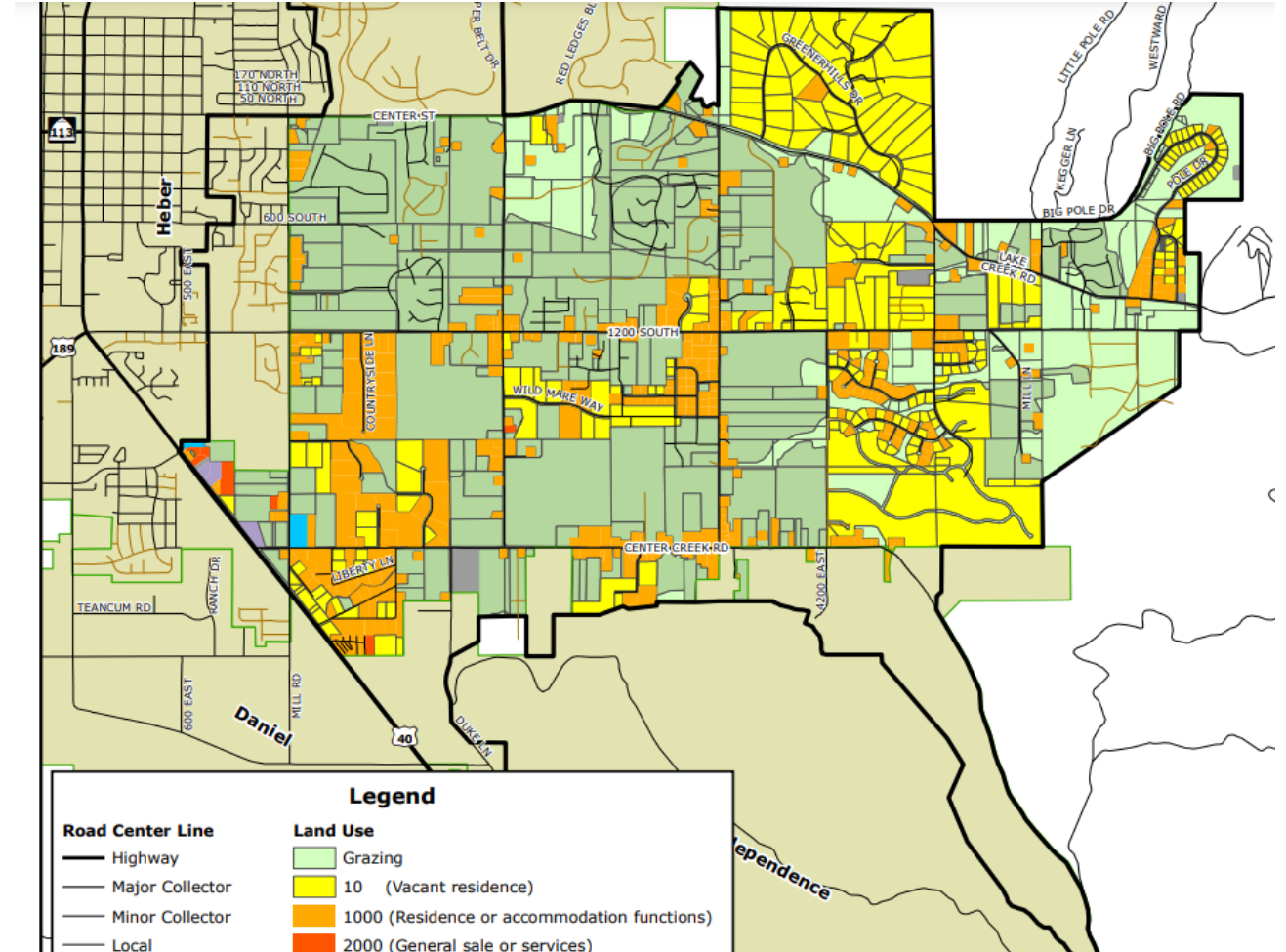
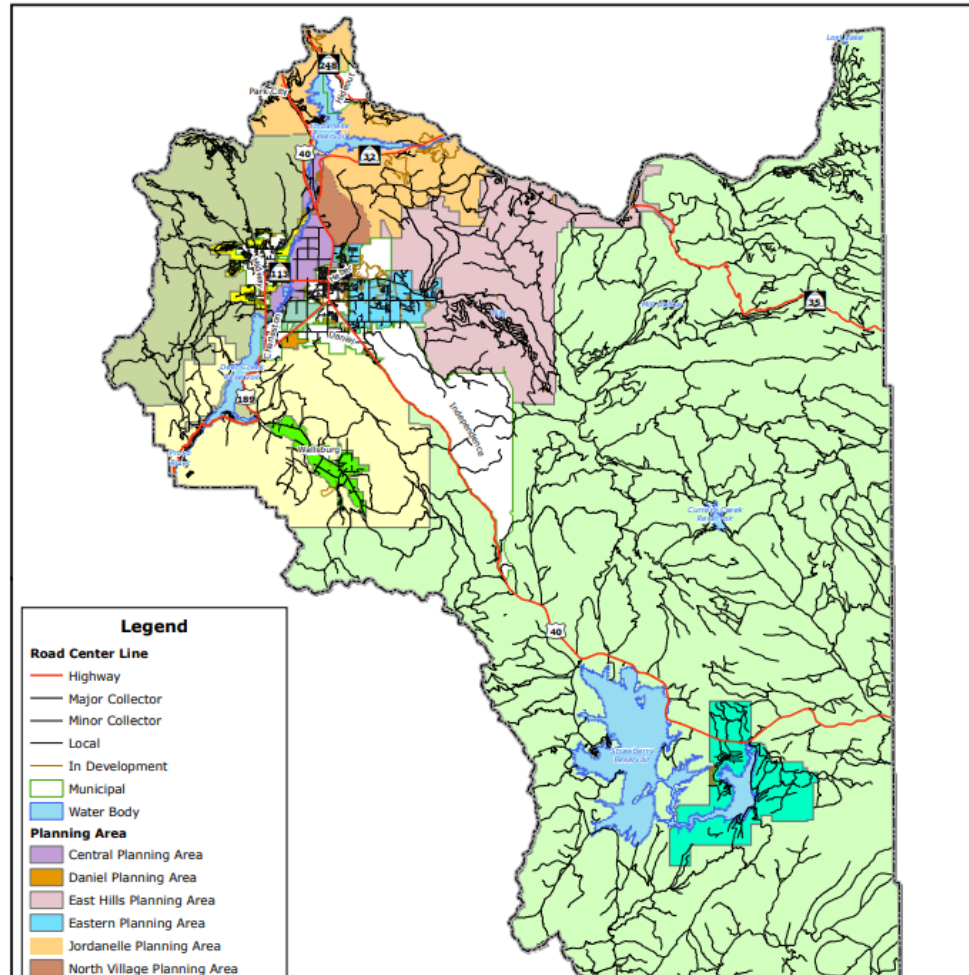
Continued

9.3.1 POLICY: Upgrade collector roads, including Lake Creek Rd, 1200 South, Center Creek, Mill Rd, 2400 East, 3600 East, and 4800 East, to design standards for rural collector roads that include trail systems and bike lanes.

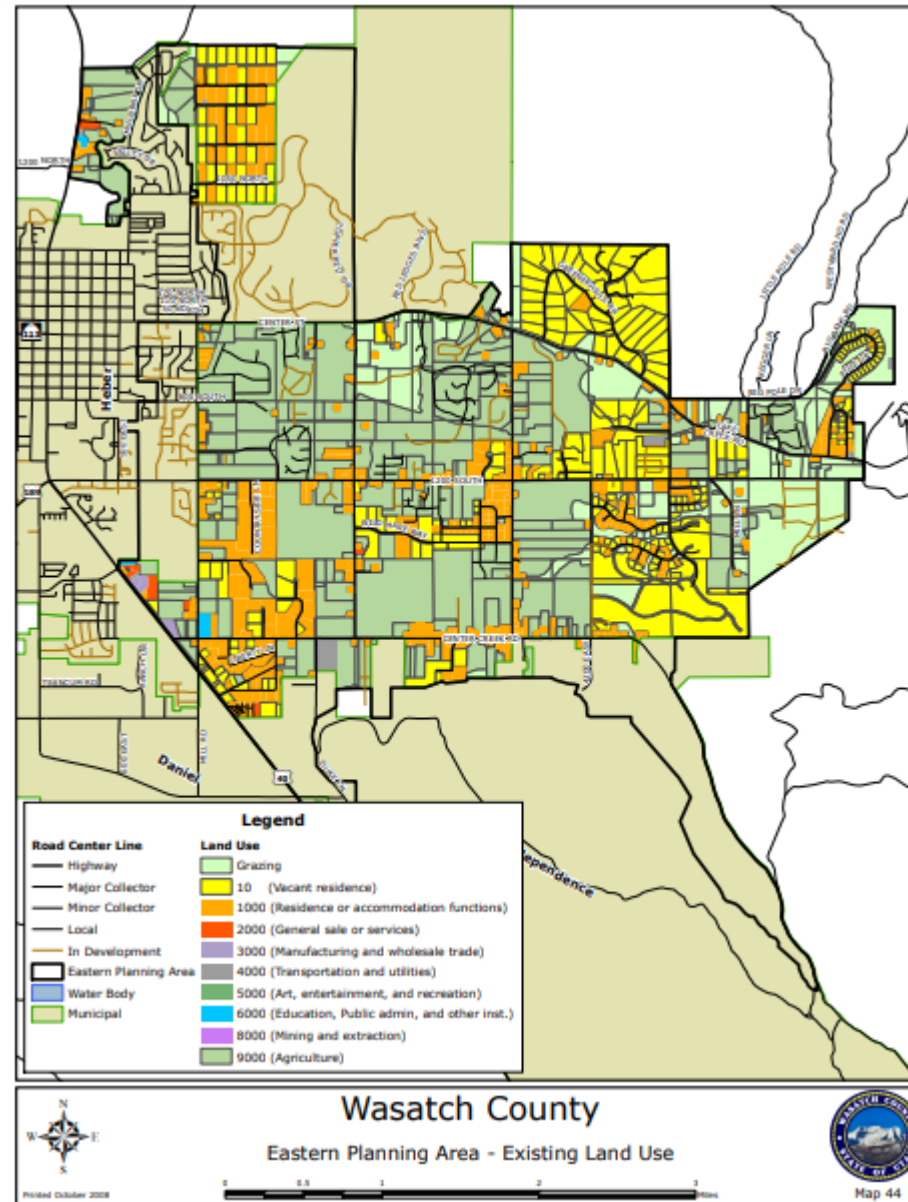
11.4.6 POLICY: Create and support greater opportunities for intergovernmental cooperation between local government entities including the local school district, colleges and universities and the business community in meeting economic development objectives.

16.5.1 POLICY: Consider options to allow developments additional density for providing land for civic facilities based on accomplishing the intent of the General Plan, ordinances and providing a public benefit to the community as determined by the legislative body.

Eastern Planning Area



Wasatch County Eastern Planning Area



Eastern Planning Area pp. 203 Settings and Constraints

Lake Creek Road and 1200 South are the two major east west routes through the planning area that provide access to the residents of Timber Lakes and the LDS Family/Youth Camp. Timber Lakes development has 1,585 approved lots and the LDS Family/Youth Camp is designed for 6,000 campers per week during the summer months. These two projects contribute to the majority of the traffic that occurs on these roads.

pp. 204 Heber City has identified the area between the City's current eastern limits and 2400 East as an area into which it would consider annexing. The area between 1200 and 2400 East is within Twin Creek Special Service District. The City would like to enter into an agreement with the Twin Creeks Special Service District to transfer service in this area to the City for culinary water and sewer collection. This action could be in the best interest of those landowners near 1200 East that do not have adequate shares of stock in the Lake Creek Irrigation Company to be transferred to TCSSD for required culinary water service. These landowners could provide Heber City with shares of Timpanogos Canal Company stock or have the City purchase M&I water, both of which could be withdrawn from the Hospital well that lacks sufficient water rights for the amount of water that the well can produce.

Eastern Planning Area pp. 211

Land Use Plan

The landowners in this planning area need to understand that as urbanization increases so will the need for new and additional services. Ultimately, a full range of urban services will likely be required. Typical of these services are:

1. Additions to the Twin Creeks and Center Creek culinary water systems to accommodate the new growth.
2. Expansion of the Twin Creeks sewer collection system.
3. A higher level of road construction and maintenance, and an increase of snow removal service.
4. Disposal of storm water and increased level of flood control.
5. More restrictive animal control.
6. A higher level of fire, police and emergency medical care.
7. Increases in busing costs of school children.
8. Parks

Eastern Planning Area pp. 212 Plans Proposed

The section of road at 1200 South between the Heber City limits and 1200 East should be constructed as soon as possible. Construction of this section of road would provide a direct route to US 40, reduce the traffic on Lake Creek Road from the LDS Family/Youth Camp and Timber Lakes, reduce air pollution due to the shortened distance and time traveled to reach US 189 from much of the Eastern Planning Area, and reduce traffic congestion and safety concerns on 600 South near the Wasatch High School.

Moderate Income Housing pp 266

Moderate Income Housing In accordance with the County Land Use, Development, and Management Act, Utah Code ann. 17-27a-403, and in compliance with the Utah Fair Housing Act under Utah Code ann. 57-21-5, the legislative body of each County shall adopt a moderate income housing plan. Moderate income housing is defined as: “housing occupied or reserved for occupancy by households with a gross household income equal to or less than eighty percent (80%) of the median gross income of the metropolitan statistical area for households of the same size as determined by HUD/UHC.” Such housing cannot cost more than thirty percent (30%) of a household's income. The purpose of this moderate income housing plan is to help ensure that Wasatch County provides a reasonable opportunity for a variety of housing, including moderate income housing, to meet the needs of the population desiring to live here. The population of Wasatch County has been increasing over the past several years, a trend that is expected to continue for the foreseeable future.

Moderate Income Housing 2022/3 Data

	Affordability Index for Wasatch Back					Bill Coleman 2022/3 Data Census Bureau- Bill Coleman								
				US Census						US Census	Affordability			
	Interest	Term	Loan Amt	Median Income	Mo Income	Max Loan Pmt	Ratio	Loan to Value	Affordable Value	Median	Index			
										Home Price				
2011														
Summit County	5.00%	30	\$343,545	\$73,769	\$6,147	-\$1,844	30%	80.00%	\$429,432	\$457,500	94%			
Park City	5.00%	30	\$360,921	\$77,500	\$6,458	-\$1,938	30%	80.00%	\$451,151	\$725,100	62%			
Wasatch County	5.00%	30	\$286,916	\$61,609	\$5,134	-\$1,540	30%	80.00%	\$358,645	\$298,200	120%			
Heber City	5.00%	30	\$240,131	\$51,563	\$4,297	-\$1,289	30%	80.00%	\$300,164	\$240,000	125%			
Statewide	5.00%	30	\$259,127	\$55,642	\$4,637	-\$1,391	30%	80.00%	\$323,909	\$208,100	156%			
2018														
Summit County	5.00%	30	\$442,186	\$94,950	\$7,913	-\$2,374	30%	80.00%	\$552,732	\$558,300	99%			
Park City	5.00%	30	\$485,180	\$104,182	\$8,682	-\$2,605	30%	80.00%	\$606,475	\$937,200	65%			
Wasatch County	5.00%	30	\$347,192	\$74,552	\$6,213	-\$1,864	30%	80.00%	\$433,990	\$357,300	121%			
Heber City	5.00%	30	\$313,256	\$67,265	\$5,605	-\$1,682	30%	80.00%	\$391,570	\$289,500	135%			
Statewide	5.00%	30	\$362,970	\$77,940	\$6,495	-\$1,949	30%	80.00%	\$453,712	\$275,100	165%			
National														
2022														
Summit County	6.00%	30	\$527,028	\$126,392	\$10,533	-\$3,160	30%	80.00%	\$658,785	\$895,100	74%			
Park City	6.00%	30	\$551,726	\$132,315	\$11,026	-\$3,308	30%	80.00%	\$689,657	\$1,545,300	45%			
Wasatch County	6.00%	30	\$437,223	\$104,855	\$8,738	-\$2,621	30%	80.00%	\$546,529	\$620,800	88%			
Heber City	6.00%	30	\$412,534	\$98,934	\$8,245	-\$2,473	30%	80.00%	\$515,668	\$483,700	107%			
Statewide	6.00%	30	\$364,181	\$87,338	\$7,278	-\$2,183	30%	80.00%	\$455,226	\$521,136	87%			
National	6.00%	30	\$310,983	\$74,580	\$6,215	-\$1,865	30%	80.00%	\$388,729	\$412,000	94%			

To interpret the indices, a value of 100 means that a family with the median income has exactly enough income to qualify for a mortgage on a median-priced home.

An index above 100 signifies that family earning the median income has more than enough income to qualify for a mortgage loan on a median-priced home, assuming a 20% down payment.

For example, a composite HAI of 120.0 means a family earning the median family income has 120% of the income necessary to qualify for a conventional loan covering 80% of a median-priced existing single-family home.

An increase in the HAI, then, shows that this family is more able to afford the median priced home.

Affordable Housing Inventory in Wasatch County by Type Mar 2024

(Per Base Data Worksheet attached)							
Available Active Listings vs Affordable Inventory as defined by Wasatch County March 10 2014							
	Total Units Available	Total at or below Affordability Maximum		Average # BRs per Unit Total	Avg # BRs per Affordable Available		
Single Family Homes	170	2	1.18%	4.48	4.48		
Townhomes & Attached	91	1	1.10%	3.42	3.20		
Stacked Flat Condominiums	64	26	40.63%	1.67	0.77		
Total	325	29	8.92%				

Mill Road Area Vacant Parcel Inventory – Current and Possible Alternative Densities

Summary of Vacant Lands Surrounding Mill Road Area Church and School Facilities	Current	Current Density acres per unit @	Equal to Current Density Units per Acre		Single Family Home Units per Acre @	Townhome Units per Acre @	Stacked Flat Apartments @
Assumptions:		1.3	0.77		3	8	13
Public Facility Adjacent Land Acres							
McCollins	19.03	14.6	0.77		57	152	247
Fishler	32.80	25.2	0.77		98	262	426
Giles Group	11.24	8.6	0.77		34	90	146
Blue Mountain	32.02	24.6	0.77		96	256	416
Other Small Lots	4.00	3.1	0.77		12	32	52
Totals	99.09	76			297	793	1288

General Plan Chapter 6 Implementation (Key Selections) pp. 299-302

1. The County should amend the Development Code to implement the land use recommendations of the General Plan.
4. When new schools are constructed, the County should acquire additional land adjacent to the school site for a park.
23. The County should consider creating special service districts to fund the higher levels of services that will be required in areas of growth such as the Eastern Planning areas.
24. The County should allow the extension of sewer lines into all areas of the Eastern Planning area.
27. The County should require all housing developments to provide 10% of all housing as affordable housing as outlined in the Affordable Housing Plan for Wasatch County, Heber City, Charleston and Wallsburg.

Thank you for your time today. Please let us know how we can be of further service.

Bill Coleman 435-901-3600
Ginny Tuite 801-201-9004

HEBER CITY EXPANSION AREA MOU

MEMORANDUM OF UNDERSTANDING BETWEEN WASATCH COUNTY AND HEBER CITY

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between Wasatch County, whose address is 25 North Main Street, Heber City, Utah 84032, and Heber City Corporation, whose address is 75 North Main Street, Heber City, Utah 84032.
2. **Purpose.** The purpose of this MOU is to establish the terms and conditions under which Wasatch County and Heber City will implement multi-jurisdictional annexation, land use and utility service policies.
3. **Term of MOU.** This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and the governing bodies of the parties’ respective counties or municipalities and shall remain in full force and effect for not longer than 30 years. This MOU may be terminated, without cause, by either party upon 60 days written notice, which notice shall be delivered by hand or by certified mail to the address listed above.
4. **Responsibilities of Wasatch County.**
 - a. Invite Heber City Planning to Development Review Committee Meetings when urban development is proposed within the City’s Expansion Area as shown in Exhibit A.
 - b. Invite Heber City Planning Department to Public Hearings involved in amendments to zones, ordinances and standards affecting properties within the City’s Expansion Area.
 - c. The North Village Special Service District (NVSSD), Twin Creeks Special Service District (TCSSD) and Jordanelle Special Service District (JSSD) agree to provide and maintain all water, secondary water, and sewer service within their respective service areas, unless those districts and Heber City mutually agree at the time of development that these services should be provided in another manner.
 - d. Ask property owners proposing urban development within the City’s Expansion Area to first talk with Heber City regarding development in the City

- e. At the request of Heber City, agree to leave an unincorporated island for Wasatch View Estates through the annexation process if there are a significant number of property owners who object to being annexed into Heber City.
- f. Continue to accept open space dedications by Jordanelle Ridge, with the intent to maintain it as open space in perpetuity with the only allowed improvements being back country trails. County may enter into agreements with a third party open space holder.
- g. County will review all improvements outside of City and may or may not require dedication of roads. If streets are constructed and dedicated to County standards outside of City limits, the County will accept such dedication and maintain them.
- h. The Wasatch County Fire District will perform all fire inspections related to development in special service district areas, and will collect the same fire inspection fees that are assessed on a county-wide basis.

5. **Responsibilities of Heber City.**

- a. Invite Wasatch County Planning and its Special Service Districts and Fire District to all Development Review Committee Meetings when development is proposed within Special Service District areas as shown in Exhibit B.
- b. Invite Wasatch County Planning to Public Hearings involved in amendments to zones, ordinances and standards affecting properties within Special Service District areas.
- c. Involve Wasatch County in the review of annexations within Special Service District areas to analyze the following public service issues:
 - 1) Consideration for regional county park facilities and open space.
 - 2) Consideration for dedication of Fire Stations.
 - 3) Consideration for Sewer, water and irrigation.
 - 4) Consideration for dedication of elementary, middle, and high school sites.
 - 5) Consideration for other necessary public facilities provided by each of the parties.
- d. Require proposed development within special service district areas to be reviewed by the Wasatch County Water Board prior to granting of development approvals.
- e. Require receipt of payment for fire district and special service district fees prior to issuance of building permits.

- f. Require all final subdivision plats be signed by the appropriate special service district.
- g. Maintain entitlement requirements for projects annexed into the city including but not limited to requirements for open space, trails, architectural standards, landscaping, densities etc., unless both parties agree that such changes would be more beneficial to the County and City.
- h. Permitted residential densities within special service district areas shall be in accordance with vested rights and/or adopted codes.
- i. Involve Wasatch County in the review of proposed annexations and developments within special service district areas to ensure developers dedicate the appropriate required open space as part of their previously approved master plans. Specifically, Jordanelle Ridge (aka Sorenson Properties) has committed to dedicate a significant area of open space to Wasatch County. The development agreement with Jordanelle Ridge is still in force and requires dedication of open space with every plat recorded.
- j. Unless agreed to by the county and city, the city will maintain the City's expansion area no further east than Mill Road (aka 1200 East), no further west than the bypass, and no further west than the eastern boundary of the Heber Valley Special Service District sewer fields.

6. Mutual Responsibilities.

- a. Heber City and Wasatch County are each committed to maintaining the North Fields as an agricultural area. As such, zone changes, municipal annexation and extension of urban services into the North Fields should be avoided, though this is not intended to infringe upon the legislative discretion of either party.
- b. Development, and/or annexations along the future bypass will include the acquisition and/or dedication of bypass right of way at a width of 124 feet or current UDOT standards by the applicable entity.
- c. Wasatch County will establish a mechanism that provides Heber City with representation to key SSDs that allows input on critical water and sewer issues occurring within or potentially impacting the city.
- d. Explore avenues to partner for the purpose of optimizing water and sewer service delivery to achieve redundancy, operational efficiencies and cost savings/avoidance.
- e. Heber City and Wasatch County will continue to work on a common affordable housing agreement.

7. **Conflict Resolution.** In the event either party determines there is a conflict in the implementation of these responsibilities, either party may arrange for an interlocal board to be convened to review the matter. Such interlocal board should consist of 3 Wasatch County representatives, including a County Councilman, the County Manager and the County

Planner; and 3 Heber City representatives, including the Mayor, City Manager and the City Planner.

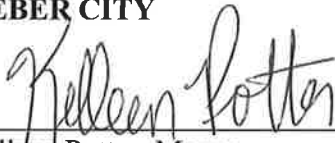
8. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

WASATCH COUNTY

 2/4/19
Greg McPhie, Council Chairman Date
Danny Goode

HEBER CITY

 2/8/19
Kelleen Potter, Mayor Date

 2/4/2019
Attest: Heber City Recorder Date



EXHIBIT A: HEBER CITY EXPANSION AREA

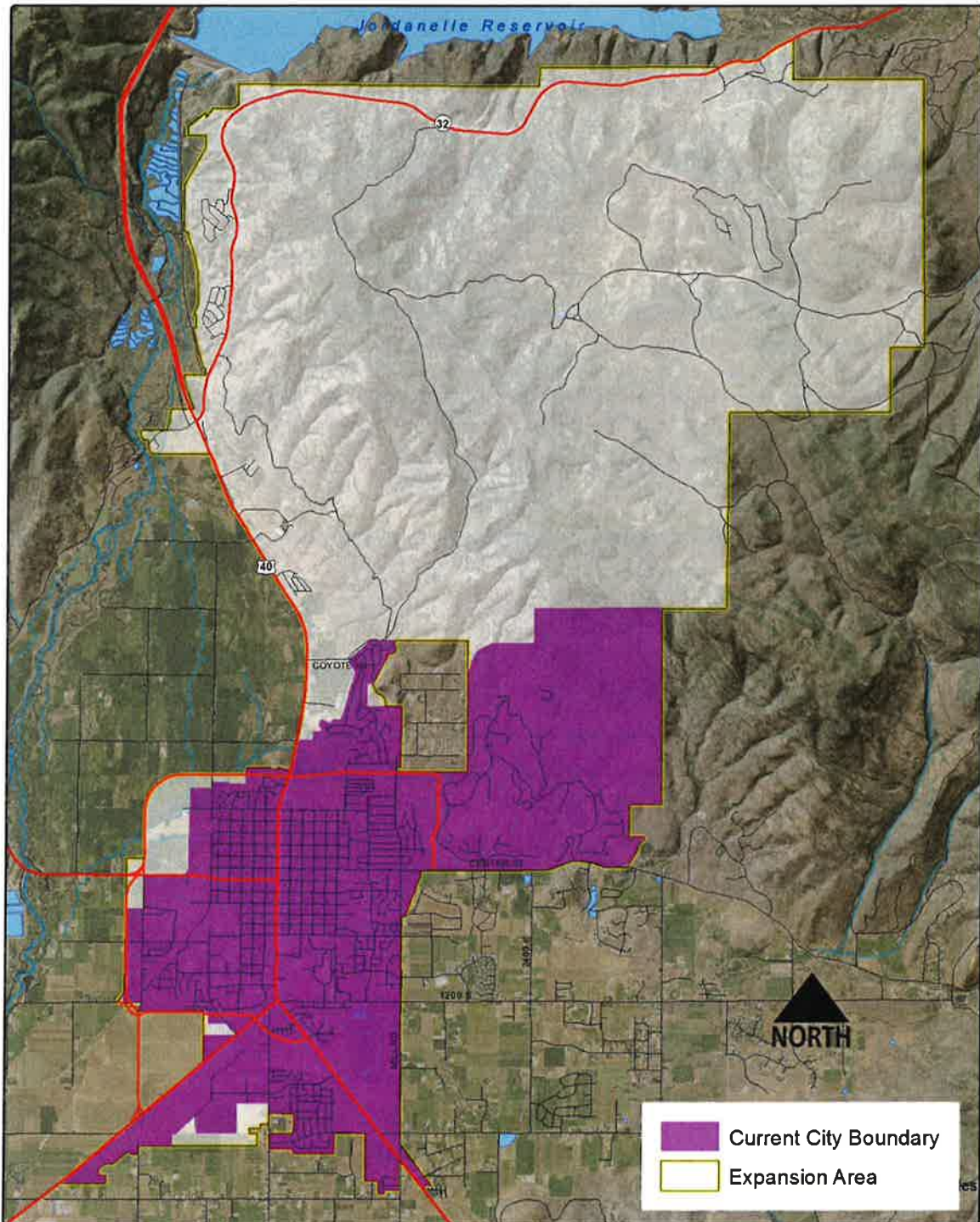
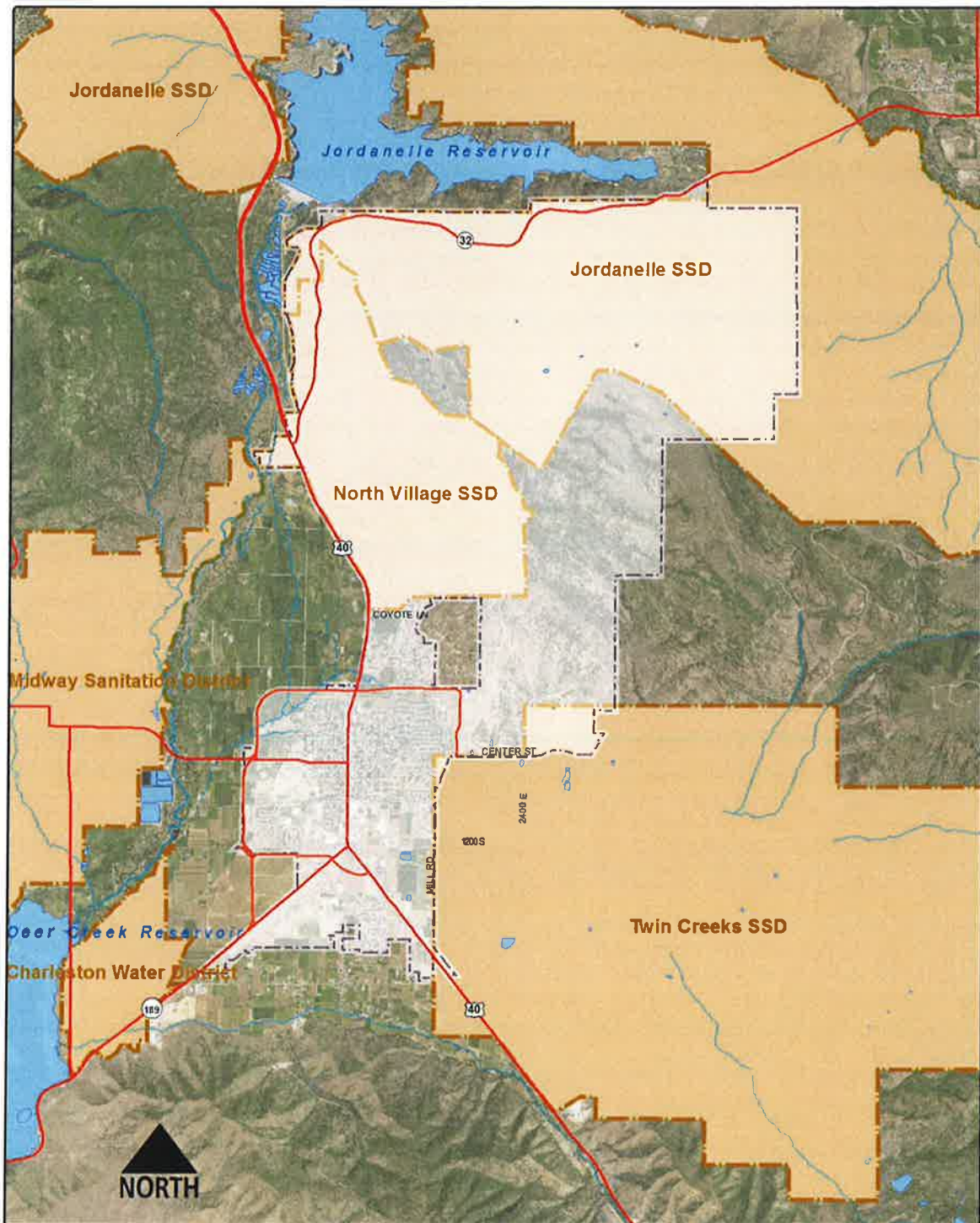


EXHIBIT B: SPECIAL SERVICE DISTRICT AREAS





Heber City Council Staff Report

MEETING DATE: 12/17/2024

SUBJECT: Ordinance 2024-24 North Village Development Annexation (aka Resort-Crossings/Harvest Village) Annexation located at the intersection of Highway 40 and Highway 32

RESPONSIBLE: Tony Kohler, Jeremy Cook

DEPARTMENT: Planning

STRATEGIC RELEVANCE: Community Development

SUMMARY

The North Village Development Annexation is located at the intersection of Highway 40 and SR 32. Council and Staff have been working with the developers of the Harvest Village and North Village Crossings developments to draft development agreements (MDAs) that could be approved in conjunction with the annexation. Policy questions for the item include:

1. Are the development agreements ready for approval? What terms need modified?
2. Is the annexation ready for approval?

RECOMMENDATION

Staff recommends Council discuss the proposed development agreements, and when ready, adopt Ordinance 2024-24 approving the North Village Development Annexation, conditional upon recording the development agreements (MDAs) prior to recording the Annexation Plat, Ordinance 2024-24 and associated MDAs.

The annexation could be approved at the December 17 meeting, conditional upon the MDAs returning to Council on January 7 for final review by Council, and the annexation not being recorded until the MDAs are given final approval by Council, as there is about 30 to 60 days needed to get to the point of recording the annexation at the County (surveyor approval, signatures, state approval).

BACKGROUND

The City Council accepted the North Village Development Annexation petition on April 7, 2020. The annexation was certified by the City Recorder on May 6, 2020, and the protest period concluded on June 6, 2020. The Planning Commission reviewed the proposed annexation on June 2, 2020, providing a recommendation for approval to the City Council. Council began discussions on the annexation in mid to late 2020 and held a public hearing on December 1, 2020, during which the

annexation was continued. Since then, the City has adopted the North Village Overlay Zone (NVOZ) as well as the Storm Drain and Transportation Plans. In early 2024, a new developer for the Resort approached the City about completing the annexation. Council resumed its review of the annexation and held a second public hearing on September 17, 2024. Council and the petitioner have been discussing issues related to development agreements in anticipation of finalizing the annexation near the end of 2024.

The City's General Plan Land Use Map identifies the future land use of the annexation area as North Village (NV) and Neighborhoods with Open Space (NOS).

With Wasatch County, the Crossings and Resort developments each were approved with associated development agreements that lock the developments into higher densities that were permitted years ago in the unincorporated area. The City has worked with the developer to translate the developments into something that is more in line with the City's vision for the area in the General Plan, and has negotiated development agreements with the developer to par back some of the density or impose conditions of approval accompanying development to mitigate that higher density. Wasatch County approved the agreement with Heber City on December 4 that approves of the island that results from this annexation.

DISCUSSION

The following includes some of the larger policy related issues with the development agreements.

Harvest Village

1. Zoning as North Village (NV) sub-district (Section 3.1)
2. Project Density (Section 4.1)
3. Site Plan Vesting (Section 4.2)
4. Exceptions to NVOZ Zone (Section 4.2.1)
5. Affordable Housing (Section 4.5)
6. Term (Section 5)
7. UDOT Bypass Road and Delay in Approvals (Section 6.2)
8. Parks and Open Space (Section 7)
9. North Fields Preservation (Section 7.8)

Crossings

1. Zoning as North Village (NV) sub-district (Section 3.1)
2. Site Plan Vesting (Section 4.2)
3. Exceptions to NVOZ Zone (Section 4.2.1)
4. Affordable Housing (Section 4.5)
5. Term (Section 5)
6. Parks and Open Space (Section 7)
7. North Fields Preservation (Section 7.8)

Pros to approving the proposed annexation include: 1) less density than proposed in the county; 2)

assurance of implementing the City's Transportation, Storm Water, North Village Overlay Zone and General Plan; 3) financial benefits such as property tax, sales tax and transient room tax; 4) job and housing creation for the UVU campus; 5) Heber City controlling land uses along its primary entrance; 6) creation of affordable housing; and 7) moving already planned development from the unincorporated area to within Heber City Corporate limits.

Cons to the proposed annexation include the potential for impacts to some of the planned bypass route alternatives.

FISCAL IMPACT

The planned developments will have positive financial benefits from property tax for second homes and commercial properties, sales tax and transient room tax for the proposed hotels.

CONCLUSION

1. The North Village Development Annexation is:

- Part of North Village Town Center;
- Consistent with Annexation Policy Plan;
- Consistent with Envision Heber 2050; &
- Consistent with NVOZ.

2. The North Village Development Annexation furthers the General Plan by:

- Promoting the town center;
- Promoting recreation, parks & trails;
- Promoting affordable housing; &
- Promoting economic development.

3. The MDAs help mitigate potential impacts from development as follows:

- Providing Affordable Housing/Workforce Housing and/or a potential fee-in lieu/offsite construction alternative.
- Limiting development along the UDOT bypass until a future date to provide more time for UDOT to review bypass alternatives.
- Promoting economic development by requiring a certain portion of development to be commercial/hospitality.
- Promoting agricultural preservation by requiring a Preservation Fee of \$2,500 per ERU.
- Mitigating building height with height restrictions separate from the NVOZ.
- Limiting the maximum retaining wall height and design to minimize impacts of mountainside development to the entrance to the City.
- Limiting density to less than County in the North Fields.
- Ensuring compliance with open space, trails, storm water & street master plans.

- Ensuring conformance to the North Village Special Service District water policy. &
- Ensuring future residential buyers are put on notice about the potential for short term rentals.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Staff Recommended Option – Approve

I move to **ADOPT Ordinance 2024-24**, approving the North Village Development Annexation and associated MDAs as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 – Approve as Amended

I move to **ADOPT Ordinance 2024-24**, approving the North Village Development Annexation and associated MDAs with the findings and conditions as presented in the conclusion above, with the following changes:

Alternative 3 – Continue

I move to **CONTINUE Ordinance 2024-24** to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 – Deny

I move to **DENY Ordinance 2024-24** with the following findings.

ACCOUNTABILITY

Department: Planning
Staff member: Tony Kohler, Community Development Director

EXHIBITS

1. Ord 2024-24
2. 060420-annex plat
3. CC-12-17-24-Crossing-Resort Annexation-alk
4. Crossings DA JRC 12.9 - 4899-5940-4549 - 1
5. Harvest Village DA JRC 12.9 - 4910-8426-4453 - 1
6. 14-6 Phasing plan 12-16-24
7. 16-8- UDOT 12-16-24
8. 10-2 Site 12-16-24
9. 12-4-walls 12-16-24
10. 1-1 Title 12-16-24
11. NVOZ Comparisons
12. NVC- Crossings
13. XSEC EXHIBIT COMBINED 12-16-24
14. 13-5 constraints 12-16-24
15. 11-3 Exisitng and demo 12-16-24
16. 17-9 open space plan 12-16-24
17. 22-G0 12-16-24
18. 15-7 Connectivity plan 12-16-24
19. Harvest Village Compare for Council

ORDINANCE NO. 2024-24

AN ORDINANCE APPROVING THE NORTH VILLAGE DEVELOPMENT (AKA CROSSINGS, RESORT/HARVEST VILLAGE) ANNEXATION LOCATED AT THE INTERSECTION OF HIGHWAY 40 AND HIGHWAY 32.

BE IT ORDAINED by the City Council of Heber City, Utah, the North Village Development Annexation described in Exhibit A, is hereby approved.

Zoning of the properties contained therein shall initially be designated consistent with the City’s North Village Overlay Zone (NVOZ), depicted in Exhibit B.

This Ordinance shall take effect immediately upon approval.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this _____ day of _____ 2024.

	AYE	NAY	ABSENT	ABSTAIN
Yvonne Barney	_____	_____	_____	_____
Aaron Cheatwood	_____	_____	_____	_____
Michael Johnston	_____	_____	_____	_____
Sid Ostergaard	_____	_____	_____	_____
D. Scott Phillips	_____	_____	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

RECORDER

Date:

Exhibit A: Legal Description

ANNEXATION DESCRIPTION

All of Parcels:

00-0020-4584, 00-0007-7664, 00-0007-7458, 00-0007-7623, 00-0007-7730 : North Village Development
00-0021-0847: Questar Gas
00-0007-7508: Brandner Trust
00-0007-7565: Stm North Village LLC
00-0020-9098: Probst Lot 1
00-0020-9099: Probst Lot 2
00-0007-7748: Kren
00-0020-2993, 00-0020-2992: Anderson
00-0007-7706: Knapp
00-0020-2995, 00-0020-2994, 00-0020-2991, 00-0020-2990, 00-0020-0978: Wasatch Crest
00-0007-7466, 0-0021-2614, 00-0021-2617, 00-0021-1555, 00-021-1558, 00-021-1559

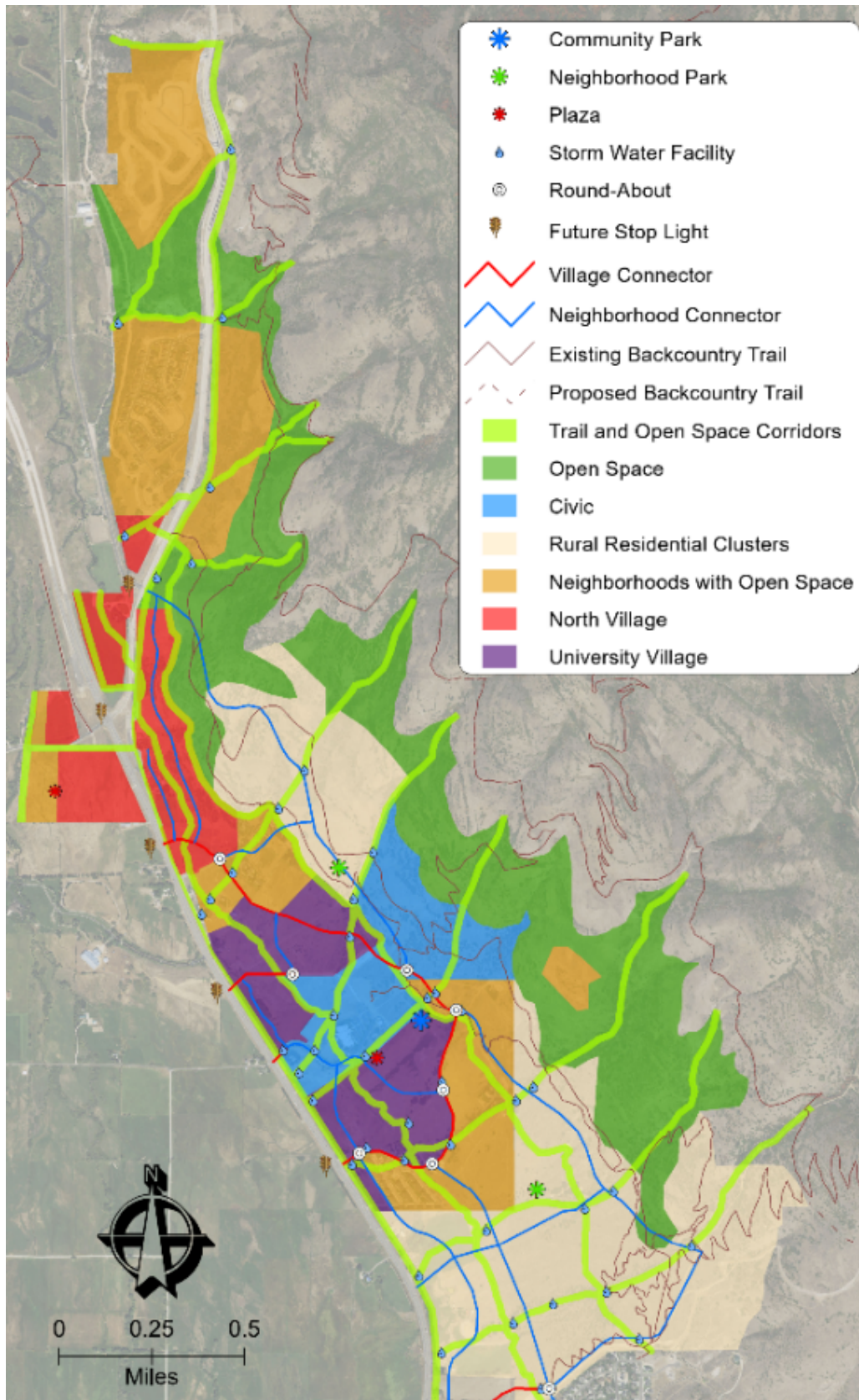
BOUNDARY DESCRIPTION

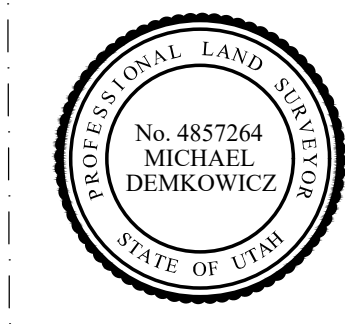
A parcel of land located in Section 18 & the Northeast Quarter Corner of Section 19, Township 3 South, Range 5 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point that is North 87°05'52" West 2619.44 feet and North 186.28 feet from the SouthEast Corner of Section 18, Township 3 South, Range 5 East, Salt Lake Base and Meridian; and running thence North 20°10'27" West 777.86 feet; thence East 3.00 feet; thence North 19°59'47" West 29.53 feet; thence South 89°18'16" West 508.60 feet; thence South 89°57'53" West 185.35 feet; thence South 89°19'16" West 734.23 feet; thence South 89°33'11" West 776.14 feet; thence North 04°56'20" West 92.58 feet; thence North 18°14'15" East 78.00 feet; thence North 50°01'05" East 71.10 feet; thence North 17°05'43" East 89.90 feet; thence North 31°02'10" East 139.90 feet; thence North 07°53'45" East 642.10 feet; thence North 14°47'08" East 66.39 feet; thence North 29°14'12" East 78.25 feet; thence North 03°31'00" East 82.00 feet; thence North 26°11'00" East 141.00 feet; thence North 05°47'00" West 49.00 feet; thence North 20°30'00" East 150.00 feet; thence North 32°01'47" West 70.44 feet; thence North 10°00'00" East 300.00 feet; thence South 89°49'41" East 1428.06 feet; thence North 01°34'17" East 643.74 feet; thence North 15°23'38" East 542.87 feet; thence South 89°42'19" East 380.82 feet; thence South 11°10'07" East 194.68 feet; thence South 46°40'07" East 166.19 feet; thence South 18°49'05" West 762.04 feet; thence South 10°40'07" East 177.88 feet; thence South 42°10'05" East 160.49 feet; thence South 40°54'29" East 334.76 feet; thence South 12°20'30" West 206.91 feet; thence South 10°24'30" East 343.54 feet; thence South 26°24'30" East 447.97 feet; thence South 40°54'30" East 500.67 feet; thence South 89°54'30" East 66.86 feet; thence South 04°01'58" West 76.69 feet; thence South 75°06'07" East 108.61 feet to a point on a non tangent curve to the left having a radius of 172.16 feet, of which the radius point bears North 14°53'58" East; thence along the arc of said curve 163.91 feet through a central angle of 54°33'02"; thence North 50°20'46" East 181.57 feet; thence North 55°15'00" East 70.35 feet; thence South 52°30'00" East 112.00 feet; thence South 03°00'00" East 152.25 feet; thence South 30°02'47" East 157.18 feet; thence North 43°30'00" East 7.27 feet; thence South 47°23'54" East 53.07 feet; thence South 49°48'59" East 125.72 feet to a point on a non tangent curve to the right having a radius of 193.90 feet, of which the radius point bears South 37°53'27" West; thence along the arc of said curve 67.39 feet through a central angle of 19°54'46"; thence South 19°44'47" East 35.54 feet; thence South 35°12'08" West 716.95 feet; thence North 27°27'52" West 28.98 feet; thence South 36°14'19" West 150.96 feet; thence South 28°30'00" West 381.74 feet; thence North 36°46'30" West 852.82 feet; thence South 63°43'50" West 286.90 feet; thence South 80°26'02" West 15.11 feet; thence South 84°58'47" West 161.72 feet to the point of beginning.

Description contains 160.63 acres.

Exhibit B: Zoning Map

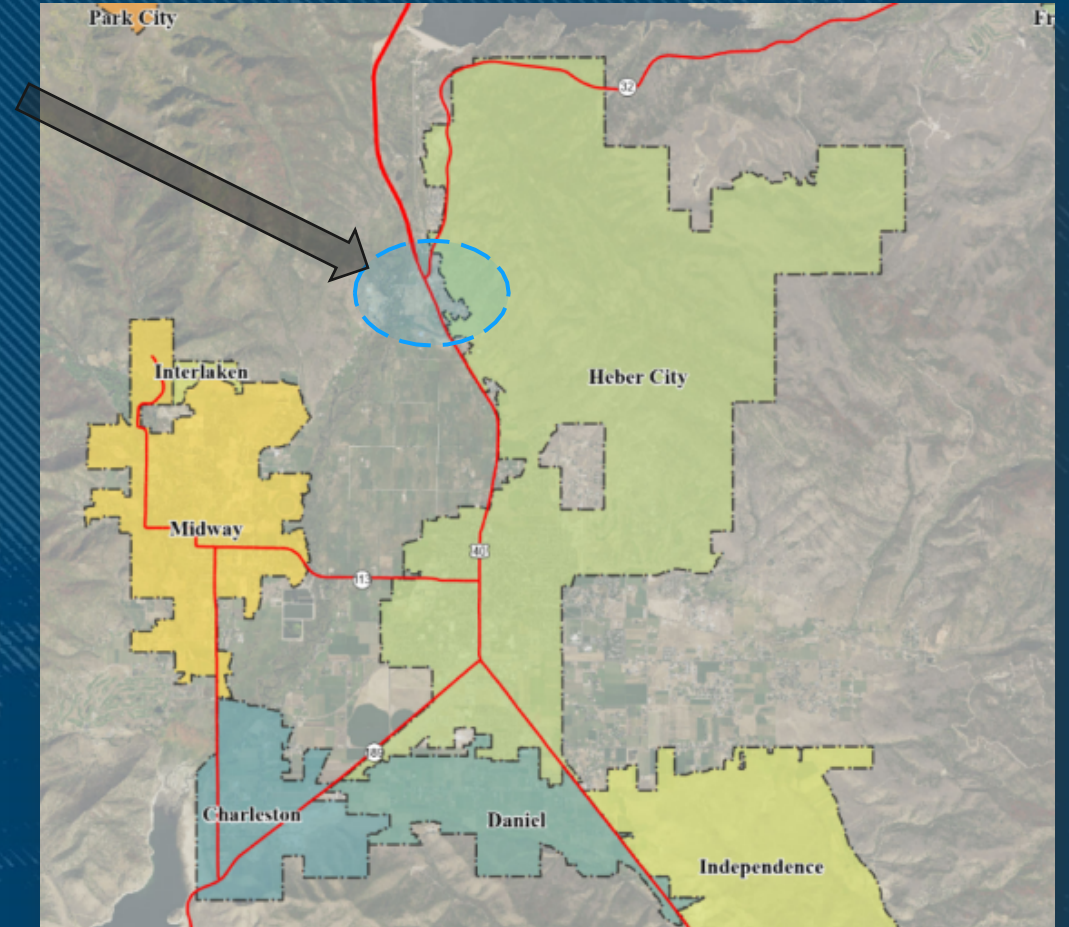




DRAFT
FOR
REVIEW

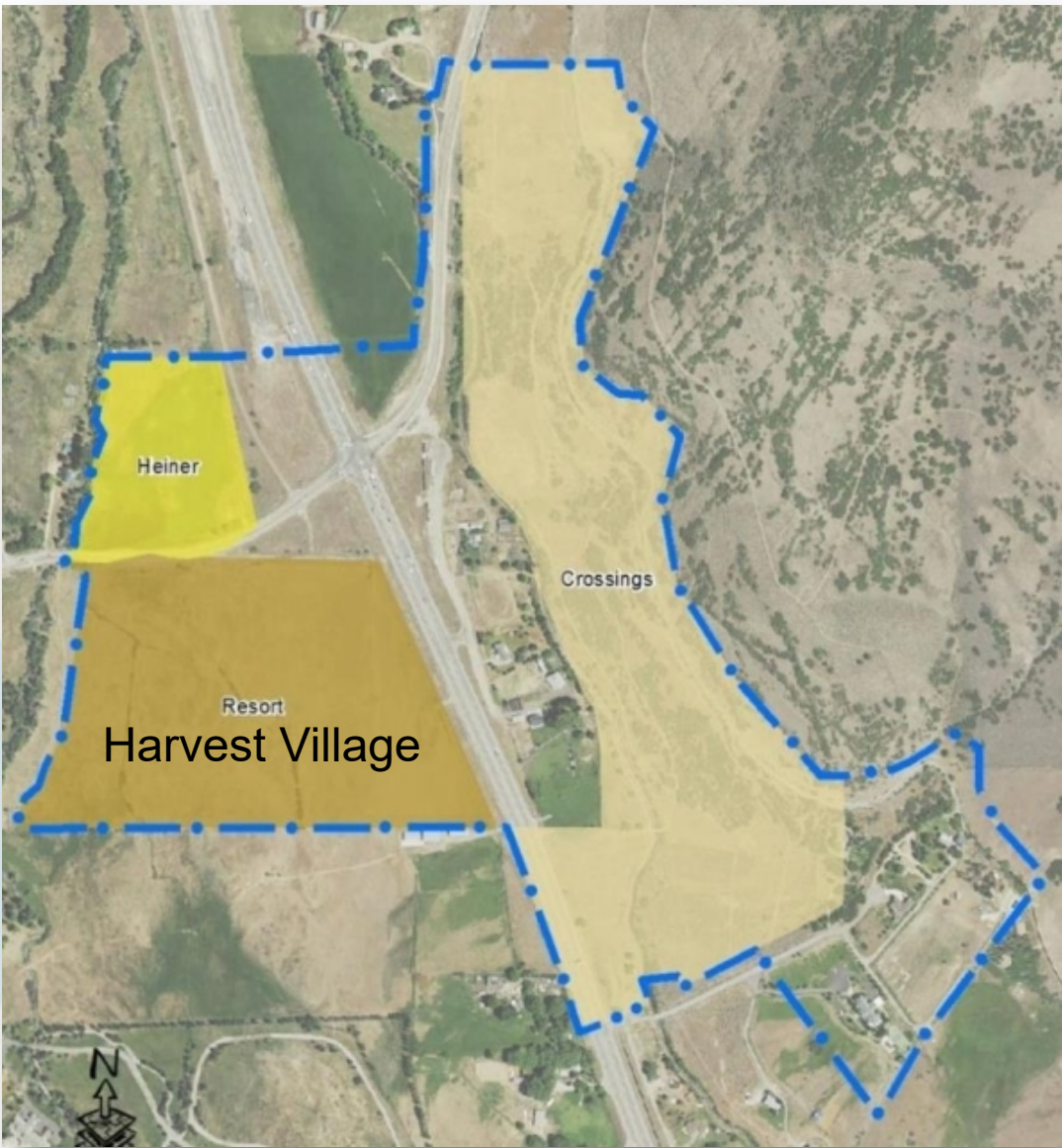
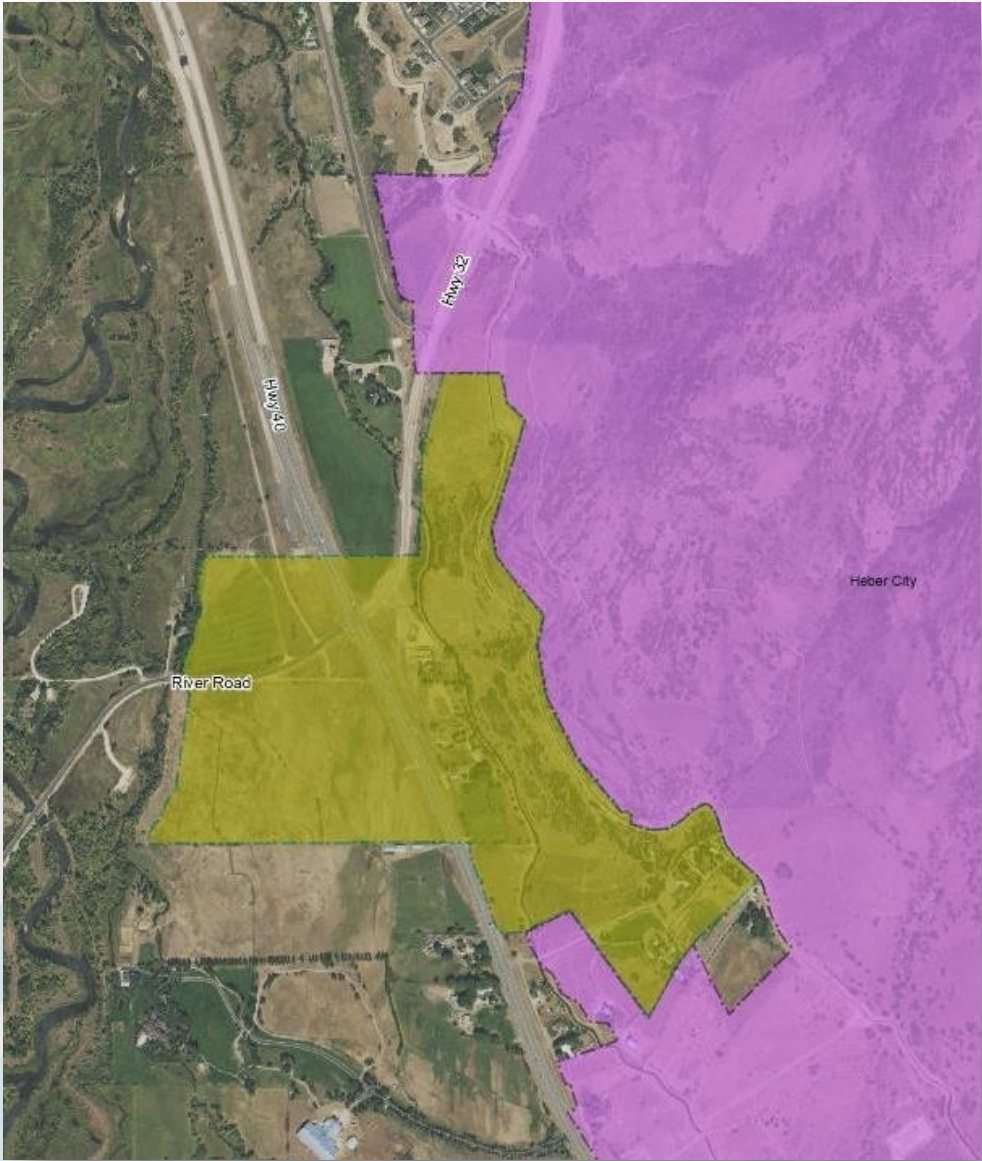
4/29/20

CITY RECORDER APPROVED AS TO FORM THIS ____ DAY OF _____, 2020 BY _____ HEBER CITY RECORDER	WASATCH COUNTY SURVEYOR APPROVED AS TO FORM THIS ____ DAY OF _____, 2020 BY _____ WASATCH COUNTY SURVEYOR	PLANNING COMMISSION APPROVED AS TO FORM THIS ____ DAY OF _____, 2020 BY _____ CHAIRMAN, HEBER CITY PLANNING COMMISSION		HEBER CITY ENGINEER APPROVED AS TO FORM THIS ____ DAY OF _____, 2020 BY _____ HEBER CITY ENGINEER	HEBER CITY MAYOR APPROVED AS TO FORM THIS ____ DAY OF _____, 2020 BY _____ HEBER CITY MAYOR	RECORDED STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF _____ DATE _____ TIME _____ ENTRY NO. _____ FEE _____ RECORDER _____
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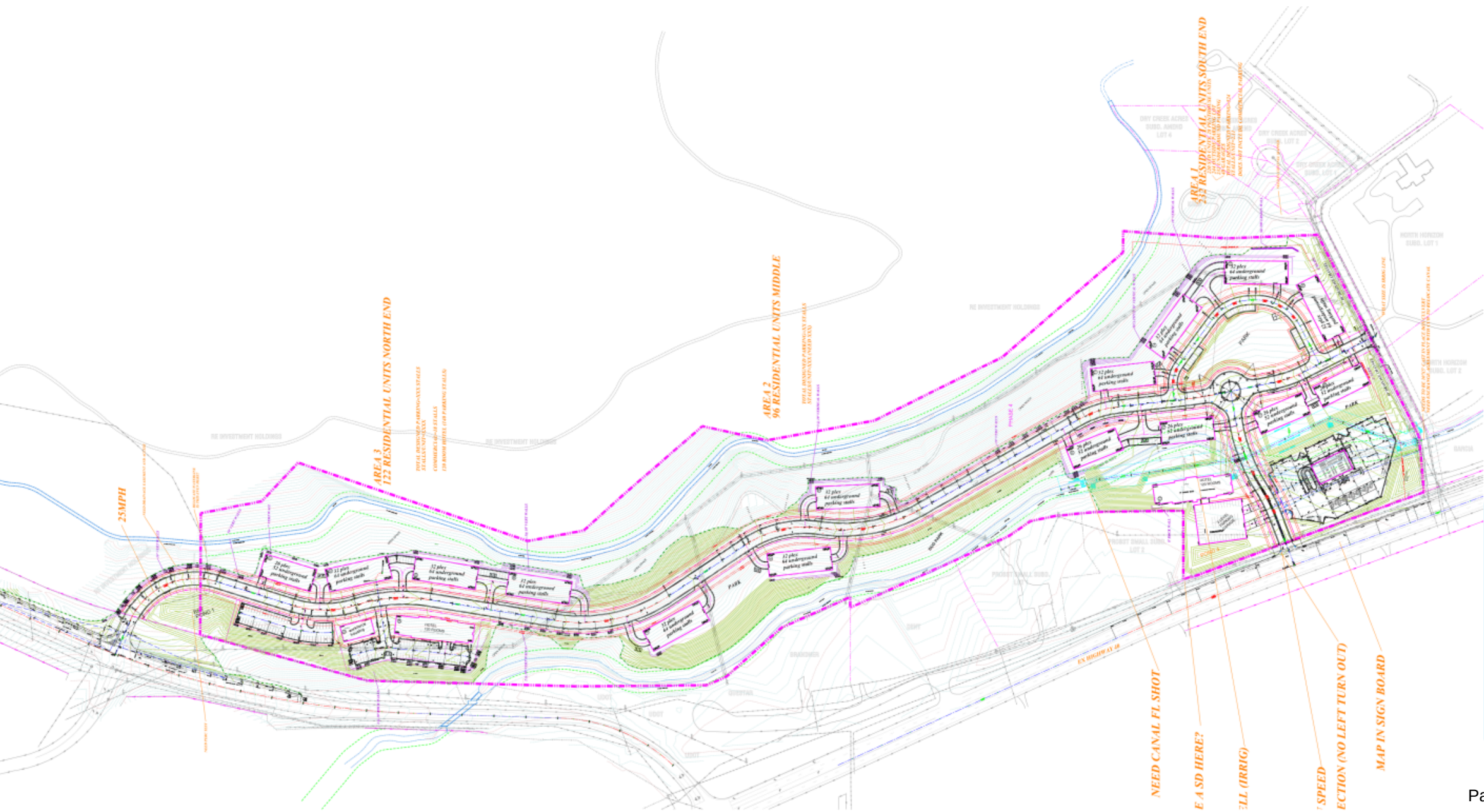


Crossings/Resort Annexation

Annexation Boundaries



Crossings Site Plan

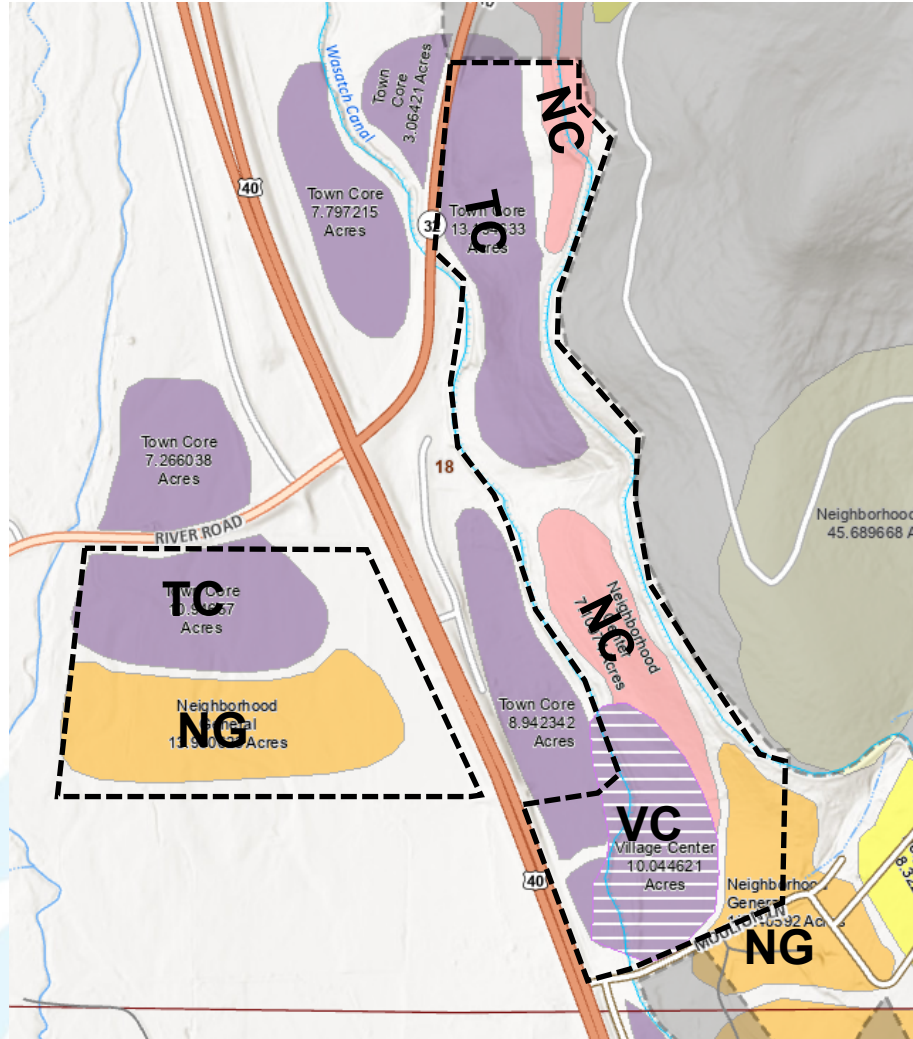


Harvest Village Site Plan

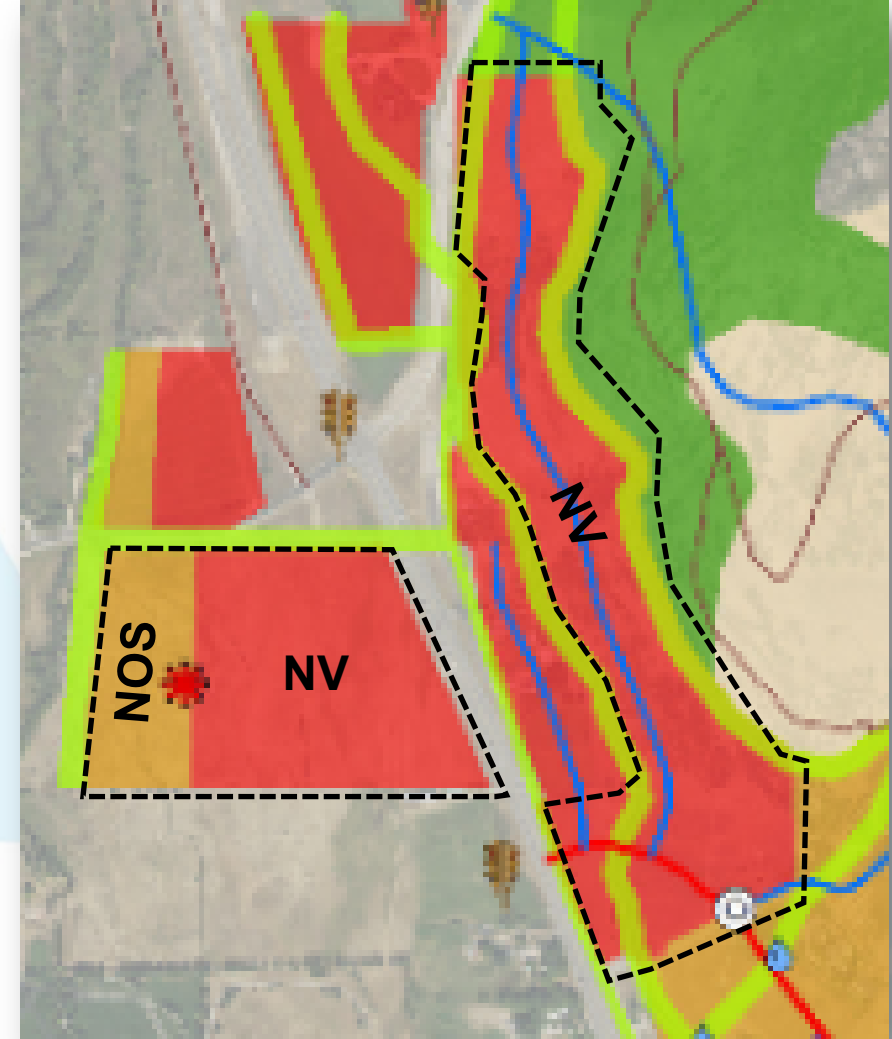


Zoning Map Comparisons

County NVOZ



City NVOZ



Crossings Zoning Breakdown

Wasatch County Zoning

District	Acres*	ERU/Acre	ERU
VC	13	6	78
TC	19	6	114
NC	19	4	76
NG	5	3	15
TOTAL	56.36		283
75% to 90% Net ERU			212 to 250

*Totals do not add up due to rounding

Heber City Zoning

District	Acres	ERU/Acre	ERU
NV	56.36	4.5	253.62
TOTAL			253.62

Harvest Village Zoning Breakdown

Wasatch County Zoning			
District	Acres*	ERU/Acre	ERU
TC	15.7	6	94.2
NG	23.2	3	69.6
TOTAL	38.93		163.8
75% to 90% Net ERU			123 to 147

Heber City Zoning			
District	Acres*	ERU/Acre	ERU
NV	27.8	4.5	125.1
NOS	11.1	3	33.3
TOTAL	38.93		158.4

*Totals do not add up due to rounding

ERU Breakdown (City MDA)

Harvest Village	
USE	ERUs
Hotel	34
Residential	204
Commercial	55
SUBTOTAL	293
Affordable Housing	33
TOTAL	326

Crossings	
USE	ERUs
Hotel	60
Residential	357
Commercial	5
SUBTOTAL	422
Affordable Housing	42
TOTAL	464

ERU Comparison

Development	County Zoning	City Zoning	County MDA	City MDA
Crossings	283 (212 to 250 net)	253.62	359.93	464
Harvest Village	163.8 (123 to 147 net)	158.4	370	326

Building Height Comparison

City NVOZ						County NVOD
District	Mixed Use	Stacked Flat	Commercial	Townhome ²	SFD	
UV 6 ERU per acre	4 story max up to 62 ft	4 story max up to 56 ft	3 story max up to 52 ft 4 story max (hospitality) up to 66 ft	3 story max up to 42 ft	3 story max up to 42 ft	VC & TC • 6 ERU per acre • 55 ft max
NV 4.5 ERU per acre	4 story max up to 62 ft ^{1, 3}	4 story max up to 56 ft	3 story max up to 52 ft 4 story max (hospitality) up to 66 ft	3 story max up to 42 ft	N/A	NC • 4 ERU per acre • 50 ft max
NOS 3 ERU per acre 1: 5 story (50' to 76') hospitality 2: 3rd story rooftop deck	3 story max up to 48 ft	3 story min up to 42 ft	N/A	3 story max up to 42 ft	3 story max up to 42 ft	NG • 3 ERU per acre • 40 ft max

3: 3 story max within 150' of Hwy 40 Crossings MDA

5 story max (50' to 70') excluding parking Crossings MDA request & 150' min from Hwy 40

Retaining Wall Heights

City Wall Heights

Zoning Wall Height	Zoning Terrace	MDA Height	MDA Design
10' (no overall max)	4'	10' wall (40' over max height/3' terrace)	Natural Rock

County Zoning Wall Heights

Height	Terrace	Length*	Design	Landscaping
10' wall (30' overall max)	3'	800'	Rock or stone	Native
Over 30', no overall max	N/A	N/A	Soil nail, shotcrete rock texture	At base of wall

*Over 800' length or over 10' height is a conditional use

Suggested Discussion Outline

Harvest Village

1. Zoning as North Village (NV) sub-district (3.1)
2. Project Density (4.1)
3. Site Plan Vesting (4.2)
4. Exceptions to NVOZ Zone (4.2.1)
5. Affordable Housing (4.5)
6. Term (5)
7. UDOT Bypass Road and Delay in Approvals (6.2)
8. Parks and Open Space (7)
9. North Fields Preservation (7.8)

Crossings

1. Zoning as North Village (NV) sub-district (3.1)
2. Site Plan Vesting (4.2)
3. Exceptions to NVOZ Zone (4.2.1)
4. Affordable Housing (4.5)
5. Term (5)
6. Parks and Open Space (7)
7. North Fields Preservation (7.8)

Policy Questions

1. Are the development agreements ready for approval? What terms need modified?
2. Is the annexation ready for approval?

Recommendation

Council discuss the proposed development agreements, and when ready, adopt Ordinance 2024-24 approving the North Village Development Annexation, conditional upon recording the development agreements (MDAs) prior to recording the Annexation Plat, Ordinance 2024-24 and associated MDAs.

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 00-0020-4584, 00-0007-7458,
00-0007-7664, 00-0007-7623, & 00-0007-7730

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
NORTH VILLAGE CROSSINGS**

THIS DEVELOPMENT AGREEMENT FOR THE NORTH VILLAGE CROSSINGS (this “**Agreement**”) is made and entered into as of the [REDACTED] day of [REDACTED], 2024, by and between HEBER CITY, a political subdivision of the State of Utah (the “**City**”), and NORTH VILLAGE DEVELOPMENT LLC, a Utah limited liability company (“**NVD**”). Each of NVD and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. NVD is the owner of approximately 56.39 acres of undeveloped real property located on the Southeast intersection of Hwy 40 and River Road (Parcel Nos. 00-0020-4584 (12.89 acres); 00-0007-7458 (3.85 acres); 00-0007-7664 (28.73 acres); 00-0007-7623 (4.02 acres); 00-0007-7730 (6.9 acres)) in Wasatch County, State of Utah (the “**Property**”). A legal description of the Property is attached hereto as **Exhibit A**.

B. In conjunction with the approval of this Agreement, the City approved and adopted a Site Plan for the Project (the “**Site Plan**”), subject to the Parties entering into this Agreement and the City agreeing to annexation of the Property.

C. The Site Plan for the Property provides for a mixed-use development, including open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone (“**NVOZ**”) as North Village (NV) Sub-District or as outlined within this Agreement.

D. This Agreement and the Site Plan meets the intent of, complies with, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of NVD and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and NVD hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.**

1.1 **Incorporation.** The foregoing Recitals and **Exhibits A** through **E** are hereby incorporated into this Agreement.

1.2 **Definitions** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2024), as amended.

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any publicly owned area or public park identified on the Site Plan that is intended to provide services to the community at large.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular

Subdivision. Backbone Improvements are generally considered to be in the nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2024).

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City’s Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City’s Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.15 **City’s Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date, including the Envision 2050 Heber General Plan

1.2.16 **Collector Road** means the collector road shown on the Site Plan. The width and configuration of the Collector Road shall comply with Site Plan, except that City may require the Collector Road to be modified or expanded at the intersections of Highway 40 and State Road 32 if the traffic study for the Project establishes that turn lanes or other modifications are required at those intersections.

1.2.17 **Council** means the elected City Council of the City.

1.2.18 **Default** shall have the meaning provided in Section 14.

1.2.19 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.20 **Developer** shall have the meaning provided in Section 22.

1.2.21 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.22 **Development Property** shall have the meaning provided in Section 22.1.

1.2.23 **Development Report** means a report containing the information specified in Section 4.3 submitted to the City by NVD or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from NVD.

1.2.24 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.25 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. § 10-2-425.

1.2.26 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws. A copy of Section 18.21.020.2.2(2) of the City's Vested Laws is attached hereto as **Exhibit E**.

1.2.27 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.28 **Highway 40** means a “state highway” type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40, as that route may be changed from time-to-time.

1.2.29 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.30 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.31 **Intended Uses** means the use of all or portions of the Project for open space, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.32 **Market Rate units** means any non-Affordable Housing within the Project.

1.2.33 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.34 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.35 **Mortgagee** means any holder of a lender’s beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.36 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.37 **North Fields** means that certain real property generally depicted on **Exhibit C** attached hereto.

1.2.38 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.39 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan

that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.40 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.41 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development to handle on-site or off-site storm drain requirements.

1.2.42 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.43 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.44 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.45 **Phase** means the development of a portion of the Project.

1.2.46 **Planning Commission** means the City's Planning Commission.

1.2.47 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.48 **Property Owner or Property Owners** means NVD and any other successor-in-interest to NVD as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.49 **Property Owners' Association(s)** means one or more associations or other entities (including a public infrastructure district or other financing district) formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.50 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan generally depicts the development plan for the Property.

1.2.51 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.52 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.53 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.54 **Zone** means the City's North Village Overlay District Zone - – North Village (NV) Sub-District.

1.2.55 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement.

3. **Zoning and Vested Rights.**

3.1 **Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone as a North Village (NV) Sub-District

3.2 **Vested Rights.** Subject to paragraphs 3.3 and 3.4, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, and the zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).

3.3 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable

ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.

3.4 Exceptions to Vested Rights. The vested rights and the restrictions on the applicability of City's Future Laws as specified in Section 3.2 are subject to the following exceptions:

3.4.1 Agreed to Regulations. City's Future Laws or other regulations to which the Developer agrees in writing;

3.4.2 State and Federal Compliance. City's Future Laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;

3.4.3 Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists;

3.4.4 Safety Codes. Any City's Future Laws that are updates or amendments to building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are enacted to meet legitimate concerns related to public health, safety or welfare;

3.4.5 Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes do not materially impact the ability of Property Owners to develop the Project in accordance with the Site Plan.

3.4.6 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

3.4.7 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.4.8 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;

3.4.9 Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design

requirements, setbacks or similar items so long as such changes do not reduce the Density Entitlements and do not materially and unreasonably increase the overall cost of the Project; or

3.4.10 Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(ii)(A) (2024).

4. **Development of the Property in Compliance with the Site Plan. Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to [60] hotel ERUs, up to [354] residential ERUs, and up to [10] commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "Density Entitlements"). Property Owners shall also either, at the Property Owners' election, construct a minimum of [44] residential ERUs of Affordable Housing as detailed in Section 4.5 of this Agreement or pay a fee-in-lieu thereof in accordance with the City's Vested Laws. **Building Elevations and Design.** As part of the approval process, Property Owners have provided potential building elevations for the hotel and condominium portions of the Project, which elevations are attached hereto as Exhibit _____. The building elevations and design standards must be similar in materials and appearance to the proposed elevations, or Property Owners must propose and obtain approval from the City Council for elevations that are consistent with NVOZ design guidelines and are to the standard of a four star resort hotel in Park City or Deer Valley.

4.3 **Gas Station Design.** The gas station must be similar in architectural design and building materials as the neighboring hotel or condominiums. No signage or lighting is allowed on the canopy except lighting that points down. The canopy, including the underneath of the canopy and posts, must be a neutral or dark color to blend with the building. Wood or imitation wood material on canopy roof and posts is preferred. The building must be solid neutral colors with a mix a natural rock or brick. Park strips must be fully landscaped with a mix of trees, wood chips, shrubs or grass. A maximum of 3 lit buildings signs no more than ____ square feet each and one monument sign no more than _____ is allowed. An example is attached hereto as Exhibit _____.

4.4 **Intended Uses by Parcel and Densities.** Intended Uses and Densities for the Project are shown on the Site Plan for the Property. The general street configurations, building types and locations, and general layout for the Project shall comply with Site Plan, which is both a vested right and a requirement. This includes the City's acceptance of the following exceptions to NVOZ ordinances:

4.4.1 NDV shall be permitted to construct buildings in the Project with a minimum 15' front setback.

4.4.2 NDV shall be permitted to construct residential and commercial structures in areas with natural slopes greater than thirty percent (30%) so long as NDV reasonably demonstrates to City staff, through soil testing or other means, that the stability of such slopes is reasonably sufficient in its natural condition or would be reasonably sufficient following the implementation of reinforcement measures for support.

4.4.3 NVD shall not be required to erect retaining walls or similar structures in areas in which such walls and/or structures would be required under City's Vested Laws or City's Future Laws if NVD reasonably demonstrates to City staff, through soil testing or other means, that the applicable soil is sufficiently stable; provided that, if any retaining walls or similar structures are required as a result of insufficient stability of the soil, then NVD shall be permitted to erect retaining walls and similar structures up to a total maximum height of forty (40) feet, except as otherwise set forth on the Site Plan, provided that retaining walls are no more than 10 feet tall with a minimum step back to the next wall of 3 feet. Any retaining walls for the Project that are visible from Highway 32 or Highway 40 must be constructed using natural rock unless the City Council approves the use of stamped concrete or other materials that blend into the surrounding environment.

4.5 Accounting for Density for Parcels Sold to Sub-developers. In connection with the sale of any Parcel sold by NVD to a Developer or Sub-developer, NVD shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, NVD shall provide the City Recorder with a development report (a "**Development Report**") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with NVD and any material effects of the sale on the Site Plan.

4.5.1 Return of Unused Density. If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to NVD. Such Development ERU shall be accounted for in any subsequent Development Report that NVD, or any of its successors in interest may be required to file with the City Recorder.

4.6 Affordable Housing Requirements. Developer shall construct not less than [REDACTED] residential ERUs of Affordable Housing within the Development. Affordable Housing shall be sold or rented, as applicable, to individuals or families with an average income of Eighty percent (80%) or less of the area median income (AMI) in Wasatch County, Utah and the monthly cost shall not be more than Thirty percent (30%) of a household's income. Individual income limits for occupants of the Affordable Housing may be anywhere within the affordable housing AMI ranges, including up to 120% of AMI; however, the overall unit mix shall have an AMI averaged of no more than 80% AMI. Property Owners shall have no obligation to disperse the Affordable Housing throughout the Project but may consolidate the Affordable Housing in one or more areas of the Project, in its sole discretion. The Property Owner shall construct at least 33% of the Affordable Housing units (or 11 residential ERUs) on the Property (the **"Onsite Affordable Housing Obligation"**), which, for the avoidance of doubt, may be satisfied by the provision of workforce housing described in Section 4.5.1 below and otherwise meeting the requirements for Affordable Housing hereunder. The remaining 67% of the Affordable Housing unit obligation (or 22 residential ERUs) (the **"Alternative Affordable Housing Obligation"**) may be satisfied by the Property Owner by one or more of the following, the determination of which shall be mutually agreeable between the City and the Property Owner, but otherwise in compliance with this Section 4.5, including Section 4.5.4 (Timing): (a) construction of Affordable Housing on the Property pursuant to this Section 4.5, (b) construction of Affordable Housing offsite pursuant to Section 4.5.3, (c) one or more payments to the City of a fee in lieu pursuant to Section 4.5.5, and/or (d) the donation of land to the City pursuant to Section 4.5.6. Property Owners shall also be entitled to allocate any such Affordable Housing requirements to Developers and/or Sub developers as Property Owners may elect. Developer and the City shall follow and comply with any deed restrictions as outlined in Chapter 18.102 of the City's Vested Laws. Property Owner's failure to comply with the Affordable Housing obligation pursuant to the terms of this Agreement shall constitute a material breach of this Agreement, and the City may pursue all available remedies to enforce compliance, including but not limited to legal and equitable relief.

4.6.1 Eligibility and Pricing. A qualified third-party professional property management company shall manage the rental of all Affordable Housing. Eligibility for the affordable for-rent housing will be based on the AMI standards of for-rent affordable housing. Property Owners may enter into one or more master leases with local employers whereby local employers may lease a block of units to meet the housing needs of their qualifying employees.

4.5.2 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing, and only to the extent required under Chapter 18.102 of the City's Vested Laws, Developer/ Owner shall negotiate and enter into with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Housing. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall have the right to enforce the terms of such a Covenant. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to be enforced by Unit Owners against each other.

4.6.3 Off-site Affordable Housing. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by construction of Affordable Housing off site on property owned by the City or another third party.

4.5.4 Timing. At least 50% of the required Affordable Housing requirement shall be completed no later than the construction of the first 50% of the Market Rate units; provided that, all of the Alternative Affordable Housing Obligation satisfied by the payment of a fee in lieu under Section 4.5.5 and/or by land donation(s) under Section 4.5.6, if applicable, shall be completed no later than the construction of the first 33% of the Market Rate units. The full Affordable Housing requirement shall be completed no later than construction of the first 90% of the Market Rate units. The Property Owners shall be entitled to a reduction of their affordable housing obligation

of 25% if they agree to construct their affordable housing obligation in the first phase of the Project. If the Property Owners choose to seek LIHTC credits, then Affordable Housing timing construction, and delivery, may be impacted. Property Owners shall use commercially reasonable efforts to meet the aforementioned timing commitments.

4.5.5 Fee in Lieu. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by paying a fee in lieu in the amount of \$60,000 per residential ERU. Payment of the fee shall be deemed sufficient to fulfill the relevant Alternative Affordable Housing Obligation without prejudice to any other rights or remedies available under this Agreement.

4.5.6 Land Donation. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by donating, or causing another third party to donate, one or more parcels of unimproved land to the City for the purpose of constructing Affordable Housing. The value of any donated land shall be determined by either of the following: (a) if the donated land was acquired within three (3) years of the date of such donation, the aggregate price per acre paid for such donated land, or (b) as determined by written appraisal in accordance with Heber City Code 18.102.050(J)(3) conducted within six months of the proposed donation. The full value of any donated land shall be recognized as a fee in lieu of \$60,000.00 in value required per residential ERU, consistent with the terms of Section 4.5.5. The Parties must agree in writing to the terms of any land donation, including the specific parcel(s), selection of the valuation method above, and compliance with the requirements outlined in this Section.

5. **Term.**

5.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue either for a period of twenty-five years (25) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs (the “**Term**”), unless it is terminated in accordance with Section 26. Unless otherwise agreed between the Parties, NVD’s vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term shall remain vested rights in accordance with the terms and conditions of such approvals. Furthermore, any obligations of Developer related to any licenses, building permits, or certificates of occupancy shall continue in full force and effect.

6. **Approval Processes for Development Applications.**

6.1 Phasing. The City acknowledges that NVD, Developers, and Sub-developers who have purchased Parcels of the Property will submit multiple applications from time to time to develop and/or construct portions of the Project in phases, as generally described in the Site Plan.

6.2 Timing of Collector Road Construction. Prior to issuance of any building permits for within each phase of the Project, as shown on the Phasing Plan attached hereto as **Exhibit D**, NVD shall complete or post completion assurance in accordance with Utah Code § 10-9a-604 (2024) for the construction of the portion of the Collector Road within that phase.

7. **Open Space, Improved Public Parks, and Trails Requirements**

7.1 Development Timing: Open Space, Neighborhood Parks, and Trails. For each Phase, neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. Open space, parks and trails shall comply with the requirements of Heber City Code § 18.21.050 for the NV Sub-District, except that NVD shall provide not less than 10% of the total Project area as Open Space and NVD must provide 10% of the overall Project area as Traditional Park Space in accordance with Heber City Code Table 5.1(1)) or pay a fee in lieu. In accordance with Utah Code § 10-9a-604(3)(d)(iv) and (4) (2024), the City may require completion assurance for any landscaping that is necessary to meet the open space or traditional park space requirements.

7.2 Dedication of Open Space or Trails. All trails, open space and park space within the Project shall be dedicated to and maintained by the Homeowner's Association.

7.3 Park Improvements and Design. The Site Plan includes one neighborhood park (the "Neighborhood Park") which is located in Phase 2 of the Project. The Neighborhood Park shall be fully landscaped with a mix of commercial playground equipment and recreational amenities. Prior to issuance of any building permits for the residential ERU's, NVD shall submit a park plan to the City for approval.

7.4 Park Impact Fees. Property Owners acknowledge that all required park, trail and open space improvements within the Project are a condition of development approval and are project improvements pursuant to Utah Code § 11-36a-102(15). Property Owners may be required to pay parks, recreation, open space and trails impact fees for system improvements that benefit the Project as established in the City's impact fee analysis.

7.5 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting,

granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

7.6 North Fields Preservation. Property Owners, for themselves and with respect to each subsequent Owner of the Property, agree that upon issuance of any building permit for residential or commercial ERUs, the Owner shall pay to the City a one-time fee equal to \$2,500 per ERU or such prorated amount on partial ERU attributable to such unit, as applicable (the “**North Fields Preservation Fee**”). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including the acquisition of development rights or the use of other conservation related tools for the preservation of open space. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Affordable Housing.

8. Public Improvements.

8.1 Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD). The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services. However, if at any point City sewer and water, including secondary water is available in the area, the City agrees that Property Owner shall be able to obtain City services. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers.

8.2 Streets. Unless otherwise designated on the Site Plan, all streets within the Project shall be improved to the Residential / Minor Collector standard as set forth in Heber City Code § 18.21.040.4.6. NVD shall be responsible to construct all streets and road accesses to the Project as shown on the Site Plan. Unless accepted by the City, all streets shall be dedicated to the Homeowners Association and shall be owned and maintained by the Homeowner’s Association.

8.3. **Storm Water Improvements and Management.** The Parties acknowledge that the City has adopted a regional storm water master plan (as finalized and adopted by the City, the “**City Updated North Village Stormwater Master Plan**”). NVD shall be required to comply with the policies and standards of the North Village Stormwater Master Plan and associated Stormwater Design Manual, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter. NVD acknowledges that compliance with North Village Stormwater Master Plan may require construction of off-site improvements as outlined in the City Updated North Village Storm water Master Plan, Developer and Property Owner shall restore or replace the historic, natural drainage channels downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan.

8.4 **Storm Water Retention/Detention from Off-Site Sources.** The Parties acknowledge that all or a portion of the On-Site Storm Water Retention/Detention for the Project will be on the property of an adjacent development. Prior to issuance of any permits for the Project, NVD shall be responsible to obtain all easements or other property rights necessary to construct the stormwater retention / detention for that portion of the Project in accordance with City standards.

8.5. **Infrastructure Plan.** NVD shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure that is necessary to support the development proposed within a specific Development Application.

8.6 **General Excess Improvements/Upsizing.** If the City requires NVD to enlarge, increase or otherwise “upsized” or upgrade (collectively, the “**Excess Improvements**”) the City agrees that it shall reimburse NVD from Impact Fees collected by the City for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by NVD in the construction of Excess Improvements. NVD shall not be compensated for any “upsizing” of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

8.7. **Reimbursement for Collector Road.** NDV is required to construct the Collector Road, which is indicated on the Site Plan as being a 69 foot right of way with a minimum of 38 feet of asphalt. City acknowledges and agrees that a standard residential road would only require 32 feet of asphalt. Accordingly, prior to completion of the road, City shall enter into an impact fee reimbursement agreement with NDV, in substantially the form utilized by the City for other

similar impact fee reimbursements, to reimburse NDV for the pro-rata costs of the additional required road width. The reimbursable costs shall include only the costs of the materials to construct the additional road width, and shall not include engineering, retaining walls, geotechnical or other costs that would have otherwise been required to build the Collector Road to a residential road standard.

8.8. Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan. The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

8.9. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

8.10 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8.11 Public Infrastructure District. City understands that NVD may request a Public Infrastructure District ("PID") pursuant to Utah Code § 17D-4-101 et seq. for the Property. The City shall review and reasonably consider NVD's petition to create the PID as an option to implement and facilitate the financing, construction,

and operation of some or all of the Public Infrastructure for the Project.

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a provision that regulates the nightly rental of any residential unit located on the Property. It is anticipated that nightly rental of residential units within the development shall be through the Property's hotel and within the hotel's brand standards. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Bonding.** Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "Security"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

11.3 Building Heights. No structure in the Project shall exceed three stories along Highway 40 unless approved by the City Council. The maximum height of structures in the Project generally shall not exceed five stories or seventy (70) feet from final grade, excluding any underground parking. To qualify to construct to five stories the proposed structure must offset from Highway 40 by at least 150 feet to protect the views of surrounding properties and highway 40.

12. **Grading, On-Site Processing of Natural Materials.**

12.1 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and subject to City's Vested Laws, may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

13. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a **"Default"** under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Remedies Upon Default.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City’s obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.]

14.4 **City’s Remedies Upon Default.** In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

North Village Development, LLC
Attn: Richard T. Wolper
7026 S 900 East
Midvale, UT 84047

To the City:

City of Heber
Attn: City Recorder
25 North Main Street

Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by NVD or its successors and assigns.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed twenty-one (21) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 Notification Regarding Application and Administrator's Approval. Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 21-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. Amendment. Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 Submissions of Modification Applications. Only the City or NVD or an assignee of NVD, approved in writing by the City, and one that succeeds to all of the rights and obligations of NVD under this Agreement may submit a Modification Application.

17.2 Modification Application Contents. Modification Applications shall:

17.2.1 Identification of Property. Identify the property or properties affected by the Modification Application.

17.2.2 Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 Identification of Non-City Agencies. Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 Map. Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 Fee. Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. Mutual Cooperation in Processing Modification Applications. Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 Planning Commission Review of Modification Applications.

17.4.1 Review. All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 Recommendation. The Planning Commission's vote on the Modification Application, if required by law, shall be only a recommendation.

17.5 Council Review of Modification Application. After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 Council's Objections to Modification Applications. If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent

with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 Mediation of Council's Objections to Modification Applications. If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 Amendments by NVD. Notwithstanding any other provision in this Agreement to the contrary, NVD may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from NVD or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor NVD shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. Estoppel Certificate. Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. Entire Agreement. Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

20. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

21. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, NVD or its successor may sell any portion of the Property to one or more parties (each a “**Developer**” or “**Sub-developer**”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property.

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless NVD otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of NVD, which may be granted or withheld in NVD's sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by NVD Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved

Final Plats, site plans, and/or Development Applications procured by NVD for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

22.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

22.1.4 NVD shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

23. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

24. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period

of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. Termination.

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in Default beyond any applicable notice, grace or cure period, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 Notice of Termination. City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

25.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

26. Insurance and Indemnification. Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

27. Hazardous, Toxic, and/or Contaminating Materials. Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

28. **Binding Effect.** If NVD or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and NVD each shall designate and appoint a representative to act as a liaison between the City and its various departments and NVD. The initial representative for the City shall be City Manager, or his designee and the initial representatives for NVD shall be Richard T. Wolper. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall

not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

37. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

38. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

39. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

40. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

41. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

[Signatures appear on the following two pages.]

CITY

Heber City, a political subdivision of the State of Utah

By: _____

Name:

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By: _____

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Legal Description

[REDACTED]

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Site Plan

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

North Fields

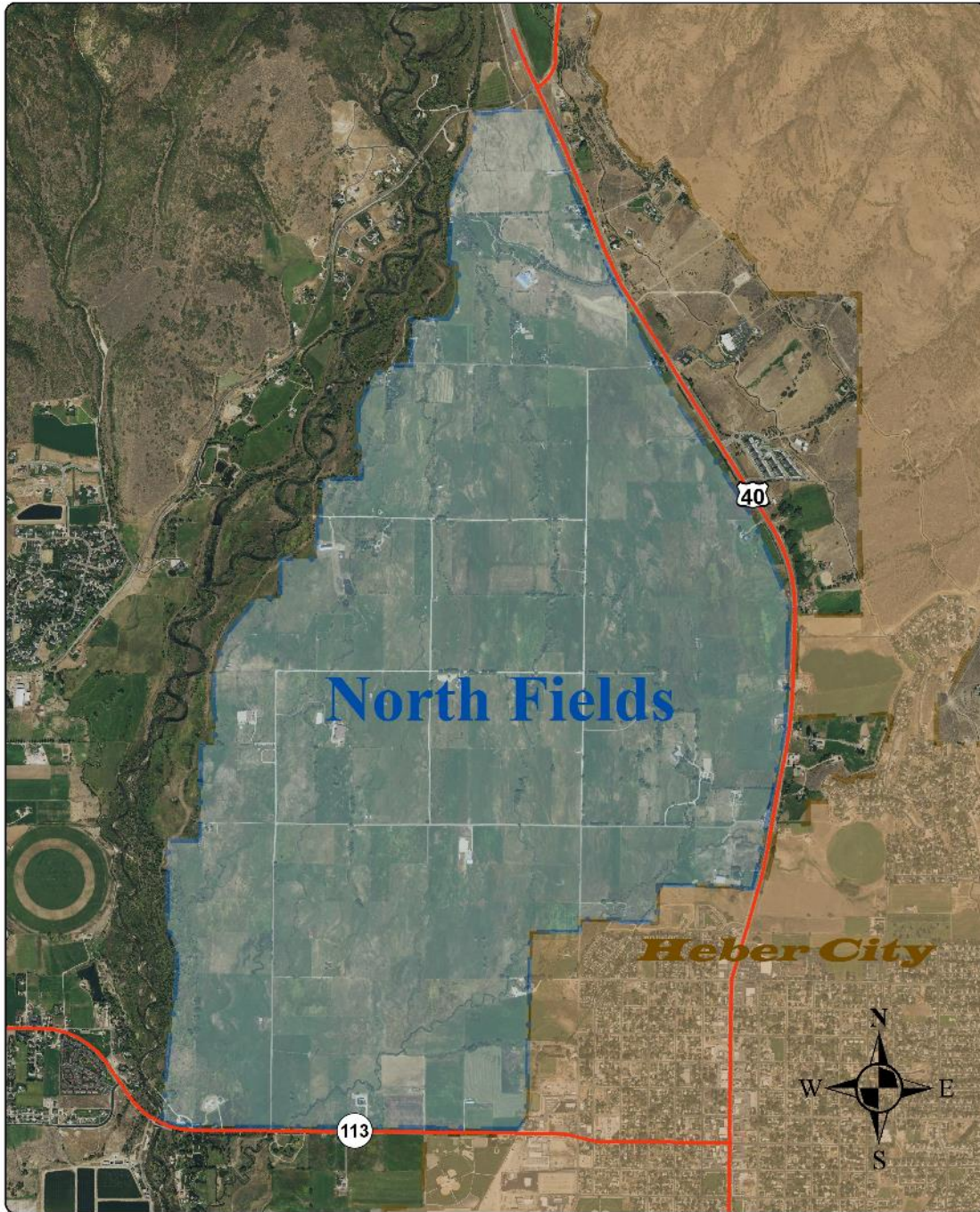


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Phasing Plan

EXHIBIT E
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
HARVEST VILLAGE MIXED USE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE HARVEST VILLAGE MIXED USE DEVELOPMENT (this “**Agreement**”) is made and entered into as of the [REDACTED] day of [REDACTED], 2024, by and between HEBER CITY, a political subdivision of the State of Utah (the “**City**”), and KLJB, LLC and its successor and assign ANGSTROM DEVELOPMENT GROUP LLC, a Utah limited liability company (“**ADG**”), BAIBACH, LLC, and K&H DEVELOPMENT HEBER, LLC (collectively “**Property Owners**”). The Property Owners and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Property Owners are the owners of approximately 39 acres of undeveloped real property located on the Southwest intersection of Hwy 40 and River Road (Parcel Nos. 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558) in Wasatch County, State of Utah (the “**Property**”). A legal description of the Property is attached hereto as **Exhibit A**.

B. In conjunction with the approval of this Agreement, the City approved and adopted a Site Plan for the Project (the “**Site Plan**”).

C. The Site Plan for the Property provides for a mixed-use development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone (“**NVOZ**”) as North Village (NV) Sub-District or as outlined within this Agreement.

D. This Agreement and the Site Plan meets the intent of, complies with, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of Property Owners and their successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Property Owners hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.** **Incorporation.** The foregoing Recitals and **Exhibits A** through **D** are hereby incorporated into this Agreement.

1.2 **Definitions** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2024), as amended.

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any publicly owned area or public park identified on the Site Plan that is intended to provide services to the community at large.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision. Backbone Improvements are generally considered to be in the

nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2024).

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City’s Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City’s Future Laws** means the ordinances, policies, standards, and procedures of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.15 **City’s Vested Laws** means the ordinances, policies, standards, and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.16 **Council** means the elected City Council of the City.

1.2.17 **Default** shall have the meaning provided in Section 14.

1.2.18 **Design Guidelines** means the design guidelines referenced in the North Village Overlay Zone.

1.2.19 **Developer** shall have the meaning provided in Section 22.

1.2.20 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.21 **Development Property** shall have the meaning provided in Section 22.1.

1.2.22 **Development Report** means a report containing the information specified in Section 3.4 submitted to the City by Property Owners or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from Property Owners.

1.2.23 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.24 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. § 10-2-425.

1.2.25 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws.

1.2.26 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.27 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40, as that route may be changed from time-to-time.

1.2.28 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.29 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.30 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.31 **Intended Uses** means the use of all or portions of the Project for open space, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.32 **Market Rate units** means any non-Affordable Housing within the Project.

1.2.33 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.34 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.35 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.36 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.37 **North Fields** means that certain real property generally depicted on **Exhibit C** attached hereto.

1.2.38 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.39 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.40 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.41 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development to handle on-site or off-site storm drain requirements.

1.2.42 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.43 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.44 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.45 **Phase** means the development of a portion of the Project.

1.2.46 **Planning Commission** means the City's Planning Commission.

1.2.47 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.48 **Property Owner or Property Owners** means KLJB, LLC and its successor and assign ADG, Baibach, LLC, and K&H Development Heber, LLC and any other successor-in-interest to any of the foregoing as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.49 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan generally depicts the development plan for the Property.

1.2.50 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.51 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.52 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.53 **Zone** means the City's North Village Overlay District Zone – North Village (NV) Sub-District.

1.2.54 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement.

3. **Zoning and Vested Rights.**

3.1 **Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone as a North Village (NV) Sub-District.

3.2 **Vested Rights.** Subject to paragraphs 3.3 and 3.4, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, and the zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).

3.3 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.

3.4 **Exceptions to Vested Rights.** The vested rights and the restrictions on the applicability of City's Future Laws as specified in Section 3.1 are subject to the following exceptions:

3.4.1 **Agreed to Regulations.** City's Future Laws or other regulations to

which the Developer agrees in writing;

3.4.2 State and Federal Compliance. City's Future Laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;

3.4.3 Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists;

3.4.4 Safety Codes. Any City's Future Laws that are updates or amendments to building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are enacted to meet legitimate concerns related to public health, safety or welfare;

3.4.5 Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes do not materially impact the ability of Property Owners to develop the Project in accordance with the Site Plan.

3.4.6 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

3.4.7 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.4.8 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;

3.4.9 Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not reduce the Density Entitlements and do not materially and unreasonably increase the overall cost of the Project; or

3.4.10 Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah

4. **Development of the Property in Compliance with the Site Plan.**

4.1 **Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to 34 hotel ERUs, up to 211 Market Rate residential ERUs (split between for sale condos/townhomes and for rent multi-family), and up to 48 commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the “**Density Entitlements**”). Property Owners also have an obligation to provide 33 residential ERUs as Affordable Housing as detailed in Section 4.5 of this Agreement.

4.2 **Building Elevations and Design.** As part of the approval process, Property Owners have provided potential building elevations for the hotel and condominium portions of the Project, which elevations are attached hereto as Exhibit _____. The building elevations and design standards must be similar in materials and appearance to the proposed elevations, or Property Owners must propose and obtain approval from the City Council for elevations that are consistent with NVOZ design guidelines and are to the standard of a four star resort hotel in Park City or Deer Valley.

4.2 **Transfer of Density for Eminent Domain.** If a portion of the Project is voluntarily or involuntarily transferred for public use, including, but not limited to, property taken by the Utah Department of Transportation as part of a road expansion project, Property Owner shall not be entitled to move density to other portions of the Project or amend the Site Plan to adjust for densities in areas acquired for public use.

4.3 **Intended Uses by Parcel and Densities.** Intended Uses and Densities for the Project are shown on the Site Plan for the Property. The general street configurations, building types and locations, and general layout for the Project shall comply with Site Plan, which is both a vested right and a requirement. This includes the City’s acceptance of the following exceptions to NVOZ ordinances:

4.3.1 **Building Heights.** Property Owners shall be allowed to construct a hotel or condominium hotel as a principal anchor to their development that is no more than five stories with stories being measured in height consistent with the Heber City NVOZ zone “Mixed Use Building” provision of the code found at § 3.3 of Chapter 18.21 of the North Village Overlay District.

Property Owners shall also be allowed to construct townhomes, affordable housing, and commercial retail buildings at three stories consistent with the provisions of Heber City NVOZ zone code found at Chapter 18.21 of the North Village Overlay District. Property Owners shall be allowed to include

rooftop decks on the proposed townhomes without violating the building height requirements of Chapter 18.21.

4.3.2 **Setbacks.** Property Owners shall be permitted to construct residential townhomes with minimum side yard setbacks between building at five (5) feet per building, for a combined setback of ten (10) feet. To protect the natural riparian areas the rear yard setback at Rock Creek on the West side of the Property shall be thirty feet (30) feet from the property line. To provide a natural barrier from the residential property South of the Property the Property Owners shall provide a thirty-foot (30) foot buffer from the property line.

4.2.3 **Contiguous Units.** Property Owners shall be permitted to construct residential townhomes with up to eight (8) contiguous units.

4.2.4 **Front Drives.** Property Owners shall be permitted to build townhomes with front driveways, not alleys, on their private road(s).

4.4 **Accounting for Density for Parcels Sold to Sub-developers** In connection with the sale of any Parcel sold by Property Owners to a Developer or Sub-developer, Property Owners shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, Property Owners shall provide the City Recorder with a development report (a "Development Report") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with Property Owners and any material effects of the sale on the Site Plan.

4.4.1 **Return of Unused Density.** If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to Property Owners. Such Development ERU shall be accounted for in any subsequent Development Report that Property Owners, or any of its successors in interest may be required to file with the City Recorder.

4.5 **Affordable Housing Requirements.** Developer shall construct not less than 33 residential ERUs of Affordable Housing within the Development. Affordable Housing shall be sold or rented, as applicable, to individuals or families

with an average income of Eighty percent (80%) or less of the area median income (AMI) in Wasatch County, Utah and the monthly cost shall not be more than Thirty percent (30%) of a household's income. Individual income limits for occupants of the Affordable Housing may be anywhere within the affordable housing AMI ranges, including up to 120% of AMI; however, the overall unit mix shall have an AMI averaged of no more than 80% AMI. Property Owners shall have no obligation to disperse the Affordable Housing throughout the Project but may consolidate the Affordable Housing in one or more areas of the Project, in its sole discretion. The Property Owner shall construct at least 33% of the Affordable Housing units (or 11 residential ERUs) on the Property (the “**Onsite Affordable Housing Obligation**”), which, for the avoidance of doubt, may be satisfied by the provision of workforce housing described in Section 4.5.1 below and otherwise meeting the requirements for Affordable Housing hereunder. The remaining 67% of the Affordable Housing unit obligation (or 22 residential ERUs) (the “**Alternative Affordable Housing Obligation**”) may be satisfied by the Property Owner by one or more of the following, the determination of which shall be mutually agreeable between the City and the Property Owner, but otherwise in compliance with this Section 4.5, including Section 4.5.4 (Timing): (a) construction of Affordable Housing on the Property pursuant to this Section 4.5, (b) construction of Affordable Housing offsite pursuant to Section 4.5.3, (c) one or more payments to the City of a fee in lieu pursuant to Section 4.5.5, and/or (d) the donation of land to the City pursuant to Section 4.5.6. Property Owners shall also be entitled to allocate any such Affordable Housing requirements to Developers and/or Sub developers as Property Owners may elect. Developer and the City shall follow and comply with any deed restrictions as outlined in Chapter 18.102 of the City's Vested Laws. Property Owner's failure to comply with the Affordable Housing obligation pursuant to the terms of this Agreement shall constitute a material breach of this Agreement, and the City may pursue all available remedies to enforce compliance, including but not limited to legal and equitable relief.

4.5.1 Eligibility and Pricing. A qualified third-party professional property management company shall manage the rental of all Affordable Housing. Eligibility for the affordable for-rent housing will be based on the AMI standards of for-rent affordable housing. Property Owners may enter into one or more master leases with local employers whereby local employers may lease a block of units to meet the housing needs of their qualifying employees.

4.5.2 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing, and only to the extent required under Chapter 18.102 of the City's Vested Laws, Developer/ Owner shall negotiate and enter into

with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Housing. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall have the right to enforce the terms of such a Covenant. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to be enforced by Unit Owners against each other.

4.5.3 Off-site Affordable Housing. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by construction of Affordable Housing off site on property owned by the City or another third party.

4.5.4 Timing. At least 50% of the required Affordable Housing requirement shall be completed no later than the construction of the first 50% of the Market Rate units; provided that, all of the Alternative Affordable Housing Obligation satisfied by the payment of a fee in lieu under Section 4.5.5 and/or by land donation(s) under Section 4.5.6, if applicable, shall be completed no later than the construction of the first 33% of the Market Rate units. The full Affordable Housing requirement shall be completed no later than construction of the first 90% of the Market Rate units. The Property Owners shall be entitled to a reduction of their affordable housing obligation of 25% if they agree to construct their affordable housing obligation in the first phase of the Project. If the Property Owners choose to seek LIHTC

credits, then Affordable Housing timing construction, and delivery, may be impacted. Property Owners shall use commercially reasonable efforts to meet the aforementioned timing commitments.

4.5.5 Fee in Lieu. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by paying a fee in lieu in the amount of \$60,000 per residential ERU. Payment of the fee shall be deemed sufficient to fulfill the relevant Alternative Affordable Housing Obligation without prejudice to any other rights or remedies available under this Agreement.

4.5.6 Land Donation. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by donating, or causing another third party to donate, one or more parcels of unimproved land to the City for the purpose of constructing Affordable Housing. The value of any donated land shall be determined by either of the following: (a) if the donated land was acquired within three (3) years of the date of such donation, the aggregate price per acre paid for such donated land, or (b) as determined by written appraisal in accordance with Heber City Code 18.102.050(J)(3) conducted within six months of the proposed donation. The full value of any donated land shall be recognized as a fee in lieu of \$60,000.00 in value required per residential ERU, consistent with the terms of Section 4.5.5. The Parties must agree in writing to the terms of any land donation, including the specific parcel(s), selection of the valuation method above, and compliance with the requirements outlined in this Section.

5. **Term.**

5.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue either for a period of twenty-five (25) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs (the “**Term**”), unless it is terminated in accordance with Section 26. Unless otherwise agreed between the Parties, NVD’s vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term shall remain vested rights in accordance with the terms and conditions of such approvals. Furthermore, any obligations of Developer related to any licenses, building permits, or certificates of occupancy shall continue in full force and effect.

6. **Approval Processes for Development Applications.**

6.1 **Phasing.** The City acknowledges that Property Owners, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6.2 **UDOT Bypass.** The Utah Department of Transportation (UDOT) is currently in the process of developing a Heber Valley Corridor Environmental Impact Statement (EIS). As part of the EIS, UDOT has established five potential alternatives for a future bypass road. Two of the five alternatives established by UDOT, would potentially require UDOT to acquire some amount of the Property via eminent domain. Developer acknowledges the proposed bypass routes. Accordingly, Developer agrees to delay the receipt of any permits until April 1, 2025. To avoid doubt, the Parties acknowledge:

6.2.1 The City will still accept and process permit applications submitted by Developer on, or before April 1, 2025.

6.2.2 Developer's vested rights granted within this Agreement will not be impacted or in any way limited or impaired by any UDOT EIS report.

6.2.3 If UDOT selects a bypass route that impacts the Property the Property Owners will, in good faith, negotiate with UDOT regarding the condemnation of Property via eminent domain to facilitate the construction of the bypass road.

7. **Open Space, Improved Public Parks, and Trails Requirements**

7.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** For each Phase, neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. Open space, parks and trails shall comply with the requirements of Heber City Code § 18.21.050 for the NV Sub-District, except that Property Owners shall provide not less than 20% of the total Project area within the Market Rate residential ERU area as Open Space; Property Owners must provide at least 20% of the overall Project area as Open Space (excluding the Highway Buffer area set forth in Section 7.2); and Property Owners must provide 10% of the overall Project area as Traditional Park Space in accordance with Heber City Code Table 5.1(1)) or pay a fee in lieu. In accordance with Utah Code § 10-9a-604(3)(d)(iv) and (4) (2024), the City may require completion assurance for any landscaping that is necessary to meet the open space or traditional park space requirements.

7.2 **Highway 40 Landscape Buffer.** Property Owners shall provide an open space buffer on the Project property of not less than 150 feet from the existing western boundary of Highway 40, measured from the edge of the paved roadway. Property Owners may construct portions of the Outer Loop Trail within the buffer

area along with a split rail wood fence along the trail. Property Owners may also use portions of this area for stormwater retention, but shall coordinate with UDOT to ensure that any improvements to Highway 40 are not impeded by such stormwater retention.

7.3 Outer Loop Trail. Property Owners shall construct a public access multi-use trail along the perimeter of the Project as generally shown on the Site Plan. The trail shall be not less than 8 feet wide and shall include not less than 6 feet of hard surface.

7.4 Ownership and Maintenance of Open Space or Trails. All trails and open space shall be dedicated to and maintained by the Master Association for the development. All trails within the Project shall be open to public use unless the trail is utilized specifically to access a private residence.

7.5 Sledding Hill and Plaza. Property Owners have proposed constructing a sledding hill and plaza area, as generally shown on the Site Plan, that would be open to use for a reasonable fee by residents within the Project and the public. The sledding area and plaza shall count towards the required Traditional Park Space portion of the Open Space requirement and Open Space requirements generally. Property Owners acknowledge that the sledding hill and plaza are important characteristics to the approval of the Project, and in the event they elect not to construct the sledding hill or plaza area, Property Owners shall construct other public recreational amenities and public gathering places within the Project that are similar in cost and scope to the proposed sledding hill and plaza area.

7.6 Park Impact Fees. Property Owners acknowledge that all required park, trail and open space improvements within the Project are a condition of development approval and are project improvements pursuant to Utah Code § 11-36a-102(15). Property Owners may be required to pay parks, recreation, open space and trails impact fees for system improvements that benefit the Project as established in the City's impact fee analysis.

7.7 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

7.8 North Fields Preservation. Property Owners, for themselves and with respect to each subsequent Owner of the Property, agree that upon issuance of any building permit for residential or commercial ERUs, the Owner shall pay to the City a one-time fee equal to \$2,500 per ERU or such prorated amount on partial

ERU attributable to such unit, as applicable (the “**North Fields Preservation Fee**”). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including the acquisition of development rights or the use of other conservation related tools for the preservation of open space. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Affordable Housing.

8. **Public Improvements.**8.1 **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD).** The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services. However, if at any point City sewer and water, including secondary water is available in the area, the City agrees that Property Owner shall be able to obtain City services. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers

8.2 **Streets.** At a minimum, all streets within the Project shall be improved to the Residential / Minor Collector standard as set forth in Heber City Code § 18.21.040.4.6. Notwithstanding this requirement, Property Owners may elect to construct a single multi-use path on one side of any street in lieu of the 5’ sidewalks typically require on both sides of the street under Heber City Code § 18.21.040.4.6. Any such multi-use paths shall have a minimum of 6’ of hard surface material. Additionally, Property Owners may elect to construct one or more private access drives to facilitate its residential development that do not meet public street standards. Property Owners shall be responsible to construct all streets, road accesses, and pedestrian paths within the Project. Unless accepted by the City, all streets and paths shall be private and shall be dedicated to the Master Association and shall be owned and maintained by the Master Association.

8.3 **Storm Water Improvements and Management.** The Parties acknowledge that the City has adopted a regional storm water master plan “**City Updated North Village Stormwater Master Plan**”). Property Owners shall be required to comply with the policies and standards of the North Village Stormwater Master Plan, as amended, and associated Stormwater Design Manual, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement. Property Owners acknowledge that compliance with North Village Stormwater Master Plan may require construction of off-site improvements as outlined in the City Updated North Village Storm Water Master Plan. Developer and Property Owner shall restore or replace the historic, natural drainage channels

downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan

8.4 Storm Water Retention/Detention from Off-Site Sources. The Parties acknowledge that Property Owners may provide On-Site Storm Water Retention/Detention on the Property for an adjacent development, which On-Site Storm Water Retention/Detention would be used to meet the adjacent development's storm water retention/detention requirements with the City.

8.5 Utilities and On-Site Infrastructure. Property Owners shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure that is necessary to support the development proposed within a specific Development Application.

8.6 Excess Improvements/Upsizing. The Property Owners and City do not anticipate that Property Owners will be required to install any System Improvements or upsize any infrastructure. If the City does require the Property Owners to enlarge, increase or otherwise "upsized" or upgrade (collectively, the "**Excess Improvements**") the City agrees that it shall reimburse the applicable Property Owners from Impact Fees collected by the City for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Property Owners shall not be compensated for any "upsizing" of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

8.7. Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan. The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

8.8. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

8.9 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8.10 Public Infrastructure District. City understands that Property Owners may request a Public Infrastructure District ("PID") pursuant to Utah Code § 17D-4-101 et seq. for the Property. The City shall review and reasonably consider Property Owners' petition to create the PID as an option to implement and facilitate the financing, construction, and operation of some or all of the Public Infrastructure for the Project.

9. CC&Rs. As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a provision that regulates the nightly rental of any residential unit located on the Property. It is anticipated that nightly rental of residential units within the development shall be through the Property's hotel and within the hotel's brand standards. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines.

10. Fees & Bonding.

10.1 General Requirement of Payment of Fees. The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 Bonding. Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the

Project (the “**Security**”), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City’s Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City’s Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

12. **Grading and On-Site Processing of Natural Materials.**

12.1 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and subject to City’s Vested Laws, may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

12.2. **Future Transportation Plan.** The Parties acknowledge that the City is presently contemplating a future Updated North Village Transportation Plan (as finalized and adopted by the City) (the “**City Updated North Village Transportation Plan**”). Concurrent with Provision 4.1 above, Property Owners shall be required to comply with all future policies and standards of the North Village Transportation Plan, yet to be adopted, and all standards and requirements

of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter. City agrees that it shall include the Project in any future plans for public transit connections associated with the North Village development area generally. As a NVOZ “Village Center”, this Project is a priority for public mass transit optionality.

13. **Provision of Municipal Services.** Except for services provided by Districts, the City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Remedies Upon Default.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in

this Agreement and City's obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES

14.4 City's Remedies Upon Default. In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

15. Notices. All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

Angstrom Development Group
Attn: Neil Goldman
1461 W Ursa Way
Heber City, UT 84032

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 Effectiveness of Notice. Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 Physical Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 Electronic Delivery. Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** If allowed by Utah state law, the following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by Property Owners or their successors and assigns.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed twenty-one (21) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 **Notification Regarding Application and Administrator's Approval.** Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be

considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. **Amendment.** Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 **Submissions of Modification Applications.** Only the City or Property Owners or an assignee of Property Owners, approved in writing by the City, and one that succeeds to all of the rights and obligations of Property Owners under this Agreement may submit a Modification Application.

17.2 **Modification Application Contents.** Modification Applications shall include:

17.2.1 **Identification of Property.** Identify the property or properties affected by the Modification Application.

17.2.2 **Description of Effect.** Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 **Identification of Non-City Agencies.** Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application, if required by law, shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall

pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 Amendments by Property Owners. Notwithstanding any other provision in this Agreement to the contrary, Property Owners may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from Property Owners or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor Property Owners shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. Estoppel Certificate. Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. Entire Agreement. Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

20. Headings. The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

21. No Third-Party Rights/No Joint Venture. This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD

or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, Property Owners or their successors may sell any portion of the Property to one or more parties (each a “**Developer**” or “**Sub-developer**”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property.

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless Property Owners otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of Property Owners, which may be granted or withheld in their sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by Property Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by Property Owners for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

22.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

22.1.4 Property Owners shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

23. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

24. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such

Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. **Termination.**

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of

the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

25.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

26. Insurance and Indemnification. Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

27. Hazardous, Toxic, and/or Contaminating Materials. Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

28. Binding Effect. If Property Owners or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Property Owners each shall designate and appoint a representative to act as a liaison between the City and its various departments and Property Owners. The initial representative for the City shall be City Manager, or his designee and the initial representatives for Property Owners shall be [REDACTED]. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall

succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

37. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

38. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

39. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

40. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

41. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

[Signatures appear on the following two pages.]

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
 CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Baibach, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

K&H Development Heber, LLC

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
) CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the K&H Development Heber, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

CITY

Heber City, a political subdivision of the State of Utah

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By: _____

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE RESIDENTIAL DEVELOPMENT

Legal Description

BEGINNING AT A POINT LOCATED NORTH 00°30'00" WEST ALONG THE SECTION LINE 132.85 FEET AND WEST 654.07 FEET FROM THE FOUND WASATCH COUNTY ALUMINUM CAP MARKING EH EAST 1/4 CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 32°00'23" WEST 1201.64 FEET TO THE HEBER CITY BOUNDARY AS SHOWN ON THE NORTH VILLAGE ANNEXATION PLAT; THENCE ALONG SAID HEBER CITY BOUNDARY AND THE NORTH VILLAGE ANNEXATION PLAT THE FOLLOWING 22 (TWENTY TWO) CALLS: 1. NORTH 42°02'19" EAST 253.96 FEET, 2. NORTH 89°51'56" EAST 493.00 FEET, 3. SOUTH 42°15'26" EAST 71.50 FEET, 4. ALONG THE ARC OF A 463.93 FOOT RADIUS CURVE TO THE LEFT 66.76 FEET (CHORD BEARS SOUTH 46°22'46" EAST 66.70 FEET), 5. SOUTH 50°30'06" EAST 70.63 FEET, 6. ALONG THE ARC OF A 226.74 FOOT RADIUS CURVE TO THE RIGHT 97.65 FEET (CHORD BEARS SOUTH 38°09'48" EAST 96.90 FEET), 7. SOUTH 25°49'31" EAST 80.79 FEET, 8. ALONG THE ARC OF A 234.73 FOOT RADIUS CURVE TO THE LEFT 109.51 FEET (CHORD BEARS SOUTH 39°11'26" EAST 108.52 FEET), 9. SOUTH 52°33'20" EAST 46.06 FEET, 10. ALONG THE ARC OF A 95.72 FOOT RADIUS CURVE TO THE RIGHT 27.55 FEET (CHORD BEARS SOUTH 44°18'34" EAST 27.46 FEET), 11. SOUTH 36°03'49" EAST 17.11 FEET, 12. ALONG THE ARC OF A 84.88 FOOT RADIUS CURVE TO THE LEFT 74.84 FEET (CHORD BEARS SOUTH 61°19'17" EAST 72.44 FEET), 13. SOUTH 86°34'45" EAST 55.03 FEET, 14. ALONG THE ARC OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT 41.05 FEET (CHORD BEARS SOUTH 69°46'38" EAST 40.47 FEET), 15. NORTH 39°00'43" EAST 134.19 FEET, 16. SOUTH 00°28'04" EAST 215.78 FEET, 17. SOUTH 22°22'27" WEST 568.62 FEET, 18. NORTH 50°59'17" WEST 229.73 FEET, 19. ALONG THE ARC OF A 138.00 FOOT RADIUS CURVE TO THE LEFT 109.61 FEET (CHORD BEARS SOUTH 61°40'19" WEST 106.75 FEET), 20. SOUTH 39°00'43" WEST 127.93 FEET, 21. ALONG THE ARC OF A 248.00 FOOT RADIUS CURVE TO THE RIGHT 39.75 FEET (CHORD BEARS SOUTH 43°36'15" WEST 39.71 FEET), AND 22. SOUTH 48°11'46" WEST 70.25 FEET TO THE POINT OF BEGINNING. AREA = 20.35 ACRES

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
Site Plan



EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
North Fields

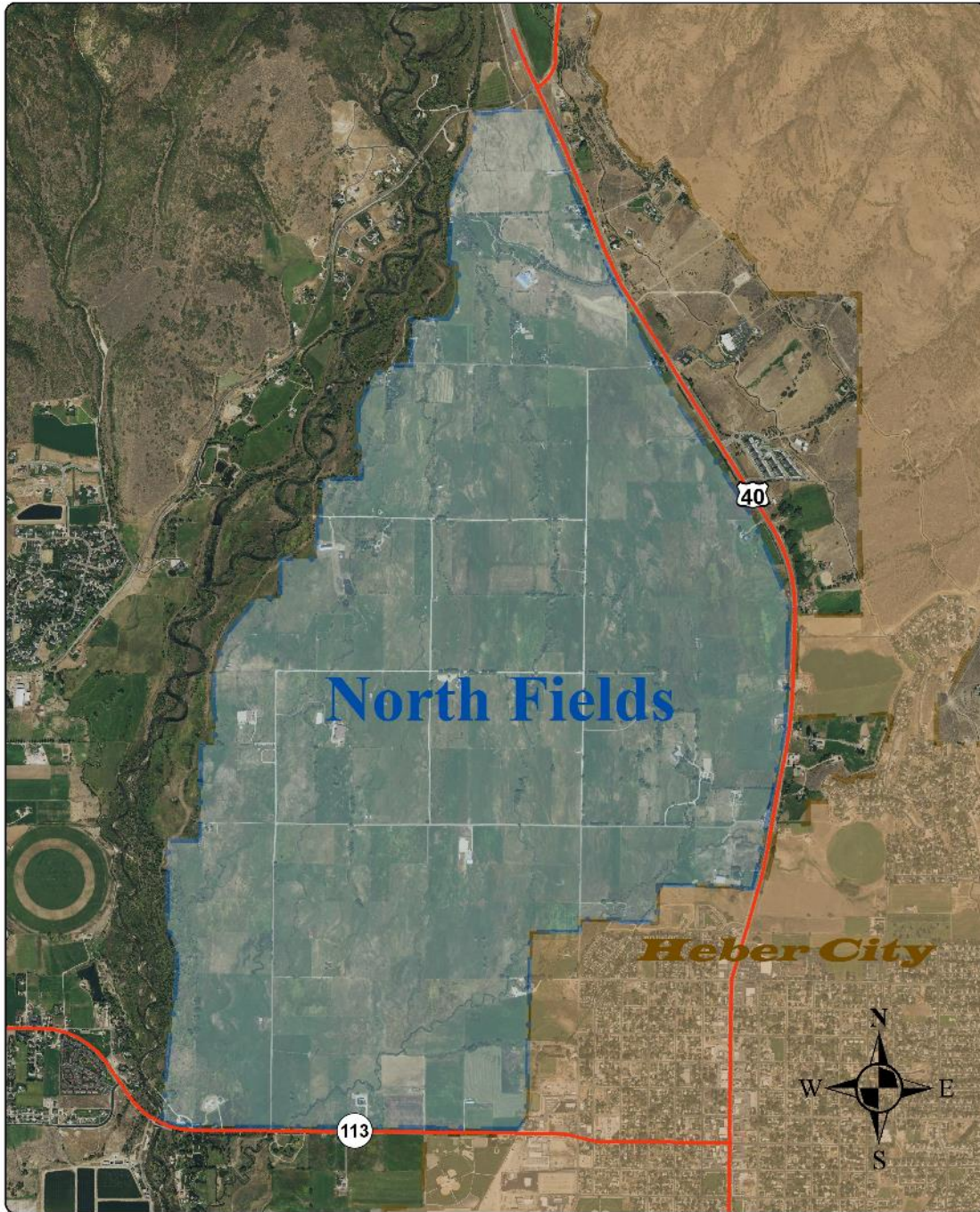
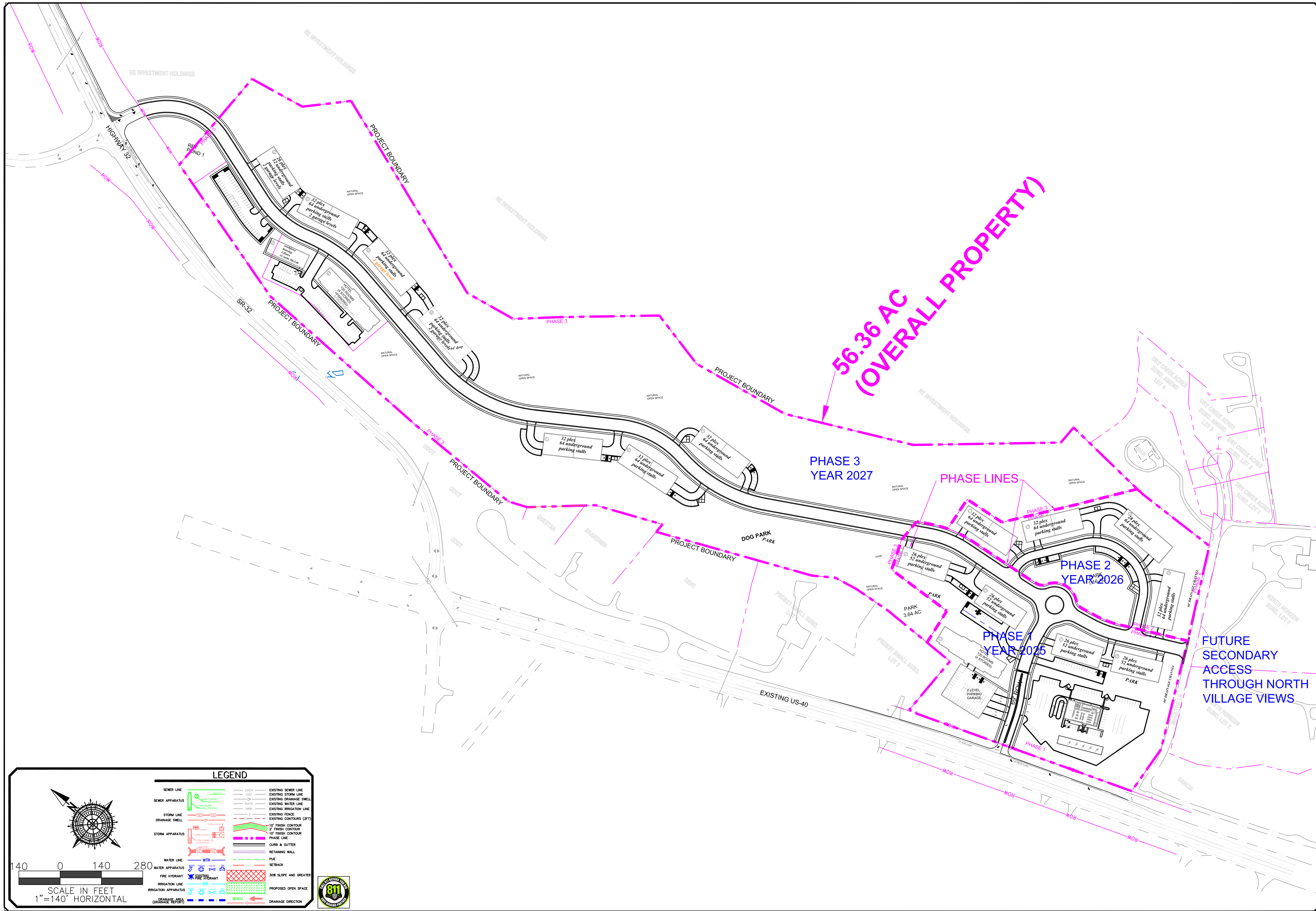


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

DRAFT



ORIG. DATE: 8-5-14

SURVEY BY: GPH

DRAWN BY: GPH

DESIGNED BY: GPH

CHECKED BY: GPH

SCALE: 1"=140'

NO.

DESCRIPTION

DATE

APP'D

GATEWAY CONSULTING, Inc.

P.O. BOX 951005 SOUTH JORDAN, UT 84095

PH: (801) 694-5848

paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING

CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS

PHASING AND TIMING PLAN

12-16-2024

HEBER CITY

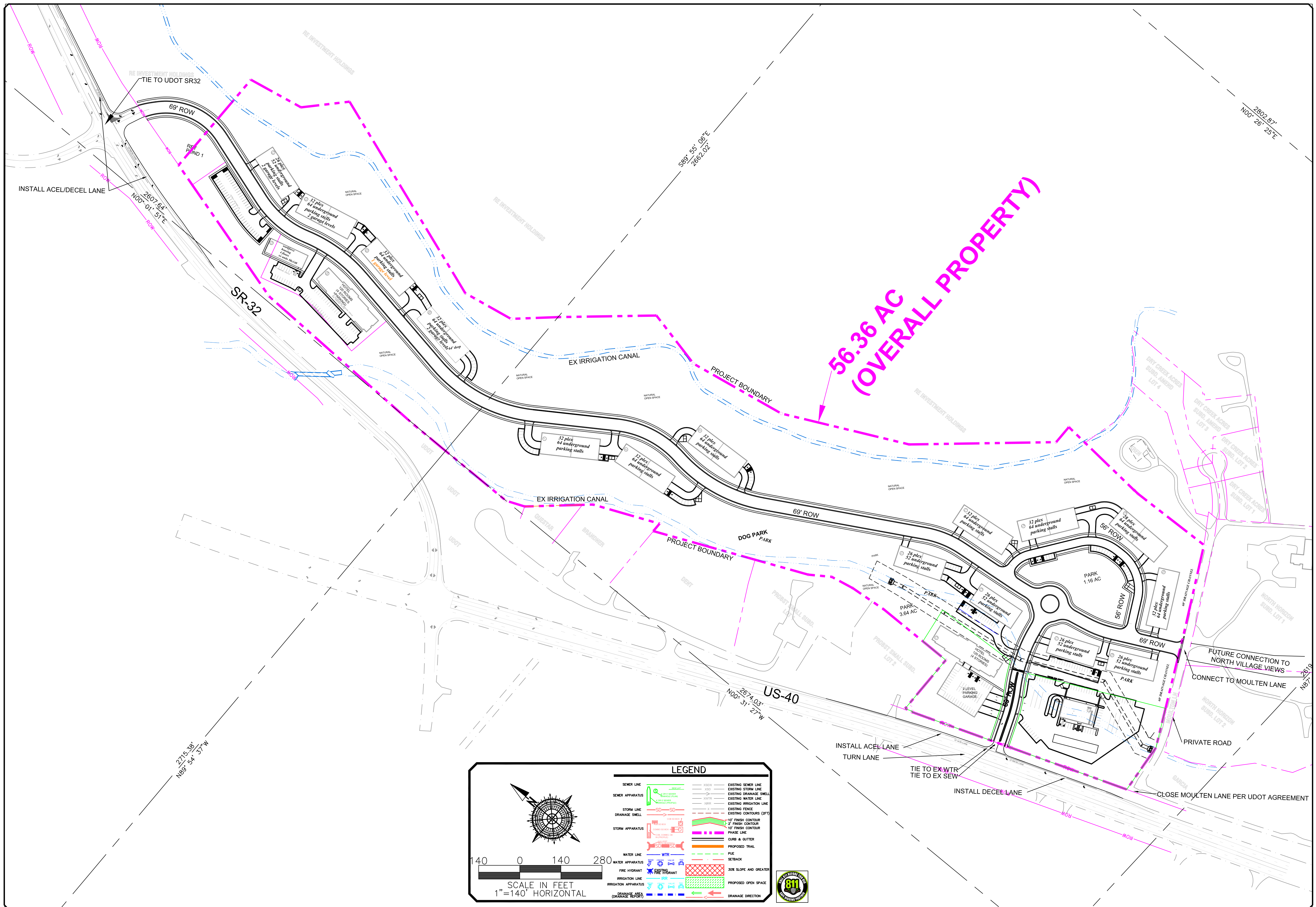
RECEIVED

PLANNING DEPARTMENT

2024 DEC 16 PM 3:05

SHEET NO. 6

Page 137 of 355

[illegible]

ORIG. DATE:	6-1-16
SURVEY BY:	
DRAWN BY :	GPW
DESIGNED BY :	GPW
CHECKED BY :	GPW
SCALE :	1"=140'

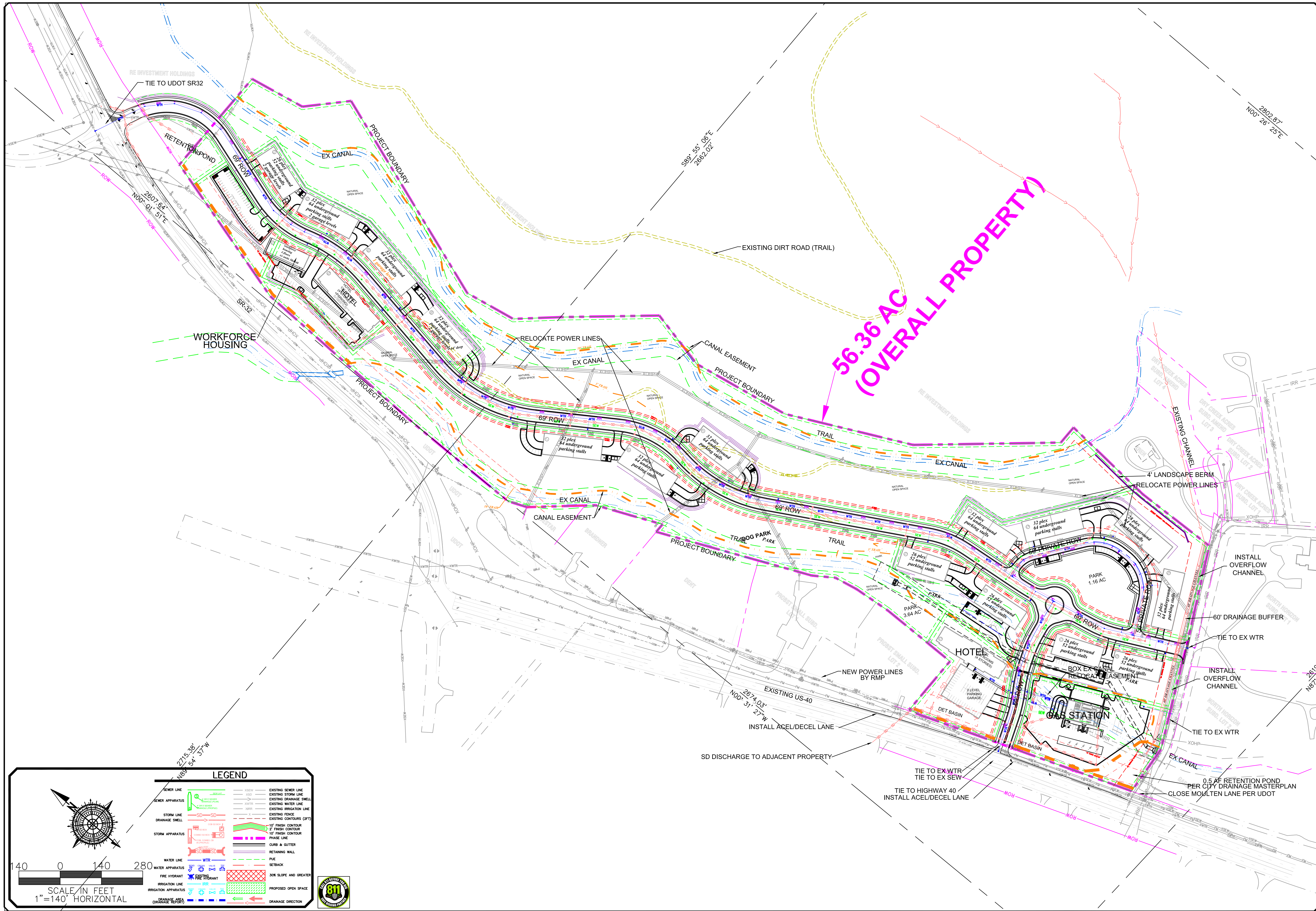
 **GATEWAY CONSULTING, Inc.**
P.O. BOX 951005 SOUTH JORDAN, UT 84095
PH: (801) 694-5848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING
CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS
UDOT OVERLAY SITE PLAN
12-16-2024

HEBER
CITY

SHEET NO. 8



140 0 140 280

SCALE IN FEET
1"=140' HORIZONTAL

SEWER LINE

SEWER APPARATUS

STORM LINE

STORM APPARATUS

WATER LINE

WATER APPARATUS

IRIGATION LINE

IRIGATION APPARATUS

DRAINAGE ARE

EXISTING SEWER LINE

EXISTING STORM LINE

EXISTING WATER LINE

EXISTING IRRIGATION LINE

EXISTING FENCE

EXISTING CONTOURS (3FT)

10' FINISH CONTOUR

2' FINISH CONTOUR

10' FINISH CONTOUR

PHASE LINE

CURE & OUTER

RETAINING WALL

PUE

SETBACK

30% SLOPE AND GREATER

PROPOSED OPEN SPACE

DRAINAGE DIRECTION

SEWER

STORM

WATER

IRIGATION

DRAINAGE

ORIG. DATE: 8-5-14

SURVEY BY: GPM

DRAWN BY: GPM

CHECKED BY: GPM

SCALE: 1"=140'

NO.

DESCRIPTION

DATE

APP'D

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CIVIL ENGINEERING * CONSULTING * LAND PLANNING

CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS

SITE PLAN

12-16-2024

HEBER CITY

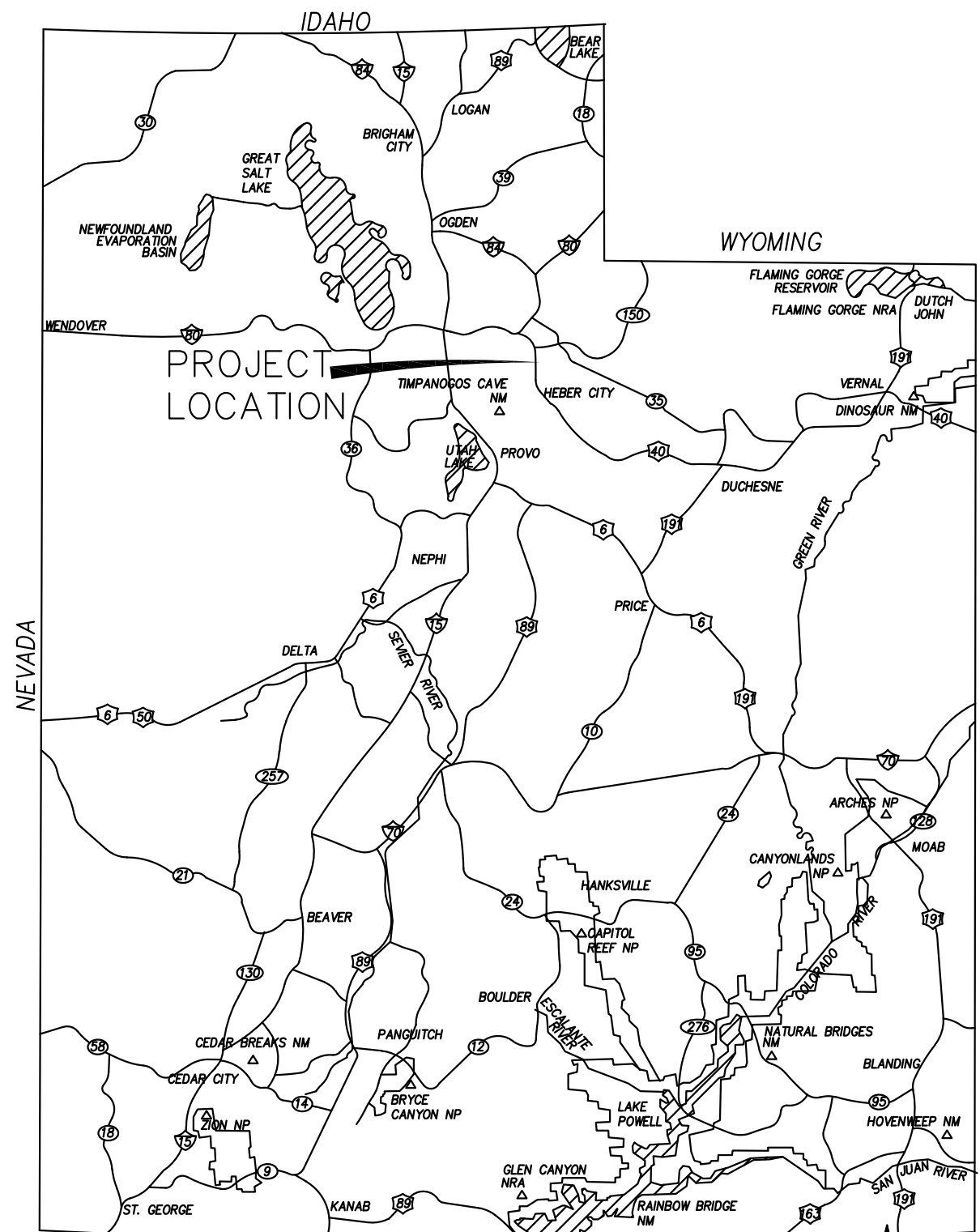
SHEET NO. 2

Page 139 of 355

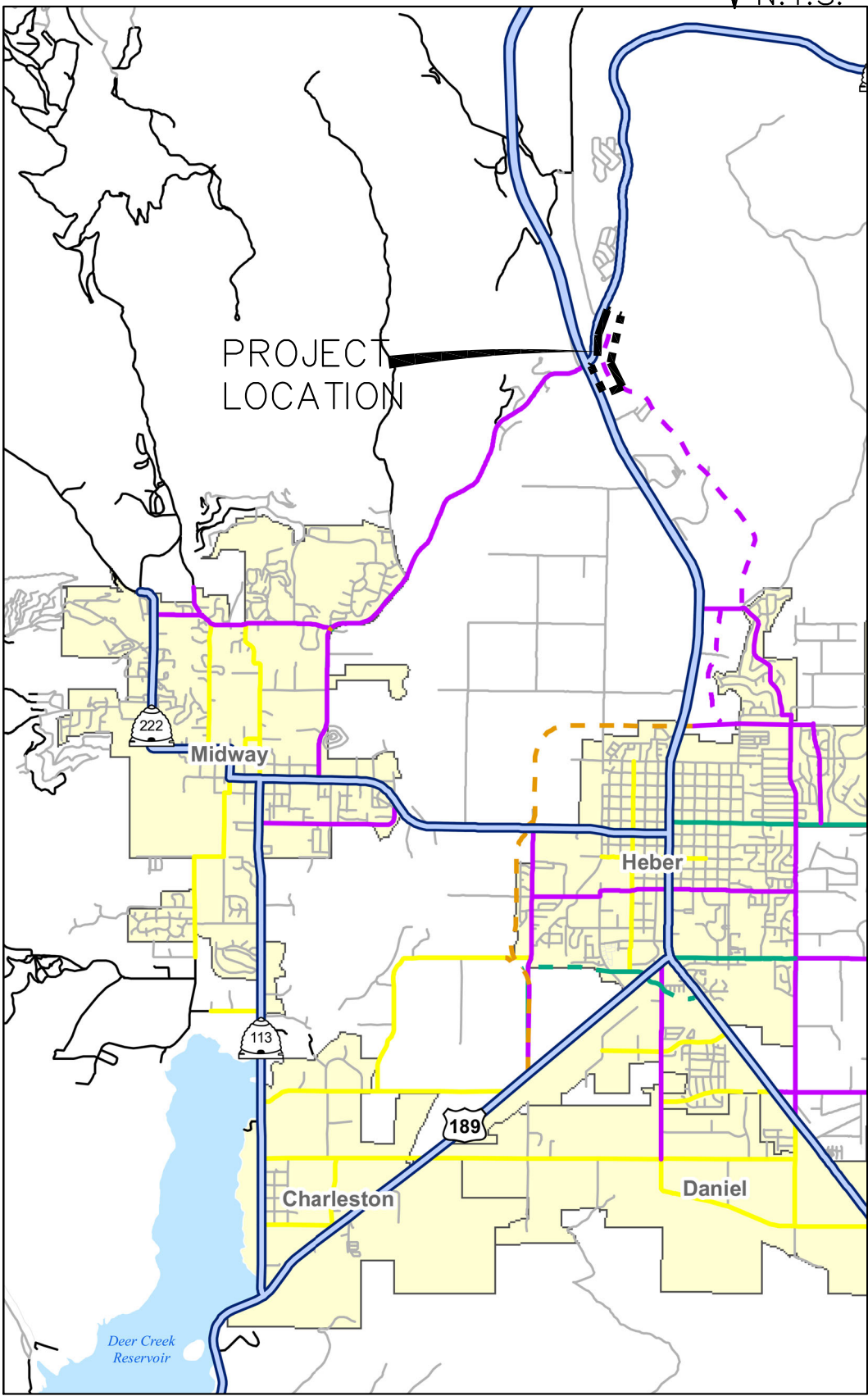
NORTH VILLAGE CROSSINGS

LOCATION
SOUTH QUARTER OF SECTION 18
TOWNSHIP 3 SOUTH, RANGE 5 EAST
SALT LAKE BASE AND MERIDIAN

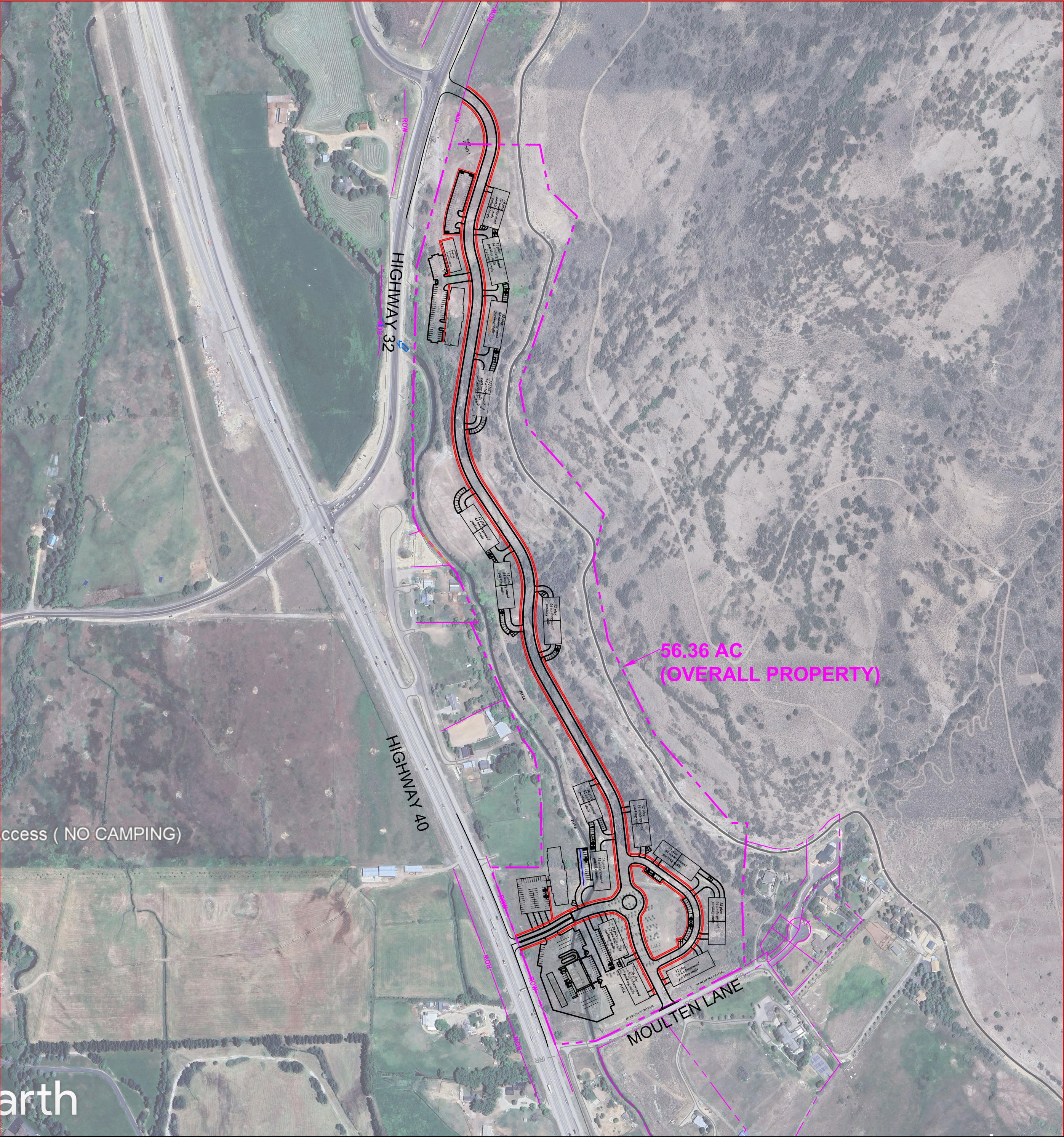
PRELIMINARY PLAN
DECEMBER. 16, 2024



VICINITY MAP

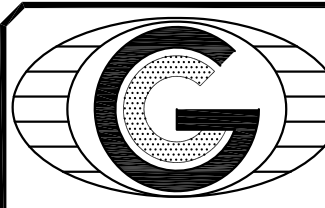


VICINITY MAP
N.T.S.



REVISIONS			
#	DESCRIPTION	DATE	SHEETS AFFECTED

INDEX OF SHEETS	
1	TITLE SHEET
1A	PROJECT NOTES
2	OVERALL SITE PLAN
3	EXISTING CONDITIONS/DEMOLITION PLAN/GEOTEC
4	RETAINING WALL PLAN
5	PHYSICAL CONSTRAINTS ANALYSIS
6	PHASING PLAN
7	CONNECTIVITY/TRAIL PLAN
8	UDOT SITE PLAN
9	OPEN SPACE AND TRAIL CALC'S MAP
SS1	LIGHTING, PAINT, AND SIGNAGE
DRAIN	DRAINAGE BASINS
G1-G8	GRADING AND DRAINAGE SHEET
U1	CULINARY AND IRRIGATION WATER UTILITY PLAN
U2	SANITARY SEWER UTILITY PLAN
U3	STORM WATER UTILITY PLAN
U4	IRRIGATION PLAN
U5	DRY UTILITY PLAN
U6	CANAL PLAN
PP1-PP23	PLAN AND PROFILE SHEETS
SWPPP	STORM WATER POLLUTION PROTECTION PLAN
ER1-ER2	EROSION CONTROL DETAILS
D1	STREET DETAILS
D2	SANITARY SEWER DETAILS
D3	CULINARY WATER DETAILS
D4	WATER AND STORM DRAIN DETAILS



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CIVIL ENGINEERING • CONSULTING • LAND PLANNING
CONSTRUCTION MANAGEMENT

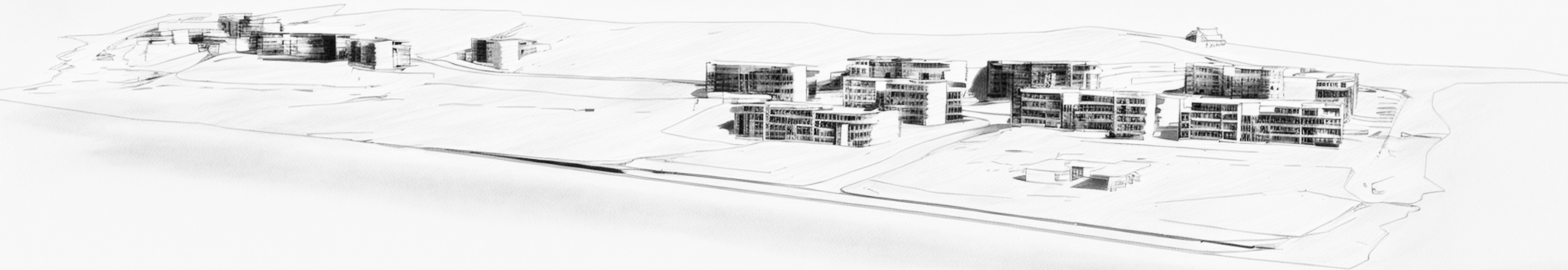


REGISTERED PROFESSIONAL ENGINEER
STATE OF UTAH
No. 12345
Exp. 12/31/2025

NVOZ ANNEXATION

	HARVEST VILLAGE		THE CROSSINGS	
	ORIGINAL MDA	UPDATED MDA	ORIGINAL MDA	UPDATED MDA
DENSITY	Hotel: 34 Residential: 204 Commercial: 55 Total: 293 Bonus Affordable: 33 Total for Project: 326	Hotel: 34 Residential: 211 (+7) Commercial: 48 (-7) Total: 293 Bonus Affordable: 33 Total for Project: 326	Hotel: 60 Residential: 357 Commercial: 5 Total: 422 Bonus Affordable: 42 Total for Project: 464	Hotel: 60 Residential: 311 (-46) Commercial: 5 Total: 373 (-46) Bonus Affordable: 38 (-4) Total for Project: 411 (-53)
OPEN SPACE	20%+ as Open Space - Sled Hill / Plaza - Trails 150' Highway 40 Buffer - Park Impact Fees		69%+ as Open Space - Dog park - Public trails along two canals & Hwy 40 - Underground Parking (increases open space) - Park Impact Fees	
AFFORDABLE HOUSING	Targets resort employees and local families - Build at least 11 ERU on site - Remaining 22 ERU - Build on site - Pay fee in lieu (\$60k per ERU) - Donate equivalent land for public/private partnership		Targets workforce housing - Build at least 13 ERU on site - Remaining 25 ERU - Build on site - Pay fee in lieu (\$35k per ERU) - Donate equivalent land for public/private partnership	
COMMUNITY BENEFITS	120k+ SF of commercial - Public access to activities/amenities - Collaboration with UDOT for future bypass - Resort with restaurant(s) and conference space		- Public collector road that connects the North Village to SR-32 (reduces traffic for locals) - City master stormwater plan - Two hotels	
ADDITIONAL BENEFITS	- Plans that conform with Envision 2050 - High Valley Transit stop(s) - Entrance to Heber Valley (future collaboration with developers) - Heber City captures property, sales, transient room, TAP, restaurant and utility taxes - Capture Deer Valley/Jordanelle visitors without impacting downtown traffic - Affordable housing delivers the equivalent of 71 ERU and/or \$2.2M available for public/private partnership to deliver affordable in other locations throughout Heber City			

Page 142 of 3





NVC BUILDING RENDER



NVC VIEW FROM THE WEST

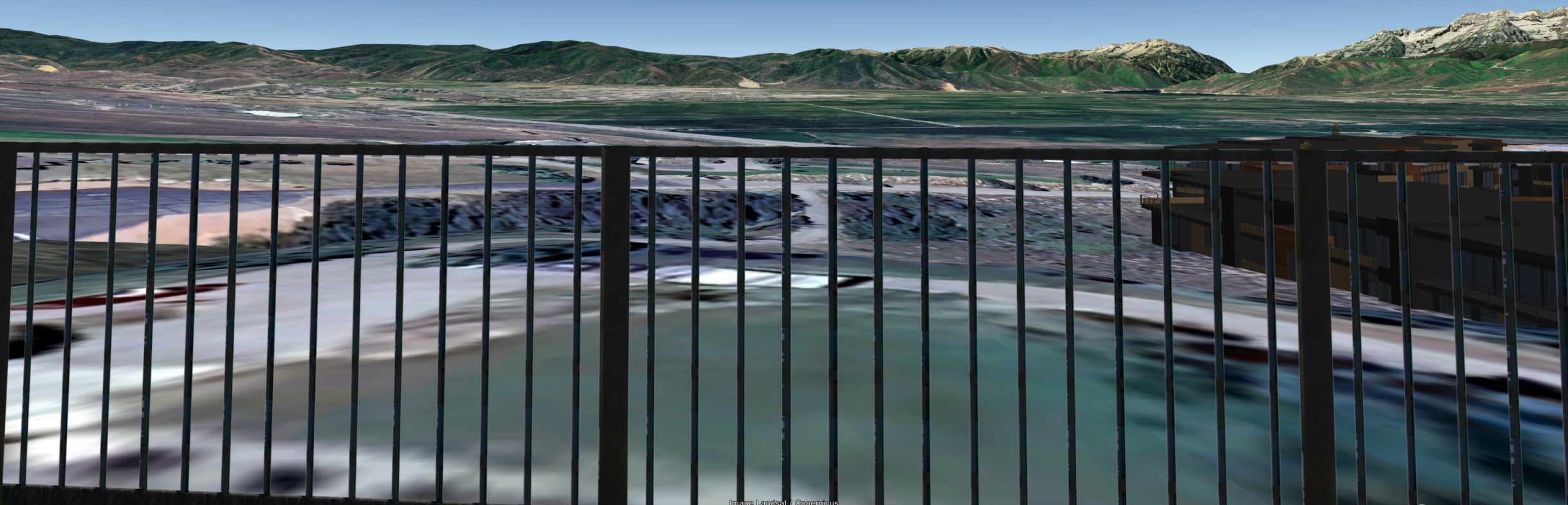
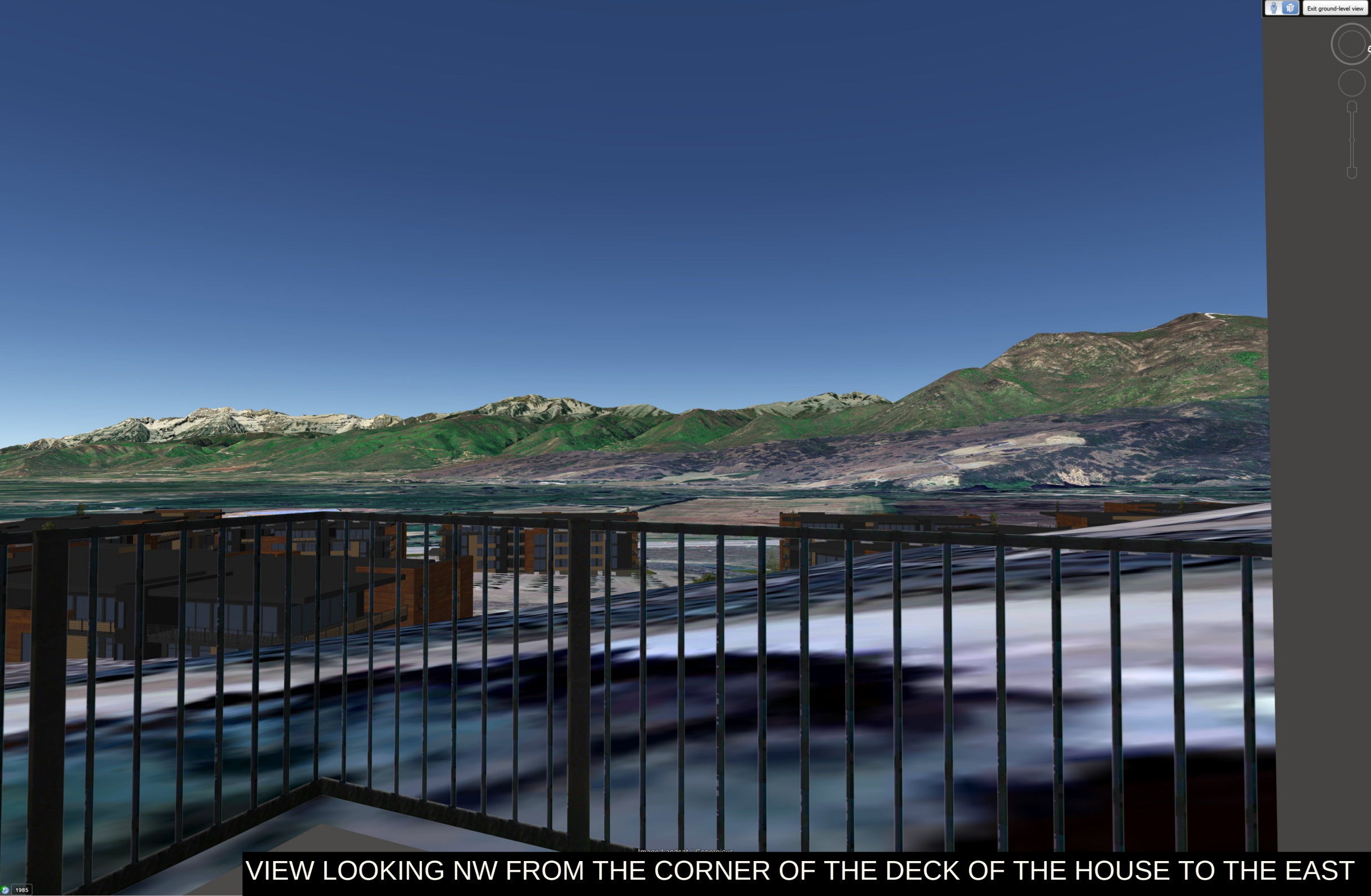
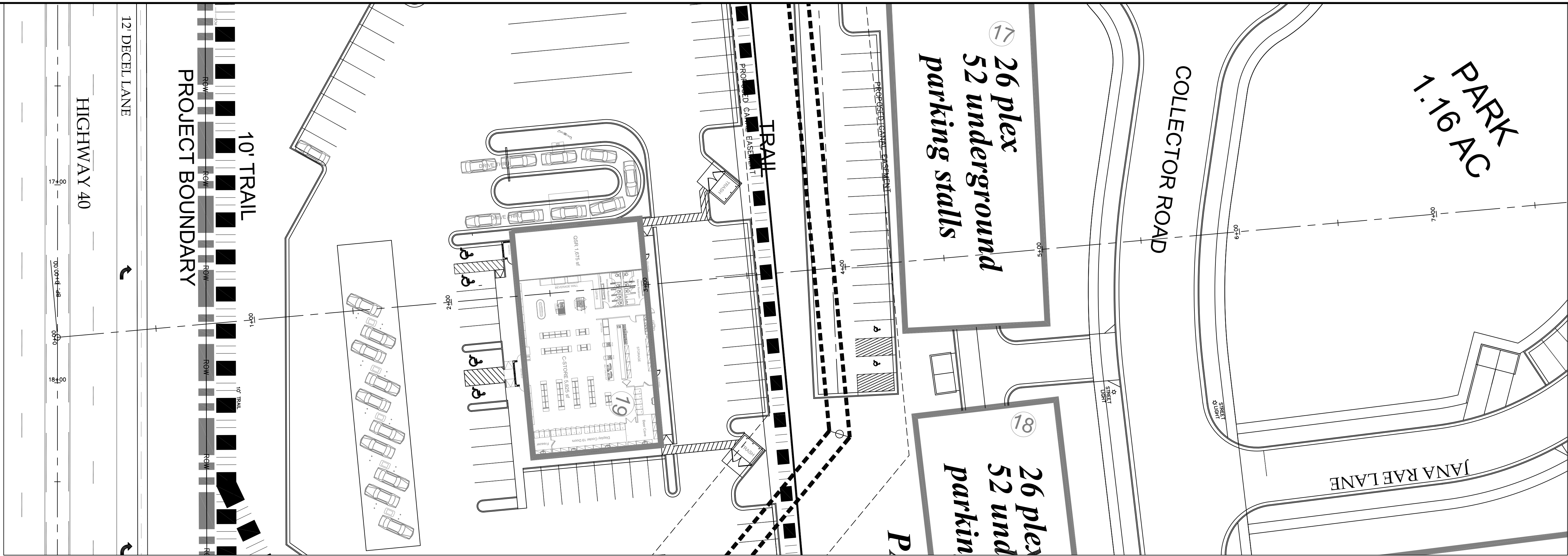


Image Landsat / Copernicus

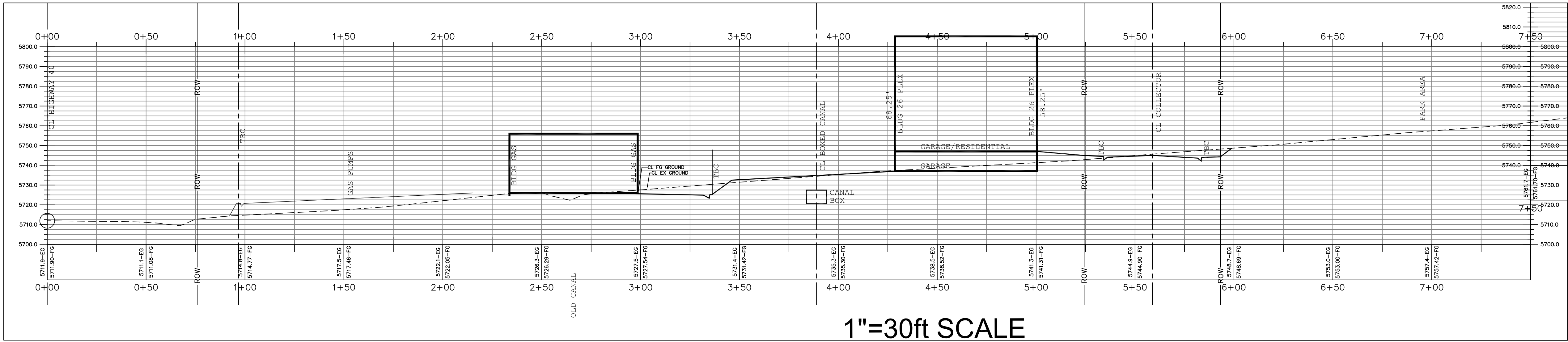
VIEW LOOKING SW FROM THE DECK OF THE HOUSE TO THE EAST



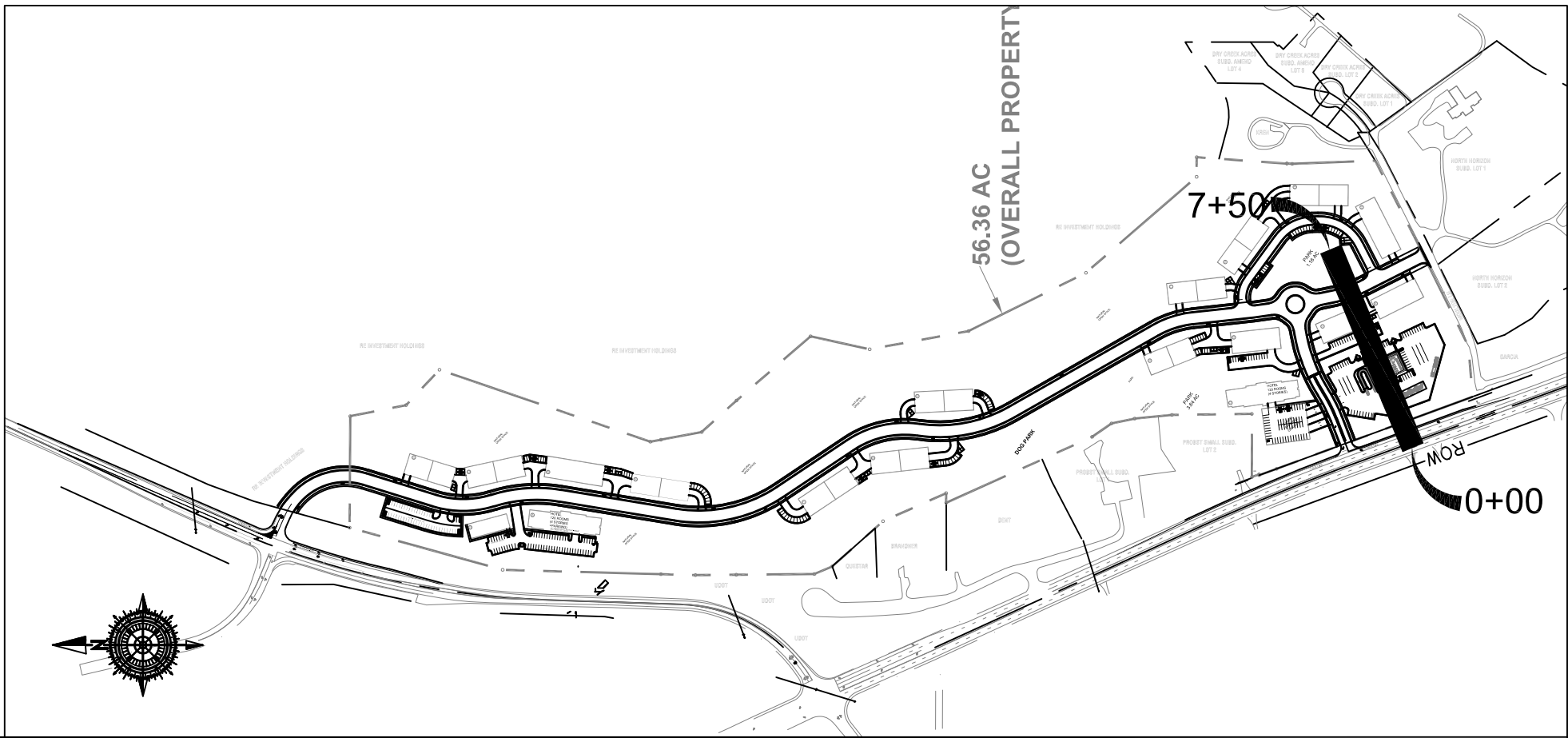
VIEW LOOKING NW FROM THE CORNER OF THE DECK OF THE HOUSE TO THE EAST



MATCHLINE SEE SHEET X-SEC 1B



MATCHLINE SEE SHEET X-SEC 1B



SCALE IN FEET
1"=30' (24X36)

LEGEND	
SEWER LINE	EXISTING SEWER LINE
SEWER APPARATUS	EXISTING STORM LINE
STORM LINE	EXISTING DRAINAGE SHEL
DRAINAGE SHEL	EXISTING WATER LINE
STORM APPARATUS	EXISTING IRRIGATION LINE
WATER LINE	EXISTING BURIED PHONE
WATER APPARATUS	EXISTING FENCE
FIRE HYDRANT	EXISTING CONTOURS (2FT)
IRRIGATION LINE	EXISTING CONTOURS (2FT)
IRRIGATION APPARATUS	EXISTING CONTOURS (2FT)
DRAINAGE AREA (DRAINAGE REPORT)	EXISTING CONTOURS (2FT)

12-16-2024

PLAN AND PROFILE

STA: 0+00 to 7+50

NORTH VILLAGE CROSSINGS

SITE CROSS SECTION 1

HEBER CITY

XSEC-1A

SHEET NO.

ORIG. DATE: 6-1-16

SURVEY BY: GPM

DRAWN BY: GPM

DESIGNED BY: GPM

CHECKED BY: GPM

SCALE: 1"=30'

GATEWAY CONSULTING, Inc.

P.O. BOX 951005 SOUTH JORDAN, UT 84095

PH: (801) 694-5848

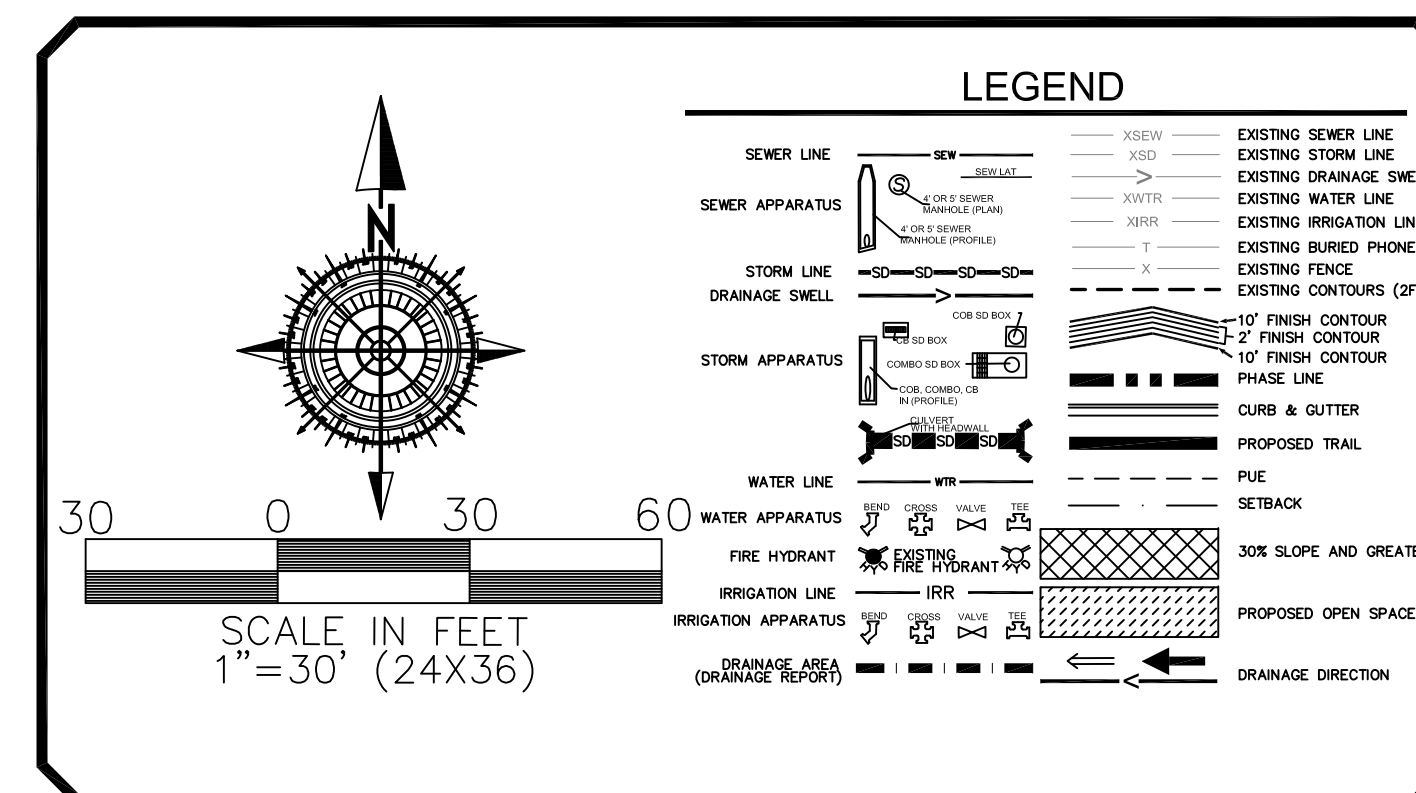
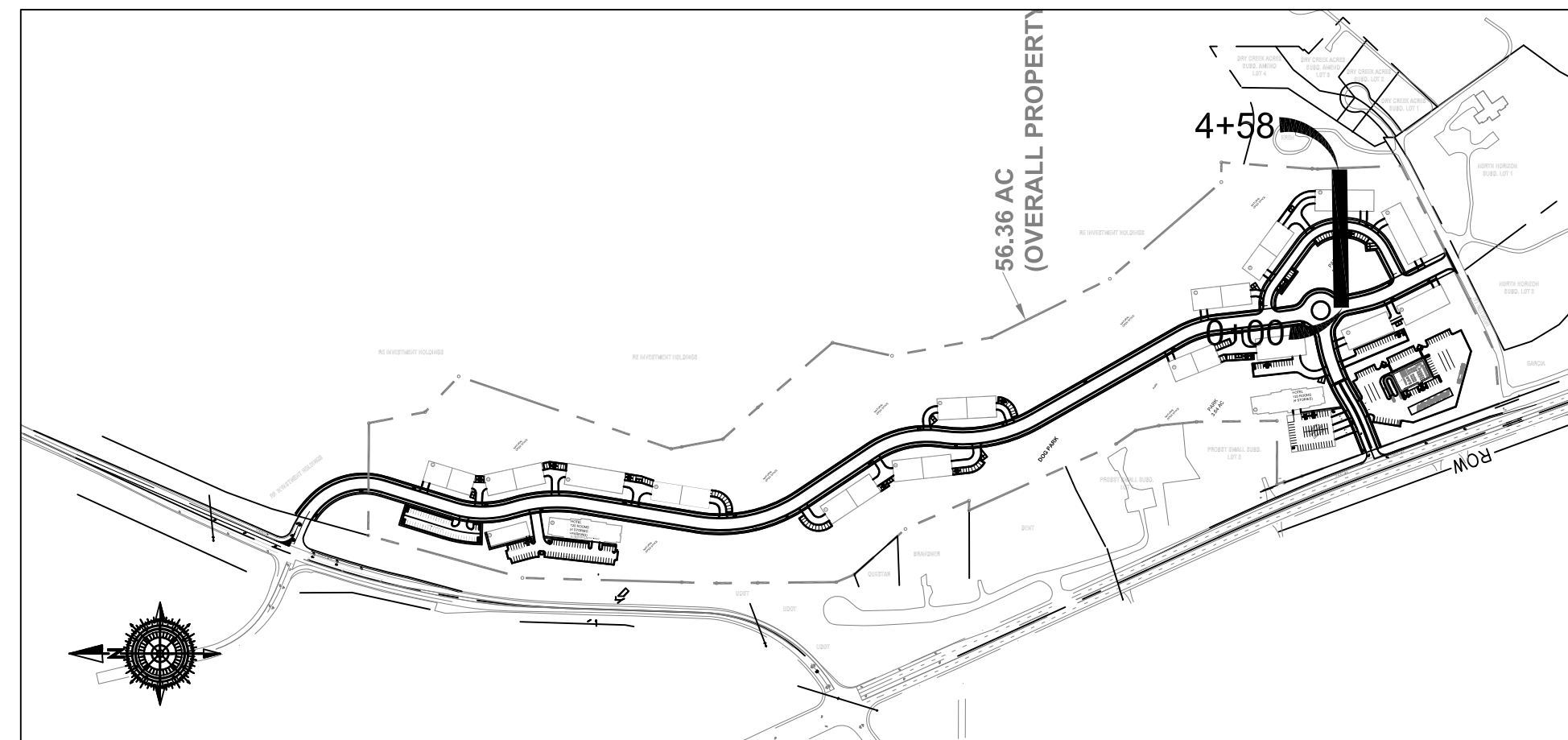
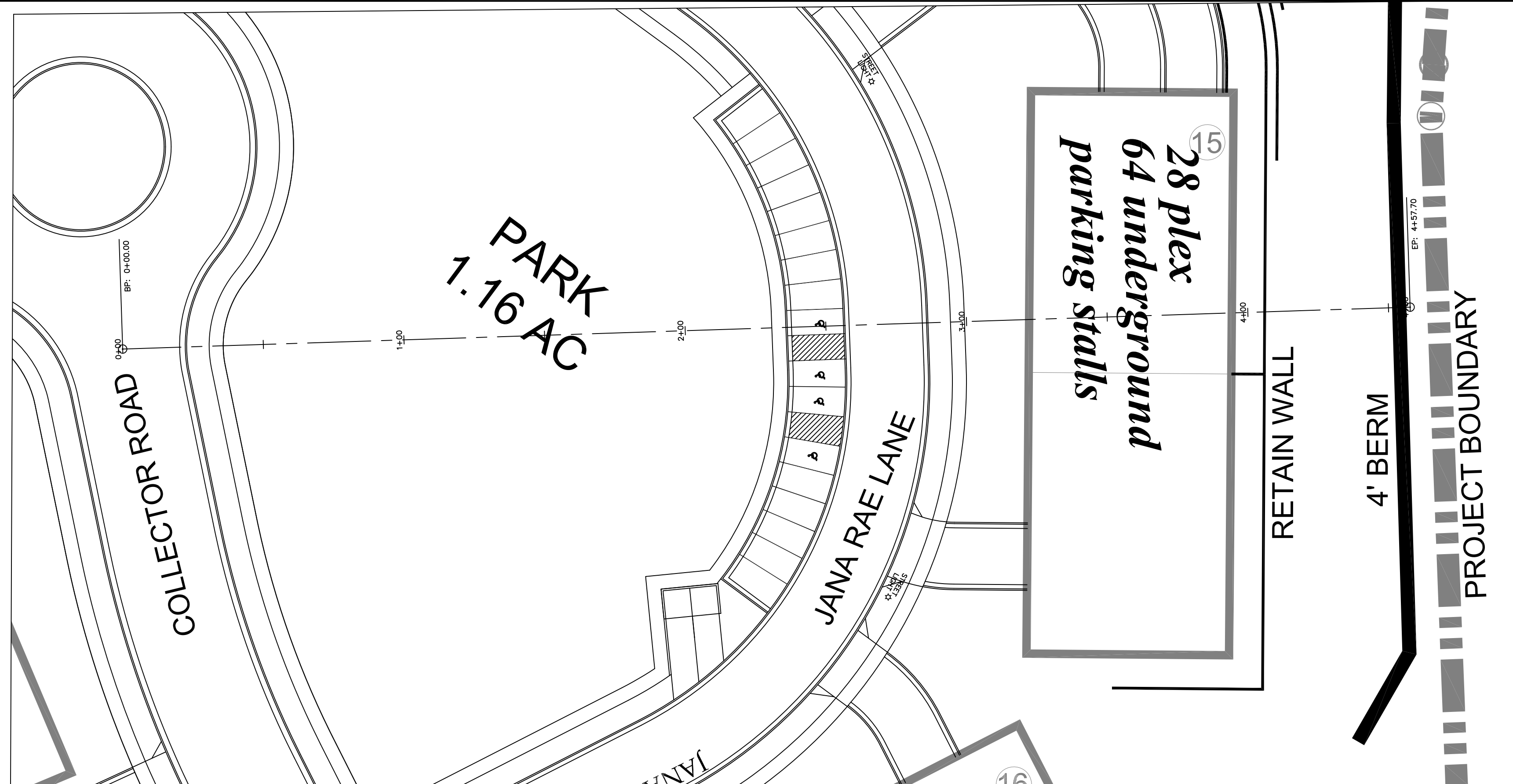
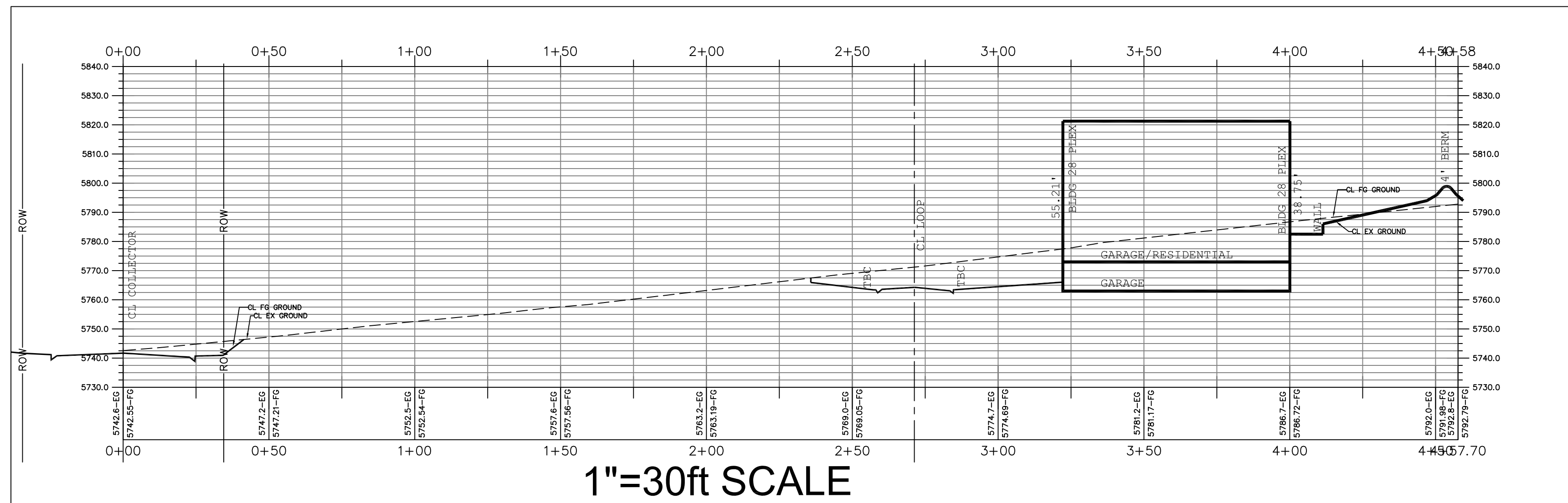
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING

CONSTRUCTION MANAGEMENT

NO.	DESCRIPTION	DATE	APP'D

Page 148 of 355

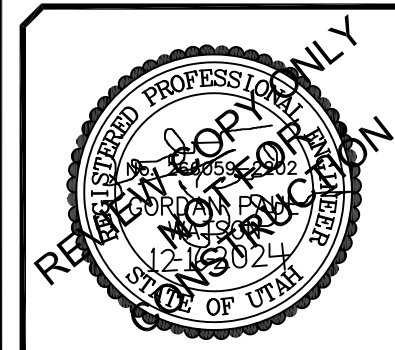


NORTH VILLAGE CROSSINGS SITE CROSS SECTION 2

PLAN AND PROFILE
STA: 0+00 to 4+58

12-16-2024

HEBER
CITY



XSEC-2
SHEET NO. _____

[illegible]

ORIG. DATE:	6-1-16
SURVEY BY:	
DRAWN BY :	GPW
DESIGNED BY :	GPW
CHECKED BY :	GPW
SCALE :	1"=30'

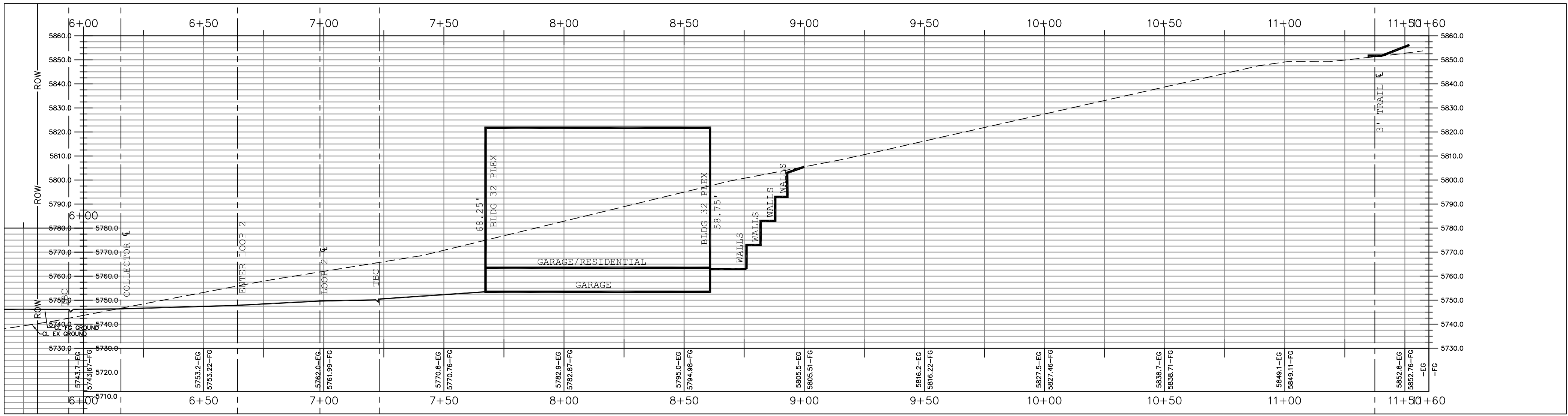
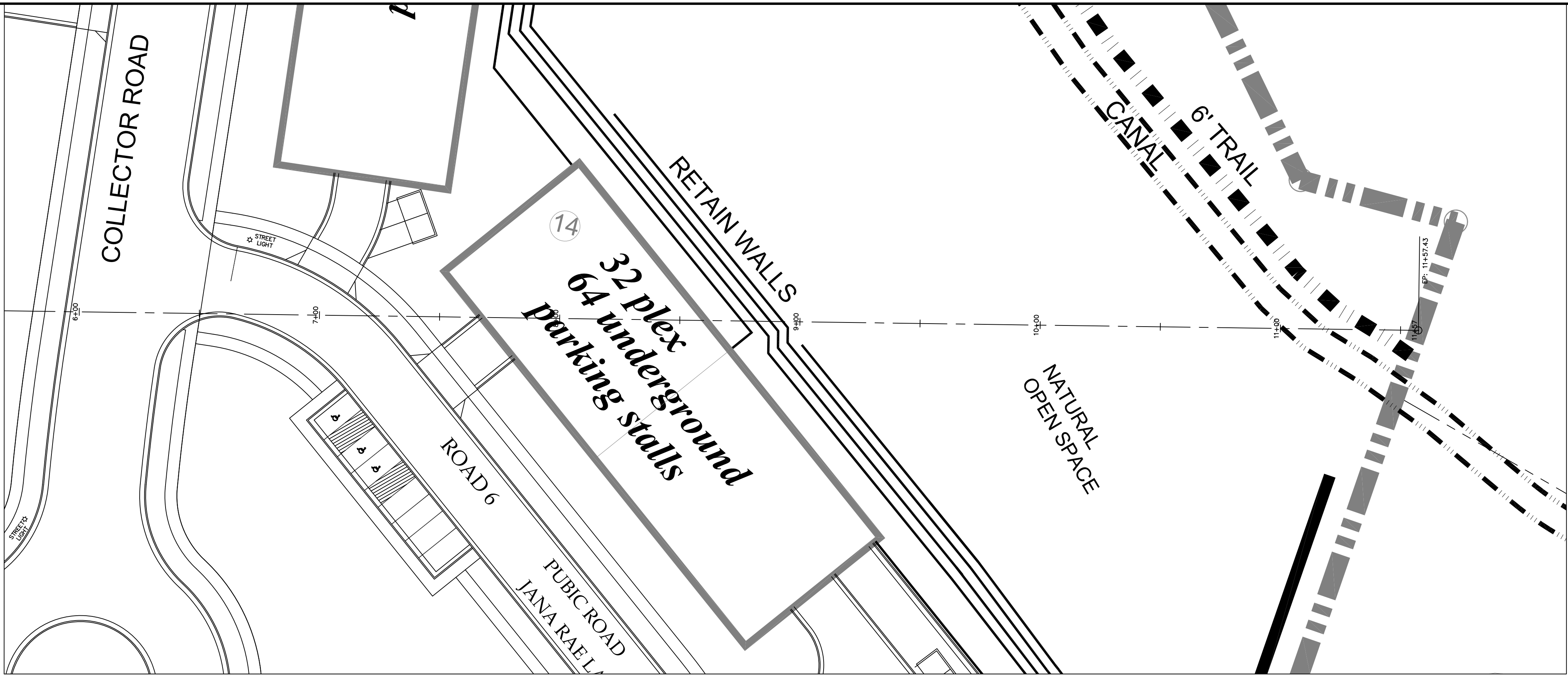
GATEWAY CONSULTING, Inc.

P.O. BOX 951005 SOUTH JORDAN, UT 84095

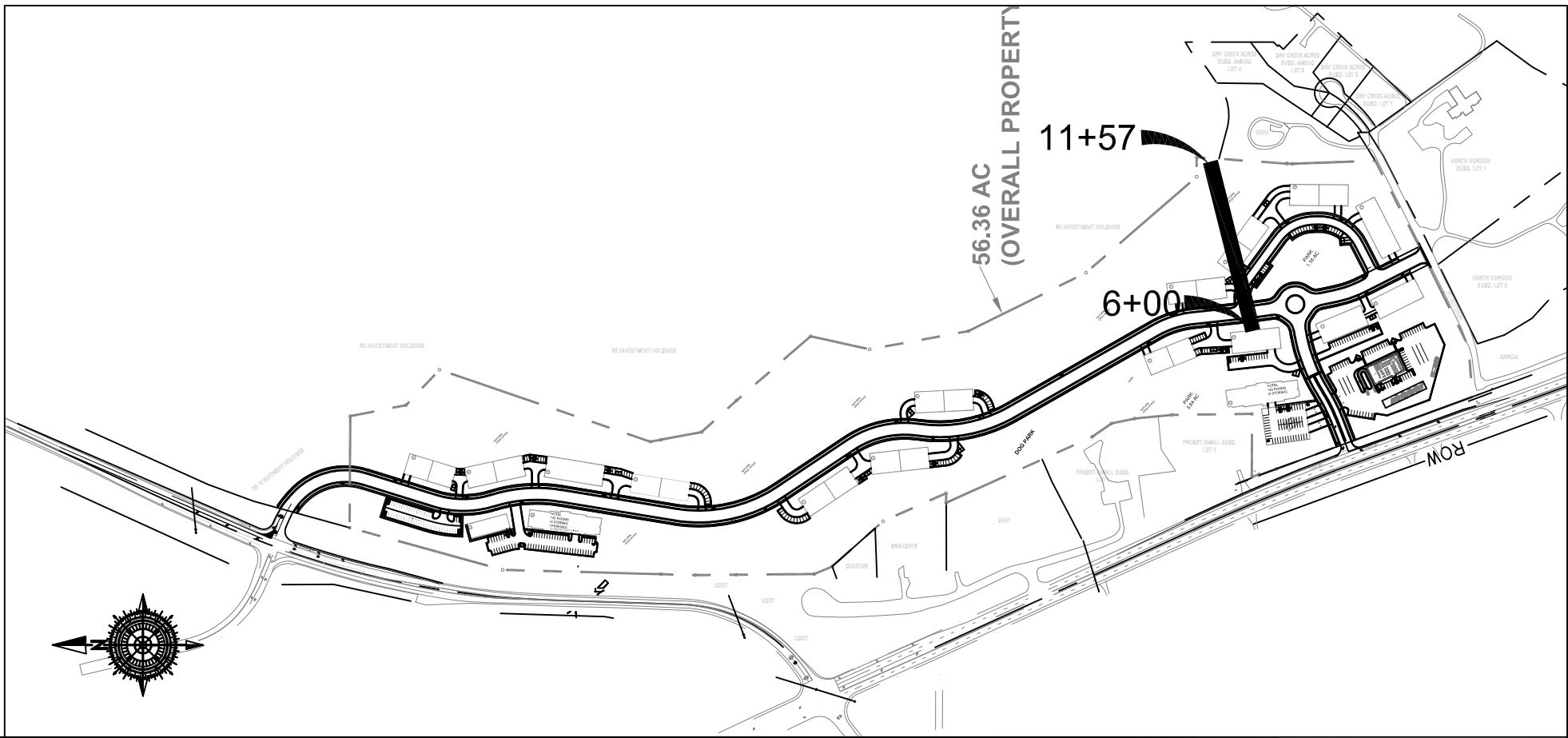
005 SOUTH JORDA
PH: (801) 694-5848

PH: (601) 694-3848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING* CONSULTING* LAND PLANNING
CONSTRUCTION MANAGEMENT



1"=30ft SCALE



LEGEND

SEWER LINE	SEW	EXISTING SEWER LINE
SEWER APPARATUS	SEW	EXISTING STORM LINE
STORM LINE	STO	EXISTING DRAINAGE SHEL
DRAINAGE SHEL	STO	EXISTING WATER LINE
STORM APPARATUS	STO	EXISTING IRRIGATION LINE
WATER LINE	WTR	EXISTING BURIED PHONE
WATER APPARATUS	WTR	EXISTING FENCE
FIRE HYDRANT	FIR	EXISTING CONTOURS (2FT)
IRRIGATION LINE	IRR	10' FINISH CONTOUR
IRRIGATION APPARATUS	IRR	2' FINISH CONTOUR
DRAINAGE AREA (DRAINAGE REPORT)	DRN	10' FINISH CONTOUR
		PHASE LINE
		CURB & GUTTER
		PROPOSED TRAIL
		PUE
		SETBACK
		30% SLOPE AND GREATER
		PROPOSED OPEN SPACE
		DRAINAGE DIRECTION

GATEWAY CONSULTING, Inc.
P.O. BOX 951005 SOUTH JORDAN, UT 84095
PH: (801) 694-5848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING
CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS
SITE CROSS SECTION 3

PLAN AND PROFILE
STA: 6+00 to 11+57

12-16-2024

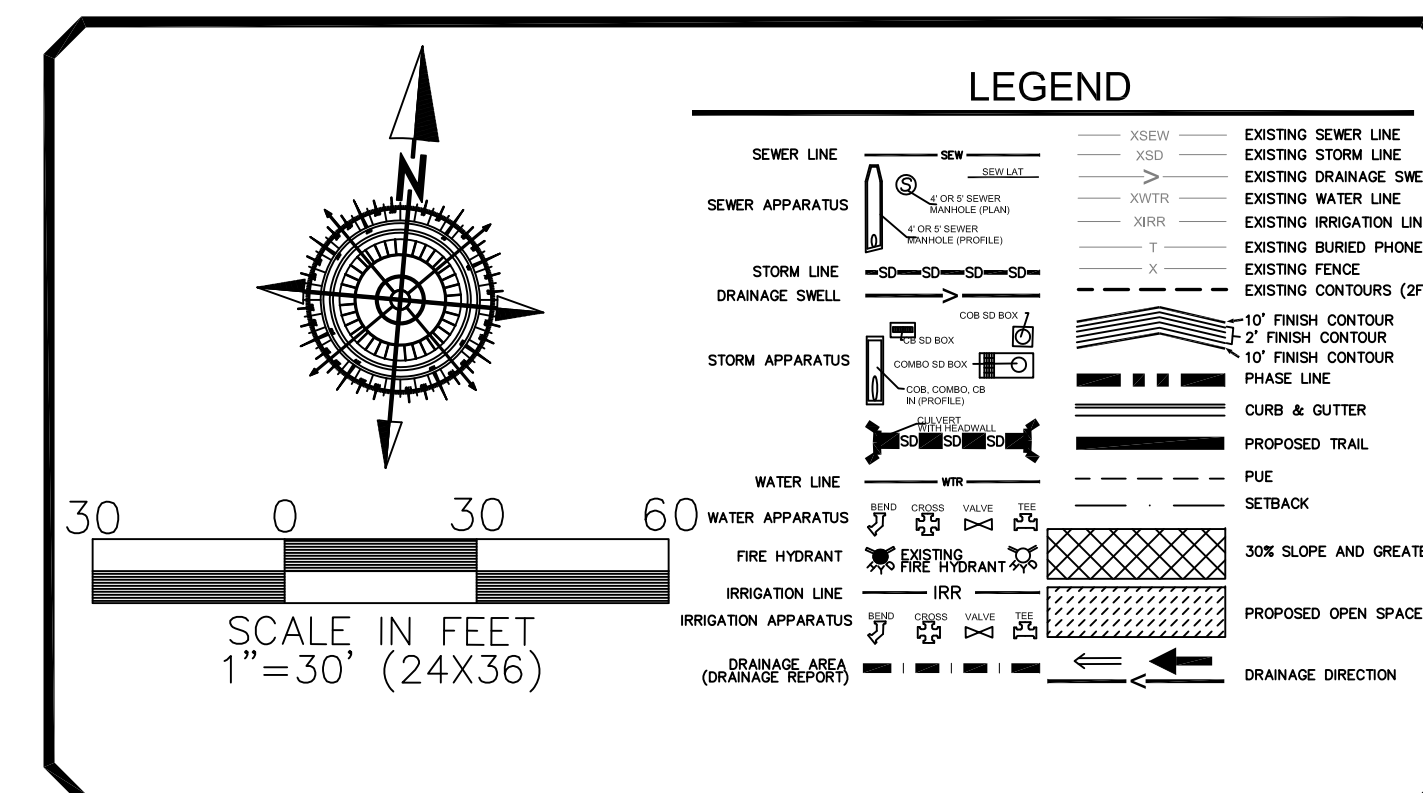
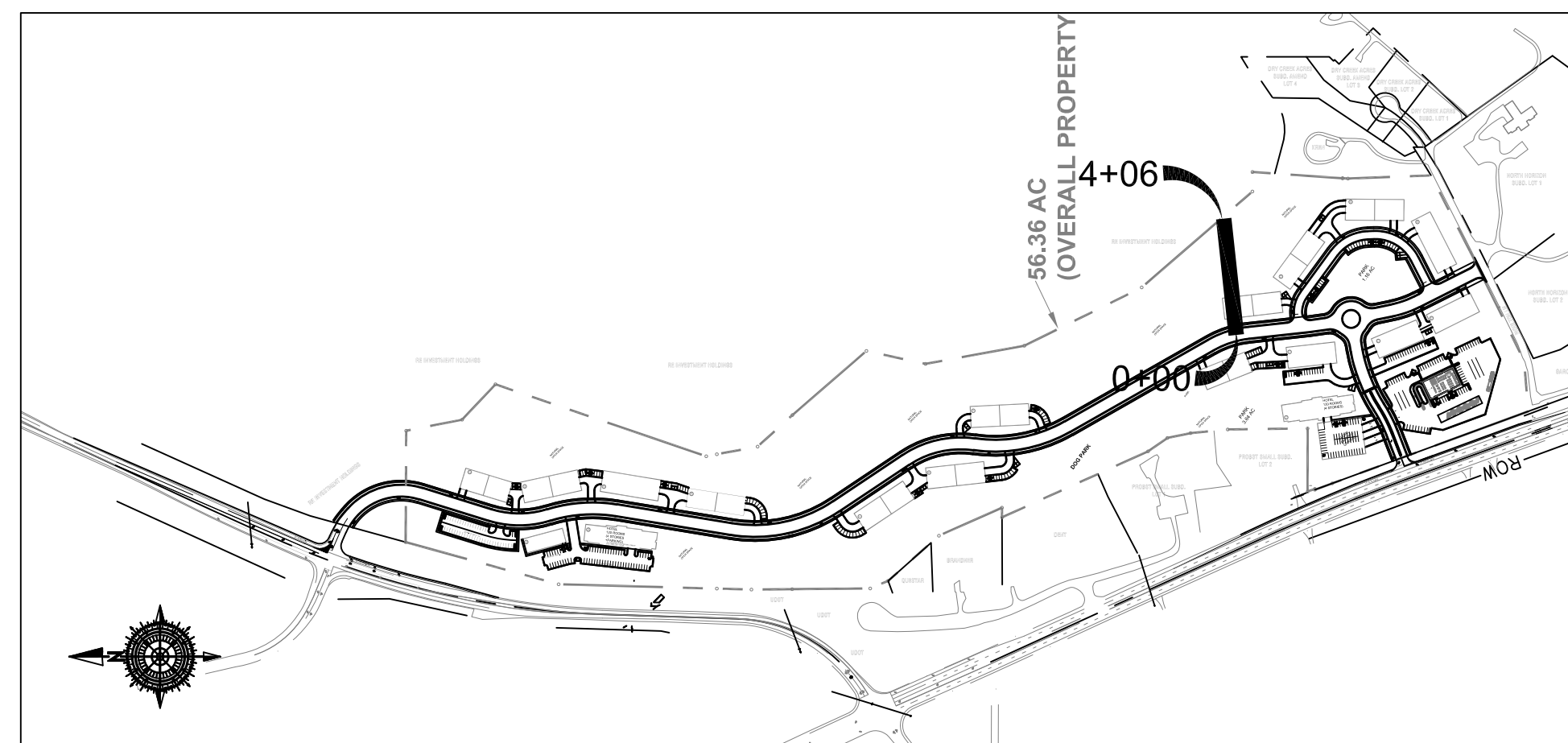
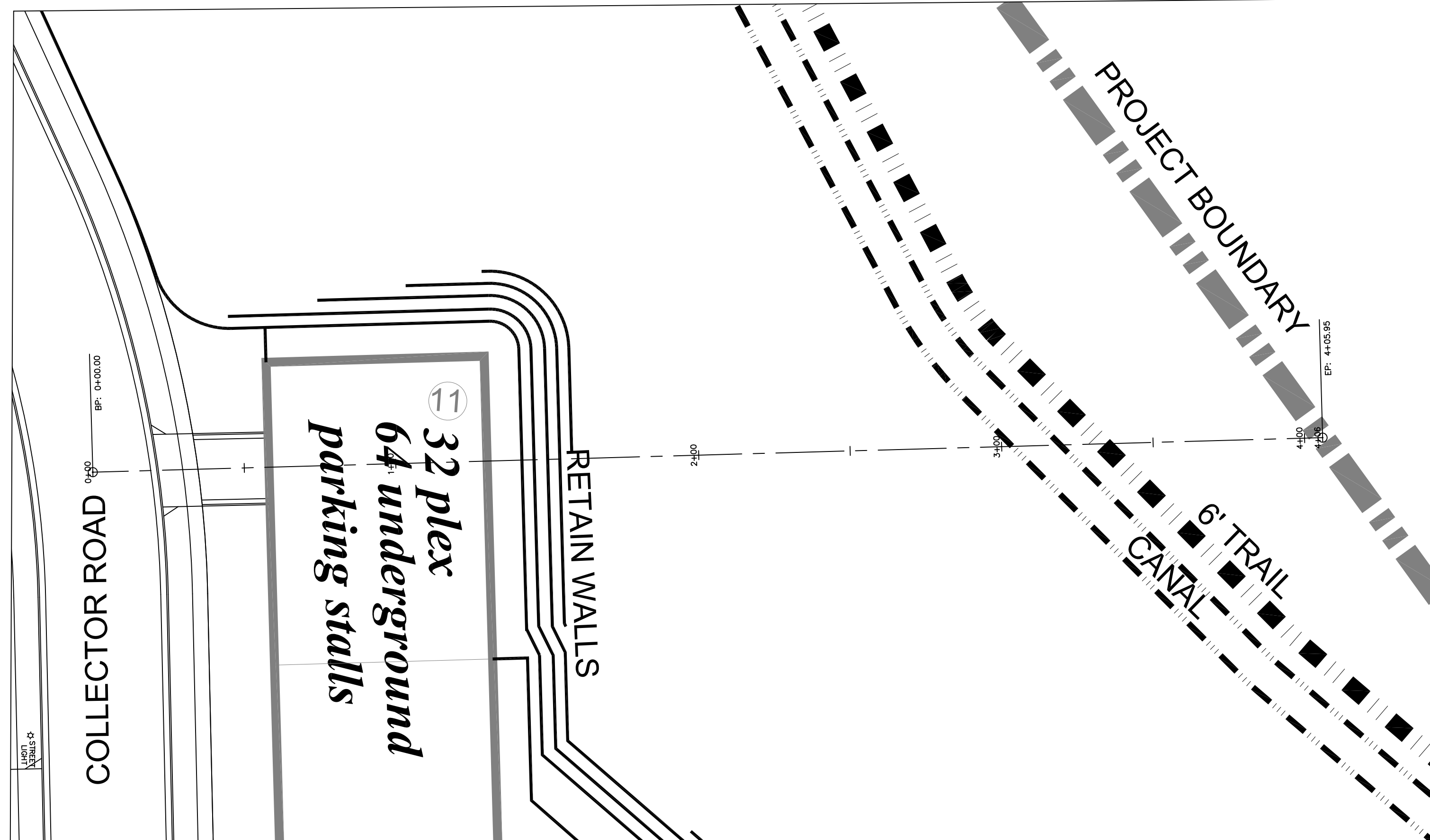
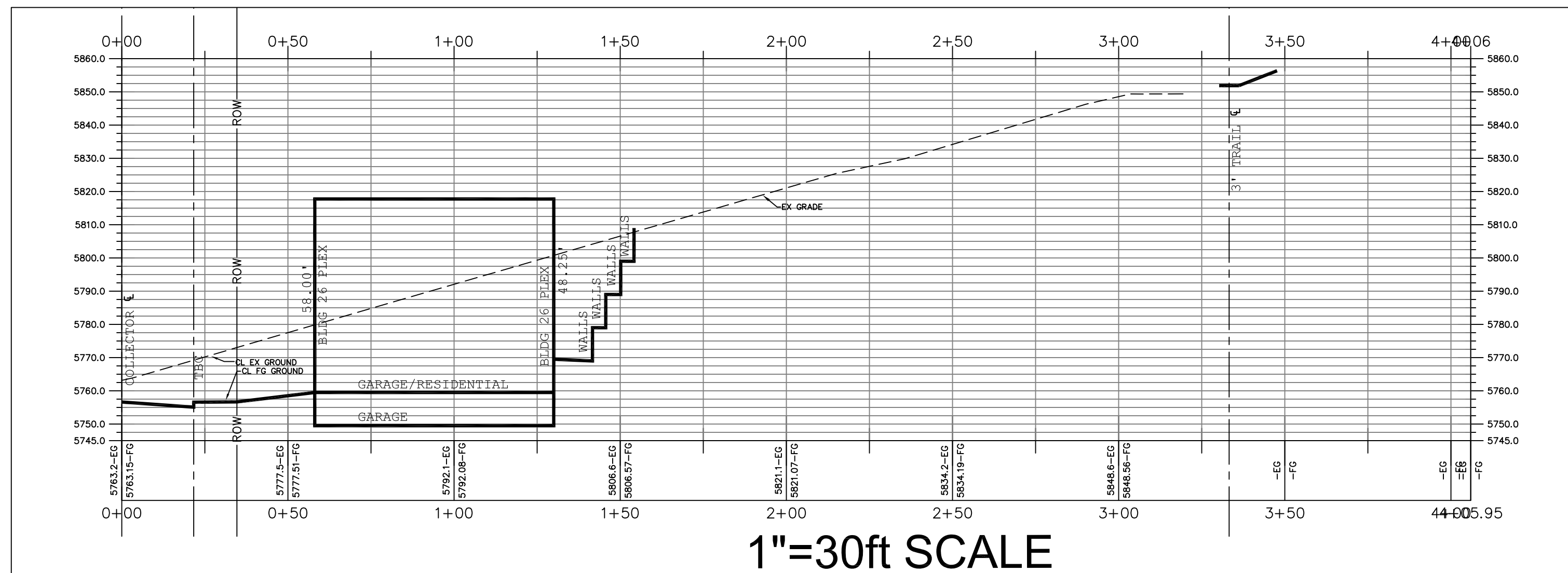
HEBER CITY

REGISTERED PROFESSIONAL ENGINEER
PAUL J. GATEWAY
STATE OF UTAH

XSEC-3B
SHEET NO.

ORIG. DATE:	6-1-16
SURVEY BY:	GPW
DRAWN BY:	GPW
DESIGNED BY:	GPW
CHECKED BY:	GPW
SCALE:	1"=30'

NO.	DESCRIPTION	DATE	APP'D

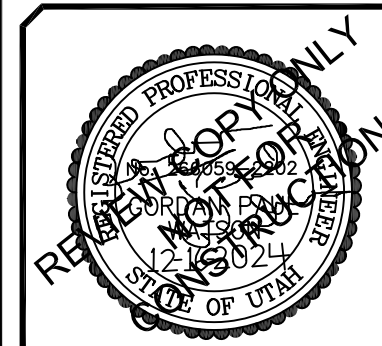


**NORTH VILLAGE CROSSINGS
SITE CROSS SECTION 4**

PLAN AND PROFILE
STA: 0+00 to 4+06

12-16-2024

HEBER
CITY

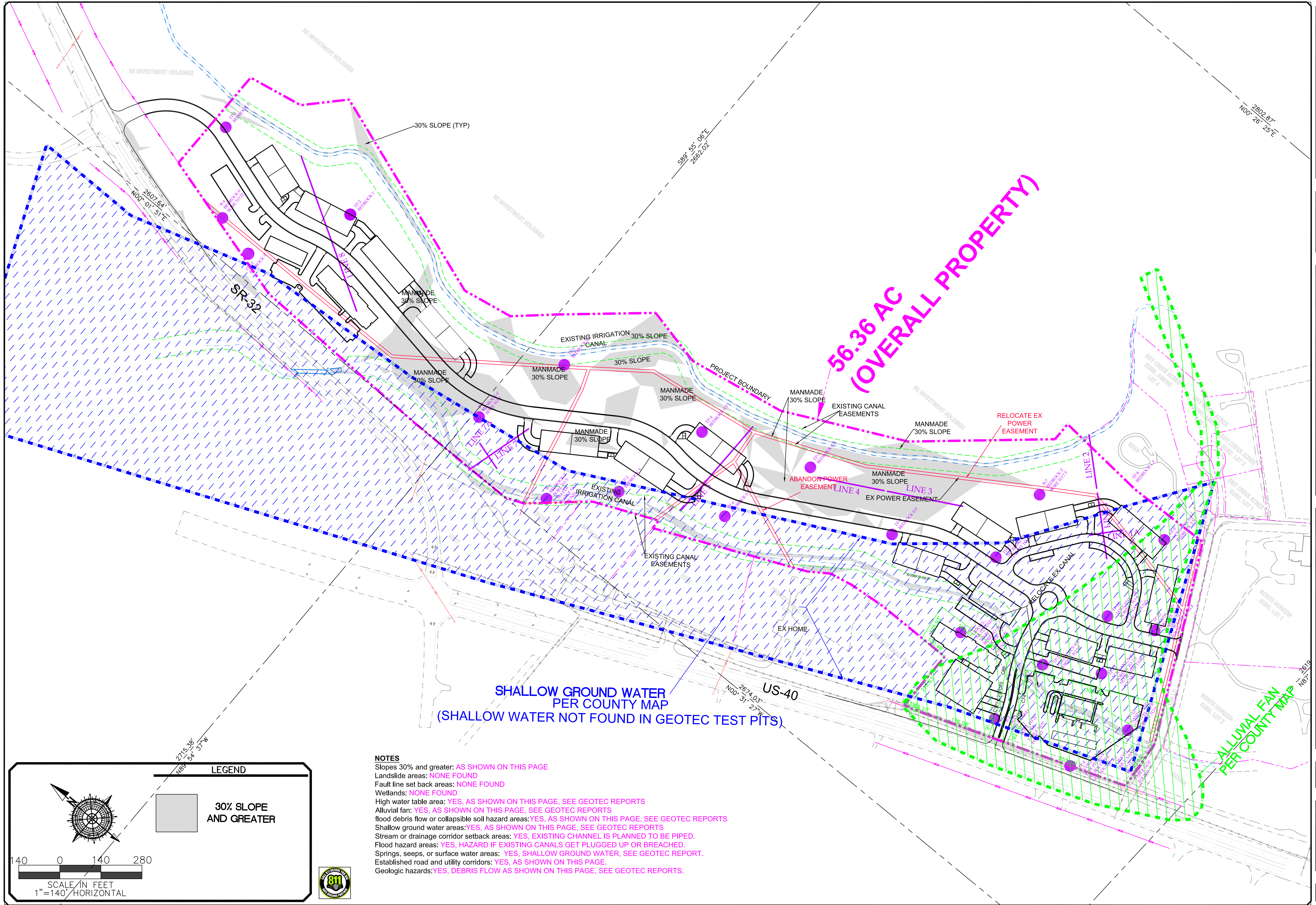


XSEC-4
SHEET NO. _____

[illegible]

GATEWAY CONSULTING, Inc
P.O. BOX 951005 SOUTH JORDAN, UT 84095
P.H: (801) 694-3848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING
CONSTRUCTION MANAGEMENT



LEGEND

30% SLOPE AND GREATER

NOTES
Slopes 30% and greater: **AS SHOWN ON THIS PAGE**
Landslide areas: **NONE FOUND**
Fault line set back areas: **NONE FOUND**
Wetlands: **NONE FOUND**
High water table area: **YES, AS SHOWN ON THIS PAGE, SEE GEOTEC REPORTS**
Alluvial fan: **YES, AS SHOWN ON THIS PAGE, SEE GEOTEC REPORTS**
flood debris flow or collapsible soil hazard areas: **YES, AS SHOWN ON THIS PAGE, SEE GEOTEC REPORTS**
Shallow ground water areas: **YES, AS SHOWN ON THIS PAGE, SEE GEOTEC REPORTS**
Stream or drainage corridor setback areas: **YES, EXISTING CHANNEL IS PLANNED TO BE PIPED.**
Flood hazard areas: **YES, HAZARD IF EXISTING CANALS GET PLUGGED UP OR BREACHED.**
Springs, seeps, or surface water areas: **YES, SHALLOW GROUND WATER, SEE GEOTEC REPORT.**
Established road and utility corridors: **YES, AS SHOWN ON THIS PAGE.**
Geologic hazards: **YES, DEBRIS FLOW AS SHOWN ON THIS PAGE, SEE GEOTEC REPORTS.**



NO.	DESCRIPTION	DATE	APP'D

ORIG. DATE:	6-1-16
SURVEY BY:	GPW
DRAWN BY:	GPW
DESIGNED BY:	GPW
CHECKED BY:	GPW
SCALE:	1"=140'

GATEWAY CONSULTING, Inc.
P.O. BOX 951005 SOUTH JORDAN, UT 84095
PH: (801) 694-5848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING
CONSTRUCTION MANAGEMENT

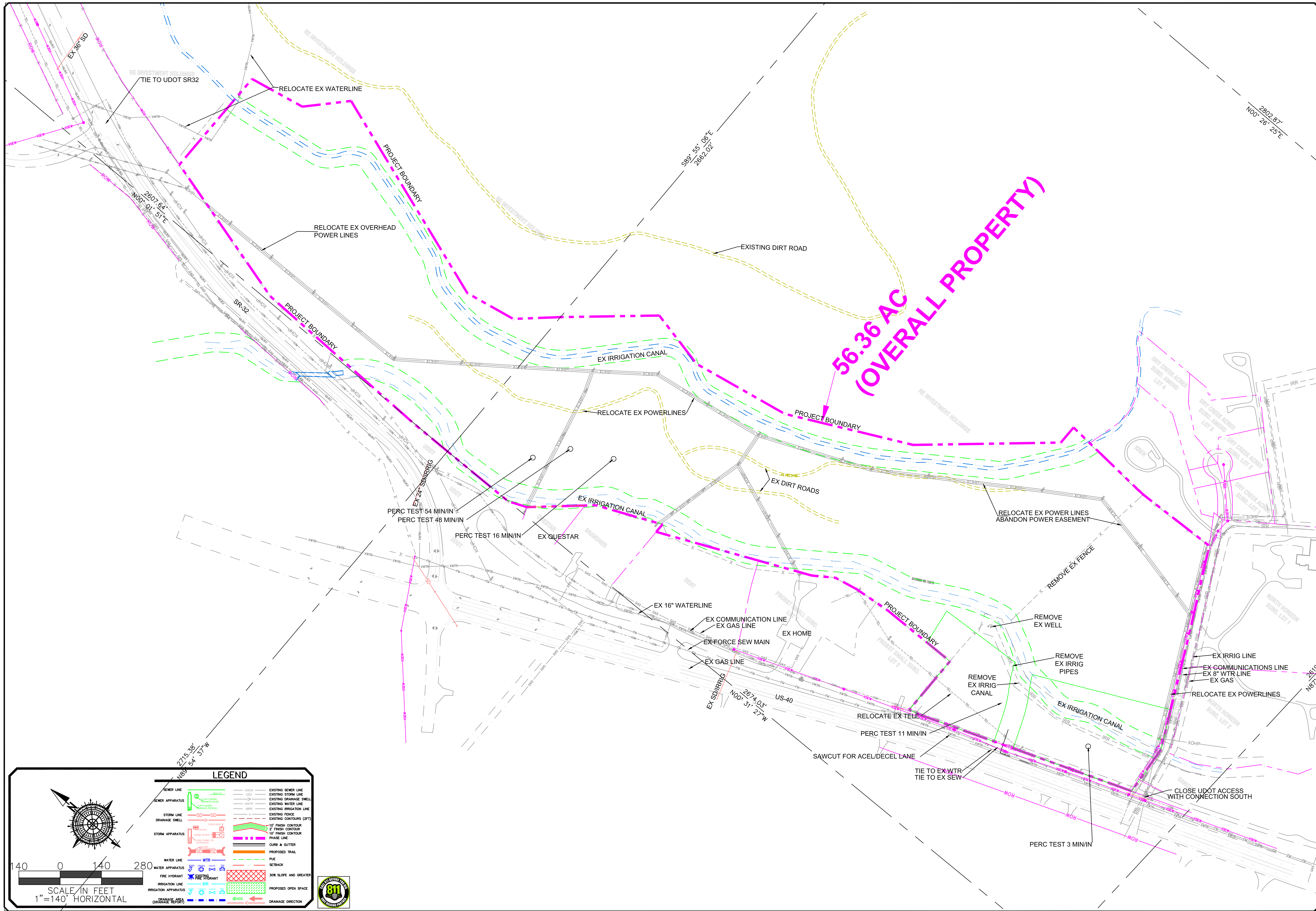
NORTH VILLAGE CROSSINGS

PHYSICAL CONSTRAINTS ANALYSIS

12-16-2024

HEBER CITY

SHEET NO. **5**



140 0 140 280

SCALE IN FEET
1"=140' HORIZONTAL

LEGEND

SEWER LINE	EXISTING SEWER LINE
SEWER APPARATUS	EXISTING STORM LINE
STORM LINE	EXISTING DRAINAGE SWELL
DRAINAGE SWELL	EXISTING WATER LINE
STORM APPARATUS	EXISTING IRRIGATION LINE
WATER LINE	EXISTING FENCE
FIRE HYDRANT	EXISTING CONTOURS (3FT)
IRRIGATION APPARATUS	10' FINISH CONTOUR
DRAINAGE APPARATUS	2' FINISH CONTOUR
	10' FINISH CONTOUR
	PHASE LINE
	CURE & GUTTER
	PROPOSED TRIAL
	5% SETBACK
	30% SLOPE AND GREATER
	PROPOSED OPEN SPACE
	DRAINAGE DIRECTION

NO.	DESCRIPTION	DATE	APP'D

ORIG. DATE:	6-1-16
SURVEY BY:	GPW
DRAWN BY:	GPW
DESIGNED BY:	GPW
CHECKED BY:	GPW
SCALE:	1"=140'

GATEWAY CONSULTING, Inc.
P.O. BOX 951005 SOUTH JORDAN, UT 84095
PH: (801) 694-5848
paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING
CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS

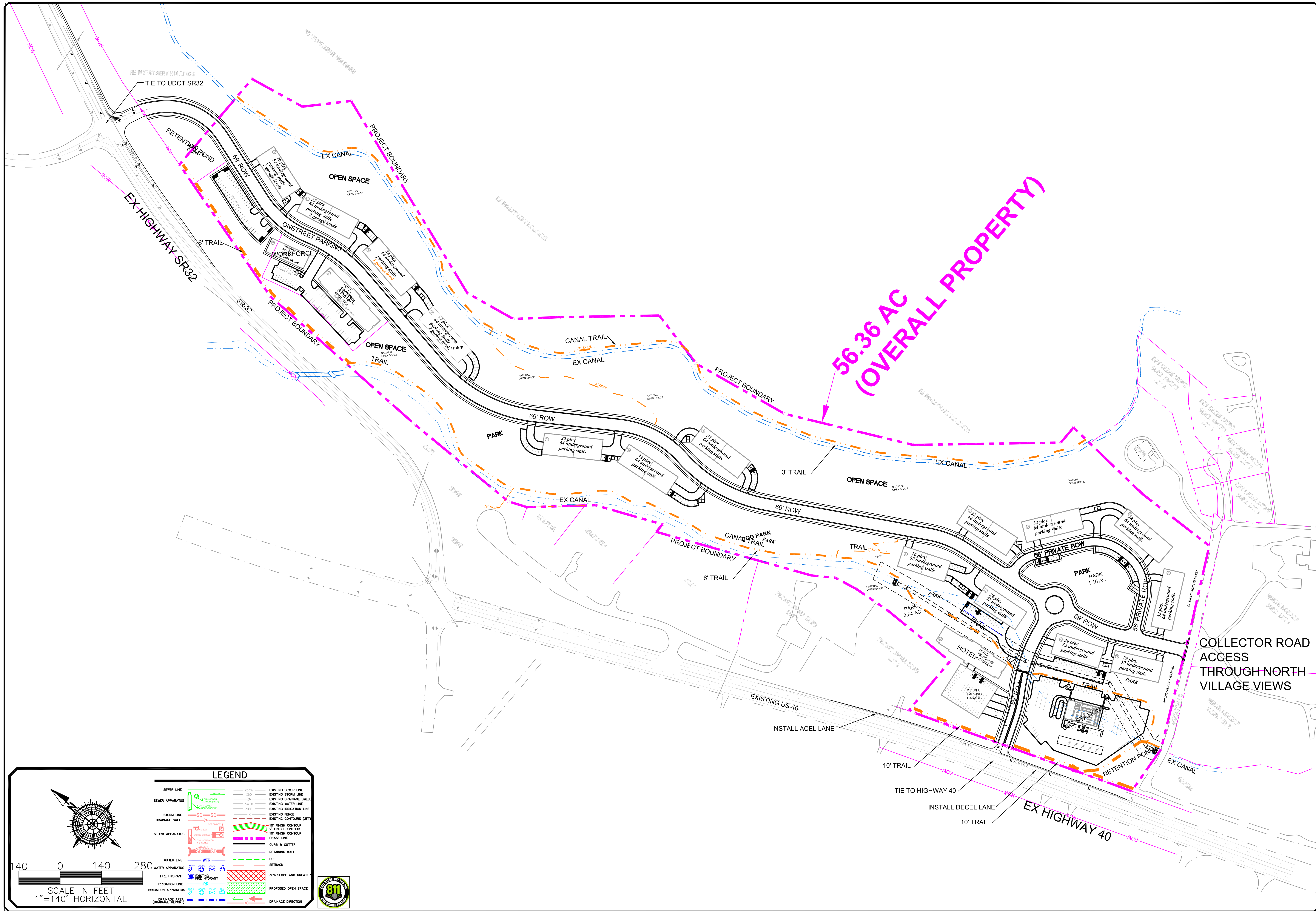
EXISTING SITE PLAN
GEOTEC AND DEMO PLAN

12-16-2024

HEBER CITY

RECEIVED PROPOSED PROJECT
JAN 23 2025
CITY OF UTAH

SHEET NO. 3



LEGEND

SEWER LINE	EXISTING SEWER LINE
SEWER APPARATUS	EXISTING STORM LINE
STORM LINE	EXISTING DRAINAGE SHEL
DRAINAGE SHEL	EXISTING WATER LINE
STORM APPARATUS	EXISTING IRRIGATION LINE
WATER LINE	EXISTING FENCE
FIRE HYDRANT	EXISTING CONTOURS (2FT)
IRRIGATION APPARATUS	10' FINISH CONTOUR
DRAINAGE APPARATUS	2' FINISH CONTOUR
	10' FINISH CONTOUR
	PHASE LINE
	CURE & OUTER
	RETAINING WALL
	PUE
	SETBACK
	30% SLOPE AND GREATER
	PROPOSED OPEN SPACE
	DRAINAGE DIRECTION

ORIG. DATE: 8-5-14

SURVEY BY: GPM

DRAWN BY: GPM

DESIGNED BY: GPM

CHECKED BY: GPM

SCALE: 1"=140'

NO.

DESCRIPTION

DATE

APP'D

GATEWAY CONSULTING, Inc.

P.O. BOX 951005 SOUTH JORDAN, UT 84095

PH: (801) 694-5848

paul@gatewayconsultingllc.com

CIVIL ENGINEERING * CONSULTING * LAND PLANNING

CONSTRUCTION MANAGEMENT

NORTH VILLAGE CROSSINGS

CONCEPTUAL

CONNECTIVITY/TRAIL

PLAN

12-16-2024

HEBER CITY

SHEET NO. 7

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
HARVEST VILLAGE MIXED USE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE HARVEST VILLAGE MIXED USE DEVELOPMENT (this “**Agreement**”) is made and entered into as of the [REDACTED] day of [REDACTED], 2024, by and between HEBER CITY, a political subdivision of the State of Utah (the “**City**”), and KLJB, LLC and its successor and assign ANGSTROM DEVELOPMENT GROUP LLC, a Utah limited liability company (“**ADG**”), BAIBACH, LLC, and K&H DEVELOPMENT HEBER, LLC (collectively “**Property Owners**”). The Property Owners and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Property Owners are the owners of approximately 39 acres of undeveloped real property located on the Southwest intersection of Hwy 40 and River Road (Parcel Nos. 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558) in Wasatch County, State of Utah (the “**Property**”). A legal description of the Property is attached hereto as **Exhibit A**.

B. In conjunction with the approval of this Agreement, the City approved and adopted a Site Plan for the Project (the “**Site Plan**”).

C. The Site Plan for the Property provides for a mixed-use development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone (“**NVOZ**”) as North Village (NV) Sub-District or as outlined within this Agreement.

D. This Agreement and the Site Plan meets the intent of, complies with, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of Property Owners and their successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Property Owners hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.** **Incorporation.** The foregoing Recitals and **Exhibits A through D** are hereby incorporated into this Agreement.

1.2 **Definitions** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2024), as amended.

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any publicly owned area or public park identified on the Site Plan that is intended to provide services to the community at large.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision. Backbone Improvements are generally considered to be in the

nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2024).

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City’s Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City’s Future Laws** means the ordinances, policies, standards, and procedures of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.15 **City’s Vested Laws** means the ordinances, policies, standards, and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.16 **Council** means the elected City Council of the City.

1.2.17 **Default** shall have the meaning provided in Section 14.

1.2.18 **Design Guidelines** means the design guidelines referenced in the North Village Overlay Zone.

1.2.19 **Developer** shall have the meaning provided in Section 22.

1.2.20 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.21 **Development Property** shall have the meaning provided in Section 22.1.

1.2.22 **Development Report** means a report containing the information specified in Section 3.4 submitted to the City by Property Owners or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from Property Owners.

1.2.23 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.24 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. § 10-2-425.

1.2.25 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws.

1.2.26 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.27 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40, as that route may be changed from time-to-time.

1.2.28 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.29 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.30 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.31 **Intended Uses** means the use of all or portions of the Project for open space, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.32 **Market Rate units** means any non-Affordable Housing within the Project.

1.2.33 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.34 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.35 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.36 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.37 **North Fields** means that certain real property located generally south of the Property and generally depicted on **Exhibit C** attached hereto.

1.2.38 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.39 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.40 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.41 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development to handle on-site or off-site storm drain requirements.

1.2.42 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.43 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.44 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.45 **Phase** means the development of a portion of the Project.

1.2.46 **Planning Commission** means the City's Planning Commission.

1.2.47 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.48 **Property Owner or Property Owners** means KLJB, LLC and its successor and assign ADG, Baibach, LLC, and K&H Development Heber, LLC and any other successor-in-interest to any of the foregoing as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.49 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan generally depicts the development plan for the Property.

1.2.50 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.51 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.52 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.53 **Zone** means the City's North Village Overlay District Zone – North Village (NV) Sub-District.

1.2.54 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement. The Parties acknowledge and agree that if there is a conflict with this Agreement and the City's Vested Laws or the City's Future Laws, then this Agreement shall supersede and take precedence.

3. **Zoning and Vested Rights.**

3.1 **Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone as a North Village (NV) Sub-District.

3.2 **Vested Rights.** Subject to paragraphs 3.3 and 3.4 To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, and the zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).

~~3.3 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.~~

3.4 **Exceptions to Vested Rights.** The vested rights and the restrictions on the

applicability of City's Future Laws as specified in Section 3.1 are subject to the following exceptions:

3.4.1 Agreed to Regulations. City's Future Laws or other regulations to which the Developer agrees in writing;

3.4.2 State and Federal Compliance. City's Future Laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;

~~3.4.3 Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists;~~

~~3.4.4~~ 3.4.3.4.3 Safety Codes. Any City's Future Laws that are updates or amendments to existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are enacted/generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

~~3.4.5 Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes do not materially impact the ability of Property Owners to develop the Project in accordance with the Site Plan.~~

~~3.4.6~~ 3.4.4 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

~~3.4.7~~ 3.4.5 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

~~3.4.8~~ 3.4.6 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;

~~3.4.9~~ 3.4.7 Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not

reduce the Density Entitlements, are generally applicable across the entire City, and do not materially and unreasonably increase the overall cost costs of the Project development; or

~~3.4.10~~3.4.8 Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(ii)(A) (2024).

4. **Development of the Property in Compliance with the Site Plan.**

4.1 **Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to 34 hotel ERUs, -up to 211 Market Rate residential ERUs (split between for sale condos/townhomes and for rent multi-family), and up to 48 commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Density Entitlements**"). Property Owners also have an obligation to provide 33 residential ERUs as Affordable Housing as detailed in Section 4.5 of this Agreement.

~~4.2~~ **Building Elevations and Design.** As part of the approval process, Property Owners have provided potential building elevations for the agree to build a hotel and condominium portions of the Project, which elevations are attached hereto as Exhibit _____. The building elevations and with design standards must be similar in materials and appearance to the proposed elevations, or Property Owners must propose and obtain approval from the City Council for elevations that are consistent with NVOZ design guidelines and are to the standard of a four star resort hotel in Park City or Deer Valley.

~~4.2~~ **Transfer of Density for Eminent Domain.** If a portion of the Project is voluntarily or involuntarily transferred for public use, including, but not limited to, property taken by the Utah Department of Transportation as part of a road expansion project, Property Owner shall not be entitled to move density to other portions of the Project or amend the Site Plan to adjust for densities in areas acquired for public use.

4.2 INTENTIONALLY OMITTED

4.3 **Intended Uses by Parcel and Densities.** Intended Uses and Densities for the Project each Parcel are shown on the Site Plan for the Property, which plan has been prepared in compliance with the requirements of the Heber City ordinances set forth in Chapter 17.20 Plans of the City's Vested Laws. The general street configurations, building types and locations, and general layout for the Project shall comply with Site Plan, which is both a vested right and a requirement. In the event of any conflict between this Agreement and the Site Plan and the City's ordinances,

this Agreement and the Site Plan shall govern. This includes the City's acceptance of the following exceptions to NVOZ ordinances:

4.3.1 **Building Heights.** Property Owners shall be allowed to construct a hotel or condominium hotel as a principal anchor to their development that is no more than five stories with stories being measured in height consistent with the Heber City NVOZ zone "Mixed Use Building" provision of the code found at § 3.3 of Chapter 18.21 of the North Village Overlay District.

Property Owners shall also be allowed to construct townhomes, affordable housing, and commercial retail buildings at three stories consistent with the provisions of Heber City NVOZ zone code found at Chapter 18.21 of the North Village Overlay District. Property Owners shall be allowed to include rooftop decks on the proposed townhomes without violating the building height requirements of Chapter 18.21.

4.3.2 **Setbacks.** Property Owners shall be permitted to construct residential townhomes with minimum side yard setbacks between building at five (5) feet per building, for a combined setback of ten (10) feet. To protect the natural riparian areas the rear yard setback at Rock Creek on the West side of the Property shall be thirty feet (30) feet from the property line. To provide a natural barrier from the residential property South of the Property the Property Owners shall provide a thirty-foot (30) foot buffer from the property line.

4.2.3 **Contiguous Units.** Property Owners shall be permitted to construct residential townhomes with up to eight (8) contiguous units.

4.2.4 **Front Drives.** Property Owners shall be permitted to build townhomes with front driveways, not alleys, on their private road(s).

4.4 **Accounting for Density for Parcels Sold to Sub-developers** In connection with the sale of any Parcel sold by Property Owners to a Developer or Sub-developer, Property Owners shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, Property Owners shall provide the City Recorder with a development report (a "Development Report") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with Property Owners and any material effects of the sale on the Site Plan.

4.4.1 Return of Unused Density. If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to Property Owners. Such Development ERU shall be accounted for in any subsequent Development Report that Property Owners, or any of its successors in interest may be required to file with the City Recorder.

Parcel Sales

. The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the sale of a Parcel. City further acknowledges that Developer may adjust boundaries between existing metes and bounds parcels prior to recording a subdivision plat for the Project. City further acknowledges that Developer may adjust boundaries between existing metes and bounds parcels prior to recording a subdivision plat for the Project.

4.54.6 Affordable Housing Requirements. Developer shall construct not less than **33 residential ERUs of Affordable Housing** within the Development. Affordable Housing shall be sold or rented, as applicable, to individuals or families with an average income of Eighty percent (80%) or less of the area median income (AMI) in Wasatch County, Utah and the monthly cost shall not be more than Thirty percent (30%) of a household's income. Individual income limits for occupants of the Affordable Housing may be anywhere within the affordable housing AMI ranges, including up to 120% of AMI; however, the overall unit mix shall have an AMI averaged of no more than 80% AMI. Property Owners shall have no obligation to disperse the Affordable Housing throughout the Project but may consolidate the Affordable Housing in one or more areas of the Project, in its sole discretion. The Property Owner shall construct at least 33% of the Affordable **Housing units (or 11 residential ERUs) on the Property** (the "**Onsite Affordable Housing Obligation**"), which, for the avoidance of doubt, may be satisfied by the provision of **workforce housing** described in Section 4.56.1 below and otherwise meeting the requirements for Affordable Housing hereunder. The remaining 67% of the Affordable Housing unit obligation (or 22 residential ERUs) (the "**Alternative Affordable Housing Obligation**") may be satisfied by the Property Owner by one or more of the following, the determination of which shall be **mutually agreeable between the City and the Property Owner**, but otherwise in compliance with this Section 4.56, including Section 4.56.4 (Timing): (a) construction of Affordable Housing on the Property pursuant to this Section 4.56, (b) construction of Affordable Housing offsite pursuant to Section 4.56.3, (c) one or more payments to the City of a fee in lieu pursuant to Section 4.56.5, and/or (d)

the donation of land to the City pursuant to Section 4.56.6. Property Owners shall also be entitled to allocate any such Affordable Housing requirements to Developers and/or Sub developers as Property Owners may elect. Developer and the City shall follow and comply with any deed restrictions as outlined in Chapter 18.102 of the City's Vested Laws. Property Owner's failure to comply with the Affordable Housing obligation pursuant to the terms of this Agreement shall constitute a material breach of this Agreement, and the City may pursue all available remedies to enforce compliance, including but not limited to legal and equitable relief.

4.5.14.6.1 **Eligibility and Pricing.** A qualified third-party professional property management company shall manage the rental of all Affordable Housing. Eligibility for the affordable for-rent housing will be based on the AMI standards of for-rent affordable housing. Property Owners may enter into one or more master leases with local employers whereby local employers may lease a block of units to meet the housing needs of their qualifying employees.

4.56.2 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing, and only to the extent required under Chapter 18.102 of the City's Vested Laws, Developer/ Owner shall negotiate and enter into with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Housing. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall have the right to enforce the terms of such a Covenant. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to be enforced by Unit Owners against each other.

4.5.34.6.3 Off-site Affordable Housing. Subject to Section 4.56, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by construction of Affordable Housing off site on property owned by the City or another third party.

4.56.4 Timing. At least 50% of the required Affordable Housing requirement shall be completed no later than the construction of the first 50% of the Market Rate units; provided that, all of the Alternative Affordable Housing Obligation satisfied by the payment of a fee in lieu under Section 4.56.5 and/or by land donation(s) under Section 4.56.6, if applicable, shall be completed no later than the construction of the first 33% of the Market Rate units. The full Affordable Housing requirement shall be completed no later than construction of the first 90% of the Market Rate units. The Property Owners shall be entitled to a reduction of their affordable housing obligation of 25% if they agree to construct their affordable housing obligation in the first phase of the Project. If the Property Owners choose to seek LIHTC credits, then Affordable Housing timing construction, and delivery, may be impacted. Property Owners shall use commercially reasonable efforts to meet the aforementioned timing commitments.

4.5.5 Fee in Lieu. Subject to Section 4.56, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by paying a fee in lieu in the amount of \$60,000 per residential ERU. Payment of the fee shall be deemed sufficient to fulfill the relevant Alternative Affordable Housing Obligation without prejudice to any other rights or remedies available under this Agreement.

4.5.6 Land Donation. Subject to Section 4.56, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by donating, or causing another third party to donate, one or more parcels of unimproved land to the City for the purpose of constructing Affordable Housing. The value of any donated land shall be determined by either of the following: (a) if the donated land was acquired within three (3) years of the date of such donation, the aggregate price per acre paid for such donated land, or (b) as determined by written appraisal in accordance with Heber City

Code 18.102.050(J)(3) conducted within six months of the proposed donation. The full value of any donated land shall be recognized as a fee in lieu of \$60,000.00 in value required per residential ERU, consistent with the terms of Section 4.56.5. The Parties must agree in writing to the terms of any land donation, including the specific parcel(s), selection of the valuation method above, and compliance with the requirements outlined in this Section.

~~4.6 Parcel Sales. The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the sale of a Parcel. City further acknowledges that Developer may adjust boundaries between existing metes and bounds parcels prior to recording a subdivision plat for the Project. City further acknowledges that Developer may adjust boundaries between existing metes and bounds parcels prior to recording a subdivision plat for the Project.~~

5. **Term.**

5.1 **Compliance with City Requirements and Standards.** ~~Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.~~

5.2 **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue either for a period of twenty-five (25) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs (the “**Term**”), unless it is terminated in accordance with Section 26. Unless otherwise agreed between the Parties, Property ~~Owner’s~~**Owners’** unbuilt vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term shall remain vested rights in accordance with the terms and conditions of such approvals. Furthermore, any obligations of Developer related to any licenses, building permits, or certificates of occupancy shall continue in full force and effect.

6. **Approval Processes for Development Applications.**

6.1 **Phasing.** The City acknowledges that Property Owners, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6.2 **UDOT Bypass.** The Utah Department of Transportation (UDOT) is currently in the process of developing a Heber Valley Corridor Environmental Impact Statement (EIS). As part of the EIS, UDOT has established five potential alternatives for a future bypass road. Two of the five alternatives established by UDOT, would potentially require UDOT to acquire some amount of the Property via eminent domain. Developer acknowledges the proposed bypass routes. Accordingly, Developer agrees to delay the receipt of any permits until April 1, 2025. To avoid doubt, the Parties acknowledge:

6.2.1 The City will still accept and process permit applications submitted by Developer on, or before April 1, 2025.

6.2.2 Developer's vested rights granted within this Agreement will not be impacted or in any way limited or impaired by any UDOT EIS report.

6.2.3 If UDOT selects a bypass route that impacts the Property the Property Owners will, in good faith, negotiate with UDOT regarding the condemnation of Property via eminent domain to facilitate the construction of the bypass road.

7. **Open Space, Improved Public Parks, and Trails Requirements**

7.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** For each Phase, neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. Open space, parks and trails shall comply with the requirements of Heber City Code § 18.21.050 for the NV Sub-District, except that Property Owners shall provide not less than 20% of the total Project area within the Market Rate residential ERU area as Open Space; Property Owners must provide at least 20% of the overall Project area as Open Space ~~(excluding the Highway Buffer area set forth in Section 7.2);~~; and Property Owners must provide 10% of the overall Project area as Traditional Park Space in accordance with Heber City Code Table 5.1(1) **or pay a fee in lieu.** ~~In accordance with Utah Code § 10-9a-604(3)(d)(iv) and (4) (2024), the City may require completion assurance for any landscaping that is necessary to meet the open space or traditional park space requirements.~~

7.2 **Highway 40 Landscape Buffer.** Property Owners shall provide an open space buffer on the Project property of not less than 150 feet from the existing western boundary of Highway 40, **measured from the edge of the paved roadway.** Property Owners may construct portions of the Outer Loop Trail within the buffer

area along with a split rail wood fence along the trail. Property Owners may also use portions of this area for stormwater retention, but shall coordinate with UDOT to ensure that any improvements to Highway 40 are not impeded by such stormwater retention.

7.3 Outer Loop Trail. Property Owners shall construct a public access multi-use trail along the perimeter of the Project as generally shown on the Site Plan. The trail shall be not less than 8 feet wide and shall include not less than 6 feet of hard surface.

7.4 Ownership and Maintenance of Open Space or Trails. All trails and open space shall be dedicated to and maintained by the Master Association for the development. All trails within the Project shall be open to public use unless the trail is utilized specifically to access a private residence.

7.5 Sledding Hill and Plaza. Property Owners have proposed constructing a sledding hill and plaza area, as generally shown on the Site Plan, that would be open to use for a reasonable fee by residents within the Project and the public. The sledding area and plaza shall count towards the required Traditional Park Space portion of the Open Space requirement and Open Space requirements generally. Property Owners acknowledge that the sledding hill and plaza are important characteristics to the approval of the Project, and in the event they elect not to construct the sledding hill or plaza area, Property Owners shall construct other public recreational amenities and public gathering places within the Project that are similar in cost and scope to the proposed sledding hill and plaza area.

7.6 Park Impact Fees. Property Owners acknowledge that all required park, trail and open space improvements within the Project are a condition of development approval and are project improvements pursuant to Utah Code § 11-36a-102(15). Property Owners may be required to pay parks, recreation, open space and trails impact fees for system improvements that benefit the Project as established in the City's impact fee analysis.

7.7 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

7.8 North Fields Preservation. Property Owners, for themselves and with respect to each subsequent Owner of the Property, agree that upon issuance of any building permit for residential or commercial ERUs, the Owner shall pay to the City a one-time fee equal to \$2,500 per ERU or such prorated amount on partial

ERU attributable to such unit, as applicable (the “**North Fields Preservation Fee**”). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including the acquisition of development rights or the use of other conservation related tools for the preservation of open space. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Affordable Housing.

8. **Public Improvements.**

8.1 **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD).** The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services. However, if at any point City sewer and water, including secondary water is available in the area, the City agrees that Property Owner shall be able to obtain City services. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers

8.2 **Streets.** At a minimum, all streets within the Project shall be improved to the Residential / Minor Collector standard as set forth in Heber City Code § 18.21.040.4.6. Notwithstanding this requirement, Property Owners may elect to construct a single multi-use path on one side of any street in lieu of the 5’ sidewalks typically require on both sides of the street under Heber City Code § 18.21.040.4.6. Any such multi-use paths shall have a minimum of 6’ of hard surface material. Additionally, Property Owners may elect to construct one or more private access drives to facilitate its residential development that do not meet public street standards. Property Owners shall be responsible to construct all streets, road accesses, and pedestrian paths within the Project. Unless accepted by the City, all streets and paths shall be private and shall be dedicated to the Master Association and shall be owned and maintained by the Master Association.

8.3 **Storm Water Improvements and Management.** The Parties acknowledge that the City has adopted a regional storm water master plan “City

Updated North Village Stormwater Master Plan”). Property Owners shall be required to comply with the policies and standards of the North Village Stormwater Master Plan, as amended, and associated Stormwater Design Manual, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement. Property Owners acknowledge that compliance with North Village Stormwater Master Plan may require construction of off-site improvements as outlined in the City Updated North Village Storm Water Master Plan. Developer and Property Owner shall restore or replace the historic, natural drainage channels downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan

8.4 **Storm Water Retention/Detention from Off-Site Sources.** The Parties acknowledge that Property Owners may provide On-Site Storm Water Retention/Detention on the Property for an adjacent development, which On-Site Storm Water Retention/Detention would be used to meet the adjacent development’s storm water retention/detention requirements with the City.

8.5 **Utilities and On-Site Infrastructure.** Property Owners shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure that is necessary to support the development proposed within a specific Development Application.

8.6 **Excess Improvements/Upsizing.** The Property Owners and City do not anticipate that Property Owners will be required to install any System Improvements or upsize any infrastructure. If the City does require the Property Owners to enlarge, increase or otherwise “upsized” or upgrade (collectively, the “**Excess Improvements**”) the City agrees that it shall reimburse the applicable Property Owners from Impact Fees collected by the City for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Property Owners shall not be compensated for any “upsizing” of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

8.7. **Variations between Infrastructure Plan, Capital Facilities Plan and any City’s Future Capital Facilities Plan.** The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or

sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

8.8. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

8.9 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8.10 Public Infrastructure District. City understands that Property Owners may request a Public Infrastructure District ("PID") pursuant to Utah Code § 17D-4-101 et seq. for the Property. The City shall review and reasonably consider Property Owners' petition to create the PID as an option to implement and facilitate the financing, construction, and operation of some or all of the Public Infrastructure for the Project.

9. CC&Rs. As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a provision that regulates the nightly rental of any residential unit located on the Property. It is anticipated that nightly rental of residential units within the development shall be through the Property's hotel and within the hotel's brand standards. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Bonding.** Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "Security"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

12. **Grading and On-Site Processing of Natural Materials.**

12.1 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and subject to City's Vested Laws, may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review

and approval for such improvements. Any such uses shall not be considered gravel pits.

12.2. **Future Transportation Plan.** The Parties acknowledge that the City is presently contemplating a future Updated North Village Transportation Plan (as finalized and adopted by the City) (the “**City Updated North Village Transportation Plan**”). Concurrent with Provision 4.1 above, Property Owners shall be required to comply with all future policies and standards of the North Village Transportation Plan, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter. City agrees that it shall include the Project in any future plans for public transit connections associated with the North Village development area generally. As a NVOZ “Village Center”, this Project is a priority for public mass transit optionality.

13. **Provision of Municipal Services.** Except for services provided by Districts, the City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Remedies Upon Default.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City’s obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES

14.4 **City’s Remedies Upon Default.** In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

Angstrom Development Group
Attn: Neil Goldman
1461 W Ursa Way
Heber City, UT 84032

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** If allowed by Utah state law, the following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by Property Owners or their successors and assigns.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative

Amendment within a reasonable time not to exceed twenty-one (21) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 Notification Regarding Application and Administrator's Approval. Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. Amendment. Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 Submissions of Modification Applications. Only the City or Property Owners or an assignee of Property Owners, approved in writing by the City, and one that succeeds to all of the rights and obligations of Property Owners under this Agreement may submit a Modification Application.

17.2 Modification Application Contents. Modification Applications shall include:

17.2.1 Identification of Property. Identify the property or properties affected by the Modification Application.

17.2.2 Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 Identification of Non-City Agencies. Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 Map. Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 Fee. Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. Mutual Cooperation in Processing Modification Applications. Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 Planning Commission Review of Modification Applications.

17.4.1 Review. All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 Recommendation. The Planning Commission's vote on the Modification Application, if required by law, shall be only a recommendation.

17.5 Council Review of Modification Application. After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 Council's Objections to Modification Applications. If the Council objects to the Modification Application, the Council shall provide a written

determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 Mediation of Council's Objections to Modification Applications. If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 Amendments by Property Owners. Notwithstanding any other provision in this Agreement to the contrary, Property Owners may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from Property Owners or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor Property Owners shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. **Estoppel Certificate.** Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. **Entire Agreement.** Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony

with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

20. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

21. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, Property Owners or their successors may sell any portion of the Property to one or more parties (each a “**Developer**” or “**Sub-developer**”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property.

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless Property Owners otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of Property Owners, which may be granted or withheld in their sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by Property Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by Property Owners for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

22.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

22.1.4 Property Owners shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

23. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

24. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or

a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. Termination.

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State

and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 Notice of Termination. City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

25.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

26. Insurance and Indemnification. Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

27. Hazardous, Toxic, and/or Contaminating Materials. Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising

out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

28. **Binding Effect.** If Property Owners or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Property Owners each shall designate and appoint a representative to act as a liaison between the City and its various departments and Property Owners. The initial representative for the City shall be City Manager, or his designee and the initial representatives for Property Owners shall be [REDACTED]. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

37. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

38. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

39. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

40. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

41. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement

does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

[Signatures appear on the following two pages.]

DRAFT

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
 CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Baibach, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

K&H Development Heber, LLC

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
 CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the K&H Development Heber, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

CITY

Heber City, a political subdivision of the State of Utah

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By:_____

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE RESIDENTIAL DEVELOPMENT

Legal Description

BEGINNING AT A POINT LOCATED NORTH 00°30'00" WEST ALONG THE SECTION LINE 132.85 FEET AND WEST 654.07 FEET FROM THE FOUND WASATCH COUNTY ALUMINUM CAP MARKING EH EAST 1/4 CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 32°00'23" WEST 1201.64 FEET TO THE HEBER CITY BOUNDARY AS SHOWN ON THE NORTH VILLAGE ANNEXATION PLAT; THENCE ALONG SAID HEBER CITY BOUNDARY AND THE NORTH VILLAGE ANNEXATION PLAT THE FOLLOWING 22 (TWENTY TWO) CALLS: 1. NORTH 42°02'19" EAST 253.96 FEET, 2. NORTH 89°51'56" EAST 493.00 FEET, 3. SOUTH 42°15'26" EAST 71.50 FEET, 4. ALONG THE ARC OF A 463.93 FOOT RADIUS CURVE TO THE LEFT 66.76 FEET (CHORD BEARS SOUTH 46°22'46" EAST 66.70 FEET), 5. SOUTH 50°30'06" EAST 70.63 FEET, 6. ALONG THE ARC OF A 226.74 FOOT RADIUS CURVE TO THE RIGHT 97.65 FEET (CHORD BEARS SOUTH 38°09'48" EAST 96.90 FEET), 7. SOUTH 25°49'31" EAST 80.79 FEET, 8. ALONG THE ARC OF A 234.73 FOOT RADIUS CURVE TO THE LEFT 109.51 FEET (CHORD BEARS SOUTH 39°11'26" EAST 108.52 FEET), 9. SOUTH 52°33'20" EAST 46.06 FEET, 10. ALONG THE ARC OF A 95.72 FOOT RADIUS CURVE TO THE RIGHT 27.55 FEET (CHORD BEARS SOUTH 44°18'34" EAST 27.46 FEET), 11. SOUTH 36°03'49" EAST 17.11 FEET, 12. ALONG THE ARC OF A 84.88 FOOT RADIUS CURVE TO THE LEFT 74.84 FEET (CHORD BEARS SOUTH 61°19'17" EAST 72.44 FEET), 13. SOUTH 86°34'45" EAST 55.03 FEET, 14. ALONG THE ARC OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT 41.05 FEET (CHORD BEARS SOUTH 69°46'38" EAST 40.47 FEET), 15. NORTH 39°00'43" EAST 134.19 FEET, 16. SOUTH 00°28'04" EAST 215.78 FEET, 17. SOUTH 22°22'27" WEST 568.62 FEET, 18. NORTH 50°59'17" WEST 229.73 FEET, 19. ALONG THE ARC OF A 138.00 FOOT RADIUS CURVE TO THE LEFT 109.61 FEET (CHORD BEARS SOUTH 61°40'19" WEST 106.75 FEET), 20. SOUTH 39°00'43" WEST 127.93 FEET, 21. ALONG THE ARC OF A 248.00 FOOT RADIUS CURVE TO THE RIGHT 39.75 FEET (CHORD BEARS SOUTH 43°36'15" WEST 39.71 FEET), AND 22. SOUTH 48°11'46" WEST 70.25 FEET TO THE POINT OF BEGINNING. AREA = **20.35 ACRES**

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
Site Plan





The Site Plan is provided for conceptual purposes only and does not constitute a final or binding representation of the proposed development or its components.

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
North Fields

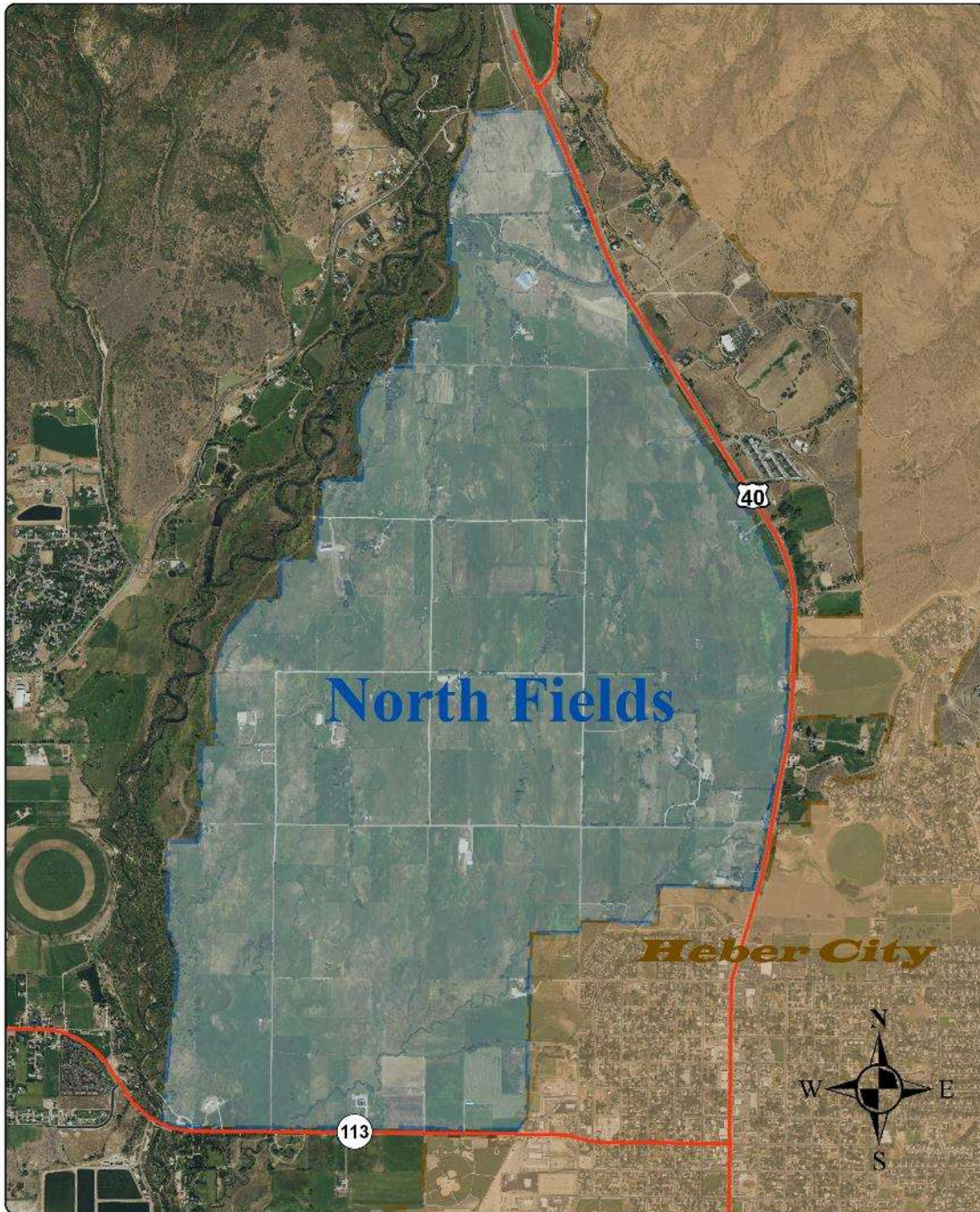


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

DRAFT

Trina Cooke

From: Sara Nagel
Sent: Thursday, December 12, 2024 4:48 PM
To: Trina Cooke
Subject: FW: Mayor's Award Nominations



Sara Jane Nagel, CPA
Finance Director

Heber City
75 N Main Street, Heber City, UT 84032
Phone: 435-657-7956
Mobile: 435-300-1265

Email: snagel@heberut.gov

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From: Sara Nagel <snagel@heberut.gov>
Sent: Wednesday, December 4, 2024 9:08 AM
To: Heidi Franco <hfranco@Heberut.gov>
Subject: Mayor's Award Nominations

Dear Mayor Franco,

I am pleased to nominate Steve Simpson and Russell Coleman for the Mayor's Award in recognition of their outstanding work on the remodel of the Finance Director's Office.

Steve and Russ demonstrated exceptional craftsmanship and dedication, ensuring every detail was executed to the highest standard while minimizing disruptions to daily operations. Their teamwork, problem-solving, and attention to detail were instrumental in the project's success, resulting in a more functional and welcoming workspace that will benefit staff for years to come.

I deeply appreciate their efforts and recommend them for this distinguished recognition.

Thank you for considering this nomination.

Sincerely,



Sara Jane Nagel, CPA
Finance Director

Heber City
75 N Main Street, Heber City, UT 84032
Phone: 435-657-7956
Mobile: 435-300-1265

Email: snagel@heberut.gov

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HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032
Heber City Council Meeting
November 19, 2024

DRAFT Minutes

4:00 p.m. Work Meeting
6:00 p.m. Regular Meeting

I. WORK MEETING - 4:00 P.M.

Mayor Pro-Tem Aaron Cheatwood called the meeting to order at 4:03 p.m. and welcomed everyone present.

City Council Present: Mayor Heidi Franco - remotely
Council Member Yvonne Barney
Council Member Aaron Cheatwood - Mayor Pro-Tem
Council Member Mike Johnston
Council Member Sid Ostergaard
Council Member Scott Phillips - remotely

Staff Present: City Manager Matt Brower
Assistant City Manager Mark Smedley
Community Development Director Tony Kohler
Planning Manager Jamie Baron
City Engineer Russ Funk
Finance Manager Sara Jane Nagel
City Attorney Jeremy Cook
Chief of Police Parker Sever
City Recorder Trina Cooke

Staff Participating Remotely: IT Manager Anthon Beales, Assistant City Manager Mark Smedley, Human Resources Manager Cherie Ashe, Engineer Kyle Turnbow, Public Works Director Matthew Kennard, Finance Manager Sara Nagel, Planning Manager Jamie Baron, Deputy City Recorder Robin Bond, and Wendy Anderson.

Also Present: Michael Mills, Paul Watson, Marian Crosby, Andy Dorobek, Neil Goldman, Katie Wilding, Russell Skousen, Oscar Covarubius, Mike Bradshaw, Jill Snyder, Eric Hales, Clint Neerings, Maxx Cohen, Hans Anderson, Del Barney, Mark Rounds, Andrea Clayton, Rachel Kahler - CAMS, John Jansen, Adam Long, Jason Norlen, John Scheid, Thomas Coleman, Tori Broughton, Mark Nelson, and others who did not sign in or whose handwriting was illegible.

Also Attending Remotely: (names are shown as signed-in online) Phil Jordan, Beau Thompson, Greg, Jacquelyn, KPCW, Michael Demkowicz, Michael Mills, Michelle Robbins, S, Justin Keys, Chris Pedersen, Ileana A, JB, and Tim Robbins.

1. Provo River Restoration Project and Potential Impacts from Proposed Annexations (Michael Mills, Executive Director, URMCC) - *20 min*

Michael Mills, with the Provo River Restoration Project, provided the purpose and background for the project. He reviewed the habitat restoration. The potential annexations that had filed petitions with Heber City caused concern for stormwater runoff into the Provo River. Mr. Mills noted the river was very important to maintaining the critical water supply for the Valley.

2. North Village Crossings/Resort Annexation and Associated Development Agreements for the Harvest Village and North Village Crossings Developments (Tony Kohler, Community Development Director, Jeremy Cook, City Attorney) - *60 min*

Community Development Director Tony Kohler provided a project summary. He reviewed the project map and the annexation process, including the negotiation of the Master Development Agreement. There were two development projects included in the annexation: the North Village Crossings, and Harvest Village Resort. The project representatives reviewed development design concepts for the North Village Crossings. City Attorney Jeremy Cook explained the purpose of the annexation negotiations with the developer was to allow the City to help guide a more desirable development. If the proposed annexation area were to remain outside the City boundary, in the County, the City would have no say in the development. Discussion regarding the project's design concepts, proposed density, and the annexation process continued.

Council Member Barney indicated that she would not support the annexation. Council Member Johnston wished to negotiate something that was win/win for City and the developer for the area. He provided more history regarding the development's previous negotiations with the County which had grandfathered the density for the developments in the area. He noted the benefits to the City if the annexation were approved versus the City feeling all the impact of the development in the County without receiving any of the benefits. Council Member Phillips reiterated that the development would be built whether it was annexed into the City or not. He hoped it would be in the City for the City to receive the potential sales tax revenue benefits. He also wanted to limit the building height to match the maximum allowed in the county.

Rich Wallsberg, development representative, indicated their efforts to be responsible with the project. He referred to the proposed hotel, restaurants, gas station, and commercial business that would provide revenue for the City. Discussion continued.

Mr. Kohler asked the Council to review the list of requested direction needed by Staff before the next presentation to help move forward.

3. Request from Jordanelle Ridge to Modify Upper Village Transportation Master Plan (Russ Funk, City Engineer) - 30 min

This agenda item was not discussed during the Work Meeting but would be discussed during the General Business portion of the agenda.

II. BREAK - 10 MIN

III. REGULAR MEETING - 6:00 P.M.

1. Call to Order

Mayor Pro-Tem Aaron Cheatwood called the meeting to order at 6:20 p.m. and welcomed everyone present.

2. Pledge of Allegiance (Sid Ostergaard, Council Member)

Council Member Ostergaard led the recitation of the Pledge of Allegiance.

3. Prayer/Thought by Invitation (Yvonne Barney, Council Member)

Council Member Yvonne Barney recognized it was currently Native American month and read the following quotes:

"There is a longing among all people and creatures to have a sense of purpose and worth. To satisfy that common longing in all of us, we must respect each other."

"When Christ said that man does not live by bread alone, he spoke of a hunger. This hunger was not the hunger of the body. It was not the hunger for bread. He spoke of a hunger that begins deep down in the very depths of our being. He spoke of a need as vital as breath. He spoke of our hunger for love. Love is something you and I must have. We must have it because our spirit feeds upon it. We must have it because without it, we become weak and faint. Without love, our self-esteem weakens. Without it, our courage fails. Without love, we can no longer look out confidently at the world. But with love, we are creative. With it, we march tirelessly. With it, and with it alone, we are able to sacrifice for others."

- Chief Dan George

IV. AWARDS, RECOGNITION, and PROCLAMATIONS:

1. Oath of Office for Police Officer Kyle Pitt

Chief of Police Parker Sever introduced new officer Kyle Pitt and City Recorder Trina Cooke swore him in.

V. CONFLICT OF INTEREST DISCLOSURE:

There were no conflicts of interest disclosed.

VI. CONSENT AGENDA:

Motion: Council Member Phillips moved to approve the Consent Agenda. **Second:** Council Member Ostergaard made the second. **Voting Yes:** Council Members Phillips, Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. The **Motion Passed Unanimously, 5-0.**

1. Approval of October 15, 2024, City Council Meeting Minutes (Trina Cooke, City Recorder)
2. Policy Update to Increase Fixed Asset Threshold (Del Barney, Audit Committee Member) - *10 min*

VII. PUBLIC COMMENTS: (3 min per person/20 min max)

Council Member Barney read a public comment received via email regarding an accident between a pedestrian and an e-bike. The email is attached to the end of the meeting minutes. City Manager Matt Brower shared that the City was looking into an e-bike policy and possibly partnering with Midway for a safety fair in the spring. The City was also looking into enforcement. Chief of Police Parker Sever added that the State had adopted new laws regarding e-bikes and the Police Department was planning to release public service announcements to inform and educate the community.

Maxx Cohen, property owner on Moulten Lane, wished to share his concerns with the proposed annexations discussed during the Work Meeting. He wanted the City to follow its North Village Overlay Zone code. The annexations would be an enormous development installed next to his home, impacting his views and way of life. He read section 9 from the City's existing zoning code for the area that required landscape buffering and set building-height restrictions.

VIII. GENERAL BUSINESS ITEMS:

1. Utah Department of Transportation Update (UDOT) on the Heber Valley Corridor and Highway 40 Barrier (UDOT) - *25 min*

Craig Hancock, Utah Department of Transportation (UDOT) Region 3 Manager and the Heber Valley Corridor EIS (Environmental Impact Statement) Project Manager, presented an updated travel demand model for Highway 40 through the Heber Valley. He outlined the purpose for the Heber Valley Corridor Project to provide a bypass to alleviate the traffic pressure of transient vehicles passing through the Valley, and large commercial truck traffic. He reviewed the five alternative routes proposed and the screening process and criteria. Mr. Hancock provided a process timeline with a final EIS and ROD (Record of Decision) anticipated by spring of 2026.

UDOT Staff agreed to hold monthly coordination meetings with local governments and regular stakeholders to keep everyone informed.

Naomi Kisen, Environmental Program Manager for UDOT, wished to clarify that UDOT was not contemplating alternate routes from the ones previously presented that had been established since the beginning of the EIS study. Ms. Kisen described UDOT's policy towards development impact and bypass routes. She described the possible setbacks UDOT would face if working around a development within the proposed annexation.

Niel Goldman, with the proposed Harvest Village annexation project, shared a side-by-side image of the currently proposed development versus the approved water park design approved with the County. He shared images reflecting how the bypass routes could work with their development design. The project representatives hoped to annex and begin development sooner than the completion of the bypass.

Council wanted clarification regarding whether or not the proposed annexation could potentially delay the construction of a bypass. City Attorney Jeremy Cook clarified the intention of Staff to bring a completed development agreement forward in conjunction with the annexation approval process. City Engineer Russ Funk reminded Council of the need to preserve the bypass route options.

Erik Rasband, Project Manager for UDOT, described a proposed raised barrier down the middle of Highway 40 to improve safety. Between 2019 and 2022 there had been 11 crashes on Highway 40, six had serious injuries and one had resulted in a fatality. The proposed barrier could reduce serious crashes by up to 80%. A reduced speed limit would not reduce the number, or severity, of crashes. He shared an image reflecting the proposed future installation of traffic signals along Highway 40.

Council Member Phillips supported the barrier but felt it might be more urgent to install the traffic signals. Mr. Rasband said UDOT continued to move forward with the traffic signals and had the work under contract. Council Member Johnston expressed support for the barrier. City Engineer Russ Funk shared the transportation plan that would permit traffic to travel to a signalized intersection to cross Highway 40. Consensus of Council majority expressed support for the proposed traffic barrier.

2. Follow-Up Discussion on SLC/Heber City Tour & Central Heber Overlay Zone
(Tony Kohler, Community Development Director, John Janson, Planning
Consultant) - *45 min*

Community Development Director Tony Kohler indicated that Staff was seeking Council input for concept and structure ideas that the Council would support for the Central Heber Overlay Zone vision based upon the site tours taken the previous month.

Planning Consultant John Janson shared new discussion items to help Council determine a direction they would like to take, including infill types to pursue, combining Midway Lane and a downtown transition overlay into one overlay, and providing additional uses for preserved historic homes. He suggested overlay zone sub-districts, new and/or revised land-use concepts within the overlay zones, including architectural standards. Council discussion continued regarding accessory dwelling units (ADUs), garage apartments, mansion homes, townhouses, multi-family courtyard developments, and mixed-use buildings including residential and commercial. Mr. Janson explained the State definition of a conditional use designation was not intended to disallow certain uses. City Attorney Jeremy Cook further clarified the conditional-use determination. Council Member Johnston felt there needed to be several options for property owners to encourage the preservation of the downtown historic homes. He outlined his ideas for the area. Council discussion continued.

3. Request from Jordanelle Ridge to modify Upper Village Transportation Master Plan (Russ Funk, City Engineer) - *30 min*

City Engineer Russ Funk was seeking feedback from Council regarding three proposed changes to the Upper Village Transportation Master Plan located in the Jordanelle Ridge development. He shared images of the original plan and the plan with the proposed changes. Jordanelle Ridge representative Mike Bradshaw explained that design improvements had presented themselves as development had progressed. He shared maps of the planned developments in the area and described the proposed alternative road routes for the area and the projected traffic patterns for future residents. Council discussion proceeded.

Fire Chief Eric Hales shared the fire safety concerns of the new development's roads. He stated the fire department needed the roads to have connectivity between the neighborhoods for their access.

Mr. Funk shared that a shorter route was going to be more appealing to drivers. He had the traffic consultants perform an analysis to determine the amount of trips in the proposed plan. He referred to the looping road that was established in the original master transportation plan. He needed to know if the Council supported the private road proposed and who would be responsible for the maintenance of the public road proposed. Council discussion continued.

It was decided to return the item for further discussion to the December 3, 2024, City Council Meeting.

IX. ACTION ITEMS: (Council can discuss; table; continue; or approve items)

1. Public Hearing and Possible Council Action on Resolution 2024-18 to Amend the FY 2025 Budget (Sara Nagel, Finance Manager) -

Finance Manager Sara Nagel presented the proposed budget amendment information as included in the meeting materials.

The Public Hearing was opened for public comment at 9:40 p.m. With no one coming forward to comment, the Public Hearing was closed at 9:41 p.m.

Motion: Council Member Barney moved to approve Resolution 2024-18 to amend the Fiscal Year 2025 Budget. **Second:** Council Member Ostergaard made the second. **Voting Yes:** Council Members Phillips, Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. The **Motion Passed Unanimously, 5-0.**

2. Public Hearing and Possible Council Action on Ordinance 2024-25 to Amend the Consolidated Fee Schedule (Sara Nagel, Finance Manager) -

Finance Manager Sara Nagel provided a summary of the proposed updates to the Consolidated Fee Schedule as included in the meeting materials. Council Member Johnston asked what the site plan fee amendment was. Planning Manager Jamie Baron described a modified fee for small site plan amendments rather than paying an entire site plan fee in full.

Mayor Pro-tem Aaron Cheatwood opened the public hearing at 9:45 p.m. With no one coming forward from the public, the Public Hearing was closed at 9:46 p.m.

Motion: Council Member Johnston moved to approve Ordinance 2024-25 to amend the Consolidated Fee Schedule as proposed. **Second:** Council Member Ostergaard made the second. **Voting Yes:** Council Members Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. Council Member Phillips was not present. The **Motion Passed 4-0.**

3. Development Agreement with Heber Light & Power and Heber Valley Railroad (Jamie Baron, Planning Manager) - *20 min*

Planning Manager Jamie Baron described the request from Heber Valley Railroad to build a track with a switch gear for moving train cars from one track to another. The area included property for the new Heber Light and Power admin building located and a Heber City right of way easement. Mr. Baron asked if Council would consider waiving administrative fees for Staff time spent on the project. He felt the majority of the proposed location was on Heber City right of way but the location had been designated for a proposed eight-foot trail. City Engineer Russ Funk shared images of the proposed location and design. He felt that the City should not give up a right-of-way for the railroad.

Heber Light and Power (HL&P) General Manager Jason Norlen explained that when HL&P had acquired the property, they had submitted a quit-claim deed for the right-of-way easement to extend the boundary of their new campus. He stated that HL&P was not fond of the railroad's plan but they did wish to work with the railroad and be good neighbors.

Motion: Council Member Barney moved to extend the meeting to 10:30 p.m.

Second: Council Member Johnston made the second. **Voting Yes:** Council Members Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. Council Member Phillips was not present. The **Motion Passed, 4-0.**

Executive Director of the Heber Valley Railroad, Mark Nelson, described the need for the railroad to extend the train platform by approximately 400 feet. The switch would only be used when a train car was being switched to another track. The proposed area would not be used to park a train at any time. Mr. Nelson stated the request was not a must-have for railroad operations but would be extremely helpful for the railroad. Council discussion followed regarding the planned trail location, and alternate solutions to help the railroad. Consensus of Council majority was to continue to work with HL&P and the railroad to find a solution.

Motion: Council Member Barney moved to extend the meeting to 11:00 p.m. **Second:** Council Member Ostergaard made the second. **Voting Yes:** Council Members Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. Council Member Phillips was not present. The **Motion Passed, 4-0.**

X. COMMUNICATION:

City Manager Matt Brower invited everyone to the City's Old Fashioned Christmas event scheduled for Friday, December 6.

XI. CLOSED EXECUTIVE SESSION:

Motion: Council Member Phillips moved to enter a Closed Meeting for pending or reasonably imminent litigation. **Second:** Council Member Barney made the second. **Voting Yes:** Council Members Phillips, Ostergaard, Cheatwood, Barney, and Johnston. **Voting No:** None. The **Motion Passed Unanimously, 5-0.** The Council entered a Closed Meeting at 10:49 p.m.

City Council Present:

Mayor Heidi Franco - remotely
Council Member Yvonne Barney
Council Member Aaron Cheatwood - Mayor Pro-Tem
Council Member Mike Johnston
Council Member Sid Ostergaard
Council Member Scott Phillips - remotely

Staff Present:

City Manager Matt Brower
Planning Manager Jamie Baron
City Attorney Jeremy Cook
City Recorder Trina Cooke

1. Pending or Reasonably Imminent Litigation (Jeremy Cook, City Attorney)

XII. ADJOURNMENT:

Motion: Council Member Phillips moved to end the Closed Meeting and adjourn. **Second:** Council Member Barney made the second. The meeting adjourned at 11:05 p.m.

Trina Cooke, City Recorder



Heber City Council Staff Report

MEETING DATE: 12/17/2024

SUBJECT: Contract Award for Construction of the Heber City 2024 Hospital Well Backup Generator Project

RESPONSIBLE: Russ Funk

DEPARTMENT: Engineering

STRATEGIC RELEVANCE: Necessary Administrative Action

SUMMARY

The purpose of this item is to seek Council approval to award a construction contract to ID Electric for the Heber City 2024 Hospital Well Backup Generator Project.

RECOMMENDATION

That the City Council authorize staff to execute a contract with the apparent low bidder ID Electric for an amount of \$279,541.00.

BACKGROUND

The City Council identified installing a backup generator system on the Hospital Well as one of their priorities for 2024. Staff worked with our consultants to design the project as envisioned with a CMU sound wall and other site improvements. We bid the original project out in October and bid prices came back in the \$500K - \$600K range. Based on a project budget of \$300K, staff worked with our consultants to make adjustments to the design, primarily removing the sound wall and other site improvements, and re-bid the project.

The revised project was re-advertised for bid in November with a public bid opening held on November 27th. The following bids were received:

Bidder	Bid Amount
ID Electric	\$279,541.00
Cinnamon Creek Const	\$315,781.00
Taylor Electric	\$327,000.00
Corrio Consruction	\$334,241.00

Expedia Power	\$335,540.49
Clear GC	\$355,892.00
Double D Electric	\$376,363.00
Atomic Construction	\$399,628.50

Attached is the bid tabulation showing the bid details.

DISCUSSION

It is anticipated that additional budget will be requested in future years to complete the remaining improvements including the sound wall. The current modified project was designed in a way that the future improvements can be completed later without requiring substantial re-work.

The project is anticipated to be complete by June 30, 2025.

FISCAL IMPACT

Total Engineering design and inspection services for the project are estimated to be \$35,459. The construction cost if awarded to ID Electric is \$279,541.00.

The total budget for the project, excluding a typical construction contingency, is estimated to be \$315,000.

The FY24/25 Budget includes \$300,000 of operating money (Fund 66 - Water Capital) for this project. If awarded as recommended, a future budget amendment will be needed. Staff will work to reduce costs by having Public Works complete inspection work and other oversight for the project where possible.

CONCLUSION

Based on receiving favorable bids and the need to complete the project, Staff recommends that the Council approve the recommendation to award the contract to ID Electric.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** the **item** as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** the **item** as amended, as follows.

Alternative 3 - Continue

I move to **continue** the **item** to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** the **item** with the following findings.

ACCOUNTABILITY

Department: Engineering
Staff member: Russ Funk, City Engineer

EXHIBITS

1. Bid Tabulation

Engineer's Estimate
Horrocks Engineers

Project Manager: Willa Motley
Project Engineer: Kayla Hoover

Construction Cost Index: 0

Heber City 2024 Hospital Well Backup Generator

Contractors	Base Bid	Total
ID Electric	\$279,541.00	\$279,541.00
Cinnamon Creek Construction	\$315,781.00	\$315,781.00
Taylor Electric	\$327,000.00	\$327,000.00
Corrio Construction	\$334,241.00	\$334,241.00
Expedia Power	\$335,540.49	\$335,540.49
Clear GC	\$355,892.00	\$355,892.00
Double D Electric	\$376,363.00	\$376,363.00
Atomic Construction	\$399,628.50	\$399,628.50
Average	\$340,498.37	\$314,140.75
Engineer's Estimate	\$297,348.38	\$297,348.38
Percent Difference	-13%	-5%

Bid Opening: For: Heber City 2024 Hospital Well Backup Generator
Date: November 27, 2024 Heber City Utah
Time: 10:00 AM

Base Bid - 2024 Cemetery Section B Landscape				Engineer's Estimate		Bidder 1 ID Electric		Bidder 2 Cinnamon Creek Construction		Bidder 3 Taylor Electric		Bidder 4 Corrio Construction	
ITEM NO.	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
1	Mobilization	1	LS	\$20,000.00	\$20,000.00	\$2,500.00	\$2,500.00	\$50,000.00	\$50,000.00	\$15,000.00	\$15,000.00	\$3,283.00	\$3,283.00
2	Electrical Design, Electrical Work, and Generator	1	LS	\$260,000.00	\$260,000.00	\$262,741.00	\$262,741.00	\$13,289.50	\$132,890.50	\$283,000.00	\$283,000.00	\$268,581.00	\$268,581.00
Base Bid Subtotal:													
Additive Item													
A1	14'x38' Concrete Pad	1	LS	\$17,348.38	\$17,348.38	\$14,300.00	\$14,300.00	\$13,289.50	\$132,890.50	\$29,000.00	\$29,000.00	\$62,377.00	\$62,377.00
GRAND TOTAL (Base Bid Subtotal plus Additive Bid Item A1)					\$297,348.38		\$279,541.00		\$315,781.00		\$327,000.00		\$334,241.00

* Denotes a mathematical error

I hereby certify that this is a true and correct Bid Tabulation for the 2024 Hospital Well Back-Up Generator

Bidder 5 Expedia Power		Bidder 6 Clear GC		Bidder 7 Double D Electric		Bidder 8 Atomic Construction	
UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
\$3,753.75	\$3,753.75	\$59,606.00	\$59,606.00	\$3,500.00	\$3,500.00	\$15,573.55	\$15,573.55
\$311,913.22	\$311,913.22	\$266,940.00	\$266,			342,398.45	\$342,398.45
\$19,873.52	\$19,873.52	\$29,346.00	\$29,346.00	\$24,608.00	\$24,608.00	\$41,656.50	\$41,
		\$335,540.49		\$355,892.00		\$376,363.00	
						\$399,628.50	



Willa Motley

Willa Motley, P.E.

The background of the slide is a photograph of a valley. In the foreground, there is a field of low-lying vegetation. In the middle ground, there are rolling hills and a small town or village. In the background, there are snow-capped mountains under a cloudy sky. The entire image has a blue tint.

Heber Valley Corridor



ENVIRONMENTAL IMPACT STATEMENT

Heber City Council

December 17, 2024

Completed Activities

Local Government Coordination

- Updated [Wasatch County Council on Nov. 13](#) (21:32)
- Updated [Heber City Council on Nov. 19](#) (2:01:49)

Conservation Easements

- Met with NRCS and Utah Open Lands to facilitate better communication moving forward

Alternative Design

- Determined, at a high level, the scope of changes to the alternatives that will be evaluated in the EIS

Ongoing Activities

Local Government Coordination

- Update Wasatch City Council on December 11, 2024
- Update Heber City Council on December 17, 2024

Conservation Easements

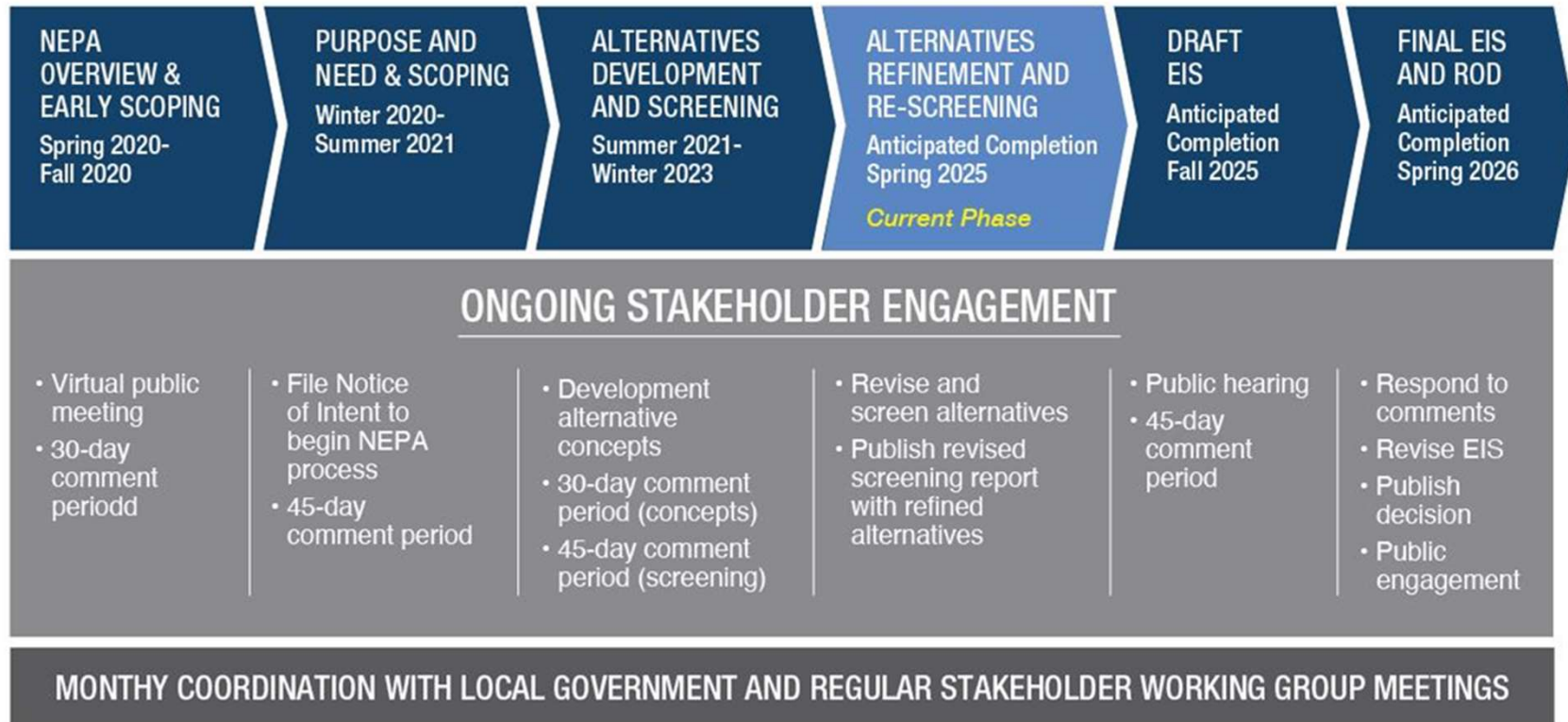
- Scheduling Meeting with WOLB (targeting January 13, 2025)

Alternative Design

- Developing Alternative Refinements
- Preparing for Alternative Screening



Process & Timeline





Alternative Refinements

Determining what upgrades are necessary to meet 2050 traffic needs based on new model:

- Evaluating widening North US-40 from 900 N to SR-32 to three lanes in each direction, adding turn lanes at intersections



Alternative Refinements

Determining what upgrades are necessary to meet 2050 traffic needs based on new model:

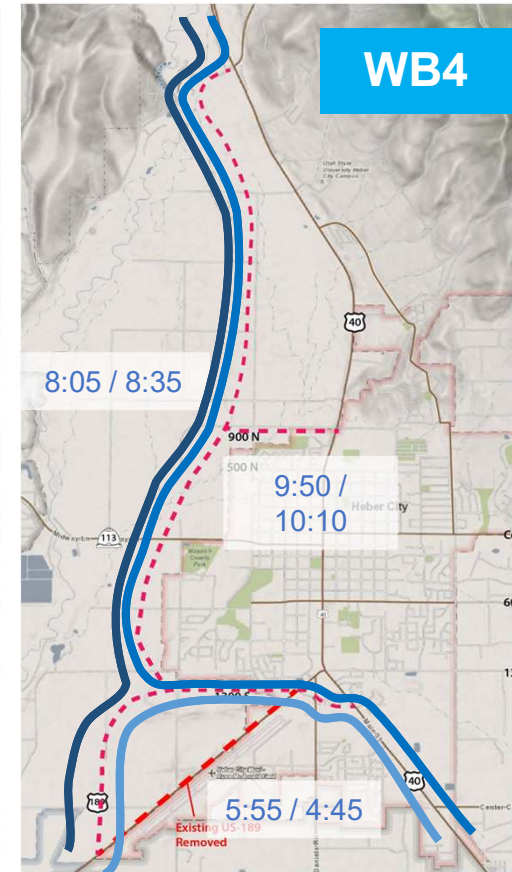
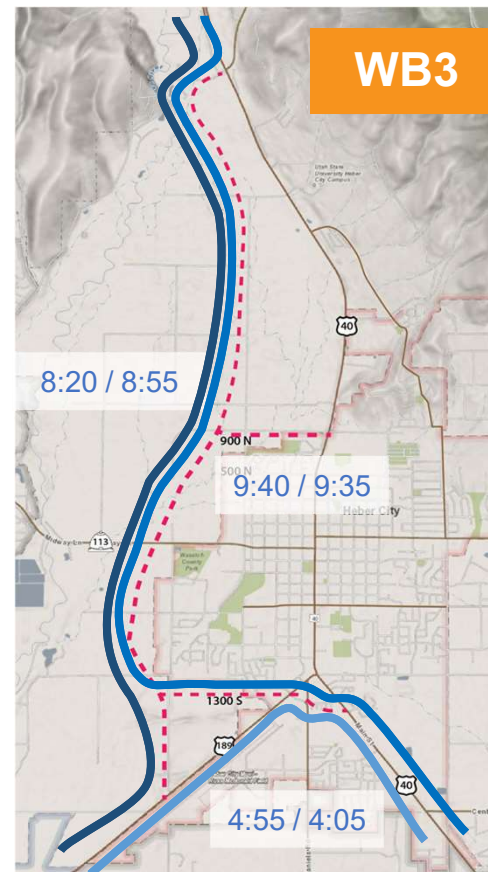
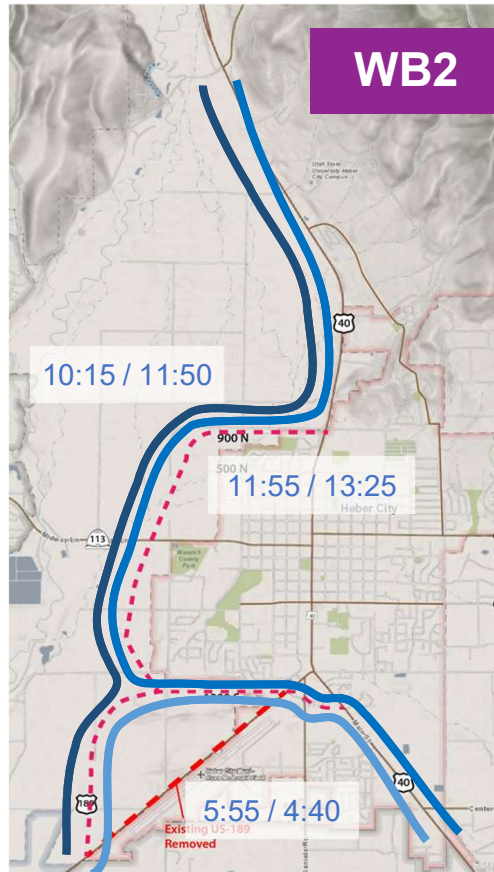
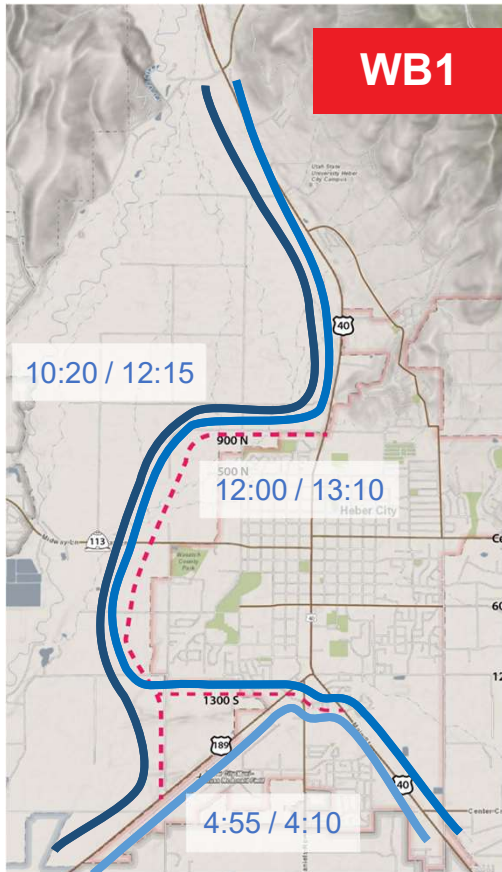
- Evaluating free-flow movements

Free-flow means traffic does not need to stop. Instead of traffic signals, there would be a bridge or interchange allowing vehicles to cross without stopping.

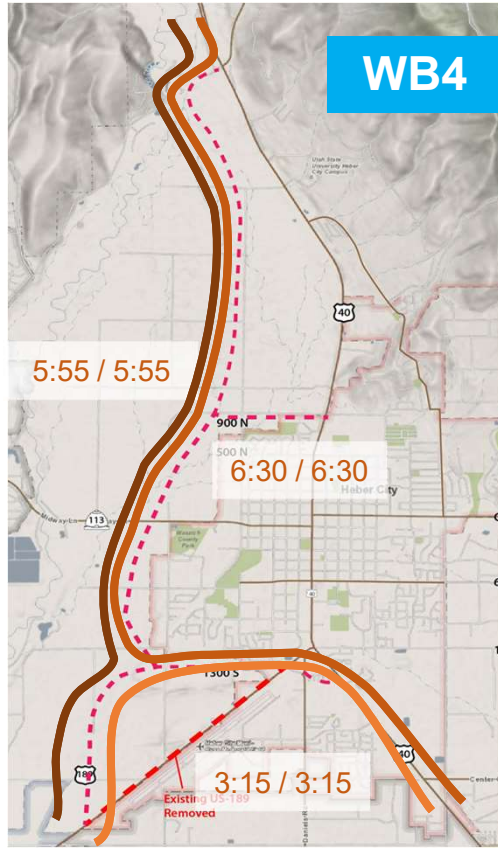
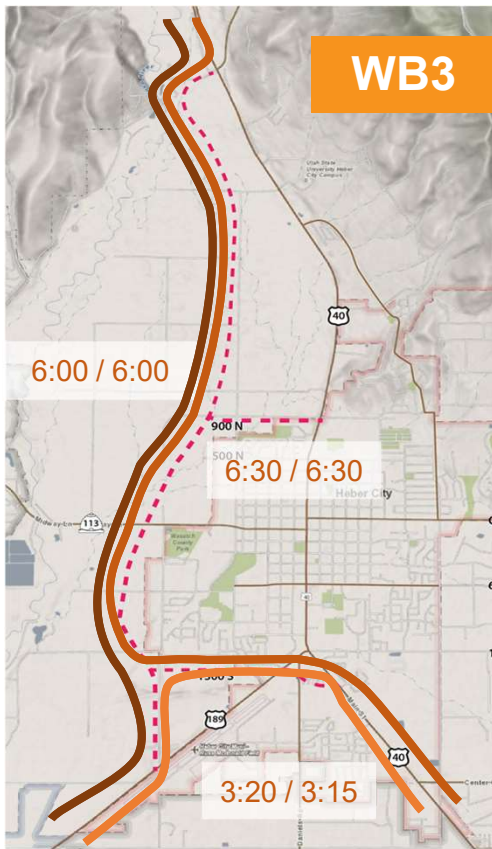
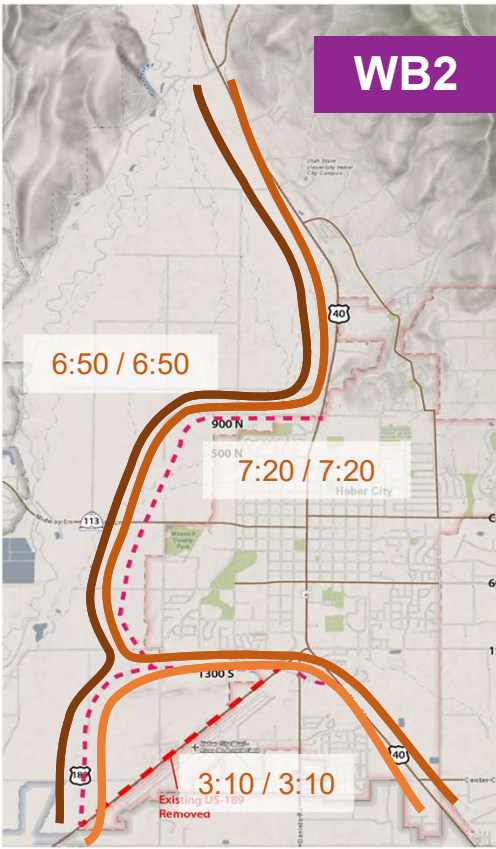
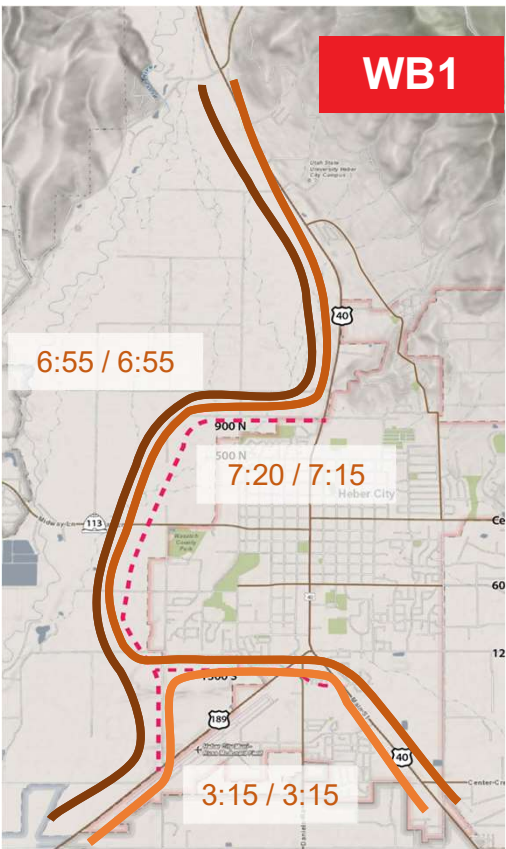
At Grade 2050 PM Peak Regional Travel Times (SB/NB or WB/EB notation)

DRAFT

**Heber Valley Corridor
ENVIRONMENTAL
IMPACT STATEMENT**



Free Flow Path 2050 PM Peak Regional Travel Times (SB/NB or WB/EB notation)



Regional Travel Times

DRAFT

Time savings using Bypass instead of Main Street – 2050 PM Peak

At Grade

	SR-32 to US-189	SR-32 to S. US-40
WB1	-5:00	-0:50
WB2	-4:55	-0:15
WB3	-6:25	-2:35
WB4	-7:45	-2:55

Free Flow*

	SR-32 to US-189	SR-32 to S. US-40
WB1	-8:25	-5:30
WB2	-8:20	-4:50
WB3	-8:45	-5:54
WB4	-9:55	-6:15

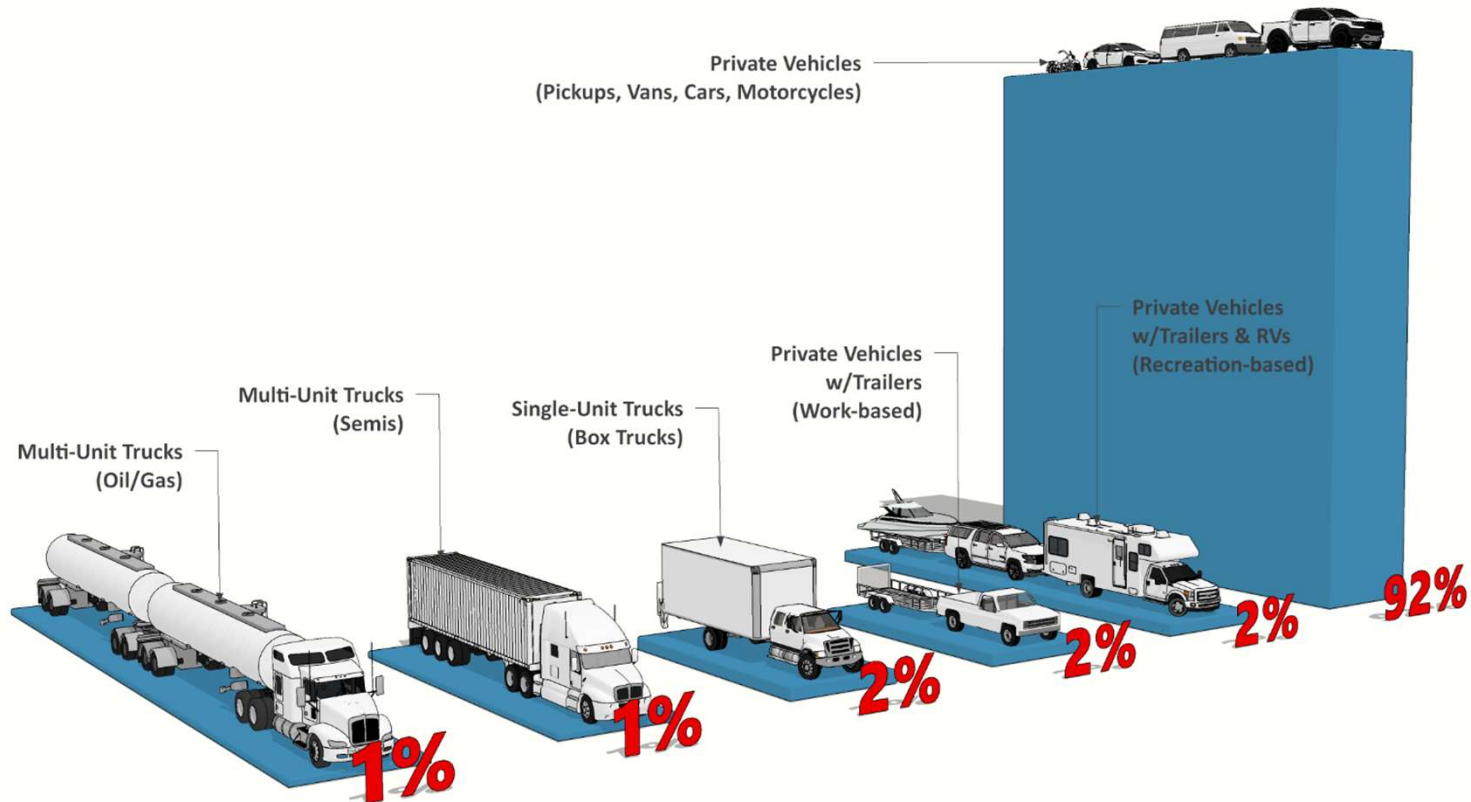
**Assumes system (3-level) interchange at Bypass/1300 South. A 2-level interchange could add about 30 sec of travel time for certain movements.*



Truck Facts

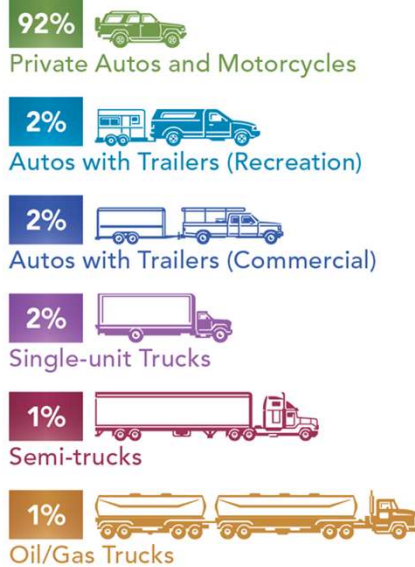
Main Street Traffic Composition (2023)

DRAFT

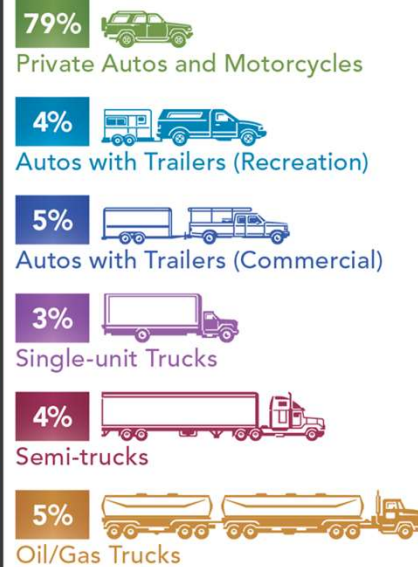


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VEHICLE COMPOSITION



**VEHICLE CATEGORIES
WEIGHTED BY LENGTH**



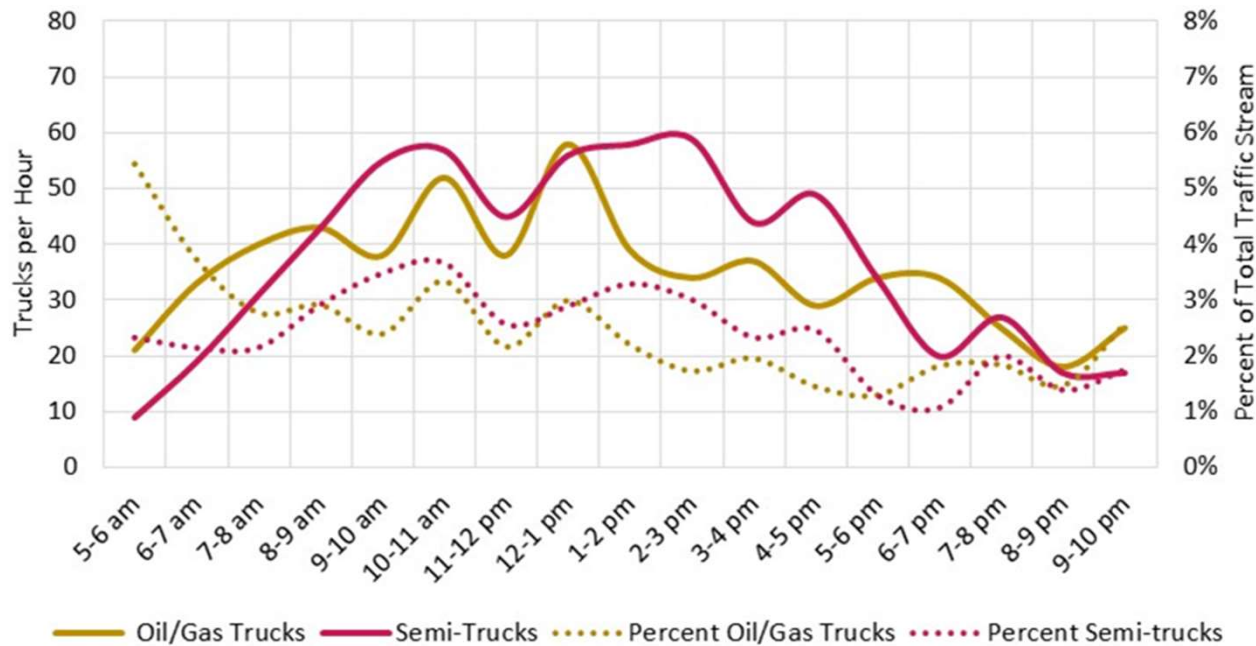
Truck Facts

*Main Street Traffic Composition
(2023)*

Truck Facts

Main Street Truck Volumes (2023)

DRAFT



Truck Facts

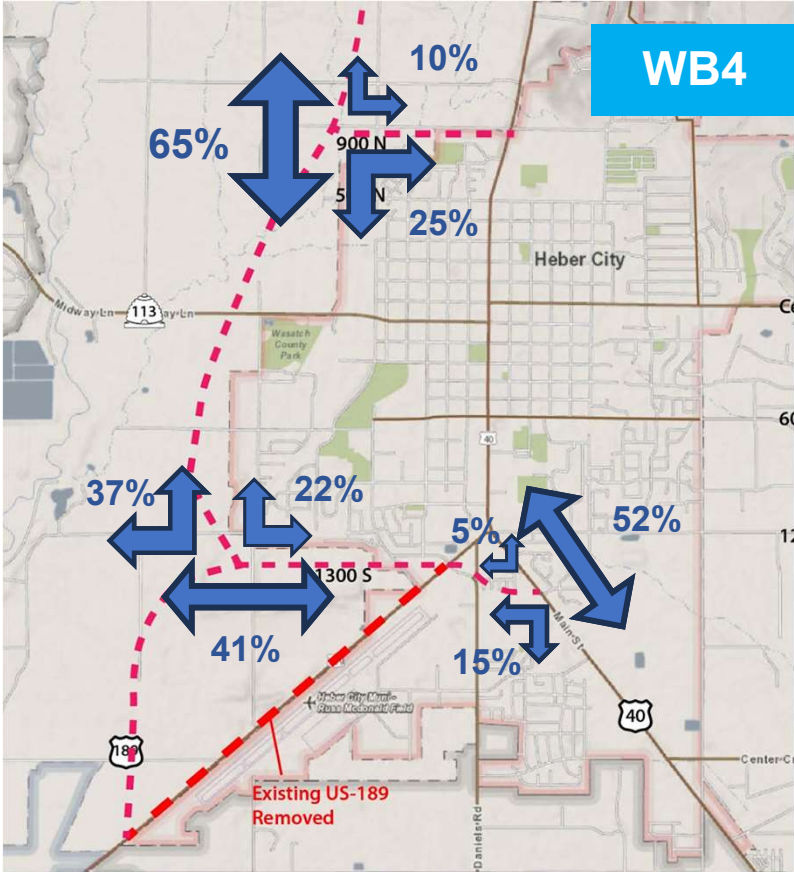
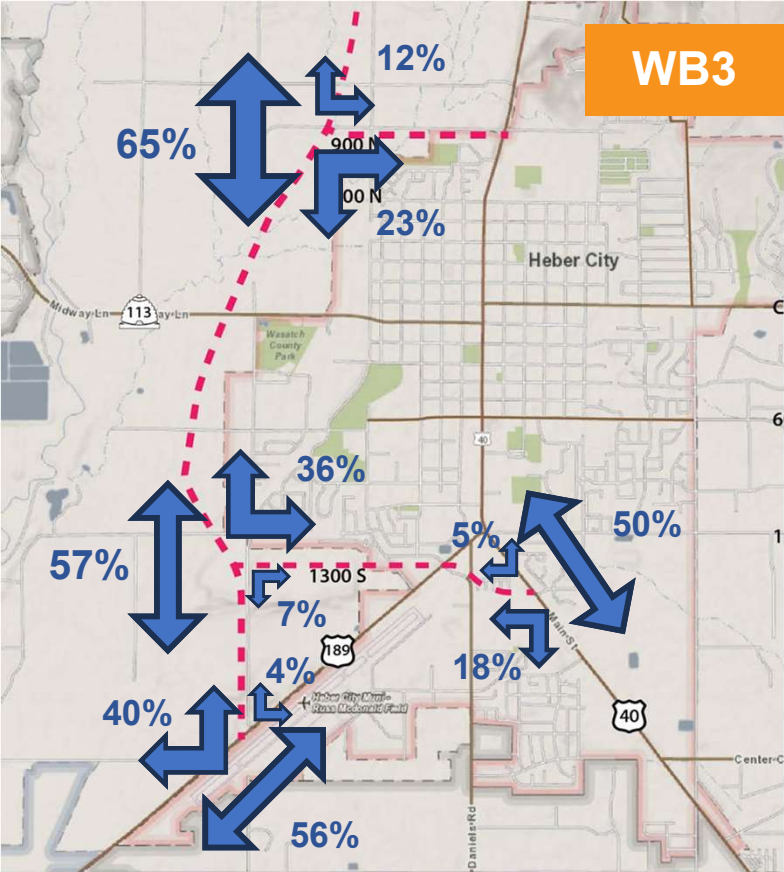
Single unit vs multi-unit (2023)

DRAFT

	Total Volume (vehicles per day)	Percent Trucks		Truck Volume (trucks per day)		
		Multi-unit	Single-unit	Multi-unit	Single-unit	Total
US-189	19,500	8.3%	8.0%	1,615	1,550	3,175
US-40	6,300	20.2%	9.4%	1,280	595	1,875



Flow Patterns





Heber Valley Corridor



ENVIRONMENTAL IMPACT STATEMENT

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being or have been carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated May 26, 2022, and executed by FHWA and UDOT.



Heber City Council Staff Report

MEETING DATE: 12/17/2024

SUBJECT: Public Hearing and Possible Council Action on Resolution 2024-21 to Amend the FY 2025 Budget for City-wide Capital Improvement Projects

RESPONSIBLE: Sara Nagel

DEPARTMENT: Finance

STRATEGIC RELEVANCE: Necessary Administrative Action

SUMMARY

Staff has determined that an amendment to the Fiscal Year 2025 budget is required to roll-forward fund balance for ongoing capital improvement projects and address unanticipated capital improvement expenditures.

RECOMMENDATION

Hold a Public Hearing on December 17, 2024, to consider an amendment to the FY 2025 annual budget and adopt Resolution 2024-21 amending the FY 2025 annual budget.

BACKGROUND

Periodically, the City needs to amend the budget to address items such as unanticipated expenditures, continuing capital improvement project, changes in department needs or procurement delays. This is the second amendment request in Fiscal Year 2025.

DISCUSSION

City staff determined there are unexpected expenditures and continuing capital improvement projects that require consideration for a budget amendment to be in compliance with State code 10-6-123.

The proposed amendment is fashioned to ensure that expenditures do not exceed budgeted resources. Exhibit "A" in resolution 2024-21 provides details and fiscal impacts of the budget changes staff is recommending.

FISCAL IMPACT

The proposed amendment will affect the following funds:

General Capital (42)	\$170,000
Street Impact Fee Fund (46)	\$850,000
Parks Impact Fee Fund (47)	\$614,000
Transportation Fund (48)	\$1,615,000
Culinary Water Impact Fee Fund (56)	\$1,904,489
Pressurized Impact Fee Fund (58)	\$177,000
Culinary Water Capital Fund (66)	\$3,101,902
Sewer Capital Fund (67)	\$5,513,698
Storm Water Capital Fund (68)	\$25,000
Pressurized Irrigation Capital Fund (69)	\$131,073
TOTAL	\$14,102,162

The fiscal impact is specified in resolution 2024-18 Exhibit "A"

CONCLUSION

Staff recommends that you move to approve resolution 2024-21 as presented, with the findings and conditions presented.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** the **item** as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** the **item** as amended, as follows.

Alternative 3 - Continue

I move to **continue** the **item** to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** the item with the following findings.

ACCOUNTABILITY

Department: Finance
Staff member: Sara Nagel, Finance Manager

EXHIBITS

1. Budget Amendment Resolution 2024-21
2. Exhibit A
3. Budget Amendment Summary
4. Fund Balance Review 2nd Budget Amendment

**HEBER CITY, UTAH
RESOLUTION NO. 2024-21**

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE HEBER CITY BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2025 (FY 2025).

WHEREAS, the Utah Uniform Fiscal Procedures Act provides for the legislative body to review and amend individual budgets of funds during the budget period as necessary to address changing circumstances (UCA § 10-6-127); and

WHEREAS, the Financial Director of Heber City has determined that amendments to the FY 2025 budget are necessary to address operational needs and priorities, as detailed in the attached Exhibit “A”; and

WHEREAS, in compliance with state law (UCA § 10-6-113), the City provided proper public notice and held a Public Hearing on Tuesday, December 17, 2024, to solicit feedback from residents regarding the proposed amendments to the FY 2025 budget;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Heber City, Utah, that:

The Heber City Budget for the fiscal year ending June 30, 2025, is hereby amended as outlined in the attached Exhibit “A,” which is incorporated by reference and made an integral part of this Resolution.

ADOPTED AND PASSED by the City Council of Heber City, Utah, on this _____ day of _____, 2024, by the following vote:

	AYE	NAY
Council Member Yvonne Barney	_____	_____
Council Member Aaron Cheatwood	_____	_____
Council Member Mike Johnston	_____	_____
Council Member Sid Ostergaard	_____	_____
Council Member Scott Phillips	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

_____ Date: _____

RECORDER

EXHIBIT "A"

PARKS IMPACT FEE FUND (47)

Request: Central Heber Trail

Source:

Account Number	Account Name	Amount
47.3870	Contributions General Fund Surplus	\$ 196,000.00
	Total	<u>\$ 196,000.00</u>

Use:

Account Number	Account Name	Amount
47.4073	Improvements Other Than Bldg	\$ 196,000.00
	Total	<u>\$ 196,000.00</u>

CULINARY WATER CIP FUND (66)

Request: Valley Hills Tank 2 Repairs (W-070)

Source:

Account Number	Account Name	Amount
66.3870	Fund Surplus - Culinary Water CIP Fund	\$ 185,000.00
	Total	<u>\$ 185,000.00</u>

Use:

Account Number	Account Name	Amount
66.4073	Improvements Other Than Bldg	\$ 185,000.00
	Total	<u>\$ 185,000.00</u>

TRANSPORTATION TAX FUND (48)

Request: Road Maintenance Project (T-060)

Source:

Account Number	Account Name	Amount
48.3870	Fund Surplus - Transportation Tax Fund	\$ 1,590,000.00
	Total	<u>\$ 1,590,000.00</u>

Use:

Account Number	Account Name	Amount
48.4073	Improvements Other Than Bldg	\$ 1,590,000.00
	Total	<u>\$ 1,590,000.00</u>

CULINARY WATER CIP (66), SEWER CIP (67), PI CIP (69), CULINARY WATER IMPACT (56)**Request: Cityworks (W-047, S-050, D-031, I-031, T-080)**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
66.3870	Fund Surplus - Culinary Water CIP Fund	\$ 25,000.00
67.3870	Fund Surplus - Sewer CIP Fund	25,000.00
68.3870	Fund Surplus - Storm Water CIP Fund	25,000.00
69.3870	Fund Surplus - PI CIP Fund	25,000.00
48.3870	Fund Surplus - Transportation Tax Fund	25,000.00
Total		<u><u>\$ 125,000.00</u></u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
66.4073	Improvements Other Than Bldg - Culinary Water	\$ 25,000.00
67.4073	Improvements Other Than Bldg - Sewer	25,000.00
68.4073	Improvements Other Than Bldg - Storm Water	25,000.00
69.4073	Improvements Other Than Bldg - PI	25,000.00
48.4073	Improvements Other Than Bldg - Transportation	25,000.00
Total		<u><u>\$ 125,000.00</u></u>

CULINARY WATER CIP (66), SEWER CIP (67), PI CIP (69), CULINARY WATER IMPACT (56)**Request: Central Heber Replacements (W-071, S-047, I-029)**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
66.3870	Fund Surplus - Culinary Water CIP Fund	\$ 2,891,902.00
67.3870	Fund Surplus - Sewer CIP Fund	5,488,698.00
69.3870	Fund Surplus - PI CIP Fund	(522,282.00)
56.3870	Fund Surplus - Culinary Water Impact Fee Fund	1,904,489.00
Total		<u><u>\$ 9,762,807.00</u></u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
66.4073	Improvements Other Than Bldg - Culinary Water	\$ 2,891,902.00
67.4073	Improvements Other Than Bldg - Sewer	5,488,698.00
69.4073	Improvements Other Than Bldg - PI	(522,282.00)
56.4073	Improvements Other Than Bldg - Water Impact	1,904,489.00
Total		<u><u>\$ 9,762,807.00</u></u>

GENERAL FUND CIP (42) , STREET IMPACT FEE (46), PARKS IMPACT FEE (47), PI IMPACT FEE (58)**Request: Cemetery Section B (T-057a, P-050, I-018)**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
42.3870	Fund Surplus - General CIP Fund	\$ 85,000.00
46.3870	Fund Surplus - Streets Impact Fee Fund	730,000
47.3870	Fund Surplus - Parks Impact Fee Fund	276,000
58.3870	Fund Surplus - PI Impact Fee Fund	177,000
Total		<u><u>\$ 1,268,000.00</u></u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
42.4073	Improvements Other Than Bldg - General CIP	\$ 85,000.00
46.4073	Improvements Other Than Bldg - Street Impact	730,000
47.4073	Improvements Other Than Bldg - Parks Impact	276,000
58.4073	Improvements Other Than Bldg - PI Impact	177,000
Total		<u><u>\$ 1,268,000.00</u></u>

GENERAL FUND CIP (42) AND PARKS IMPACT FEES (47)**Request: Cemetery Section B Landscaping**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
42.3870	Fund Surplus - General CIP Fund	\$ 85,000.00
47.3870	Fund Surplus - Parks Impact Fee Fund	142,000.00
Total		<u><u>\$ 227,000.00</u></u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
42.4073	Improvements Other Than Bldg - General CIP	\$ 85,000.00
47.4073	Improvements Other Than Bldg - Parks Impact	142,000.00
Total		<u><u>\$ 227,000.00</u></u>

PARKS IMPACT FEES (47) AND STREET IMPACT FEES (46)**Request: Mill Road Roundabout Project (T-057b & P-050)**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
46.3870	Fund Surplus - Street Impact Fee Fund	\$ 120,000.00
	Total	<u>\$ 120,000.00</u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
46.4073	Improvements Other Than Bldg - Street Impact	\$ 120,000.00
	Total	<u>\$ 120,000.00</u>

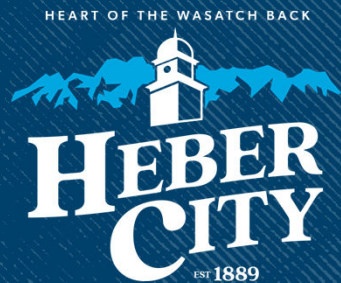
PRESSURIZED IRRIGATION CAPITAL IMPROVEMENT FUND (69)**Request: Citywide PI Meter Replacements (I-028)**

Source:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
69.3870	Fund Surplus - PI CIP Fund	\$ 628,355.00
	Total	<u>\$ 628,355.00</u>

Use:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
69.4073	Improvements Other Than Bldg - PI CIP	\$ 628,355.00
	Total	<u>\$ 628,355.00</u>



Heber City FY 2025 Budget Amendment

Public Hearing
December 17, 2024

Date _____

Budget Request Summary

- Central Heber Trail - \$196,000
- Valley Hills Tank - \$185,000
- Road Maintenance - \$1,590,000
- Cityworks- \$125,000
- Central Heber Replacements- \$9,762,807
- Cemetery Section B - \$1,268,000
- Cemetery Landscaping - \$227,000
- Mill Road Roundabout - \$120,000
- Citywide PI Meter Replacements- \$628,355



Fund Level Request Summary

The proposed amendment will affect the following funds:

General Capital (42)	\$170,000
Street Impact Fee Fund (46)	\$850,000
Parks Impact Fee Fund (47)	\$614,000
Transportation Fund (48)	\$1,615,000
Culinary Water Impact Fee Fund (56)	\$1,904,489
Pressurized Impact Fee Fund (58)	\$177,000
Culinary Water Capital Fund (66)	\$3,101,902
Sewer Capital Fund (67)	\$5,513,698
Storm Water Capital Fund (68)	\$25,000
Pressurized Irrigation Capital Fund (69)	\$131,073
TOTAL	\$14,102,162

**Fund Balance Review for FY 2025: 2nd Budget Amendment
(Based on Budgeted Amounts)**

	FY 2025 Beginning Fund Balance (Unaudited)	Total Budgeted Revenue	Bond issuances	Total Budgeted Expenses	Proposed Amendment	FY 2025 Estimated Ending Fund Balance
General Capital Fund (42)	3,051,905.25	1,451,000.00	-	4,485,000.00	170,000.00	(152,094.75)
Street Impact (46)	2,920,646.00	755,851.00	-	2,324,658.00	850,000.00	501,839.00
Parks Impact (47)	4,465,473.00	1,214,117.00	-	4,746,000.00	614,000.00	319,590.00
Trans. Tax (48)	3,942,242.00	2,185,000.00	-	1,933,392.00	1,615,000.00	2,578,850.00
Water Impact (56)	4,613,140.00	796,897.00	-	306,752.00	1,904,489.00	3,198,796.00
PI Impact (58)	1,203,522.00	318,904.00	-	430,077.00	177,000.00	915,349.00
Water Capital (66)	5,034,417.00	1,525,000.00	3,032,000.00	4,186,880.00	3,101,902.00	2,302,635.00
Sewer Capital (67)	7,770,588.00	-	5,900,000.00	5,450,600.00	5,513,698.00	2,706,290.00
Storm Capital (68)	66,567.00	265,000.00	-	269,200.00	25,000.00	37,367.00
PI Capital (69)	2,738,728.00	3,370,000.00	1,343,000.00	7,157,720.00	131,073.00	162,935.00

Note: The City is completing the FY24 audit and has yet to calculate the year-end General Fund Surplus transfer to the Capital Improvement Fund. We anticipate the transfer will be sufficient to cover the proposed amendment.



Heber City Council Staff Report

MEETING DATE: 12/17/2024

SUBJECT: Ordinance 2024-24 North Village Development Annexation (aka Resort-Crossings/Harvest Village) Annexation located at the intersection of Highway 40 and Highway 32

RESPONSIBLE: Tony Kohler, Jeremy Cook

DEPARTMENT: Planning

STRATEGIC RELEVANCE: Community Development

SUMMARY

The North Village Development Annexation is located at the intersection of Highway 40 and SR 32. Council and Staff have been working with the developers of the Harvest Village and North Village Crossings developments to draft development agreements (MDAs) that could be approved in conjunction with the annexation. Policy questions for the item include:

1. Are the development agreements ready for approval? What terms need modified?
2. Is the annexation ready for approval?

RECOMMENDATION

Staff recommends Council discuss the proposed development agreements, and when ready, adopt Ordinance 2024-24 approving the North Village Development Annexation, conditional upon recording the development agreements (MDAs) prior to recording the Annexation Plat, Ordinance 2024-24 and associated MDAs.

The annexation could be approved at the December 17 meeting, conditional upon the MDAs returning to Council on January 7 for final review by Council, and the annexation not being recorded until the MDAs are given final approval by Council, as there is about 30 to 60 days needed to get to the point of recording the annexation at the County (surveyor approval, signatures, state approval).

BACKGROUND

The City Council accepted the North Village Development Annexation petition on April 7, 2020. The annexation was certified by the City Recorder on May 6, 2020, and the protest period concluded on June 6, 2020. The Planning Commission reviewed the proposed annexation on June 2, 2020, providing a recommendation for approval to the City Council. Council began discussions on the annexation in mid to late 2020 and held a public hearing on December 1, 2020, during which the

annexation was continued. Since then, the City has adopted the North Village Overlay Zone (NVOZ) as well as the Storm Drain and Transportation Plans. In early 2024, a new developer for the Resort approached the City about completing the annexation. Council resumed its review of the annexation and held a second public hearing on September 17, 2024. Council and the petitioner have been discussing issues related to development agreements in anticipation of finalizing the annexation near the end of 2024.

The City's General Plan Land Use Map identifies the future land use of the annexation area as North Village (NV) and Neighborhoods with Open Space (NOS).

With Wasatch County, the Crossings and Resort developments each were approved with associated development agreements that lock the developments into higher densities that were permitted years ago in the unincorporated area. The City has worked with the developer to translate the developments into something that is more in line with the City's vision for the area in the General Plan, and has negotiated development agreements with the developer to par back some of the density or impose conditions of approval accompanying development to mitigate that higher density. Wasatch County approved the agreement with Heber City on December 4 that approves of the island that results from this annexation.

DISCUSSION

The following includes some of the larger policy related issues with the development agreements.

Harvest Village

1. Zoning as North Village (NV) sub-district (Section 3.1)
2. Project Density (Section 4.1)
3. Site Plan Vesting (Section 4.2)
4. Exceptions to NVOZ Zone (Section 4.2.1)
5. Affordable Housing (Section 4.5)
6. Term (Section 5)
7. UDOT Bypass Road and Delay in Approvals (Section 6.2)
8. Parks and Open Space (Section 7)
9. North Fields Preservation (Section 7.8)

Crossings

1. Zoning as North Village (NV) sub-district (Section 3.1)
2. Site Plan Vesting (Section 4.2)
3. Exceptions to NVOZ Zone (Section 4.2.1)
4. Affordable Housing (Section 4.5)
5. Term (Section 5)
6. Parks and Open Space (Section 7)
7. North Fields Preservation (Section 7.8)

Pros to approving the proposed annexation include: 1) less density than proposed in the county; 2)

assurance of implementing the City's Transportation, Storm Water, North Village Overlay Zone and General Plan; 3) financial benefits such as property tax, sales tax and transient room tax; 4) job and housing creation for the UVU campus; 5) Heber City controlling land uses along its primary entrance; 6) creation of affordable housing; and 7) moving already planned development from the unincorporated area to within Heber City Corporate limits.

Cons to the proposed annexation include the potential for impacts to some of the planned bypass route alternatives.

FISCAL IMPACT

The planned developments will have positive financial benefits from property tax for second homes and commercial properties, sales tax and transient room tax for the proposed hotels.

CONCLUSION

1. The North Village Development Annexation is:

- Part of North Village Town Center;
- Consistent with Annexation Policy Plan;
- Consistent with Envision Heber 2050; &
- Consistent with NVOZ.

2. The North Village Development Annexation furthers the General Plan by:

- Promoting the town center;
- Promoting recreation, parks & trails;
- Promoting affordable housing; &
- Promoting economic development.

3. The MDAs help mitigate potential impacts from development as follows:

- Providing Affordable Housing/Workforce Housing and/or a potential fee-in lieu/offsite construction alternative.
- Limiting development along the UDOT bypass until a future date to provide more time for UDOT to review bypass alternatives.
- Promoting economic development by requiring a certain portion of development to be commercial/hospitality.
- Promoting agricultural preservation by requiring a Preservation Fee of \$2,500 per ERU.
- Mitigating building height with height restrictions separate from the NVOZ.
- Limiting the maximum retaining wall height and design to minimize impacts of mountainside development to the entrance to the City.
- Limiting density to less than County in the North Fields.
- Ensuring compliance with open space, trails, storm water & street master plans.

- Ensuring conformance to the North Village Special Service District water policy. &
- Ensuring future residential buyers are put on notice about the potential for short term rentals.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Staff Recommended Option – Approve

I move to **ADOPT Ordinance 2024-24**, approving the North Village Development Annexation and associated MDAs as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 – Approve as Amended

I move to **ADOPT Ordinance 2024-24**, approving the North Village Development Annexation and associated MDAs with the findings and conditions as presented in the conclusion above, with the following changes:

Alternative 3 – Continue

I move to **CONTINUE Ordinance 2024-24** to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 – Deny

I move to **DENY Ordinance 2024-24** with the following findings.

ACCOUNTABILITY

Department: Planning
Staff member: Tony Kohler, Community Development Director

EXHIBITS

1. Ord 2024-24
2. 060420-annex plat
3. CC-12-17-24-Crossing-Resort Annexation-alk
4. Crossings DA JRC 12.9 - 4899-5940-4549 - 1
5. Harvest Village DA JRC 12.9 - 4910-8426-4453 - 1

ORDINANCE NO. 2024-24

AN ORDINANCE APPROVING THE NORTH VILLAGE DEVELOPMENT (AKA CROSSINGS, RESORT/HARVEST VILLAGE) ANNEXATION LOCATED AT THE INTERSECTION OF HIGHWAY 40 AND HIGHWAY 32.

BE IT ORDAINED by the City Council of Heber City, Utah, the North Village Development Annexation described in Exhibit A, is hereby approved.

Zoning of the properties contained therein shall initially be designated consistent with the City’s North Village Overlay Zone (NVOZ), depicted in Exhibit B.

This Ordinance shall take effect immediately upon approval.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this _____ day of _____ 2024.

	AYE	NAY	ABSENT	ABSTAIN
Yvonne Barney	_____	_____	_____	_____
Aaron Cheatwood	_____	_____	_____	_____
Michael Johnston	_____	_____	_____	_____
Sid Ostergaard	_____	_____	_____	_____
D. Scott Phillips	_____	_____	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

RECORDER

Date:

Exhibit A: Legal Description

ANNEXATION DESCRIPTION

All of Parcels:

00-0020-4584, 00-0007-7664, 00-0007-7458, 00-0007-7623, 00-0007-7730 : North Village Development
00-0021-0847: Questar Gas
00-0007-7508: Brandner Trust
00-0007-7565: Stm North Village LLC
00-0020-9098: Probst Lot 1
00-0020-9099: Probst Lot 2
00-0007-7748: Kren
00-0020-2993, 00-0020-2992: Anderson
00-0007-7706: Knapp
00-0020-2995, 00-0020-2994, 00-0020-2991, 00-0020-2990, 00-0020-0978: Wasatch Crest
00-0007-7466, 0-0021-2614, 00-0021-2617, 00-0021-1555, 00-021-1558, 00-021-1559

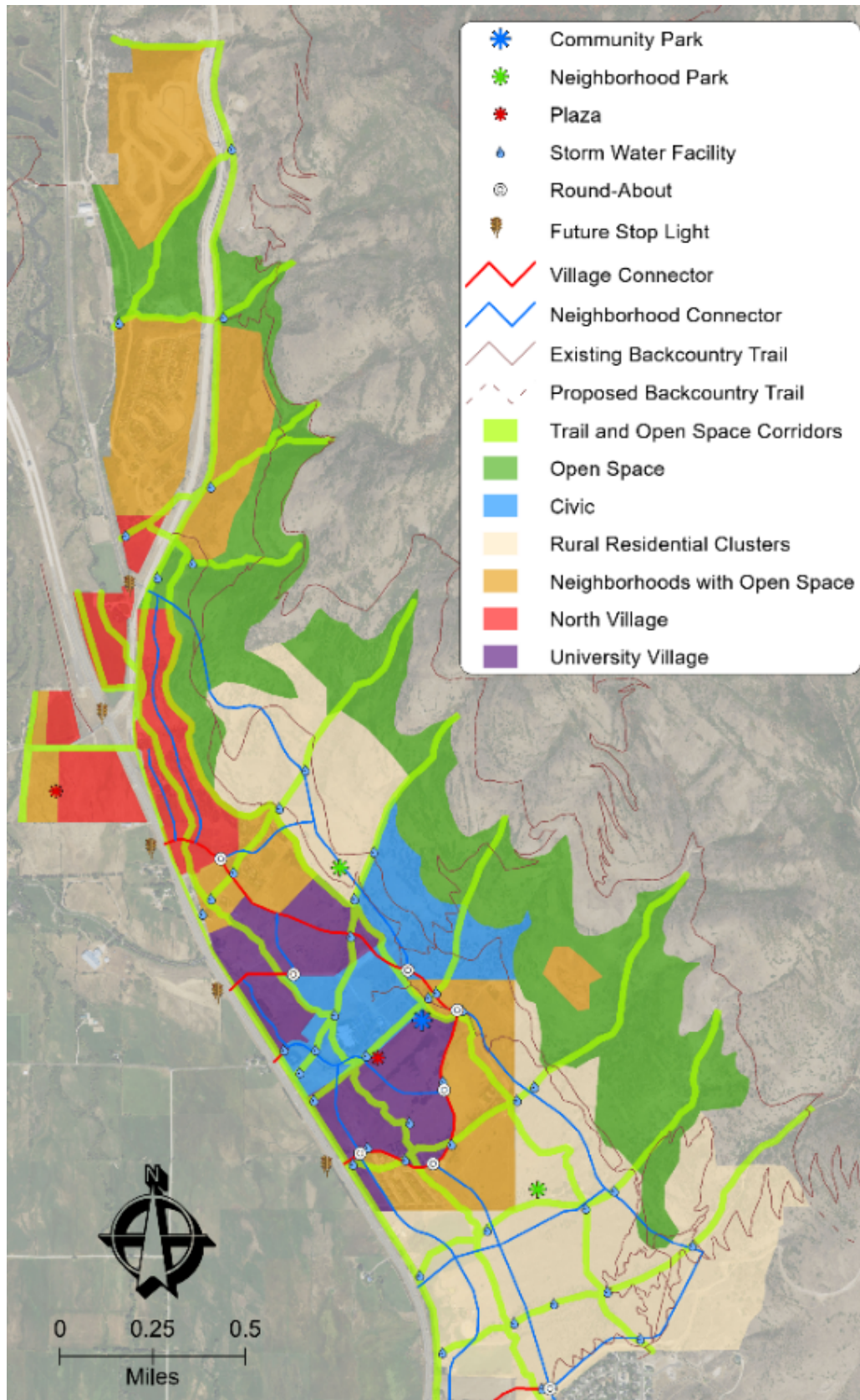
BOUNDARY DESCRIPTION

A parcel of land located in Section 18 & the Northeast Quarter Corner of Section 19, Township 3 South, Range 5 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point that is North 87°05'52" West 2619.44 feet and North 186.28 feet from the SouthEast Corner of Section 18, Township 3 South, Range 5 East, Salt Lake Base and Meridian; and running thence North 20°10'27" West 777.86 feet; thence East 3.00 feet; thence North 19°59'47" West 29.53 feet; thence South 89°18'16" West 508.60 feet; thence South 89°57'53" West 185.35 feet; thence South 89°19'16" West 734.23 feet; thence South 89°33'11" West 776.14 feet; thence North 04°56'20" West 92.58 feet; thence North 18°14'15" East 78.00 feet; thence North 50°01'05" East 71.10 feet; thence North 17°05'43" East 89.90 feet; thence North 31°02'10" East 139.90 feet; thence North 07°53'45" East 642.10 feet; thence North 14°47'08" East 66.39 feet; thence North 29°14'12" East 78.25 feet; thence North 03°31'00" East 82.00 feet; thence North 26°11'00" East 141.00 feet; thence North 05°47'00" West 49.00 feet; thence North 20°30'00" East 150.00 feet; thence North 32°01'47" West 70.44 feet; thence North 10°00'00" East 300.00 feet; thence South 89°49'41" East 1428.06 feet; thence North 01°34'17" East 643.74 feet; thence North 15°23'38" East 542.87 feet; thence South 89°42'19" East 380.82 feet; thence South 11°10'07" East 194.68 feet; thence South 46°40'07" East 166.19 feet; thence South 18°49'05" West 762.04 feet; thence South 10°40'07" East 177.88 feet; thence South 42°10'05" East 160.49 feet; thence South 40°54'29" East 334.76 feet; thence South 12°20'30" West 206.91 feet; thence South 10°24'30" East 343.54 feet; thence South 26°24'30" East 447.97 feet; thence South 40°54'30" East 500.67 feet; thence South 89°54'30" East 66.86 feet; thence South 04°01'58" West 76.69 feet; thence South 75°06'07" East 108.61 feet to a point on a non tangent curve to the left having a radius of 172.16 feet, of which the radius point bears North 14°53'58" East; thence along the arc of said curve 163.91 feet through a central angle of 54°33'02"; thence North 50°20'46" East 181.57 feet; thence North 55°15'00" East 70.35 feet; thence South 52°30'00" East 112.00 feet; thence South 03°00'00" East 152.25 feet; thence South 30°02'47" East 157.18 feet; thence North 43°30'00" East 7.27 feet; thence South 47°23'54" East 53.07 feet; thence South 49°48'59" East 125.72 feet to a point on a non tangent curve to the right having a radius of 193.90 feet, of which the radius point bears South 37°53'27" West; thence along the arc of said curve 67.39 feet through a central angle of 19°54'46"; thence South 19°44'47" East 35.54 feet; thence South 35°12'08" West 716.95 feet; thence North 27°27'52" West 28.98 feet; thence South 36°14'19" West 150.96 feet; thence South 28°30'00" West 381.74 feet; thence North 36°46'30" West 852.82 feet; thence South 63°43'50" West 286.90 feet; thence South 80°26'02" West 15.11 feet; thence South 84°58'47" West 161.72 feet to the point of beginning.

Description contains 160.63 acres.

Exhibit B: Zoning Map



HEBER CITY ANNEXATION
(NORTH VILLAGE DEVELOPMENT)

LOCATED IN SECTION 18 & THE NORTHEAST QUARTER CORNER OF SECTION 19,
TOWNSHIP 3 SOUTH, RANGE 5 EAST,
SALT LAKE BASE AND MERIDIAN

SURVEYORS CERTIFICATE

I, Michael Demkowicz, do hereby certify that I am a Professional Land Surveyor and that I hold License No. 4857264 as prescribed by the laws of the State of Utah, and that I have caused to be made under my direction and by the authority of the owners, I have made a survey of the parcel of land shown on this plat to be annexed to Heber City, Wasatch County, Utah.

ANNEXATION DESCRIPTION

All of Parcels:
00-0020-4584, 00-0007-7664, 00-0007-7458, 00-0007-7623, 00-0007-7730 : North Village Development
00-0021-0847: Questar Gas
00-0007-7508: Brandner Trust
00-0007-7565: Stm North Village LLC
00-0020-9098: Probst Lot 1
00-0020-9099: Probst Lot 2
00-0007-7748: Kren
00-0020-2993, 00-0020-2992: Anderson
00-0007-7706: Knapp
00-0020-2995, 00-0020-2994, 00-0020-2991, 00-0020-2990, 00-0020-0978: Wasatch Crest
00-0007-7466, 0-0021-2614, 00-0021-2617, 00-0021-1555, 00-021-1558, 00-021-1559

BOUNDARY DESCRIPTION

A parcel of land located in Section 18 & the Northeast Quarter Corner of Section 19, Township 3 South, Range 5 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point that is North 87°05'52" West 2619.44 feet and North 186.28 feet from the SouthEast Corner of Section 18, Township 3 South, Range 5 East, Salt Lake Base and Meridian; and running thence North 20°10'27" West 777.86 feet; thence East 3.00 feet; thence North 19°59'47" West 29.53 feet; thence South 89°18'16" West 508.60 feet; thence South 89°57'53" West 185.35 feet; thence South 89°19'16" West 734.23 feet; thence South 89°33'11" West 776.14 feet; thence North 04°56'20" West 92.58 feet; thence North 18°14'15" East 78.00 feet; thence North 50°01'05" East 71.10 feet; thence North 17°05'43" East 89.90 feet; thence North 31°02'10" East 139.90 feet; thence North 07°53'45" East 642.10 feet; thence North 14°47'08" East 66.39 feet; thence North 29°14'12" East 78.25 feet; thence North 03°31'00" East 82.00 feet; thence North 26°11'00" East 141.00 feet; thence North 05°47'00" West 49.00 feet; thence North 20°30'00" East 150.00 feet; thence North 32°01'47" West 70.44 feet; thence North 10°00'00" East 300.00 feet; thence South 89°49'41" East 1428.06 feet; thence North 01°34'17" East 643.74 feet; thence North 15°23'38" East 542.87 feet; thence South 89°42'19" East 380.82 feet; thence South 11°10'07" East 194.68 feet; thence South 46°40'07" East 166.19 feet; thence South 18°49'05" West 762.04 feet; thence South 10°40'07" East 177.88 feet; thence South 42°10'05" East 160.49 feet; thence South 40°54'29" East 334.76 feet; thence South 12°20'30" West 206.91 feet; thence South 10°24'30" East 343.54 feet; thence South 26°24'30" East 447.97 feet; thence South 40°54'30" East 500.67 feet; thence South 89°54'30" East 66.86 feet; thence South 04°01'58" West 76.69 feet; thence South 75°06'07" East 108.61 feet to a point on a non tangent curve to the left having a radius of 172.16 feet, of which the radius point bears North 14°53'58" East; thence along the arc of said curve 163.91 feet through a central angle of 54°33'02"; thence North 50°20'46" East 181.57 feet; thence North 55°15'00" East 70.35 feet; thence South 52°30'00" East 112.00 feet; thence South 03°00'00" East 152.25 feet; thence South 30°02'47" East 157.18 feet; thence North 43°30'00" East 7.27 feet; thence South 47°23'54" East 53.07 feet; thence South 49°48'59" East 125.72 feet to a point on a non tangent curve to the right having a radius of 193.90 feet, of which the radius point bears South 37°53'27" West; thence along the arc of said curve 67.39 feet through a central angle of 19°54'46"; thence South 19°44'47" East 35.54 feet; thence South 35°12'08" West 716.95 feet; thence North 27°27'52" West 28.98 feet; thence South 36°14'19" West 150.96 feet; thence South 28°30'00" West 381.74 feet; thence North 36°46'30" West 852.82 feet; thence South 63°43'50" West 286.90 feet; thence South 80°26'02" West 15.11 feet; thence South 84°58'47" West 161.72 feet to the point of beginning.

Description contains 160.63 acres.

NOTES

- Basis of Bearing for this survey is between the section monuments as shown on this plat.
- The above boundary description describes the overall boundary line surrounding the following parcels. While some of these parcels boundaries have been established by multiple records of survey on file at the Wasatch County Surveyor's office, the boundary described above is only intended to represent all of these parcels combined together to be annexed into Heber City and should not be considered the result of a record of survey for all.

DRAFT
FOR
REVIEW

4/29/20

HEBER CITY ENGINEER

APPROVED AS TO FORM THIS _____

DAY OF _____, 2020

BY _____
HEBER CITY ENGINEER

HEBER CITY MAYOR

APPROVED AS TO FORM THIS _____

DAY OF _____, 2020

BY _____
HEBER CITY MAYOR

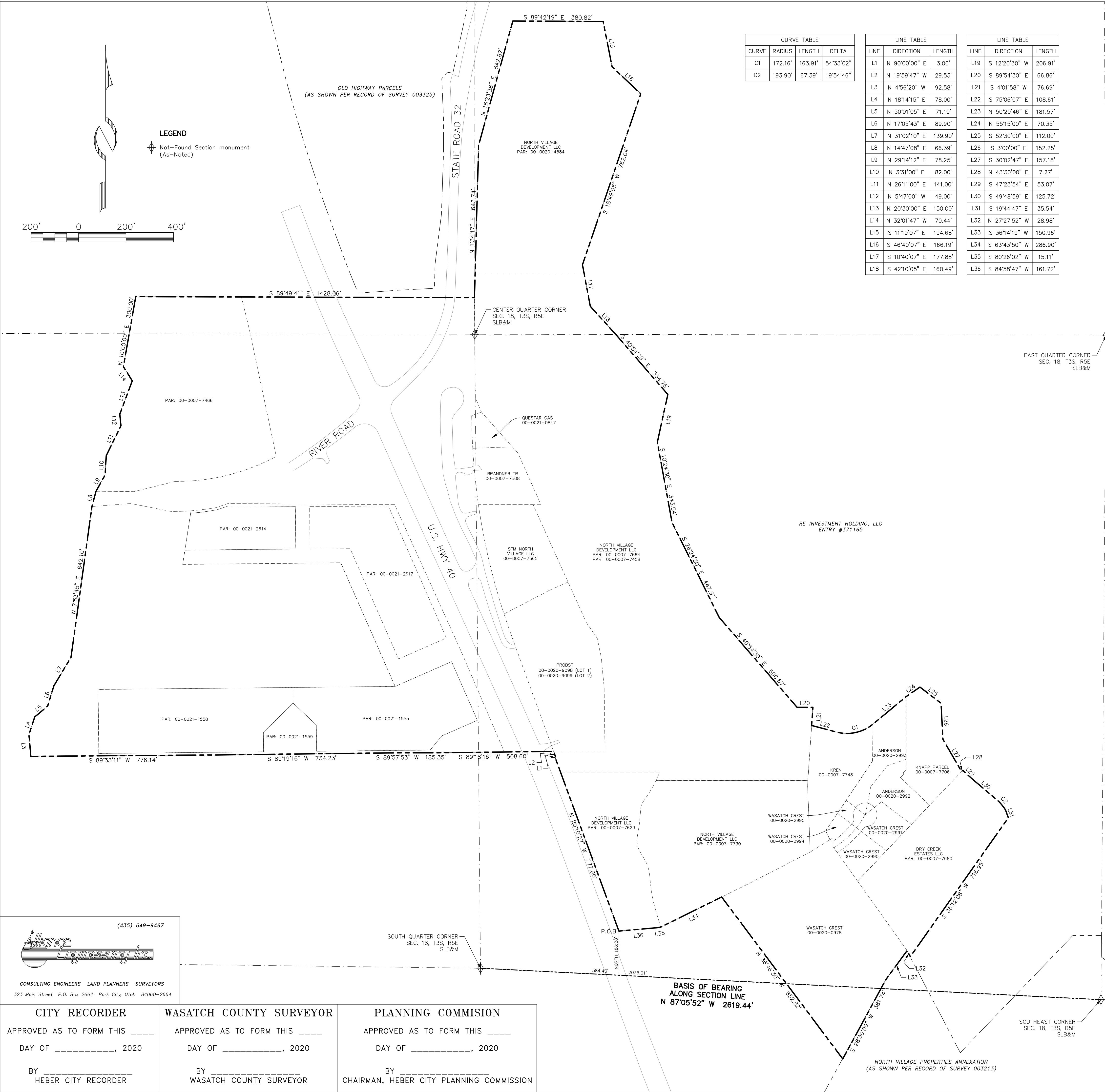
RECORDED

STATE OF UTAH, COUNTY OF SUMMIT, AND FILED

AT THE REQUEST OF _____

DATE _____ TIME _____

ENTRY NO. _____ FEE _____ RECORDER _____



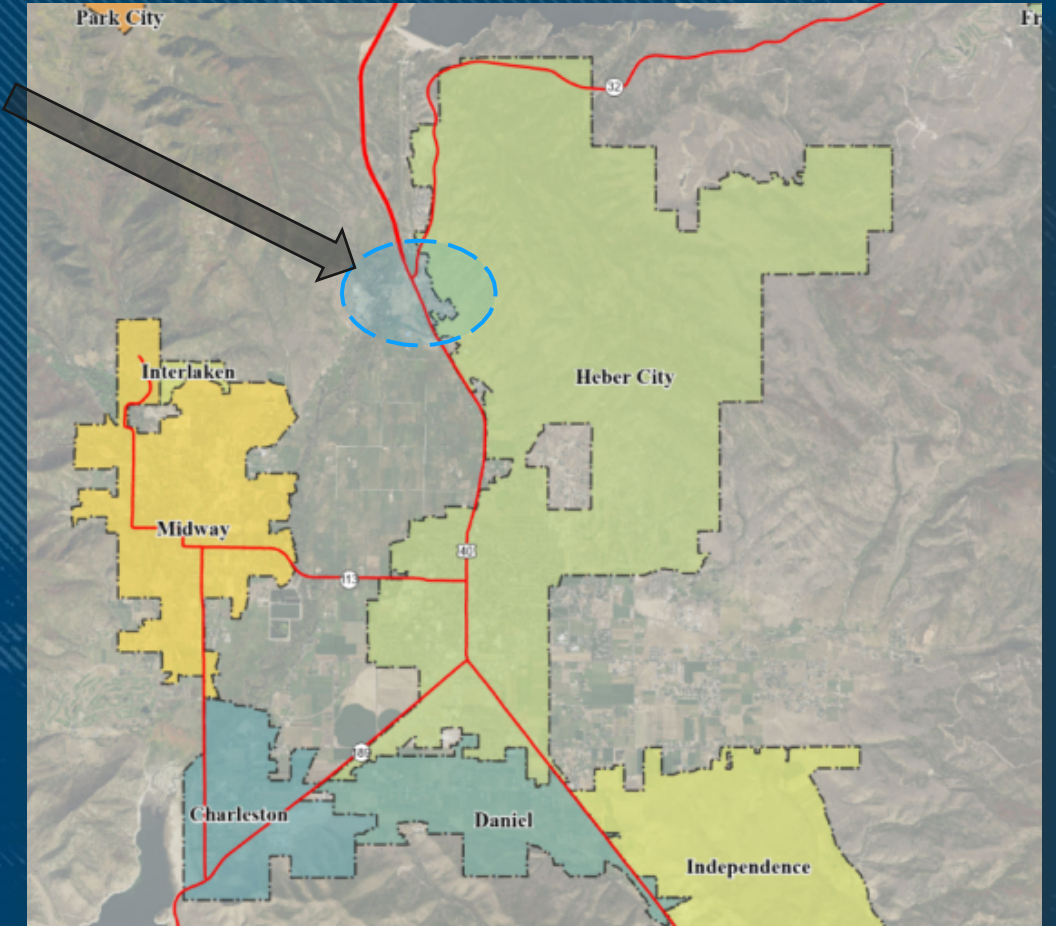
(435) 649-9467

Alliance Engineering Inc.

CONSULTING ENGINEERS LAND PLANNERS SURVEYORS

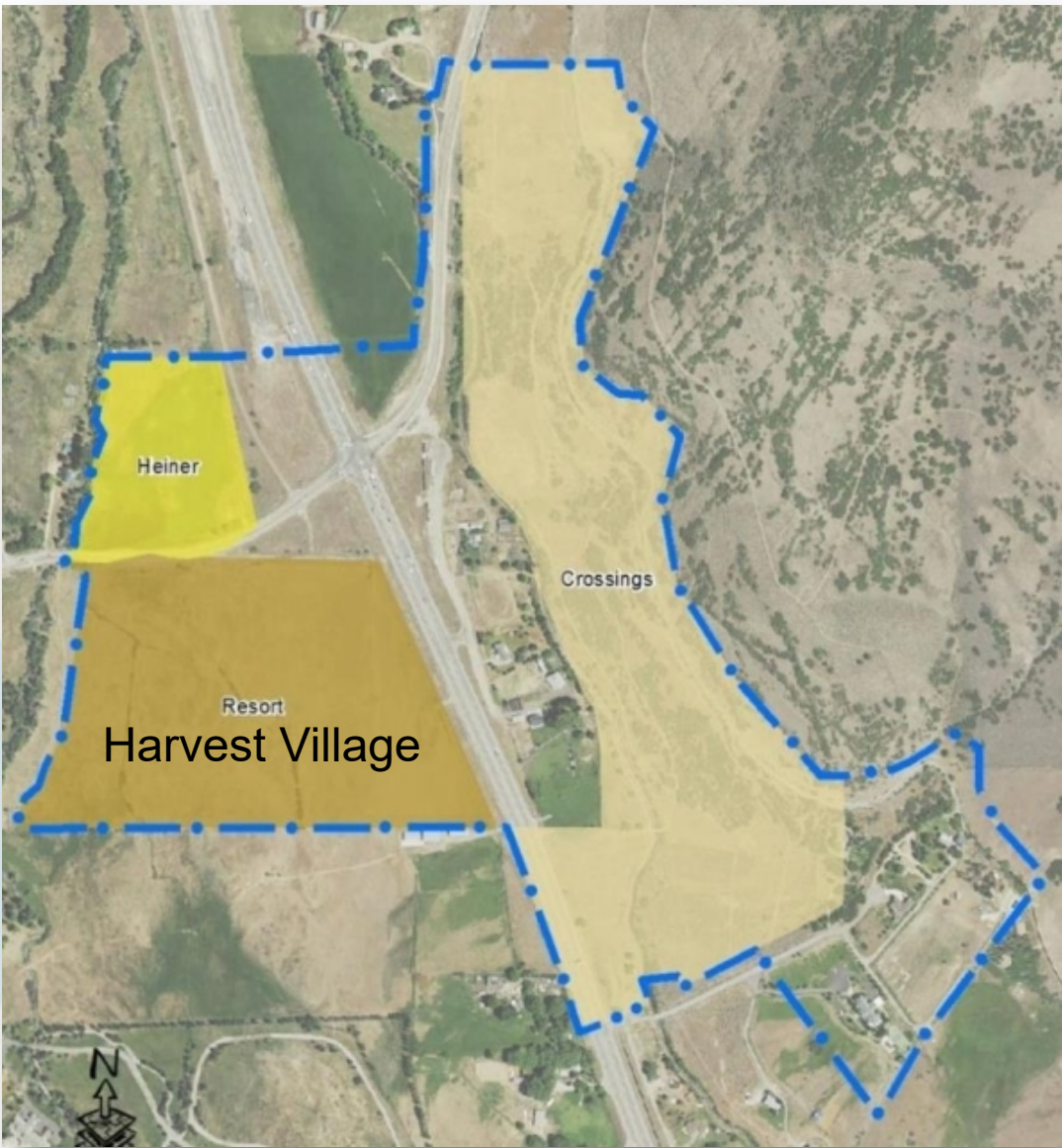
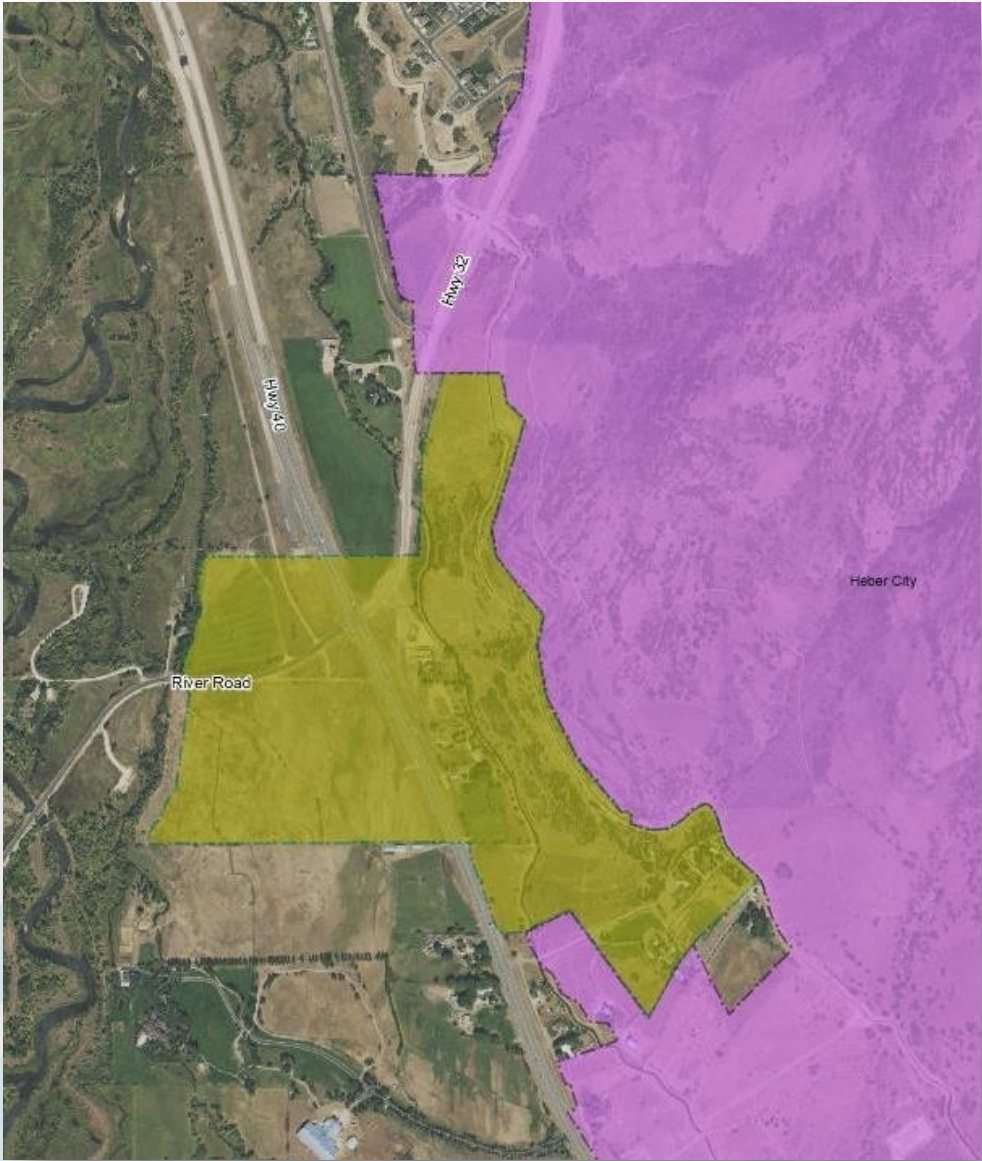
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

CITY RECORDER	WASATCH COUNTY SURVEYOR	PLANNING COMMISSION
APPROVED AS TO FORM THIS _____	APPROVED AS TO FORM THIS _____	APPROVED AS TO FORM THIS _____
DAY OF _____, 2020	DAY OF _____, 2020	DAY OF _____, 2020
BY _____ HEBER CITY RECORDER	BY _____ WASATCH COUNTY SURVEYOR	BY _____ CHAIRMAN, HEBER CITY PLANNING COMMISSION

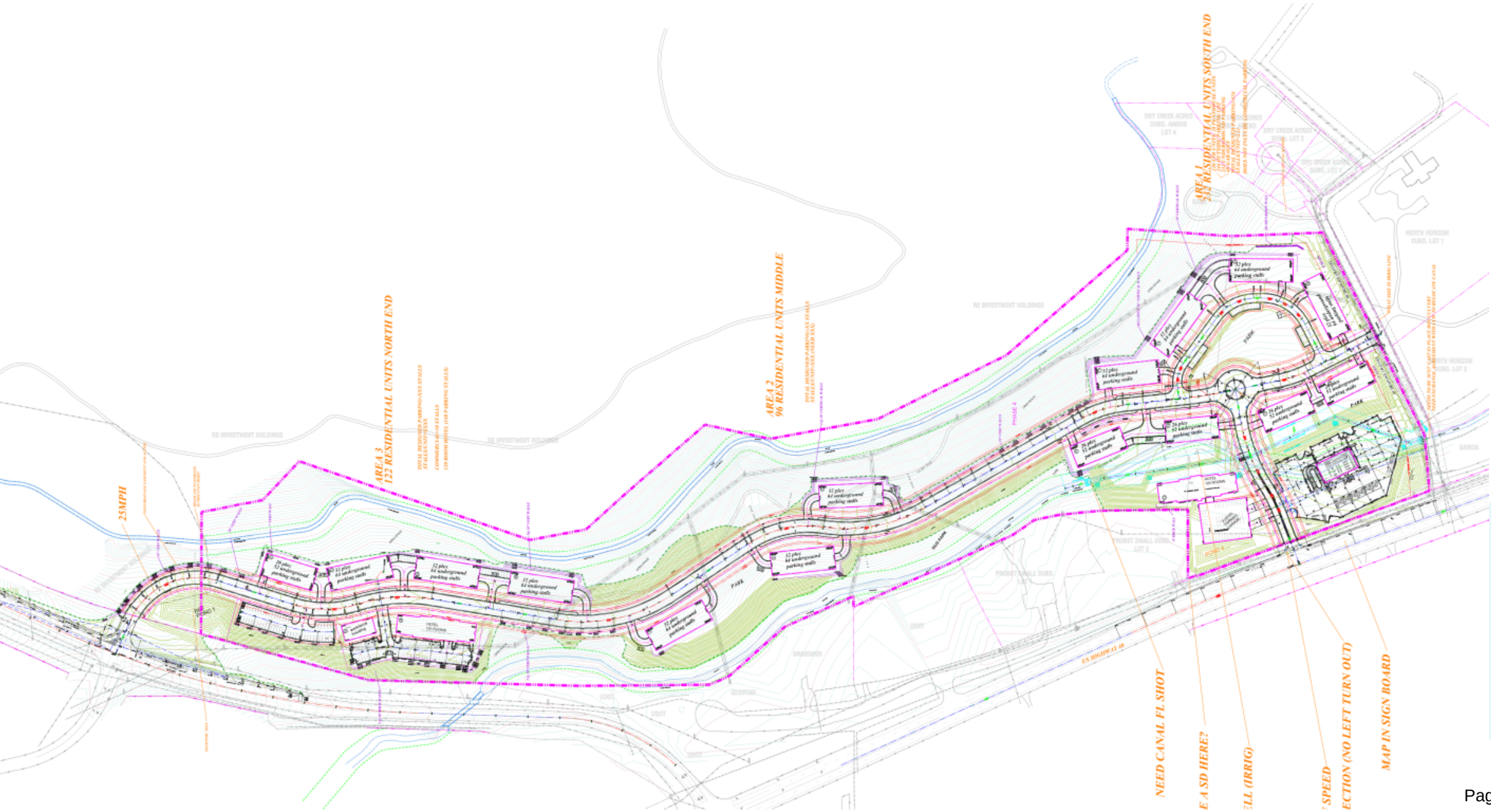


Crossings/Resort Annexation

Annexation Boundaries



Crossings Site Plan

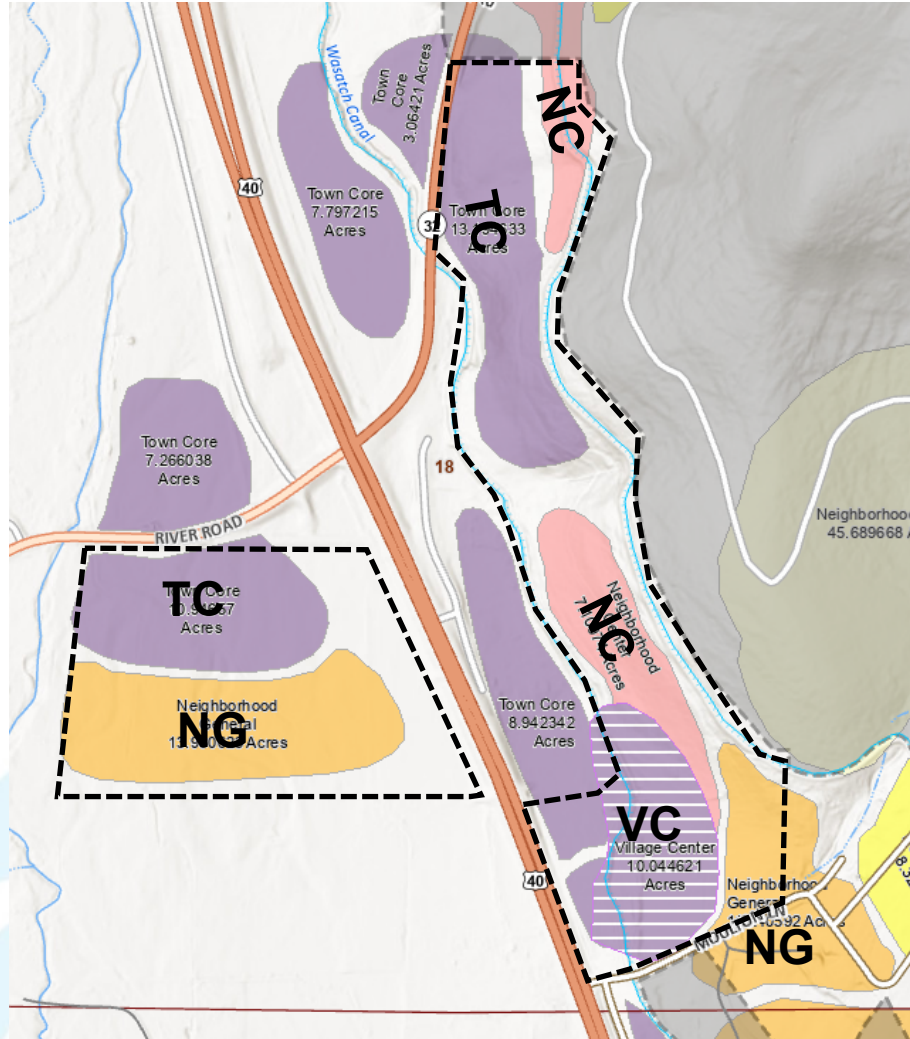


Harvest Village Site Plan

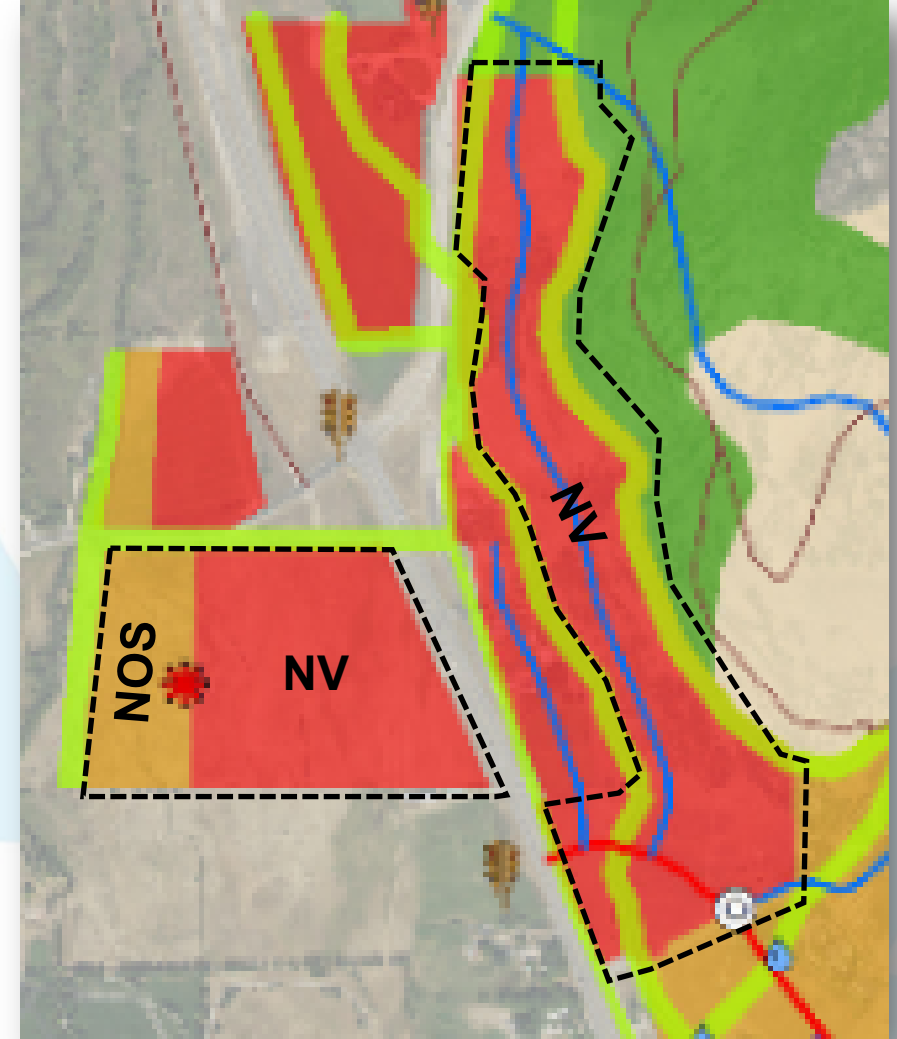


Zoning Map Comparisons

County NVOZ



City NVOZ



Crossings Zoning Breakdown

Wasatch County Zoning

District	Acres*	ERU/Acre	ERU
VC	13	6	78
TC	19	6	114
NC	19	4	76
NG	5	3	15
TOTAL	56.36		283
75% to 90% Net ERU			212 to 250

*Totals do not add up due to rounding

Heber City Zoning

District	Acres	ERU/Acre	ERU
NV	56.36	4.5	253.62
TOTAL			253.62

Harvest Village Zoning Breakdown

Wasatch County Zoning			
District	Acres*	ERU/Acre	ERU
TC	15.7	6	94.2
NG	23.2	3	69.6
TOTAL	38.93		163.8
75% to 90% Net ERU			123 to 147

Heber City Zoning			
District	Acres*	ERU/Acre	ERU
NV	27.8	4.5	125.1
NOS	11.1	3	33.3
TOTAL	38.93		158.4

*Totals do not add up due to rounding

ERU Breakdown (City MDA)

Harvest Village	
USE	ERUs
Hotel	34
Residential	204
Commercial	55
SUBTOTAL	293
Affordable Housing	33
TOTAL	326

Crossings	
USE	ERUs
Hotel	60
Residential	357
Commercial	5
SUBTOTAL	422
Affordable Housing	42
TOTAL	464

ERU Comparison

Development	County Zoning	City Zoning	County MDA	City MDA
Crossings	283 (212 to 250 net)	253.62	359.93	464
Harvest Village	163.8 (123 to 147 net)	158.4	370	326

Building Height Comparison

City NVOZ						County NVOD
District	Mixed Use	Stacked Flat	Commercial	Townhome ²	SFD	
UV 6 ERU per acre	4 story max up to 62 ft	4 story max up to 56 ft	3 story max up to 52 ft 4 story max (hospitality) up to 66 ft	3 story max up to 42 ft	3 story max up to 42 ft	VC & TC • 6 ERU per acre • 55 ft max
NV 4.5 ERU per acre	4 story max up to 62 ft ^{1, 3}	4 story max up to 56 ft	3 story max up to 52 ft 4 story max (hospitality) up to 66 ft	3 story max up to 42 ft	N/A	NC • 4 ERU per acre • 50 ft max
NOS 3 ERU per acre 1: 5 story (50' to 76') hospitality 2: 3rd story rooftop deck	3 story max up to 48 ft	3 story min up to 42 ft	N/A	3 story max up to 42 ft	3 story max up to 42 ft	NG • 3 ERU per acre • 40 ft max

3: 3 story max within 150' of Hwy 40 Crossings MDA

5 story max (50' to 70') excluding parking Crossings MDA request & 150' min from Hwy 40

Retaining Wall Heights

City Wall Heights

Zoning Wall Height	Zoning Terrace	MDA Height	MDA Design
10' (no overall max)	4'	10' wall (40' over max height/3' terrace)	Natural Rock

County Zoning Wall Heights

Height	Terrace	Length*	Design	Landscaping
10' wall (30' overall max)	3'	800'	Rock or stone	Native
Over 30', no overall max	N/A	N/A	Soil nail, shotcrete rock texture	At base of wall

*Over 800' length or over 10' height is a conditional use

Suggested Discussion Outline

Harvest Village

1. Zoning as North Village (NV) sub-district (3.1)
2. Project Density (4.1)
3. Site Plan Vesting (4.2)
4. Exceptions to NVOZ Zone (4.2.1)
5. Affordable Housing (4.5)
6. Term (5)
7. UDOT Bypass Road and Delay in Approvals (6.2)
8. Parks and Open Space (7)
9. North Fields Preservation (7.8)

Crossings

1. Zoning as North Village (NV) sub-district (3.1)
2. Site Plan Vesting (4.2)
3. Exceptions to NVOZ Zone (4.2.1)
4. Affordable Housing (4.5)
5. Term (5)
6. Parks and Open Space (7)
7. North Fields Preservation (7.8)

Policy Questions

1. Are the development agreements ready for approval? What terms need modified?
2. Is the annexation ready for approval?

Recommendation

Council discuss the proposed development agreements, and when ready, adopt Ordinance 2024-24 approving the North Village Development Annexation, conditional upon recording the development agreements (MDAs) prior to recording the Annexation Plat, Ordinance 2024-24 and associated MDAs.

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 00-0020-4584, 00-0007-7458,
00-0007-7664, 00-0007-7623, & 00-0007-7730

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
NORTH VILLAGE CROSSINGS**

THIS DEVELOPMENT AGREEMENT FOR THE NORTH VILLAGE CROSSINGS (this "**Agreement**") is made and entered into as of the [REDACTED] day of [REDACTED], 2024, by and between HEBER CITY, a political subdivision of the State of Utah (the "**City**"), and NORTH VILLAGE DEVELOPMENT LLC, a Utah limited liability company ("**NVD**"). Each of NVD and the City are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. NVD is the owner of approximately 56.39 acres of undeveloped real property located on the Southeast intersection of Hwy 40 and River Road (Parcel Nos. 00-0020-4584 (12.89 acres); 00-0007-7458 (3.85 acres); 00-0007-7664 (28.73 acres); 00-0007-7623 (4.02 acres); 00-0007-7730 (6.9 acres)) in Wasatch County, State of Utah (the "**Property**"). A legal description of the Property is attached hereto as **Exhibit A**.

B. In conjunction with the approval of this Agreement, the City approved and adopted a Site Plan for the Project (the "**Site Plan**"), subject to the Parties entering into this Agreement and the City agreeing to annexation of the Property.

C. The Site Plan for the Property provides for a mixed-use development, including open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone ("**NVOZ**") as North Village (NV) Sub-District or as outlined within this Agreement.

D. This Agreement and the Site Plan meets the intent of, complies with, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of NVD and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and NVD hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.**

1.1 **Incorporation.** The foregoing Recitals and **Exhibits A** through **E** are hereby incorporated into this Agreement.

1.2 **Definitions** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2024), as amended.

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any publicly owned area or public park identified on the Site Plan that is intended to provide services to the community at large.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular

Subdivision. Backbone Improvements are generally considered to be in the nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2024).

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City’s Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City’s Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.15 **City’s Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date, including the Envision 2050 Heber General Plan

1.2.16 **Collector Road** means the collector road shown on the Site Plan. The width and configuration of the Collector Road shall comply with Site Plan, except that City may require the Collector Road to be modified or expanded at the intersections of Highway 40 and State Road 32 if the traffic study for the Project establishes that turn lanes or other modifications are required at those intersections.

1.2.17 **Council** means the elected City Council of the City.

1.2.18 **Default** shall have the meaning provided in Section 14.

1.2.19 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.20 **Developer** shall have the meaning provided in Section 22.

1.2.21 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.22 **Development Property** shall have the meaning provided in Section 22.1.

1.2.23 **Development Report** means a report containing the information specified in Section 4.3 submitted to the City by NVD or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from NVD.

1.2.24 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.25 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. § 10-2-425.

1.2.26 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws. A copy of Section 18.21.020.2.2(2) of the City's Vested Laws is attached hereto as **Exhibit E**.

1.2.27 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.28 **Highway 40** means a “state highway” type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40, as that route may be changed from time-to-time.

1.2.29 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.30 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.31 **Intended Uses** means the use of all or portions of the Project for open space, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.32 **Market Rate units** means any non-Affordable Housing within the Project.

1.2.33 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.34 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.35 **Mortgagee** means any holder of a lender’s beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.36 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.37 **North Fields** means that certain real property generally depicted on **Exhibit C** attached hereto.

1.2.38 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.39 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan

that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.40 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.41 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development to handle on-site or off-site storm drain requirements.

1.2.42 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.43 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.44 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.45 **Phase** means the development of a portion of the Project.

1.2.46 **Planning Commission** means the City's Planning Commission.

1.2.47 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.48 **Property Owner or Property Owners** means NVD and any other successor-in-interest to NVD as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.49 **Property Owners' Association(s)** means one or more associations or other entities (including a public infrastructure district or other financing district) formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.50 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan generally depicts the development plan for the Property.

1.2.51 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.52 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.53 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.54 **Zone** means the City's North Village Overlay District Zone - – North Village (NV) Sub-District.

1.2.55 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement.

3. **Zoning and Vested Rights.**

3.1 **Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone as a North Village (NV) Sub-District

3.2 **Vested Rights.** Subject to paragraphs 3.3 and 3.4, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, and the zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).

3.3 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable

ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.

3.4 Exceptions to Vested Rights. The vested rights and the restrictions on the applicability of City's Future Laws as specified in Section 3.2 are subject to the following exceptions:

3.4.1 Agreed to Regulations. City's Future Laws or other regulations to which the Developer agrees in writing;

3.4.2 State and Federal Compliance. City's Future Laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;

3.4.3 Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists;

3.4.4 Safety Codes. Any City's Future Laws that are updates or amendments to building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are enacted to meet legitimate concerns related to public health, safety or welfare;

3.4.5 Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes do not materially impact the ability of Property Owners to develop the Project in accordance with the Site Plan.

3.4.6 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

3.4.7 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.4.8 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;

3.4.9 Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design

requirements, setbacks or similar items so long as such changes do not reduce the Density Entitlements and do not materially and unreasonably increase the overall cost of the Project; or

3.4.10 Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(ii)(A) (2024).

4. **Development of the Property in Compliance with the Site Plan. Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to [60] hotel ERUs, up to [354] residential ERUs, and up to [10] commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "Density Entitlements"). Property Owners shall also either, at the Property Owners' election, construct a minimum of [44] residential ERUs of Affordable Housing as detailed in Section 4.5 of this Agreement or pay a fee-in-lieu thereof in accordance with the City's Vested Laws. **Building Elevations and Design.** As part of the approval process, Property Owners have provided potential building elevations for the hotel and condominium portions of the Project, which elevations are attached hereto as Exhibit _____. The building elevations and design standards must be similar in materials and appearance to the proposed elevations, or Property Owners must propose and obtain approval from the City Council for elevations that are consistent with NVOZ design guidelines and are to the standard of a four star resort hotel in Park City or Deer Valley.

4.3 **Gas Station Design.** The gas station must be similar in architectural design and building materials as the neighboring hotel or condominiums. No signage or lighting is allowed on the canopy except lighting that points down. The canopy, including the underneath of the canopy and posts, must be a neutral or dark color to blend with the building. Wood or imitation wood material on canopy roof and posts is preferred. The building must be solid neutral colors with a mix a natural rock or brick. Park strips must be fully landscaped with a mix of trees, wood chips, shrubs or grass. A maximum of 3 lit buildings signs no more than ____ square feet each and one monument sign no more than ____ is allowed. An example is attached hereto as Exhibit ____.

4.4 **Intended Uses by Parcel and Densities.** Intended Uses and Densities for the Project are shown on the Site Plan for the Property. The general street configurations, building types and locations, and general layout for the Project shall comply with Site Plan, which is both a vested right and a requirement. This includes the City's acceptance of the following exceptions to NVOZ ordinances:

4.4.1 NDV shall be permitted to construct buildings in the Project with a minimum 15' front setback.

4.4.2 NDV shall be permitted to construct residential and commercial structures in areas with natural slopes greater than thirty percent (30%) so long as NDV reasonably demonstrates to City staff, through soil testing or other means, that the stability of such slopes is reasonably sufficient in its natural condition or would be reasonably sufficient following the implementation of reinforcement measures for support.

4.4.3 NVD shall not be required to erect retaining walls or similar structures in areas in which such walls and/or structures would be required under City's Vested Laws or City's Future Laws if NVD reasonably demonstrates to City staff, through soil testing or other means, that the applicable soil is sufficiently stable; provided that, if any retaining walls or similar structures are required as a result of insufficient stability of the soil, then NVD shall be permitted to erect retaining walls and similar structures up to a total maximum height of forty (40) feet, except as otherwise set forth on the Site Plan, provided that retaining walls are no more than 10 feet tall with a minimum step back to the next wall of 3 feet. Any retaining walls for the Project that are visible from Highway 32 or Highway 40 must be constructed using natural rock unless the City Council approves the use of stamped concrete or other materials that blend into the surrounding environment.

4.5 Accounting for Density for Parcels Sold to Sub-developers. In connection with the sale of any Parcel sold by NVD to a Developer or Sub-developer, NVD shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, NVD shall provide the City Recorder with a development report (a "**Development Report**") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with NVD and any material effects of the sale on the Site Plan.

4.5.1 Return of Unused Density. If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to NVD. Such Development ERU shall be accounted for in any subsequent Development Report that NVD, or any of its successors in interest may be required to file with the City Recorder.

4.6 Affordable Housing Requirements. Developer shall construct not less than [REDACTED] residential ERUs of Affordable Housing within the Development. Affordable Housing shall be sold or rented, as applicable, to individuals or families with an average income of Eighty percent (80%) or less of the area median income (AMI) in Wasatch County, Utah and the monthly cost shall not be more than Thirty percent (30%) of a household's income. Individual income limits for occupants of the Affordable Housing may be anywhere within the affordable housing AMI ranges, including up to 120% of AMI; however, the overall unit mix shall have an AMI averaged of no more than 80% AMI. Property Owners shall have no obligation to disperse the Affordable Housing throughout the Project but may consolidate the Affordable Housing in one or more areas of the Project, in its sole discretion. The Property Owner shall construct at least 33% of the Affordable Housing units (or 11 residential ERUs) on the Property (the **"Onsite Affordable Housing Obligation"**), which, for the avoidance of doubt, may be satisfied by the provision of workforce housing described in Section 4.5.1 below and otherwise meeting the requirements for Affordable Housing hereunder. The remaining 67% of the Affordable Housing unit obligation (or 22 residential ERUs) (the **"Alternative Affordable Housing Obligation"**) may be satisfied by the Property Owner by one or more of the following, the determination of which shall be mutually agreeable between the City and the Property Owner, but otherwise in compliance with this Section 4.5, including Section 4.5.4 (Timing): (a) construction of Affordable Housing on the Property pursuant to this Section 4.5, (b) construction of Affordable Housing offsite pursuant to Section 4.5.3, (c) one or more payments to the City of a fee in lieu pursuant to Section 4.5.5, and/or (d) the donation of land to the City pursuant to Section 4.5.6. Property Owners shall also be entitled to allocate any such Affordable Housing requirements to Developers and/or Sub developers as Property Owners may elect. Developer and the City shall follow and comply with any deed restrictions as outlined in Chapter 18.102 of the City's Vested Laws. Property Owner's failure to comply with the Affordable Housing obligation pursuant to the terms of this Agreement shall constitute a material breach of this Agreement, and the City may pursue all available remedies to enforce compliance, including but not limited to legal and equitable relief.

4.6.1 Eligibility and Pricing. A qualified third-party professional property management company shall manage the rental of all Affordable Housing. Eligibility for the affordable for-rent housing will be based on the AMI standards of for-rent affordable housing. Property Owners may enter into one or more master leases with local employers whereby local employers may lease a block of units to meet the housing needs of their qualifying employees.

4.5.2 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing, and only to the extent required under Chapter 18.102 of the City's Vested Laws, Developer/ Owner shall negotiate and enter into with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Housing. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall have the right to enforce the terms of such a Covenant. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to be enforced by Unit Owners against each other.

4.6.3 Off-site Affordable Housing. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by construction of Affordable Housing off site on property owned by the City or another third party.

4.5.4 Timing. At least 50% of the required Affordable Housing requirement shall be completed no later than the construction of the first 50% of the Market Rate units; provided that, all of the Alternative Affordable Housing Obligation satisfied by the payment of a fee in lieu under Section 4.5.5 and/or by land donation(s) under Section 4.5.6, if applicable, shall be completed no later than the construction of the first 33% of the Market Rate units. The full Affordable Housing requirement shall be completed no later than construction of the first 90% of the Market Rate units. The Property Owners shall be entitled to a reduction of their affordable housing obligation

of 25% if they agree to construct their affordable housing obligation in the first phase of the Project. If the Property Owners choose to seek LIHTC credits, then Affordable Housing timing construction, and delivery, may be impacted. Property Owners shall use commercially reasonable efforts to meet the aforementioned timing commitments.

4.5.5 Fee in Lieu. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by paying a fee in lieu in the amount of \$60,000 per residential ERU. Payment of the fee shall be deemed sufficient to fulfill the relevant Alternative Affordable Housing Obligation without prejudice to any other rights or remedies available under this Agreement.

4.5.6 Land Donation. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by donating, or causing another third party to donate, one or more parcels of unimproved land to the City for the purpose of constructing Affordable Housing. The value of any donated land shall be determined by either of the following: (a) if the donated land was acquired within three (3) years of the date of such donation, the aggregate price per acre paid for such donated land, or (b) as determined by written appraisal in accordance with Heber City Code 18.102.050(J)(3) conducted within six months of the proposed donation. The full value of any donated land shall be recognized as a fee in lieu of \$60,000.00 in value required per residential ERU, consistent with the terms of Section 4.5.5. The Parties must agree in writing to the terms of any land donation, including the specific parcel(s), selection of the valuation method above, and compliance with the requirements outlined in this Section.

5. **Term.**

5.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue either for a period of twenty-five years (25) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs (the “**Term**”), unless it is terminated in accordance with Section 26. Unless otherwise agreed between the Parties, NVD’s vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term shall remain vested rights in accordance with the terms and conditions of such approvals. Furthermore, any obligations of Developer related to any licenses, building permits, or certificates of occupancy shall continue in full force and effect.

6. **Approval Processes for Development Applications.**

6.1 Phasing. The City acknowledges that NVD, Developers, and Sub-developers who have purchased Parcels of the Property will submit multiple applications from time to time to develop and/or construct portions of the Project in phases, as generally described in the Site Plan.

6.2 Timing of Collector Road Construction. Prior to issuance of any building permits for within each phase of the Project, as shown on the Phasing Plan attached hereto as **Exhibit D**, NVD shall complete or post completion assurance in accordance with Utah Code § 10-9a-604 (2024) for the construction of the portion of the Collector Road within that phase.

7. **Open Space, Improved Public Parks, and Trails Requirements**

7.1 Development Timing: Open Space, Neighborhood Parks, and Trails. For each Phase, neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. Open space, parks and trails shall comply with the requirements of Heber City Code § 18.21.050 for the NV Sub-District, except that NVD shall provide not less than 10% of the total Project area as Open Space and NVD must provide 10% of the overall Project area as Traditional Park Space in accordance with Heber City Code Table 5.1(1)) or pay a fee in lieu. In accordance with Utah Code § 10-9a-604(3)(d)(iv) and (4) (2024), the City may require completion assurance for any landscaping that is necessary to meet the open space or traditional park space requirements.

7.2 Dedication of Open Space or Trails. All trails, open space and park space within the Project shall be dedicated to and maintained by the Homeowner's Association.

7.3 Park Improvements and Design. The Site Plan includes one neighborhood park (the "Neighborhood Park") which is located in Phase 2 of the Project. The Neighborhood Park shall be fully landscaped with a mix of commercial playground equipment and recreational amenities. Prior to issuance of any building permits for the residential ERU's, NVD shall submit a park plan to the City for approval.

7.4 Park Impact Fees. Property Owners acknowledge that all required park, trail and open space improvements within the Project are a condition of development approval and are project improvements pursuant to Utah Code § 11-36a-102(15). Property Owners may be required to pay parks, recreation, open space and trails impact fees for system improvements that benefit the Project as established in the City's impact fee analysis.

7.5 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting,

granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

7.6 North Fields Preservation. Property Owners, for themselves and with respect to each subsequent Owner of the Property, agree that upon issuance of any building permit for residential or commercial ERUs, the Owner shall pay to the City a one-time fee equal to \$2,500 per ERU or such prorated amount on partial ERU attributable to such unit, as applicable (the “**North Fields Preservation Fee**”). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including the acquisition of development rights or the use of other conservation related tools for the preservation of open space. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Affordable Housing.

8. Public Improvements.

8.1 Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD). The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services. However, if at any point City sewer and water, including secondary water is available in the area, the City agrees that Property Owner shall be able to obtain City services. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers.

8.2 Streets. Unless otherwise designated on the Site Plan, all streets within the Project shall be improved to the Residential / Minor Collector standard as set forth in Heber City Code § 18.21.040.4.6. NVD shall be responsible to construct all streets and road accesses to the Project as shown on the Site Plan. Unless accepted by the City, all streets shall be dedicated to the Homeowners Association and shall be owned and maintained by the Homeowner’s Association.

8.3. **Storm Water Improvements and Management.** The Parties acknowledge that the City has adopted a regional storm water master plan (as finalized and adopted by the City, the “**City Updated North Village Stormwater Master Plan**”). NVD shall be required to comply with the policies and standards of the North Village Stormwater Master Plan and associated Stormwater Design Manual, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter. NVD acknowledges that compliance with North Village Stormwater Master Plan may require construction of off-site improvements as outlined in the City Updated North Village Storm water Master Plan, Developer and Property Owner shall restore or replace the historic, natural drainage channels downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan.

8.4 **Storm Water Retention/Detention from Off-Site Sources.** The Parties acknowledge that all or a portion of the On-Site Storm Water Retention/Detention for the Project will be on the property of an adjacent development. Prior to issuance of any permits for the Project, NVD shall be responsible to obtain all easements or other property rights necessary to construct the stormwater retention / detention for that portion of the Project in accordance with City standards.

8.5. **Infrastructure Plan.** NVD shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure that is necessary to support the development proposed within a specific Development Application.

8.6 **General Excess Improvements/Upsizing.** If the City requires NVD to enlarge, increase or otherwise “upsized” or upgrade (collectively, the “**Excess Improvements**”) the City agrees that it shall reimburse NVD from Impact Fees collected by the City for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by NVD in the construction of Excess Improvements. NVD shall not be compensated for any “upsizing” of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

8.7. **Reimbursement for Collector Road.** NDV is required to construct the Collector Road, which is indicated on the Site Plan as being a 69 foot right of way with a minimum of 38 feet of asphalt. City acknowledges and agrees that a standard residential road would only require 32 feet of asphalt. Accordingly, prior to completion of the road, City shall enter into an impact fee reimbursement agreement with NDV, in substantially the form utilized by the City for other

similar impact fee reimbursements, to reimburse NDV for the pro-rata costs of the additional required road width. The reimbursable costs shall include only the costs of the materials to construct the additional road width, and shall not include engineering, retaining walls, geotechnical or other costs that would have otherwise been required to build the Collector Road to a residential road standard.

8.8. Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan. The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

8.9. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

8.10 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8.11 Public Infrastructure District. City understands that NVD may request a Public Infrastructure District ("PID") pursuant to Utah Code § 17D-4-101 et seq. for the Property. The City shall review and reasonably consider NVD's petition to create the PID as an option to implement and facilitate the financing, construction,

and operation of some or all of the Public Infrastructure for the Project.

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a provision that regulates the nightly rental of any residential unit located on the Property. It is anticipated that nightly rental of residential units within the development shall be through the Property's hotel and within the hotel's brand standards. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Bonding.** Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "Security"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

11.3 Building Heights. No structure in the Project shall exceed three stories along Highway 40 unless approved by the City Council. The maximum height of structures in the Project generally shall not exceed five stories or seventy (70) feet from final grade, excluding any underground parking. To qualify to construct to five stories the proposed structure must offset from Highway 40 by at least 150 feet to protect the views of surrounding properties and highway 40.

12. **Grading, On-Site Processing of Natural Materials.**

12.1 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and subject to City's Vested Laws, may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

13. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Remedies Upon Default.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City’s obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.]

14.4 **City’s Remedies Upon Default.** In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

North Village Development, LLC
Attn: Richard T. Wolper
7026 S 900 East
Midvale, UT 84047

To the City:

City of Heber
Attn: City Recorder
25 North Main Street

Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by NVD or its successors and assigns.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed twenty-one (21) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 Notification Regarding Application and Administrator's Approval. Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 21-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. Amendment. Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 Submissions of Modification Applications. Only the City or NVD or an assignee of NVD, approved in writing by the City, and one that succeeds to all of the rights and obligations of NVD under this Agreement may submit a Modification Application.

17.2 Modification Application Contents. Modification Applications shall:

17.2.1 Identification of Property. Identify the property or properties affected by the Modification Application.

17.2.2 Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 Identification of Non-City Agencies. Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 Map. Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 Fee. Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. Mutual Cooperation in Processing Modification Applications. Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 Planning Commission Review of Modification Applications.

17.4.1 Review. All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 Recommendation. The Planning Commission's vote on the Modification Application, if required by law, shall be only a recommendation.

17.5 Council Review of Modification Application. After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 Council's Objections to Modification Applications. If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent

with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 Mediation of Council's Objections to Modification Applications. If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 Amendments by NVD. Notwithstanding any other provision in this Agreement to the contrary, NVD may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from NVD or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor NVD shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. Estoppel Certificate. Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. Entire Agreement. Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

20. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

21. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, NVD or its successor may sell any portion of the Property to one or more parties (each a “**Developer**” or “**Sub-developer**”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property.

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless NVD otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of NVD, which may be granted or withheld in NVD's sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by NVD Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved

Final Plats, site plans, and/or Development Applications procured by NVD for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

22.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

22.1.4 NVD shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

23. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

24. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period

of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. **Termination.**

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in Default beyond any applicable notice, grace or cure period, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 Notice of Termination. City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

25.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

26. Insurance and Indemnification. Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

27. Hazardous, Toxic, and/or Contaminating Materials. Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

28. **Binding Effect.** If NVD or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and NVD each shall designate and appoint a representative to act as a liaison between the City and its various departments and NVD. The initial representative for the City shall be City Manager, or his designee and the initial representatives for NVD shall be Richard T. Wolper. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall

not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

37. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

38. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

39. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

40. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

41. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

[Signatures appear on the following two pages.]

CITY

Heber City, a political subdivision of the State of Utah

By: _____

Name:

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By: _____

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Legal Description

[REDACTED]

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Site Plan

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

North Fields

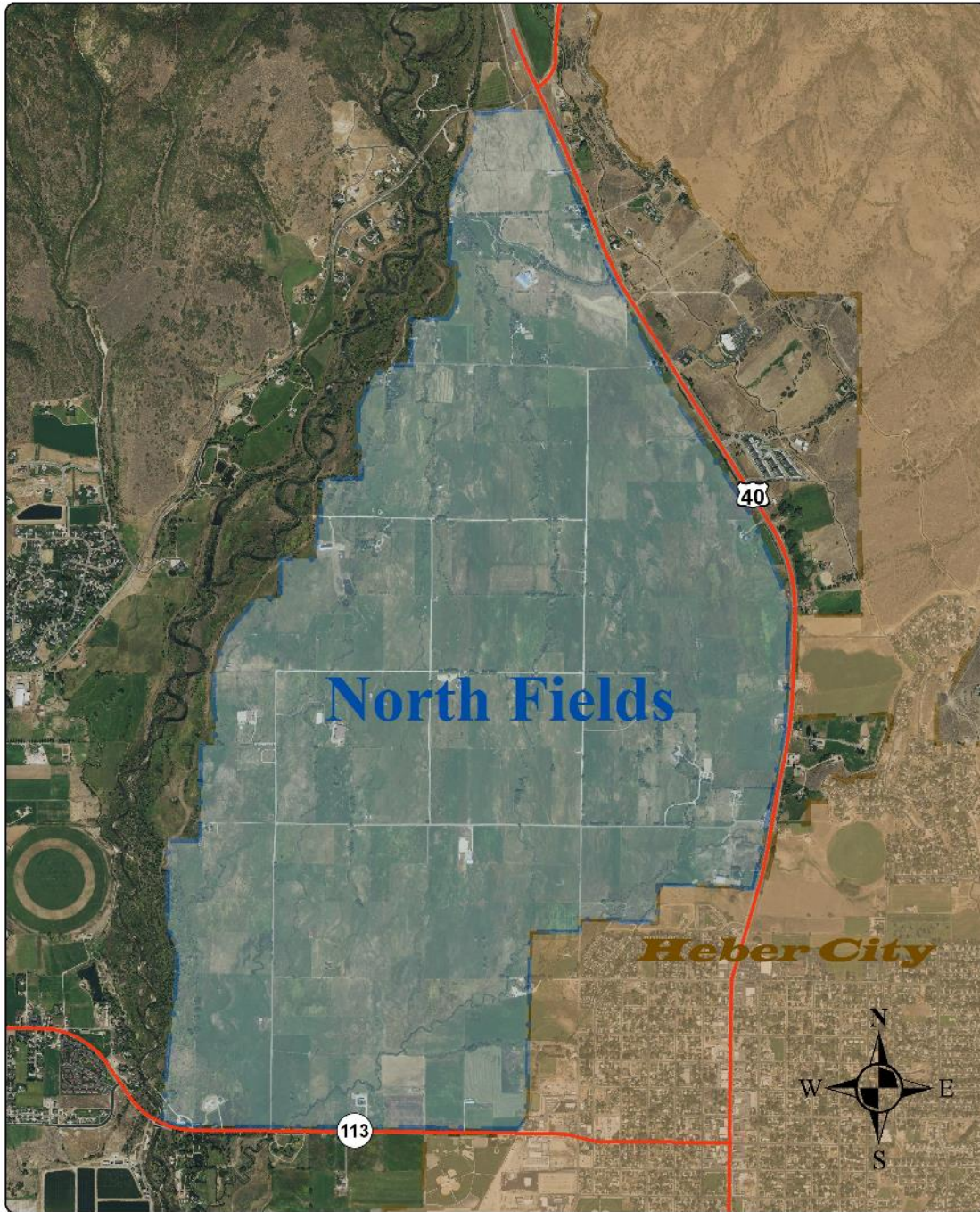


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

Phasing Plan

EXHIBIT E
TO DEVELOPMENT AGREEMENT FOR NORTH VILLAGE CROSSINGS

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
HARVEST VILLAGE MIXED USE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE HARVEST VILLAGE MIXED USE DEVELOPMENT (this “**Agreement**”) is made and entered into as of the [REDACTED] day of [REDACTED], 2024, by and between HEBER CITY, a political subdivision of the State of Utah (the “**City**”), and KLJB, LLC and its successor and assign ANGSTROM DEVELOPMENT GROUP LLC, a Utah limited liability company (“**ADG**”), BAIBACH, LLC, and K&H DEVELOPMENT HEBER, LLC (collectively “**Property Owners**”). The Property Owners and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Property Owners are the owners of approximately 39 acres of undeveloped real property located on the Southwest intersection of Hwy 40 and River Road (Parcel Nos. 20-0622, 21-2614, 21-2615, 21-2612, 21-2480, 21-2617, 21-1557, 21-1555, 21-1559, and 21-1558) in Wasatch County, State of Utah (the “**Property**”). A legal description of the Property is attached hereto as **Exhibit A**.

B. In conjunction with the approval of this Agreement, the City approved and adopted a Site Plan for the Project (the “**Site Plan**”).

C. The Site Plan for the Property provides for a mixed-use development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone (“**NVOZ**”) as North Village (NV) Sub-District or as outlined within this Agreement.

D. This Agreement and the Site Plan meets the intent of, complies with, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of Property Owners and their successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Property Owners hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.** **Incorporation.** The foregoing Recitals and **Exhibits A** through **D** are hereby incorporated into this Agreement.

1.2 **Definitions** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2024), as amended.

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any publicly owned area or public park identified on the Site Plan that is intended to provide services to the community at large.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision. Backbone Improvements are generally considered to be in the

nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2024).

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City’s Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City’s Future Laws** means the ordinances, policies, standards, and procedures of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.15 **City’s Vested Laws** means the ordinances, policies, standards, and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.16 **Council** means the elected City Council of the City.

1.2.17 **Default** shall have the meaning provided in Section 14.

1.2.18 **Design Guidelines** means the design guidelines referenced in the North Village Overlay Zone.

1.2.19 **Developer** shall have the meaning provided in Section 22.

1.2.20 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.21 **Development Property** shall have the meaning provided in Section 22.1.

1.2.22 **Development Report** means a report containing the information specified in Section 3.4 submitted to the City by Property Owners or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from Property Owners.

1.2.23 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.24 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. § 10-2-425.

1.2.25 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws.

1.2.26 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.27 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40, as that route may be changed from time-to-time.

1.2.28 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.29 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.30 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.31 **Intended Uses** means the use of all or portions of the Project for open space, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.32 **Market Rate units** means any non-Affordable Housing within the Project.

1.2.33 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.34 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.35 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.36 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.37 **North Fields** means that certain real property generally depicted on **Exhibit C** attached hereto.

1.2.38 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.39 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.40 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.41 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development to handle on-site or off-site storm drain requirements.

1.2.42 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.43 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.44 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.45 **Phase** means the development of a portion of the Project.

1.2.46 **Planning Commission** means the City's Planning Commission.

1.2.47 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.48 **Property Owner or Property Owners** means KLJB, LLC and its successor and assign ADG, Baibach, LLC, and K&H Development Heber, LLC and any other successor-in-interest to any of the foregoing as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.49 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan generally depicts the development plan for the Property.

1.2.50 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.51 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.52 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.53 **Zone** means the City's North Village Overlay District Zone – North Village (NV) Sub-District.

1.2.54 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement.

3. **Zoning and Vested Rights.**

3.1 **Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone as a North Village (NV) Sub-District.

3.2 **Vested Rights.** Subject to paragraphs 3.3 and 3.4, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, and the zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).

3.3 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement.

3.4 **Exceptions to Vested Rights.** The vested rights and the restrictions on the applicability of City's Future Laws as specified in Section 3.1 are subject to the following exceptions:

3.4.1 **Agreed to Regulations.** City's Future Laws or other regulations to

which the Developer agrees in writing;

3.4.2 State and Federal Compliance. City's Future Laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;

3.4.3 Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists;

3.4.4 Safety Codes. Any City's Future Laws that are updates or amendments to building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are enacted to meet legitimate concerns related to public health, safety or welfare;

3.4.5 Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes do not materially impact the ability of Property Owners to develop the Project in accordance with the Site Plan.

3.4.6 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

3.4.7 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.4.8 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;

3.4.9 Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not reduce the Density Entitlements and do not materially and unreasonably increase the overall cost of the Project; or

3.4.10 Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah

4. **Development of the Property in Compliance with the Site Plan.**

4.1 **Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to 34 hotel ERUs, up to 211 Market Rate residential ERUs (split between for sale condos/townhomes and for rent multi-family), and up to 48 commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the “**Density Entitlements**”). Property Owners also have an obligation to provide 33 residential ERUs as Affordable Housing as detailed in Section 4.5 of this Agreement.

4.2 **Building Elevations and Design.** As part of the approval process, Property Owners have provided potential building elevations for the hotel and condominium portions of the Project, which elevations are attached hereto as Exhibit _____. The building elevations and design standards must be similar in materials and appearance to the proposed elevations, or Property Owners must propose and obtain approval from the City Council for elevations that are consistent with NVOZ design guidelines and are to the standard of a four star resort hotel in Park City or Deer Valley.

4.2 **Transfer of Density for Eminent Domain.** If a portion of the Project is voluntarily or involuntarily transferred for public use, including, but not limited to, property taken by the Utah Department of Transportation as part of a road expansion project, Property Owner shall not be entitled to move density to other portions of the Project or amend the Site Plan to adjust for densities in areas acquired for public use.

4.3 **Intended Uses by Parcel and Densities.** Intended Uses and Densities for the Project are shown on the Site Plan for the Property. The general street configurations, building types and locations, and general layout for the Project shall comply with Site Plan, which is both a vested right and a requirement. This includes the City’s acceptance of the following exceptions to NVOZ ordinances:

4.3.1 **Building Heights.** Property Owners shall be allowed to construct a hotel or condominium hotel as a principal anchor to their development that is no more than five stories with stories being measured in height consistent with the Heber City NVOZ zone “Mixed Use Building” provision of the code found at § 3.3 of Chapter 18.21 of the North Village Overlay District.

Property Owners shall also be allowed to construct townhomes, affordable housing, and commercial retail buildings at three stories consistent with the provisions of Heber City NVOZ zone code found at Chapter 18.21 of the North Village Overlay District. Property Owners shall be allowed to include

rooftop decks on the proposed townhomes without violating the building height requirements of Chapter 18.21.

4.3.2 **Setbacks.** Property Owners shall be permitted to construct residential townhomes with minimum side yard setbacks between building at five (5) feet per building, for a combined setback of ten (10) feet. To protect the natural riparian areas the rear yard setback at Rock Creek on the West side of the Property shall be thirty feet (30) feet from the property line. To provide a natural barrier from the residential property South of the Property the Property Owners shall provide a thirty-foot (30) foot buffer from the property line.

4.2.3 **Contiguous Units.** Property Owners shall be permitted to construct residential townhomes with up to eight (8) contiguous units.

4.2.4 **Front Drives.** Property Owners shall be permitted to build townhomes with front driveways, not alleys, on their private road(s).

4.4 **Accounting for Density for Parcels Sold to Sub-developers** In connection with the sale of any Parcel sold by Property Owners to a Developer or Sub-developer, Property Owners shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, Property Owners shall provide the City Recorder with a development report (a "Development Report") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with Property Owners and any material effects of the sale on the Site Plan.

4.4.1 **Return of Unused Density.** If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to Property Owners. Such Development ERU shall be accounted for in any subsequent Development Report that Property Owners, or any of its successors in interest may be required to file with the City Recorder.

4.5 **Affordable Housing Requirements.** Developer shall construct not less than 33 residential ERUs of Affordable Housing within the Development. Affordable Housing shall be sold or rented, as applicable, to individuals or families

with an average income of Eighty percent (80%) or less of the area median income (AMI) in Wasatch County, Utah and the monthly cost shall not be more than Thirty percent (30%) of a household's income. Individual income limits for occupants of the Affordable Housing may be anywhere within the affordable housing AMI ranges, including up to 120% of AMI; however, the overall unit mix shall have an AMI averaged of no more than 80% AMI. Property Owners shall have no obligation to disperse the Affordable Housing throughout the Project but may consolidate the Affordable Housing in one or more areas of the Project, in its sole discretion. The Property Owner shall construct at least 33% of the Affordable Housing units (or 11 residential ERUs) on the Property (the “**Onsite Affordable Housing Obligation**”), which, for the avoidance of doubt, may be satisfied by the provision of workforce housing described in Section 4.5.1 below and otherwise meeting the requirements for Affordable Housing hereunder. The remaining 67% of the Affordable Housing unit obligation (or 22 residential ERUs) (the “**Alternative Affordable Housing Obligation**”) may be satisfied by the Property Owner by one or more of the following, the determination of which shall be mutually agreeable between the City and the Property Owner, but otherwise in compliance with this Section 4.5, including Section 4.5.4 (Timing): (a) construction of Affordable Housing on the Property pursuant to this Section 4.5, (b) construction of Affordable Housing offsite pursuant to Section 4.5.3, (c) one or more payments to the City of a fee in lieu pursuant to Section 4.5.5, and/or (d) the donation of land to the City pursuant to Section 4.5.6. Property Owners shall also be entitled to allocate any such Affordable Housing requirements to Developers and/or Sub developers as Property Owners may elect. Developer and the City shall follow and comply with any deed restrictions as outlined in Chapter 18.102 of the City's Vested Laws. Property Owner's failure to comply with the Affordable Housing obligation pursuant to the terms of this Agreement shall constitute a material breach of this Agreement, and the City may pursue all available remedies to enforce compliance, including but not limited to legal and equitable relief.

4.5.1 Eligibility and Pricing. A qualified third-party professional property management company shall manage the rental of all Affordable Housing. Eligibility for the affordable for-rent housing will be based on the AMI standards of for-rent affordable housing. Property Owners may enter into one or more master leases with local employers whereby local employers may lease a block of units to meet the housing needs of their qualifying employees.

4.5.2 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing, and only to the extent required under Chapter 18.102 of the City's Vested Laws, Developer/ Owner shall negotiate and enter into

with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Housing. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall have the right to enforce the terms of such a Covenant. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to be enforced by Unit Owners against each other.

4.5.3 Off-site Affordable Housing. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by construction of Affordable Housing off site on property owned by the City or another third party.

4.5.4 Timing. At least 50% of the required Affordable Housing requirement shall be completed no later than the construction of the first 50% of the Market Rate units; provided that, all of the Alternative Affordable Housing Obligation satisfied by the payment of a fee in lieu under Section 4.5.5 and/or by land donation(s) under Section 4.5.6, if applicable, shall be completed no later than the construction of the first 33% of the Market Rate units. The full Affordable Housing requirement shall be completed no later than construction of the first 90% of the Market Rate units. The Property Owners shall be entitled to a reduction of their affordable housing obligation of 25% if they agree to construct their affordable housing obligation in the first phase of the Project. If the Property Owners choose to seek LIHTC

credits, then Affordable Housing timing construction, and delivery, may be impacted. Property Owners shall use commercially reasonable efforts to meet the aforementioned timing commitments.

4.5.5 Fee in Lieu. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by paying a fee in lieu in the amount of \$60,000 per residential ERU. Payment of the fee shall be deemed sufficient to fulfill the relevant Alternative Affordable Housing Obligation without prejudice to any other rights or remedies available under this Agreement.

4.5.6 Land Donation. Subject to Section 4.5, the Property Owners may satisfy all or part of the Alternative Affordable Housing Obligation by donating, or causing another third party to donate, one or more parcels of unimproved land to the City for the purpose of constructing Affordable Housing. The value of any donated land shall be determined by either of the following: (a) if the donated land was acquired within three (3) years of the date of such donation, the aggregate price per acre paid for such donated land, or (b) as determined by written appraisal in accordance with Heber City Code 18.102.050(J)(3) conducted within six months of the proposed donation. The full value of any donated land shall be recognized as a fee in lieu of \$60,000.00 in value required per residential ERU, consistent with the terms of Section 4.5.5. The Parties must agree in writing to the terms of any land donation, including the specific parcel(s), selection of the valuation method above, and compliance with the requirements outlined in this Section.

5. **Term.**

5.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue either for a period of twenty-five (25) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs (the “**Term**”), unless it is terminated in accordance with Section 26. Unless otherwise agreed between the Parties, NVD’s vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term shall remain vested rights in accordance with the terms and conditions of such approvals. Furthermore, any obligations of Developer related to any licenses, building permits, or certificates of occupancy shall continue in full force and effect.

6. **Approval Processes for Development Applications.**

6.1 **Phasing.** The City acknowledges that Property Owners, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6.2 **UDOT Bypass.** The Utah Department of Transportation (UDOT) is currently in the process of developing a Heber Valley Corridor Environmental Impact Statement (EIS). As part of the EIS, UDOT has established five potential alternatives for a future bypass road. Two of the five alternatives established by UDOT, would potentially require UDOT to acquire some amount of the Property via eminent domain. Developer acknowledges the proposed bypass routes. Accordingly, Developer agrees to delay the receipt of any permits until April 1, 2025. To avoid doubt, the Parties acknowledge:

6.2.1 The City will still accept and process permit applications submitted by Developer on, or before April 1, 2025.

6.2.2 Developer's vested rights granted within this Agreement will not be impacted or in any way limited or impaired by any UDOT EIS report.

6.2.3 If UDOT selects a bypass route that impacts the Property the Property Owners will, in good faith, negotiate with UDOT regarding the condemnation of Property via eminent domain to facilitate the construction of the bypass road.

7. **Open Space, Improved Public Parks, and Trails Requirements**

7.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** For each Phase, neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. Open space, parks and trails shall comply with the requirements of Heber City Code § 18.21.050 for the NV Sub-District, except that Property Owners shall provide not less than 20% of the total Project area within the Market Rate residential ERU area as Open Space; Property Owners must provide at least 20% of the overall Project area as Open Space (excluding the Highway Buffer area set forth in Section 7.2); and Property Owners must provide 10% of the overall Project area as Traditional Park Space in accordance with Heber City Code Table 5.1(1)) or pay a fee in lieu. In accordance with Utah Code § 10-9a-604(3)(d)(iv) and (4) (2024), the City may require completion assurance for any landscaping that is necessary to meet the open space or traditional park space requirements.

7.2 **Highway 40 Landscape Buffer.** Property Owners shall provide an open space buffer on the Project property of not less than 150 feet from the existing western boundary of Highway 40, measured from the edge of the paved roadway. Property Owners may construct portions of the Outer Loop Trail within the buffer

area along with a split rail wood fence along the trail. Property Owners may also use portions of this area for stormwater retention, but shall coordinate with UDOT to ensure that any improvements to Highway 40 are not impeded by such stormwater retention.

7.3 Outer Loop Trail. Property Owners shall construct a public access multi-use trail along the perimeter of the Project as generally shown on the Site Plan. The trail shall be not less than 8 feet wide and shall include not less than 6 feet of hard surface.

7.4 Ownership and Maintenance of Open Space or Trails. All trails and open space shall be dedicated to and maintained by the Master Association for the development. All trails within the Project shall be open to public use unless the trail is utilized specifically to access a private residence.

7.5 Sledding Hill and Plaza. Property Owners have proposed constructing a sledding hill and plaza area, as generally shown on the Site Plan, that would be open to use for a reasonable fee by residents within the Project and the public. The sledding area and plaza shall count towards the required Traditional Park Space portion of the Open Space requirement and Open Space requirements generally. Property Owners acknowledge that the sledding hill and plaza are important characteristics to the approval of the Project, and in the event they elect not to construct the sledding hill or plaza area, Property Owners shall construct other public recreational amenities and public gathering places within the Project that are similar in cost and scope to the proposed sledding hill and plaza area.

7.6 Park Impact Fees. Property Owners acknowledge that all required park, trail and open space improvements within the Project are a condition of development approval and are project improvements pursuant to Utah Code § 11-36a-102(15). Property Owners may be required to pay parks, recreation, open space and trails impact fees for system improvements that benefit the Project as established in the City's impact fee analysis.

7.7 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

7.8 North Fields Preservation. Property Owners, for themselves and with respect to each subsequent Owner of the Property, agree that upon issuance of any building permit for residential or commercial ERUs, the Owner shall pay to the City a one-time fee equal to \$2,500 per ERU or such prorated amount on partial

ERU attributable to such unit, as applicable (the “**North Fields Preservation Fee**”). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including the acquisition of development rights or the use of other conservation related tools for the preservation of open space. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Affordable Housing.

8. **Public Improvements.**8.1 **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD).** The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services. However, if at any point City sewer and water, including secondary water is available in the area, the City agrees that Property Owner shall be able to obtain City services. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers

8.2 **Streets.** At a minimum, all streets within the Project shall be improved to the Residential / Minor Collector standard as set forth in Heber City Code § 18.21.040.4.6. Notwithstanding this requirement, Property Owners may elect to construct a single multi-use path on one side of any street in lieu of the 5’ sidewalks typically require on both sides of the street under Heber City Code § 18.21.040.4.6. Any such multi-use paths shall have a minimum of 6’ of hard surface material. Additionally, Property Owners may elect to construct one or more private access drives to facilitate its residential development that do not meet public street standards. Property Owners shall be responsible to construct all streets, road accesses, and pedestrian paths within the Project. Unless accepted by the City, all streets and paths shall be private and shall be dedicated to the Master Association and shall be owned and maintained by the Master Association.

8.3 **Storm Water Improvements and Management.** The Parties acknowledge that the City has adopted a regional storm water master plan “**City Updated North Village Stormwater Master Plan**”). Property Owners shall be required to comply with the policies and standards of the North Village Stormwater Master Plan, as amended, and associated Stormwater Design Manual, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement. Property Owners acknowledge that compliance with North Village Stormwater Master Plan may require construction of off-site improvements as outlined in the City Updated North Village Storm Water Master Plan. Developer and Property Owner shall restore or replace the historic, natural drainage channels

downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan

8.4 Storm Water Retention/Detention from Off-Site Sources. The Parties acknowledge that Property Owners may provide On-Site Storm Water Retention/Detention on the Property for an adjacent development, which On-Site Storm Water Retention/Detention would be used to meet the adjacent development's storm water retention/detention requirements with the City.

8.5 Utilities and On-Site Infrastructure. Property Owners shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure that is necessary to support the development proposed within a specific Development Application.

8.6 Excess Improvements/Upsizing. The Property Owners and City do not anticipate that Property Owners will be required to install any System Improvements or upsize any infrastructure. If the City does require the Property Owners to enlarge, increase or otherwise "upsized" or upgrade (collectively, the "**Excess Improvements**") the City agrees that it shall reimburse the applicable Property Owners from Impact Fees collected by the City for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Property Owners shall not be compensated for any "upsizing" of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

8.7. Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan. The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

8.8. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

8.9 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8.10 Public Infrastructure District. City understands that Property Owners may request a Public Infrastructure District ("PID") pursuant to Utah Code § 17D-4-101 et seq. for the Property. The City shall review and reasonably consider Property Owners' petition to create the PID as an option to implement and facilitate the financing, construction, and operation of some or all of the Public Infrastructure for the Project.

9. CC&Rs. As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a provision that regulates the nightly rental of any residential unit located on the Property. It is anticipated that nightly rental of residential units within the development shall be through the Property's hotel and within the hotel's brand standards. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines.

10. Fees & Bonding.

10.1 General Requirement of Payment of Fees. The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 Bonding. Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the

Project (the “**Security**”), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City’s Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City’s Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

12. **Grading and On-Site Processing of Natural Materials.**

12.1 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and subject to City’s Vested Laws, may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

12.2. **Future Transportation Plan.** The Parties acknowledge that the City is presently contemplating a future Updated North Village Transportation Plan (as finalized and adopted by the City) (the “**City Updated North Village Transportation Plan**”). Concurrent with Provision 4.1 above, Property Owners shall be required to comply with all future policies and standards of the North Village Transportation Plan, yet to be adopted, and all standards and requirements

of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter. City agrees that it shall include the Project in any future plans for public transit connections associated with the North Village development area generally. As a NVOZ “Village Center”, this Project is a priority for public mass transit optionality.

13. **Provision of Municipal Services.** Except for services provided by Districts, the City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Remedies Upon Default.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in

this Agreement and City's obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES

14.4 City's Remedies Upon Default. In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

15. Notices. All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

Angstrom Development Group
Attn: Neil Goldman
1461 W Ursa Way
Heber City, UT 84032

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 Effectiveness of Notice. Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 Physical Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 Electronic Delivery. Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** If allowed by Utah state law, the following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by Property Owners or their successors and assigns.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed twenty-one (21) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 **Notification Regarding Application and Administrator's Approval.** Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be

considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. Amendment. Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 Submissions of Modification Applications. Only the City or Property Owners or an assignee of Property Owners, approved in writing by the City, and one that succeeds to all of the rights and obligations of Property Owners under this Agreement may submit a Modification Application.

17.2 Modification Application Contents. Modification Applications shall include:

17.2.1 Identification of Property. Identify the property or properties affected by the Modification Application.

17.2.2 Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 Identification of Non-City Agencies. Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application, if required by law, shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall

pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 Amendments by Property Owners. Notwithstanding any other provision in this Agreement to the contrary, Property Owners may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from Property Owners or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor Property Owners shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. Estoppel Certificate. Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. Entire Agreement. Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

20. Headings. The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

21. No Third-Party Rights/No Joint Venture. This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD

or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, Property Owners or their successors may sell any portion of the Property to one or more parties (each a “**Developer**” or “**Sub-developer**”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property.

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless Property Owners otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of Property Owners, which may be granted or withheld in their sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by Property Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by Property Owners for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

22.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

22.1.4 Property Owners shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

23. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

24. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such

Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. **Termination.**

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of

the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

25.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

26. Insurance and Indemnification. Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

27. Hazardous, Toxic, and/or Contaminating Materials. Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

28. Binding Effect. If Property Owners or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Property Owners each shall designate and appoint a representative to act as a liaison between the City and its various departments and Property Owners. The initial representative for the City shall be City Manager, or his designee and the initial representatives for Property Owners shall be [REDACTED]. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall

succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

37. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

38. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

39. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

40. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

41. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

[Signatures appear on the following two pages.]

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.

PROPERTY OWNERS:

KLJB, LLC Utah limited liability company

By: _____

Name:

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)

:§.

CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of KLJB, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

Baibach, LLC

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
 CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Baibach, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

K&H Development Heber, LLC

By: _____

Name:

Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
)
) :§.
)
) CITY OF SALT LAKE)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the K&H Development Heber, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

CITY

Heber City, a political subdivision of the State of Utah

By: _____

Name:

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By: _____

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE RESIDENTIAL DEVELOPMENT

Legal Description

BEGINNING AT A POINT LOCATED NORTH 00°30'00" WEST ALONG THE SECTION LINE 132.85 FEET AND WEST 654.07 FEET FROM THE FOUND WASATCH COUNTY ALUMINUM CAP MARKING EH EAST 1/4 CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 32°00'23" WEST 1201.64 FEET TO THE HEBER CITY BOUNDARY AS SHOWN ON THE NORTH VILLAGE ANNEXATION PLAT; THENCE ALONG SAID HEBER CITY BOUNDARY AND THE NORTH VILLAGE ANNEXATION PLAT THE FOLLOWING 22 (TWENTY TWO) CALLS: 1. NORTH 42°02'19" EAST 253.96 FEET, 2. NORTH 89°51'56" EAST 493.00 FEET, 3. SOUTH 42°15'26" EAST 71.50 FEET, 4. ALONG THE ARC OF A 463.93 FOOT RADIUS CURVE TO THE LEFT 66.76 FEET (CHORD BEARS SOUTH 46°22'46" EAST 66.70 FEET), 5. SOUTH 50°30'06" EAST 70.63 FEET, 6. ALONG THE ARC OF A 226.74 FOOT RADIUS CURVE TO THE RIGHT 97.65 FEET (CHORD BEARS SOUTH 38°09'48" EAST 96.90 FEET), 7. SOUTH 25°49'31" EAST 80.79 FEET, 8. ALONG THE ARC OF A 234.73 FOOT RADIUS CURVE TO THE LEFT 109.51 FEET (CHORD BEARS SOUTH 39°11'26" EAST 108.52 FEET), 9. SOUTH 52°33'20" EAST 46.06 FEET, 10. ALONG THE ARC OF A 95.72 FOOT RADIUS CURVE TO THE RIGHT 27.55 FEET (CHORD BEARS SOUTH 44°18'34" EAST 27.46 FEET), 11. SOUTH 36°03'49" EAST 17.11 FEET, 12. ALONG THE ARC OF A 84.88 FOOT RADIUS CURVE TO THE LEFT 74.84 FEET (CHORD BEARS SOUTH 61°19'17" EAST 72.44 FEET), 13. SOUTH 86°34'45" EAST 55.03 FEET, 14. ALONG THE ARC OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT 41.05 FEET (CHORD BEARS SOUTH 69°46'38" EAST 40.47 FEET), 15. NORTH 39°00'43" EAST 134.19 FEET, 16. SOUTH 00°28'04" EAST 215.78 FEET, 17. SOUTH 22°22'27" WEST 568.62 FEET, 18. NORTH 50°59'17" WEST 229.73 FEET, 19. ALONG THE ARC OF A 138.00 FOOT RADIUS CURVE TO THE LEFT 109.61 FEET (CHORD BEARS SOUTH 61°40'19" WEST 106.75 FEET), 20. SOUTH 39°00'43" WEST 127.93 FEET, 21. ALONG THE ARC OF A 248.00 FOOT RADIUS CURVE TO THE RIGHT 39.75 FEET (CHORD BEARS SOUTH 43°36'15" WEST 39.71 FEET), AND 22. SOUTH 48°11'46" WEST 70.25 FEET TO THE POINT OF BEGINNING. AREA = 20.35 ACRES

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
Site Plan



EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT
North Fields

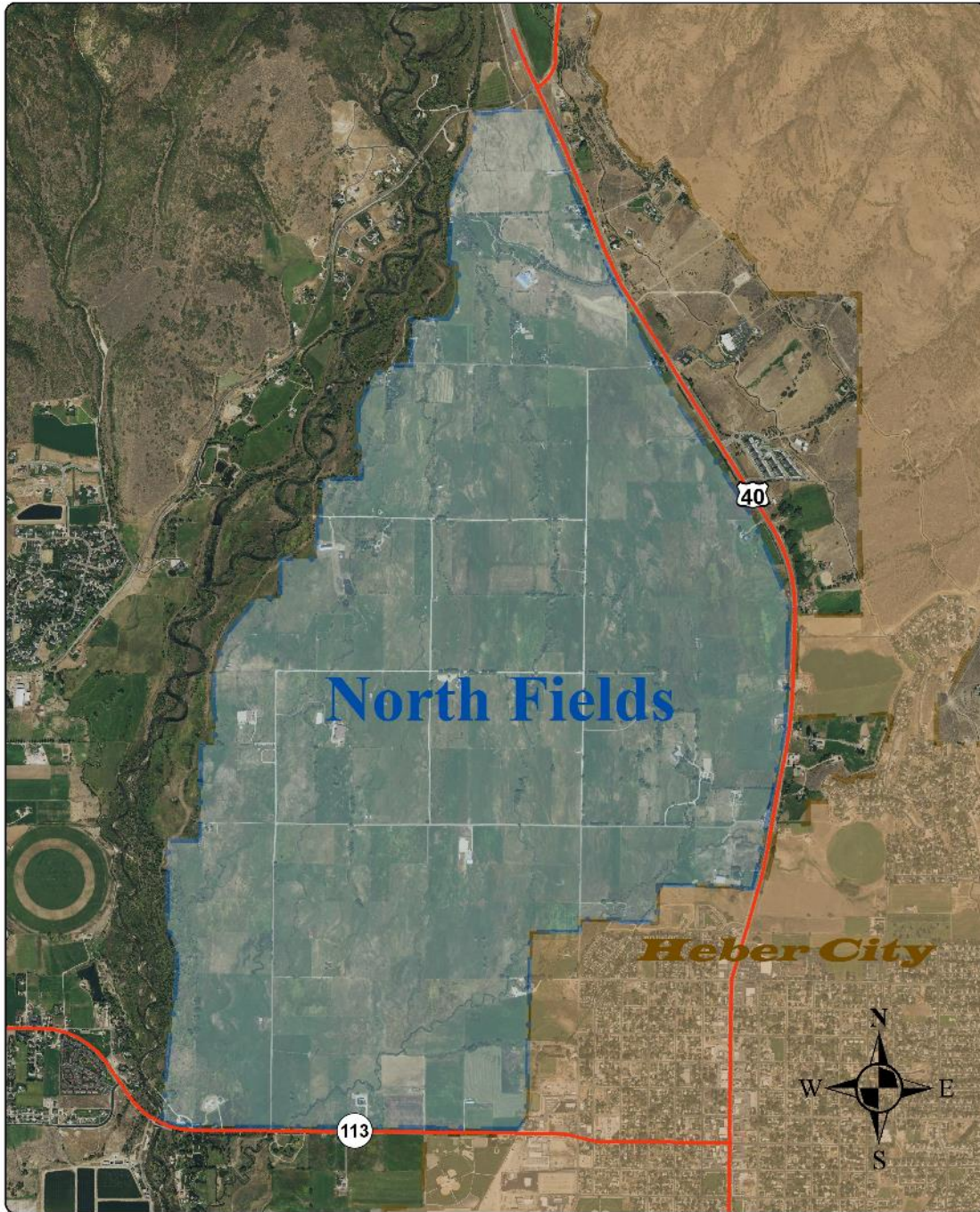


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR HARVEST VILLAGE MIXED USE
RESIDENTIAL DEVELOPMENT

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

DRAFT



Heber City Council Staff Report

MEETING DATE: 12/17/2024
SUBJECT: Central Heber Replacements Project – Phase 1C - Construction Change Orders 1 & 2
RESPONSIBLE: Russ Funk
DEPARTMENT: Engineering
STRATEGIC RELEVANCE: Necessary Administrative Action
Infrastructure Sustainability

SUMMARY

The purpose of this item is to seek Council approval to execute Construction Contract Change Orders with BHI to add the remaining work into Phase 1C of the Central Heber Water/Sewer Replacements Project as originally envisioned.

RECOMMENDATION

Approve and authorize staff to execute Phase 1C Construction Contract Change Orders 1 and 2 with BHI to add the remaining work as originally envisioned back into the project scope. It is recommended that this authorization be contingent upon completion of the bond closings for additional funding.

BACKGROUND

During the July 2, 2024 Special Council Meeting, Council authorized staff to enter into a Modified Phase 1C Construction and GMP Contract with BHI in the amount of \$9,757,952.46. This amount was reduced from the full project scope previously anticipated, but did include an additional \$2,287,000.00 of work that was previously not budgeted toward the project. Staff had identified funds that could be used to make up the shortfall by using fund surpluses and by reducing the scope of other funded projects for the year.

The original funding package for the project totaled \$43 Million. Due to extreme inflationary factors over the past several years, the budget had an overall shortfall of just under \$10.8 Million to complete the entire Phase 1 scope as originally anticipated.

Council indicated that they supported pursuing additional funding to complete the originally

anticipated scope of the project, if it could be done without causing additional increases to utility rates beyond those already anticipated and approved with prior budgets.

Staff pursued additional funding by applying for additional funding through the Community Impact Board (CIB) and the Division of Water Resources (DWR). The following funding is expected to be authorized with bond closings scheduled for December 18th:

Funding Agency	Utility	Amount	Interest Rate	Term
CIB	Sewer	\$5,900,000	3.5%	30 Years
DWR	Water	\$3,032,000	0.0%	25 Years
DWR	Irrigation	\$1,343,000	0.0%	25 Years

DISCUSSION

FISCAL IMPACT

As indicated previously, payments for the additional funding are not expected to result in additional utility rate increases for City customers. This is because staff had budgeted money to start building reserves for the future replacements needed on the west side of town. This budgeted reserve money was already included in the utility rate study and recommended rates. It should be understood that redirecting this money to bond payments will delay building reserves for future replacements.

The amount of additional funding the City has applied for is sufficient to make up the overall budget shortfall without the budget modifications previously proposed by staff to make up the \$2,287,000.00 shortfall on the Modified Phase 1C contract that was already awarded. The only exception to this is the \$338,000 that was budgeted for storm drain improvements. The storm drain improvements were rolled into the project on 500 North since BHI was already working in the area.

There are 2 change orders that are currently proposed. Change Order 1 in the amount of (\$2,326,043.52) reduces the amount of the previously approved contract to an amount that, when Change Order 2 is added back into the project in the amount of \$10,455,000.00, it will match the construction estimates provided to the funding agencies with the funding applications. It was done this way in an effort to avoid confusion with the funding agencies.

CONCLUSION

Based on the need to replace our aging infrastructure and the desire to complete the scope of the project as originally anticipated, staff recommends Council provide authorization for staff to execute Phase 1C Change Orders 1 and 2 with BHI contingent upon completion of the bond closings for the additional funding.

ALTERNATIVES

1. Approve as proposed
 2. Approve as amended
 3. Continue
 4. Deny
-

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** the item as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** the item as amended, as follows.

Alternative 3 - Continue

I move to **continue** the item to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** the item with the following findings.

ACCOUNTABILITY

Department: Engineering
Staff member: Russ Funk, City Engineer

EXHIBITS

1. Phase 1C - Change Order 1
2. Phase 1C - Change Order 2

CONTRACT CHANGE ORDER						ORDER NO.	1
CONTRACT FOR: Central Heber City Water/Sewer Replacement Program Phase 1C Construction Services						DATE:	12/01/2024
OWNER: Heber City							
CONSTRUCTOR: BH, Inc.							
You are hereby requested to comply with the following changes from the contract plans and specifications. The following items will be revised on the Constructor's GMP.							
Bid Item	Cat.	Description of Changes (Supplemental Drawings & Specifications Attached)	Qty	Unit	Unit Price	Decrease in Contract Price	Increase in Contract Price
100	GC	Mobilization	1	LS	\$ 121,300.00	\$ 121,300.00	
101	GC	General Conditions	1	LS	\$ 49,500.00	\$ 49,500.00	
102	GC	Traffic Control	1	ALW	\$ 89,183.48	\$ 89,183.48	
103	GC	Dust Control and Watering	1	LS	\$ 12,000.00	\$ 12,000.00	
104	GC	Restore Surface Improvements	1	ALW	\$ 40,600.00	\$ 40,600.00	
105	GC	Sewer Camera Laterals Exploration	2	EA	\$ 518.00	\$ 1,036.00	
200	SWR	6" PVC Sewer	70	LF	\$ 90.00		\$ 6,300.00
201	SWR	8" PVC Sewer	901	LF	\$ 61.50	\$ 55,411.50	
202	SWR	10" PVC Sewer	184	LF	\$ 96.00	\$ 17,664.00	
203	SWR	12" PVC Sewer	162	LF	\$ 105.00	\$ 17,010.00	
204	SWR	18" PVC Sewer	1,770	LF	\$ 111.00	\$ 196,470.00	
205	SWR	48" Manhole	1	EA	\$ 3,000.00	\$ 3,000.00	
206	SWR	60" Manhole	2	EA	\$ 4,200.00	\$ 8,400.00	
207	SWR	48" to 60" CIP Manhole	3	EA	\$ 9,500.00	\$ 28,500.00	
208	SWR	Plug and Re-Finish Manhole	1	EA	\$ 2,200.00	\$ 2,200.00	
209	SWR	Connect To Existing Manhole	8	EA	\$ 2,500.00		\$ 20,000.00
210	SWR	8" Pipe Reconnect "Temp"	11	EA	\$ 1,900.00	\$ 20,900.00	
211	SWR	18" Sewer Cap	1	EA	\$ 650.00	\$ 650.00	
212	SWR	8" Sewer Cap	1	EA	\$ 300.00	\$ 300.00	
213	SWR	Bypassing (8" only assumed no 18")	23	EA	\$ 6,500.00	\$ 149,500.00	
214	SWR	4" PVC Sewer Lateral	590	LF	\$ 65.00	\$ 38,350.00	
215	SWR	New Cleanout	16	EA	\$ 1,200.00	\$ 19,200.00	
216	SWR	Existing Lateral Reconnect	30	EA	\$ 1,600.00	\$ 48,000.00	
217	SWR	Remove Manhole	6	EA	\$ 1,200.00	\$ 7,200.00	
218	SWR	Abandon Manhole	5	EA	\$ 625.00	\$ 3,125.00	
219	SWR	Cut and Plug Pipe	51	EA	\$ 350.00	\$ 17,850.00	
300	IRR	6" PVC Irrigation DR18 C900 Purple	3,280	LF	\$ 24.00	\$ 78,720.00	
301	IRR	6" Gate Valve	17	EA	\$ 555.00	\$ 9,435.00	
302	IRR	6" Fittings	13	EA	\$ 720.00	\$ 9,360.00	
303	IRR	6" Blowoff Assembly	7	EA	\$ 1,700.00	\$ 11,900.00	
304	IRR	Connect to Ex Irrigation Line	4	EA	\$ 3,200.00	\$ 12,800.00	
305	IRR	1" Service Lateral (Single Service)	410	LF	\$ 57.00	\$ 23,370.00	
306	IRR	1.5" Service Lateral (Double Service)	120	LF	\$ 58.00	\$ 6,960.00	
307	IRR	1" Meter Assembly (Single Service)	13	EA	\$ 1,800.00	\$ 23,400.00	
308	IRR	1" Meter Assembly (Double Service)	4	EA	\$ 2,000.00		\$ 8,000.00
309	IRR	Irrigation Discharge Assembly (No Structure)	6	EA	\$ 5,000.00	\$ 30,000.00	
310	IRR	Air Release Valve	1	EA	\$ 3,500.00	\$ 3,500.00	
400	WTR	16" PVC DR18	27	LF	\$ 71.00	\$ 1,917.00	
401	WTR	16" Butterfly Valve	-	EA	\$ 1,400.00		
402	WTR	16" Fittings	-	EA	\$ 1,200.00		
403	WTR	8" PVC DR 18	3,660	LF	\$ 40.00	\$ 146,400.00	
404	WTR	8" Gate Valve Assembly	24	EA	\$ 750.00	\$ 18,000.00	
405	WTR	8" Fittings	32	EA	\$ 850.00	\$ 27,200.00	

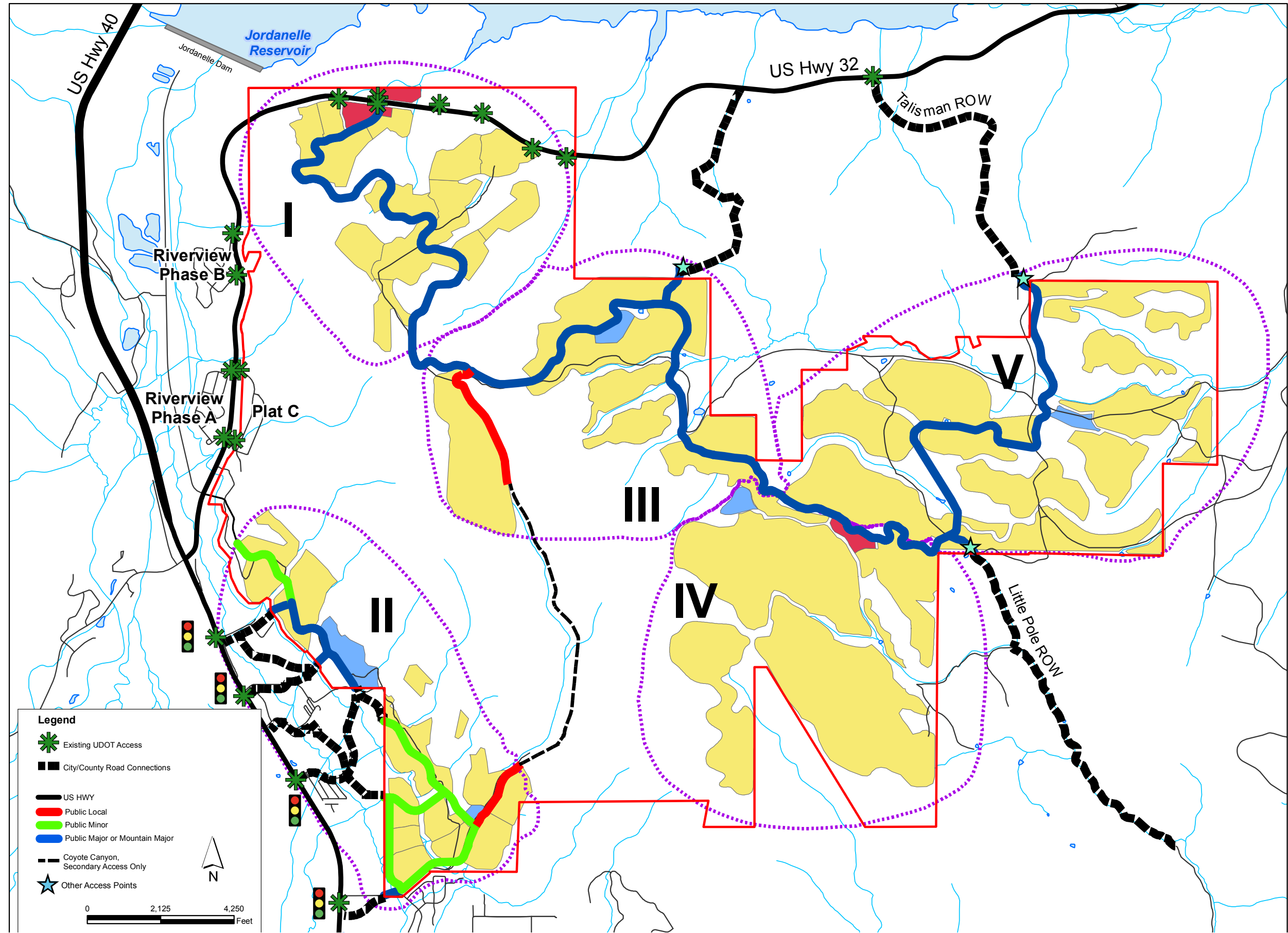
406	WTR	8" Blowoff Assembly (Includes Testing)	2	EA	\$ 3,000.00	\$ 6,000.00	
407	WTR	8" Temp Connections (Additional Labor Only)	1	EA	\$ 3,400.00	\$ 3,400.00	
408	WTR	6" PVC C900 DR 18	90	LF	\$ 50.00		\$ 4,500.00
409	WTR	6" Gate Valve	1	EA	\$ 650.00	\$ 650.00	
410	WTR	6" Fittings	1	EA	\$ 500.00	\$ 500.00	
411	WTR	1" Water Service Lateral Polyline	1,175	LF	\$ 70.00	\$ 82,250.00	
412	WTR	1" Water Service Connection with Curb Stop	3	EA	\$ 1,600.00		\$ 4,800.00
413	WTR	1" Water Service Connection with Meter Assembly	3	EA	\$ 1,800.00		\$ 5,400.00
414	WTR	1" Water Service Connection Relocate with Meter Assembly	3	EA	\$ 2,100.00	\$ 6,300.00	
415	WTR	1" Water Service Connection Relocate & Reconnect Meter	2	EA	\$ 2,500.00	\$ 5,000.00	
416	WTR	1" Water Service Replace Meter Box and Ball Valve	-	EA	\$ 2,500.00		
417	WTR	2" Water Service Lateral Polyline	65	LF	\$ 80.00	\$ 5,200.00	
418	WTR	2" Water Service Connection With Meter Assembly	1	EA	\$ 2,500.00	\$ 2,500.00	
419	WTR	New Fire Hydrant	1	EA	\$ 3,200.00		\$ 3,200.00
420	WTR	*Replace Fire Hydrant	-	EA	\$ 3,200.00		
421	WTR	Reconnect Fire Hydrant	1	EA	\$ 4,000.00	\$ 4,000.00	
422	WTR	Remove Fire Hydrant	1	EA	\$ 800.00	\$ 800.00	
423	WTR	Remove Water Valve Box & Collar	12	EA	\$ 200.00	\$ 2,400.00	
424	WTR	Plug or Cap Waterline	10	EA	\$ 200.00	\$ 2,000.00	
425	WTR	Water tie-in to existing Old mainlines	8	EA	\$ 2,500.00	\$ 20,000.00	
500	AGG	Gravel - Sewer Bedding	3,415.93	TN	\$ 32.00	\$ 109,309.61	
501	AGG	Sand - Waterline and Irrigation Bedding	4,388.86	TN	\$ 20.00	\$ 87,777.14	
502	AGG	3" Minus - Trench Backfill Borrow	2,097.38	TN	\$ 22.00	\$ 46,142.25	
503	AGG	Roadbase	6,833.44	TN	\$ 23.55	\$ 160,927.54	
504	AGG	Spoils Haul off (No Dump Fees)	4,553.61	CY	\$ 18.00	\$ 81,964.93	
600	RDWY	Trench Milling (4' wide Pass)	5,374	LF	\$ 2.90		\$ 15,584.60
601	RDWY	HMA Patching 3"depth (Hand patching areas)	5,075	SF	\$ 7.95	\$ 40,346.25	
602	RDWY	HMA Patching (Small Paver Work)	5,810	SF	\$ 5.50		\$ 31,955.00
603	RDWY	Roto milling - 3"	12,310	SF	\$ 1.35		\$ 16,618.50
604	RDWY	Roto milling - 4"	74,090	SF	\$ 0.92		\$ 68,162.80
605	RDWY	Pulverize Asphalt	131,940	SF	\$ 0.20	\$ 26,388.00	
606	RDWY	Remove Excess Roadway Material	3,760	CY	\$ 24.00	\$ 90,240.00	
607	RDWY	Scarify, Grade and Compact Pulverized Material	131,940	SF	\$ 0.40	\$ 52,776.00	
608	RDWY	Fine grade Existing UTBC(Small Pave Areas)	86,400	SF	\$ 0.20		\$ 17,280.00
609	RDWY	Roadway Paving - 3"	23,060	SF	\$ 2.58		\$ 59,494.80
610	RDWY	Roadway Paving - 4"	80,910	SF	\$ 4.00	\$ 323,640.00	
611	RDWY	UDOT R.O.W Paving Patching 7" HMA 2" SMA	1,515	SF	\$ 15.00	\$ 22,725.00	
612	RDWY	UDOT R.O.W Paving Patching 2" SMA inc milling & F	6,000	SF	\$ 16.00	\$ 96,000.00	
613	RDWY	Flow Fill For UDOT R.O.W	26	CY	\$ 300.00	\$ 7,800.00	
614	RDWY	Pre-Lower, Raise and Collar Manhole	4	EA	\$ 1,100.00		\$ 4,400.00
615	RDWY	Pre-Lower, Raise and Collar Valve Box	7	EA	\$ 920.00	\$ 6,440.00	
616	RDWY	Survey Monuments	-	EA	\$ 1,670.00		
617	RDWY	Sidewalk Replacement 4" thick	2,020	SF	\$ 17.25	\$ 34,845.00	
618	RDWY	Curb and Gutter Replacement	1,015	LF	\$ 66.50	\$ 67,497.50	
619	RDWY	Concrete Driveway Approaches 6" thick	1,015	SF	\$ 20.00	\$ 20,300.00	
620	RDWY	Irrigation Culvert Replacement (12" to 18")	3	EA	\$ 7,800.00		\$ 23,400.00
621	RDWY	Soft Spot Excavation , Backfill & Compact	40	CY	\$ 35.00	\$ 1,400.00	
622	RDWY	Roadway Shouldering	6,040	LF	\$ 1.60		\$ 9,664.00
700	SD	Remove Existing pipe Note #1	-	LF	\$ 30.00		
701	SD	24" RCP pipe note# 1	-	LF	\$ 120.00		
702	SD	21" RCP pipe note# 1	-	LF	\$ 85.00		
703	SD	18" RCP pipe note# 1	-	LF	\$ 75.00		
704	SD	15" RCP pipe note# 2	-	LF	\$ 100.00		
705	SD	Connect to existing Storm drain/ Boxes note# 2	-	EA	\$ 2,500.00		
706	SD	Remove Existing catch basin note# 3	-	EA	\$ 4,000.00		
707	SD	New Catch Basin note # 3	-	EA	\$ 5,500.00		

708	SD	New Storm Drain Manhole	-	EA	\$ 6,500.00		
800	50ES	6" PVC Sewer (50 East)	-	LF	\$ 150.00		
801	50ES	8" PVC Sewer (50 East)	-	LF	\$ 160.00		
802	50ES	48" Manhole (50 East)	-	EA	\$ 3,000.00		
803	50ES	60" Manhole (50East)	-	EA	\$ 4,200.00		
804	50ES	4" PVC Sewer Lateral (50 East)	-	LF	\$ 85.00		
805	50ES	Cleanout (50 East)	-	EA	\$ 1,200.00		
806	50ES	Existing Lateral Reconnect (50 East)	-	EA	\$ 630.00		
807	50ES	Abandon Manhole (50 East)	-	EA	\$ 1,200.00		
808	50ES	Cut and Plug Pipe (50 East)	-	EA	\$ 350.00		
809	50ES	Repair 12" Sewer Line sections	-	LF	\$ 190.00		
810	50ES	Bypass Pumping (12" repairs 50E)	-	EA	\$ 6,500.00		
811	50ES	Mobilization For Slip lining	-	EA	\$ 22,000.00		
812	50ES	Clean & CCTV 12"	31	LF	\$ 1.94	\$ 60.26	
813	50ES	12" Sewer Slip lining SDR 35 (50 East)	31	LF	\$ 132.84	\$ 4,118.04	
814	50ES	Post CCTV 12"	31	LF	\$ 1.08	\$ 33.48	
815	50ES	Freight on Material	-	LS	\$ 8,100.00		
816	50ES	Bypass Pumping (For Sliplining only)	-	LS	\$ 5,400.00		
817	50ES	Re- Instate Services	-	EA	\$ 540.00		
818	50ES	Top Hats for linner as needed (50 East)	-	EA	\$ 2,875.00		
819	50ES	Removal Protruding Lateral as needed (50 East)	-	EA	\$ 1,300.00		
		Contingency	1	LS	\$ 147,239.75		\$ 147,239.75
TOTALS						\$ 2,772,042.97	\$ 445,999.45
NET CHANGE IN CONTRACT PRICE							\$ (2,326,043.52)
Change Order initiated by: BH, Inc.							
JUSTIFICATION: Includes adjustments necessary to complete the full scope of Phase 1C							
The Contract total including previous change orders:						\$ 9,757,952.46	
						DOLLARS	
The amount of the Contract will be decreased by the sum of:						\$ 2,326,043.52	
						DOLLARS	
The Contract total including this change order will be:						\$ 7,431,908.94	
						DOLLARS	
The Contract period provided for completion will be unchanged:							
This document will become a supplement to the Contract and all provisions will apply thereto.							
Requested (OWNER) _____ Date: _____							
Recommended (ENGINEER) _____ Date: _____							
Accepted (CONSTRUCTOR) _____ Date: _____							

CONTRACT CHANGE ORDER						ORDER NO.	2
CONTRACT FOR: Central Heber City Water/Sewer Replacement Program Phase 1C Construction Services						DATE:	12/01/2024
OWNER: Heber City							
CONSTRUCTOR: BH, Inc.							
You are hereby requested to comply with the following changes from the contract plans and specifications. The following items will be revised on the Constructor's GMP.							
Bid Item	Cat.	Description of Changes (Supplemental Drawings & Specifications Attached)	Qty	Unit	Unit Price	Decrease in Contract Price	Increase in Contract Price
100	GC	Mobilization	1	LS	\$ 333,300.00		\$ 333,300.00
101	GC	General Conditions	1	LS	\$ 299,500.00		\$ 299,500.00
102	GC	Traffic Control	1	ALW	\$ 259,183.48		\$ 259,183.48
103	GC	Dust Control and Watering	1	LS	\$ 177,000.00		\$ 177,000.00
104	GC	Restore Surface Improvements	1	ALW	\$ 190,600.00		\$ 190,600.00
105	GC	Sewer Camera Laterals Exploration	27	EA	\$ 518.00		\$ 13,986.00
200	SWR	6" PVC Sewer	310	LF	\$ 90.00		\$ 27,900.00
201	SWR	8" PVC Sewer	11,171	LF	\$ 61.50		\$ 687,016.50
202	SWR	10" PVC Sewer	65	LF	\$ 96.00		\$ 6,240.00
203	SWR	12" PVC Sewer	50	LF	\$ 105.00		\$ 5,250.00
204	SWR	18" PVC Sewer	1,800	LF	\$ 111.00		\$ 199,800.00
205	SWR	48" Manhole	38	EA	\$ 3,000.00		\$ 114,000.00
206	SWR	60" Manhole	4	EA	\$ 4,200.00		\$ 16,800.00
207	SWR	48" to 60" CIP Manhole	5	EA	\$ 9,500.00		\$ 47,500.00
208	SWR	Plug and Re-Finish Manhole	1	EA	\$ 2,200.00		\$ 2,200.00
209	SWR	Connect To Existing Manhole	22	EA	\$ 2,500.00		\$ 55,000.00
210	SWR	8" Pipe Reconnect "Temp"	4	EA	\$ 1,900.00		\$ 7,600.00
211	SWR	18" Sewer Cap	1	EA	\$ 650.00		\$ 650.00
212	SWR	8" Sewer Cap	7	EA	\$ 300.00		\$ 2,100.00
213	SWR	Bypassing (8" only assumed no 18")	4	EA	\$ 6,500.00		\$ 26,000.00
214	SWR	4" PVC Sewer Lateral	7,960	LF	\$ 65.00		\$ 517,400.00
215	SWR	New Cleanout	215	EA	\$ 1,200.00		\$ 258,000.00
216	SWR	Existing Lateral Reconnect	184	EA	\$ 1,600.00		\$ 294,400.00
217	SWR	Remove Manhole	2	EA	\$ 1,200.00		\$ 2,400.00
218	SWR	Abandon Manhole	20	EA	\$ 625.00		\$ 12,500.00
219	SWR	Cut and Plug Pipe	193	EA	\$ 350.00		\$ 67,550.00
300	IRR	6" PVC Irrigation DR18 C900 Purple	14,750	LF	\$ 24.00		\$ 354,000.00
301	IRR	6" Gate Valve	51	EA	\$ 555.00		\$ 28,305.00
302	IRR	6" Fittings	20	EA	\$ 720.00		\$ 14,400.00
303	IRR	6" Blowoff Assembly	1	EA	\$ 1,700.00		\$ 1,700.00
304	IRR	Connect to Ex Irrigation Line	2	EA	\$ 3,200.00		\$ 6,400.00
305	IRR	1" Service Lateral (Single Service)	1,200	LF	\$ 57.00		\$ 68,400.00
306	IRR	1.5" Service Lateral (Double Service)	2,270	LF	\$ 58.00		\$ 131,660.00
307	IRR	1" Meter Assembly (Single Service)	37	EA	\$ 1,800.00		\$ 66,600.00
308	IRR	1" Meter Assembly (Double Service)	67	EA	\$ 2,000.00		\$ 134,000.00
309	IRR	Irrigation Discharge Assembly (No Structure)	7	EA	\$ 5,000.00		\$ 35,000.00
310	IRR	Air Release Valve	1	EA	\$ 3,500.00		\$ 3,500.00
400	WTR	16" PVC DR18	34	LF	\$ 71.00		\$ 2,414.00
401	WTR	16" Butterfly Valve	4	EA	\$ 1,400.00		\$ 5,600.00
402	WTR	16" Fittings	6	EA	\$ 1,200.00		\$ 7,200.00
403	WTR	8" PVC DR 18	12,270	LF	\$ 40.00		\$ 490,800.00
404	WTR	8" Gate Valve Assembly	55	EA	\$ 750.00		\$ 41,250.00
405	WTR	8" Fittings	16	EA	\$ 850.00		\$ 13,600.00

406	WTR	8" Blowoff Assembly (Includes Testing)	2	EA	\$ 3,000.00		\$ 6,000.00
407	WTR	8" Temp Connections (Additional Labor Only)	12	EA	\$ 3,400.00		\$ 40,800.00
408	WTR	6" PVC C900 DR 18	270	LF	\$ 50.00		\$ 13,500.00
409	WTR	6" Gate Valve	-	EA	\$ 650.00		
410	WTR	6" Fittings	-	EA	\$ 500.00		
411	WTR	1" Water Service Lateral Polyline	5,070	LF	\$ 70.00		\$ 354,900.00
412	WTR	1" Water Service Connection with Curb Stop	60	EA	\$ 1,600.00		\$ 96,000.00
413	WTR	1" Water Service Connection with Meter Assembly	26	EA	\$ 1,800.00		\$ 46,800.00
414	WTR	1" Water Service Connection Relocate with Meter Assembly	60	EA	\$ 2,100.00		\$ 126,000.00
415	WTR	1" Water Service Connection Relocate & Reconnect Meter	-	EA	\$ 2,500.00		
416	WTR	1" Water Service Replace Meter Box and Ball Valve	-	EA	\$ 2,500.00		
417	WTR	2" Water Service Lateral Polyline	65	LF	\$ 80.00		\$ 5,200.00
418	WTR	2" Water Service Connection With Meter Assembly	1	EA	\$ 2,500.00		\$ 2,500.00
419	WTR	New Fire Hydrant	11	EA	\$ 3,200.00		\$ 35,200.00
420	WTR	*Replace Fire Hydrant	-	EA	\$ 3,200.00		
421	WTR	Reconnect Fire Hydrant	-	EA	\$ 4,000.00		
422	WTR	Remove Fire Hydrant	5	EA	\$ 800.00		\$ 4,000.00
423	WTR	Remove Water Valve Box & Collar	23	EA	\$ 200.00		\$ 4,600.00
424	WTR	Plug or Cap Waterline	18	EA	\$ 200.00		\$ 3,600.00
425	WTR	Water tie-in to existing Old mainlines	13	EA	\$ 2,500.00		\$ 32,500.00
500	AGG	Gravel - Sewer Bedding	9,650.00	TN	\$ 32.00		\$ 308,800.00
501	AGG	Sand - Waterline and Irrigation Bedding	13,238.00	TN	\$ 20.00		\$ 264,760.00
502	AGG	3" Minus - Trench Backfill Borrow	1,570.00	TN	\$ 22.00		\$ 34,540.00
503	AGG	Roadbase	22,600.00	TN	\$ 23.55		\$ 532,230.00
504	AGG	Spoils Haul off (No Dump Fees)	42,940.00	CY	\$ 18.00		\$ 772,920.00
600	RDWY	Trench Milling (4' wide Pass)	55,906	LF	\$ 2.90		\$ 162,127.40
601	RDWY	HMA Patching 3"depth (Hand patching areas)	5,075	SF	\$ 7.95		\$ 40,346.25
602	RDWY	HMA Patching (Small Paver Work)	12,690	SF	\$ 5.50		\$ 69,795.00
603	RDWY	Roto milling - 3"	12,690	SF	\$ 1.35		\$ 17,131.50
604	RDWY	Roto milling - 4"	75,910	SF	\$ 0.92		\$ 69,837.20
605	RDWY	Pulverize Asphalt	316,240	SF	\$ 0.20		\$ 63,248.00
606	RDWY	Remove Excess Roadway Material	760	CY	\$ 24.00		\$ 18,240.00
607	RDWY	Scarify, Grade and Compact Pulverized Material	316,240	SF	\$ 0.40		\$ 126,496.00
608	RDWY	Fine grade Existing UTBC(Small Pave Areas)	88,600	SF	\$ 0.20		\$ 17,720.00
609	RDWY	Roadway Paving - 3"	316,240	SF	\$ 2.58		\$ 815,899.20
610	RDWY	Roadway Paving - 4"	75,910	SF	\$ 4.00		\$ 303,640.00
611	RDWY	UDOT R.O.W Paving Patching 7" HMA 2" SMA	1,515	SF	\$ 15.00		\$ 22,725.00
612	RDWY	UDOT R.O.W Paving Patching 2" SMA inc milling & P	-	SF	\$ 16.00		
613	RDWY	Flow Fill For UDOT R.O.W	26	CY	\$ 300.00		\$ 7,800.00
614	RDWY	Pre-Lower, Raise and Collar Manhole	36	EA	\$ 1,100.00		\$ 39,600.00
615	RDWY	Pre-Lower, Raise and Collar Valve Box	57	EA	\$ 920.00		\$ 52,440.00
616	RDWY	Survey Monuments	10	EA	\$ 1,670.00		\$ 16,700.00
617	RDWY	Sidewalk Replacement 4" thick	2,020	SF	\$ 17.25		\$ 34,845.00
618	RDWY	Curb and Gutter Replacement	1,015	LF	\$ 66.50		\$ 67,497.50
619	RDWY	Concrete Driveway Approaches 6" thick	1,015	SF	\$ 20.00		\$ 20,300.00
620	RDWY	Irrigation Culvert Replacement (12" to 18")	7	EA	\$ 7,800.00		\$ 54,600.00
621	RDWY	Soft Spot Excavation , Backfill & Compact	2,540	CY	\$ 35.00		\$ 88,900.00
622	RDWY	Roadway Shouldering	18,460	LF	\$ 1.60		\$ 29,536.00
700	SD	Remove Existing pipe Note #1	-	LF	\$ 30.00		
701	SD	24" RCP pipe note# 1	-	LF	\$ 120.00		
702	SD	21" RCP pipe note# 1	-	LF	\$ 85.00		
703	SD	18" RCP pipe note# 1	-	LF	\$ 75.00		
704	SD	15" RCP pipe note# 2	-	LF	\$ 100.00		
705	SD	Connect to existing Storm drain/ Boxes note# 2	-	EA	\$ 2,500.00		
706	SD	Remove Existing catch basin note# 3	-	EA	\$ 4,000.00		
707	SD	New Catch Basin note # 3	-	EA	\$ 5,500.00		

708	SD	New Storm Drain Manhole	-	EA	\$ 6,500.00		
800	50ES	6" PVC Sewer (50 East)	-	LF	\$ 150.00		
801	50ES	8" PVC Sewer (50 East)	-	LF	\$ 160.00		
802	50ES	48" Manhole (50 East)	1	EA	\$ 3,000.00	\$	3,000.00
803	50ES	60" Manhole (50East)	5	EA	\$ 4,200.00	\$	21,000.00
804	50ES	4" PVC Sewer Lateral (50 East)	70	LF	\$ 85.00	\$	5,950.00
805	50ES	Cleanout (50 East)	4	EA	\$ 1,200.00	\$	4,800.00
806	50ES	Existing Lateral Reconnect (50 East)	2	EA	\$ 630.00	\$	1,260.00
807	50ES	Abandon Manhole (50 East)	6	EA	\$ 1,200.00	\$	7,200.00
808	50ES	Cut and Plug Pipe (50 East)	-	EA	\$ 350.00		
809	50ES	Repair 12" Sewer Line sections	120	LF	\$ 190.00	\$	22,800.00
810	50ES	Bypass Pumping (12" repairs 50E)	1	EA	\$ 6,500.00	\$	6,500.00
811	50ES	Mobilization For Slip lining	1	EA	\$ 22,000.00	\$	22,000.00
812	50ES	Clean & CCTV 12"	2,912	LF	\$ 1.94	\$	5,660.93
813	50ES	12" Sewer Slip lining SDR 35 (50 East)	2,912	LF	\$ 132.84	\$	386,830.08
814	50ES	Post CCTV 12"	2,912	LF	\$ 1.08	\$	3,144.96
815	50ES	Freight on Material	1	LS	\$ 8,100.00	\$	8,100.00
816	50ES	Bypass Pumping (For Sliplining only)	1	LS	\$ 5,400.00	\$	5,400.00
817	50ES	Re- Instate Services	25	EA	\$ 540.00	\$	13,500.00
818	50ES	Top Hats for linner as needed (50 East)	25	EA	\$ 2,875.00	\$	71,875.00
819	50ES	Removal Protruding Lateral as needed (50 East)	10	EA	\$ 1,300.00	\$	13,000.00
		Contingency	1	LS	\$ -		
TOTALS						\$ -	\$ 10,455,000.00
NET CHANGE IN CONTRACT PRICE							\$ 10,455,000.00
Change Order initiated by: BH, Inc.							
JUSTIFICATION: Includes adjustments necessary to complete the full scope of Phase 1C							
The Contract total including previous change orders:						\$ 7,431,908.94	
							DOLLARS
The amount of the Contract will be increased by the sum of:						\$ 10,455,000.00	
							DOLLARS
The Contract total including this change order will be:						\$ 17,886,908.94	
							DOLLARS
The Contract period provided for completion will be unchanged:							
This document will become a supplement to the Contract and all provisions will apply thereto.							
Requested (OWNER) _____ Date: _____							
Recommended (ENGINEER) _____ Date: _____							
Accepted (CONSTRUCTOR) _____ Date: _____							

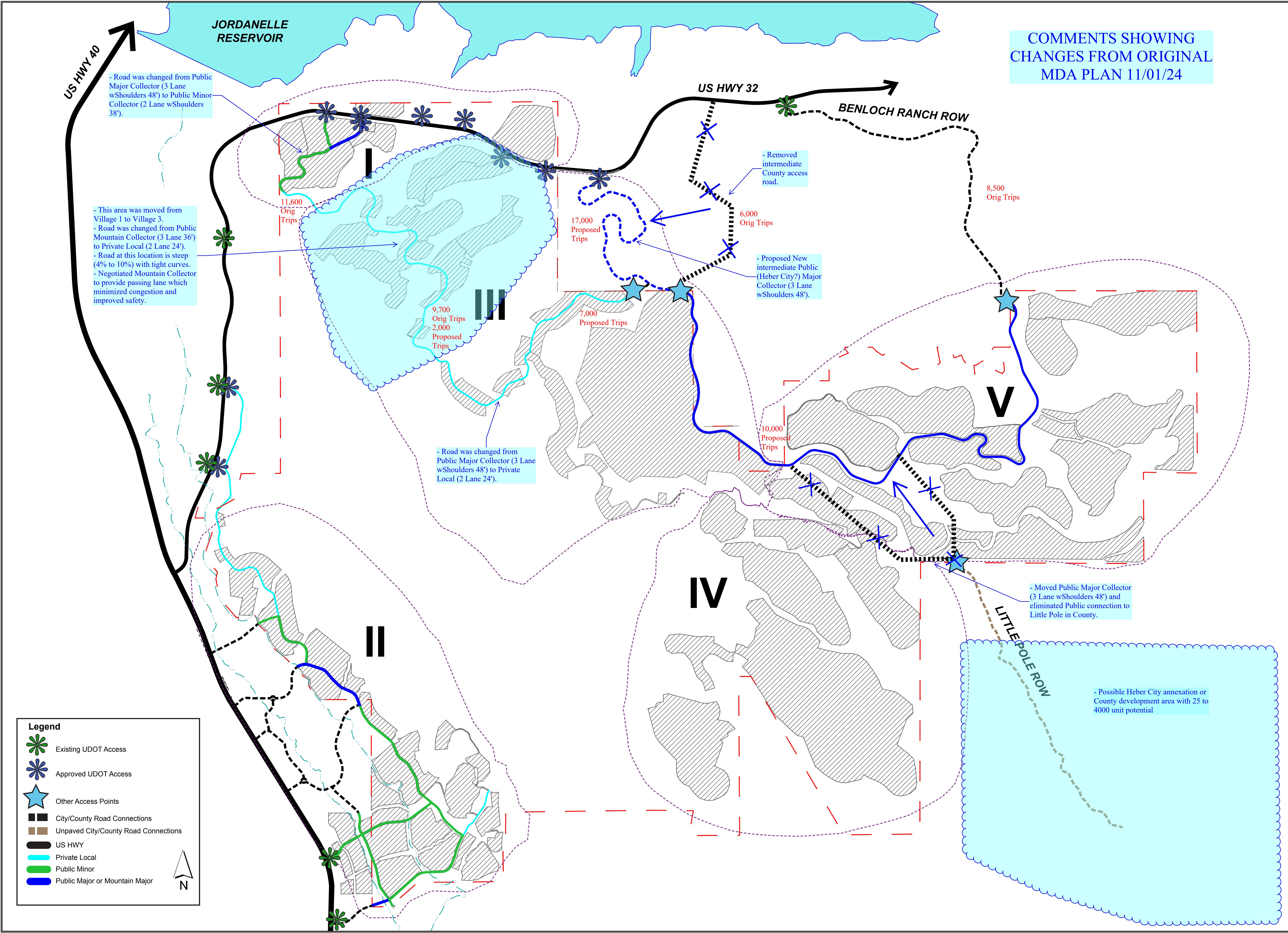


RE INVESTMENT
HOLDINGS
JORDANELLE
PROPERTY

TRANSPORTATION
PLAN



05-19-2020



JORDANELLE RIDGE		JORDANELLE RIDGE	
TRANSPORTATION		MASTER PLAN	
DATE SUBMITTED: 08-12-2024		PREPARED FOR: JORDANELLE REF ACQUISITION	
SHEET NUMBER 1		JORDANELLE RIDGE 10421 S. JORDAN GATEWAY, SUITE 200, SOUTH JORDAN, UTAH 84095	
SCALE HORIZONTAL: 1"=NTS VERTICAL: 1"=		JOB NUMBER 47-100	
CAUTION The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.			

November 4, 2024

Heber City Corporation
Attn: Russell Funk P.E.
75 North Main
Heber City, Utah 84032

Subject: Jordanelle Ridge MDA Amendment - Village 1, 3-5 Roads

Dear Russ:

Horrocks Engineers recently reviewed the concept plan for the Jordanelle Ridge MDA amendment for roads located south of SR32 in Villages 1, 3-5. The following items need to be considered in discussing the approval of this amendment. Conceptual drawings are attached at the end of this report showing the original and proposed road plans, along with comments describing the changes mentioned below.

Comparison of Original / Proposed Plans

1. Moved half of Village 1 into Village 3.
2. Changed half of the Village 1 public Major Collector, to a public Minor Collector.
3. Changed the Village 1/Village 3 public Mountain Collector, to private Local road.
4. Changed the Village 3 public Major Collector, to private Local road until it connects to the intermediate SR32 access road.
5. Reduced the trips through Village 3 from 9,700 ADT to 2000 - 7000 ADT.
6. Moved the intermediate SR32 access through the County further west, and designated it a public Major Collector potentially owned by City.
7. Increased the trips on the new intermediate SR32 public Major Collector from 6,000 ADT to 17,000 ADT.
8. Identified trips through Villages 4 & 5 as $\pm 10,000$ ADT.
9. Removed the public Major Collector connection to the County road in Little Pole Canyon.
10. Did not update the original traffic studies for the proposed plan.

Considerations

1. The City needs to understand the nature of any land use and density changes proposed in Village 1, 3-5, and any changes to public/private responsibilities and ownerships. The Villages were originally planned as private developments with some retail, office, and public / school space included. **If the plan for the area is being changed the City needs to determine if the changes are acceptable.**
2. The original plan envisioned a looped Major Collector or Mountain Collector public road through Villages 1, 3-5, providing multiple points of public access, and serving development Pods which would have private roads. The proposed plan envisions a more limited public road with one access off SR32 that loops through Villages 4 and 5 and ties into a County road to the northeast. All other roads would be private. **The City needs to determine if it wants to maintain the looped road system originally planned, if the proposed partial public road system is acceptable, or if there is little or no need for public access to the area, and all roads can be private.**

3. The original looped public road through all the Villages is proposed to be downsized in some areas from either a public Major Collector (3 Lane with shoulders, 48' Asphalt) or Mountain Collector (3 Lane, 36' Asphalt), to public Minor Collector (2 Lanes with shoulders, 38' Asphalt) and private Local roads (2 Lanes, 24' Asphalt). The original road sizes were minimums agreed to, based on estimated traffic volumes from traffic studies (Horrocks 3/2/20 & Hales 5/26/17 and 1/20/20), topography, steep slopes, and curves. **The City needs this same information to evaluate the capacity, safety, congestion, emergency service needs, etc. on the proposed reduced road sizes.**
4. The original plan estimated Village 1 could have 16,250 trips starting at SR32, reducing to 11,600 trips, and then to 9,700 trips traveling up into Village 3. The proposed plan projects only 2000 trips in the Village 1 / Village 3 area. **The City needs to understand why the trips have dropped significantly and have the traffic study for the area confirm the numbers are accurate.**
5. The original Village 1 / Village 3 public road had steep grades (4% to 10%) and tight curves. The Mountain Collector road cross section was developed to allow for a 3rd passing lane that minimized congestion created by slow moving vehicles and construction traffic. **The City needs to understand how making this road a smaller private Local road will eliminate the congestion and safety concern.**
6. The original plan estimated the intermediate access into Villages 3-5 could have 6,000 trips coming off SR32. The new plan proposes an estimated 17,000 trips along this same road and that it be constructed as a public Major Collector or Mountain Collector. Per the 3/2/20 Horrocks capacity report, the maximum traffic capacity of a 3-lane road is 14,000 trips. **The City needs to understand how this road can function as the main public access into the development if it is only a 3-lane road, and if should be upsized to a 4-lanes. The topography constraints also need to be provided for this access, e.g. alignment, grades, curves, walls, etc.**
7. The proposed plan eliminates the original public road connection between Villages 4 & 5 and Little Pole Canyon. This road connection could significantly influence where traffic from development in the Little Pole / County area is routed in the future. Without a connection through the Jordanelle Ridge Villages to SR32, the only traffic route for future development or annexations would be down Lake Creek road and onto Heber City's Center Street. **The City needs to determine how their decisions on the Villages 1, 3-5 roads will affect off-site traffic and Central Heber traffic congestion in the future.**

Please call our office with any additional questions or concerns regarding this project.

Sincerely,

HORROCKS ENGINEERS

Bart Mumford, P.E.

Attachments: Original and Proposed Road Drawings

cc: File