NEXT

HIGHLAND CITY

HIGHLAND CITY COUNCIL AGENDA

Tuesday, February 7, 2023

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

YouTube Live: http://bit.ly/HC-youtube

Email comments prior to meeting: council@highlandcity.org

6:00 PM WORK SESSION – UTAH BROADBAND

7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler
Invocation – Mayor Kurt Ostler
Pledge of Allegiance – Council Member Kim Rodela

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

2. CONSENT ITEMS (7:10 pm – 5 min)

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. **Approval of Meeting Minutes** *General City Management – Stephannie Cottle, City Recorder*
Regular City Council Meeting – January 3, 2023 and City Council Work Session – January 5, 2023

3. ALPINE FOOD STORAGE BUSINESS LICENSE REVOCATION HEARING

Quasi-Judicial/Administrative – Rob Patterson, City Attorney (7:15 pm – 15 min)
The City Council will conduct a hearing on whether to revoke the business license for Alpine Food Storage, operated by the Wadsworth's. The Council will take appropriate action and make a decision to revoke or renew the license.

4. PUBLIC HEARING/ORDINANCE: GENERAL PLAN AMENDMENT – MODERATE INCOME HOUSING ELEMENT

General Plan Update (Legislative) - Kellie Smith, Planner & GIS Analyst (7:30 pm – 20 min)
The City Council will hold a public hearing to consider a request by Highland City Staff to update the Moderate Income Housing Element of the General Plan to be compliant with Utah State Code. The City Council will take appropriate action.

5. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – RECORD DRAWINGS *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst* **(7:50 pm – 10 min)**
The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Section 5-9-111 of the Development Code to clarify details regarding record drawings or as-builts for completed subdivisions. The City Council will take appropriate action.

6. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – MODEL HOMES *Development Code Update (Legislative) – Kellie Smith, Planner & GIS Analyst* **(8:00 pm – 10 min)**
The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend several sections of the Development Code relating to model homes in residential zones. The City Council will take appropriate action.

7. ACTION: PI METER CONSTRUCTION CONTRACT WITH HYDRO VAC EXCAVATION *General City Management – Andy Spencer, City Engineer/Public Works Director* **(8:10 pm – 10 min)**
The City Council will consider approving a construction contract with Hydro Vac Excavation, LLC for the installation of PI meters. The Council will take appropriate action.

8. EXPEDITED ITEMS

a. ACTION: Approval of Sensus AMI Agreement *General City Management – Andy Spencer, City Engineer/Public Works Director* **(8:20 pm – 10 min)**
The City Council will consider authorization of an agreement for software that facilitates daily communication from the pressurized irrigation meter to the citizen or business owner. Council will take appropriate action.

b. RESOLUTION/ORDINANCE: Council Procedures, Personnel Policy, and City Officers Update *General City Management/Municipal Code Update (Legislative) – Rob Patterson, City Attorney* **(8:30 pm – 20 min)**
The City Council will discuss draft updates to the Council's rules of procedure, the City's personnel policies, and sections of the Highland Municipal Code related to council meeting procedures and the appointment and removal of city officers. The Council will take appropriate action.

c. RESOLUTION: Appointment of City Officials *General City Management (Legislative) – Rob Patterson, City Attorney* **(8:50 pm – 5 min)**
The City Council will consider consenting to and ratifying the appointment of all city officers. The Council will take appropriate action.

9. DISCUSSION ITEMS

a. Parks Division Operation Building *General City Management – Andy Spencer, City Engineer/Public Works Director* **(8:55 pm – 15 min)**
The City Council will discuss the proposed City Parks Division operations building (parks building) and the recent decision to place the parks building at the Community Center site. The Council will take no action as this will be a discussion item only.

10. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Meyers' Sewer Agreement – *Andy Spencer, City Engineer/Public Works Director* **(9:10 pm – 10 min)**

b. TSSD Rates – *Erin Wells, City Administrator* **(9:20 pm – 10 min)**

c. Library Software – *Erin Wells, City Administrator* **(9:30 pm – 5 min)**

d. Bonding for Public Improvements – *Rob Patterson, City Attorney* **(9:35 pm – 10 min)**

e. Personnel Policy – Affordable Care Act – *Rob Patterson, City Attorney* **(9:45 pm – 10 min)**

f. December Financial Report – *Tyler Bahr, Finance Director* **(9:55 pm – 5 min)**

g. Future Meetings

- February 8, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- February 21, City Council Work Session & Meeting, 6:00 pm, City Hall
- February 28, Planning Commission Meeting, 7:00 pm, City Hall
- March 7, City Council Meeting, 7:00 pm, City Hall

11. CLOSED SESSION

The City Council may recess to convene in a closed session to discuss items, as provided by Utah Code Annotated §52-4-205.

ADJOURNMENT

***Times are approximate and may need to be adjusted due to unscheduled public appearances or additional discussion.**

In accordance with Americans with Disabilities Act, Highland City will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at (801) 772-4505 at least three days in advance of the meeting.

ELECTRONIC PARTICIPATION
Members of the City Council may participate electronically during this meeting.

CERTIFICATE OF POSTING
I, Stephannie Cottle, the duly appointed City Recorder, certify that the foregoing agenda was posted at the principal office of the public body, at the Lone Peak Fire Station and Lone Peak Police Station, on the Utah State website (http://pmn.utah.gov), and on Highland City's website (www.highlandcity.org).

Please note the order of agenda items are subject to change in order to accommodate the needs of the City Council, staff and the public.

Posted and dated this agenda on the 2nd day of February, 2023. **Stephannie Cottle, CMC, City Recorder**

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL CITY COUNCIL MEETINGS.

AGENDA NEXT

Council Projects Table

Description	Owner	Due Date	Status
Park Use Policy – 8/17/2021	Erin Wells	Spring 2023	Need direction regarding Open Space parks.
Playground equipment for Highland Glen Park: look at different vendors – 9/21/2021	Erin Wells, Josh Castleberry	Spring 2023	Playground ordered. Anticipated install Winter 2022/2023
Community Center Carpet and Paint	Erin Wells	Spring 2023	Painting and upstairs carpet to be done dependent on decision at Parks Maintenance Building.
Work with agreement with USAC for soccer fields	Mayor & PTTC	Spring 2023	Staff working to draft agreement based on 9/20 Council direction
Traffic Calming Toolbox	Andy Spencer	FY2023	Contract approved by Council January 3.
Field Rental Policy Improvements	Erin Wells	Fall 2022	Researching new system. Reviewing MOU with LPYB and CH. Fees under review. Dependent on Council's direction on Open Space property.
Add meters to Councilmembers homes and share water usage data	Jeff Murdoch	Fall 2022/ Winter 2023	Council Member Rodela's left to be installed.
Security Cameras for City Hall	Andy Spencer	February 2023	Research alternative options for Council decision.
10100 N Rebuild	Andy Spencer	Summer 2023	To happen requisite with Ridgeview Development
Park Drive Traffic Calming	Andy Spencer/ Rob Patterson	Winter 2022-2023	Evaluating costs of traffic calming.
Place sign at Mountain Ridge Park	Erin Wells	Winter 2022	Working with Wes Warren to design and post.
Phyllis Smith Annexation	Kellie Smith	Spring 2023	Waiting for application from family per Council direction.
Ridgeview Traffic Flow	Andy Spencer	Winter 2022/2023	Adding signs. Will evaluate if issue still exists. May need to move to median.
Make HR position FT	Tyler Bahr	February 2023	Job posted. Applicant screening begins January 3.
Bring back more information for Council to make a decision on naming rights for Mountain Ridge Park donations	Erin Wells	February 2023	Working to update previous donation menu costs.

Bring back alternative designs and options for discussion on Parks Maintenance Building	Andy Spencer	January 17, 2023	Will come to Council for further direction.
Revoke Alpine Food Storage Business License	Rob Patterson/ Erin Wells	February 5, 2023	Letter being sent out January 9.
Updated Wimbleton Open Space Sale Potential Analysis	Andy Spencer/ Kellie Smith	Spring 2023	Will be brought to Council for consideration.

HIGHLAND CITY

HIGHLAND CITY COUNCIL MINUTES

Tuesday, January 3, 2023

Waiting Formal Approval

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

YouTube Live: http://bit.ly/HC-youtube

Email comments prior to meeting: council@highlandcity.org

7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler
Invocation – Council Member Kim Rodela
Pledge of Allegiance – Council Member Brittney P. Bills

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:03 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Council Member Kim Rodela and those in attendance were led in the Pledge of Allegiance by Council Member Brittney P. Bills.

PRESIDING: Mayor Kurt Ostler

COUNCIL MEMBERS PRESENT: Brittney P. Bills, Timothy A. Ball, Kim Rodela, Sarah D. Petersen, Scott L. Smith

CITY STAFF PRESENT: City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, Planner and GIS Analyst Kellie Smith, City Engineer/Public Works Director Andy Spencer, Fire Chief Brian Patten, Police Chief Brian Gwilliam, Communications Coordinator Lina Cosa Olsen

OTHERS PRESENT: Jon Hart, Terry Cutler, Corey Jones, Darin Juncker, Jeremy Searle, Brady Brammer

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

There were no public appearances.

2. PRESENTATIONS

a. Legislative Updates – *Brady Brammer*

Representative Brady Brammer will discuss upcoming legislation which may affect Highland City.

Representative Brammer indicated he is grateful for the opportunity to meet with the Mayor and Council to discuss pieces of legislation that will be discussed in the upcoming 2023 Legislative Session, specifically those that will impact Highland City. He used the aid of a PowerPoint presentation to discuss the stewardship of the Legislature, which includes water, energy, and land management; there have been significant investments in water and energy initiatives in the past few years and he expects increased investment in future years. Relative to land management, there has been a focus on housing affordability in the State of Utah. House Bill (HB) 462 was adopted last year and there will be a continued focus on the goals of that legislation in the upcoming session. There has been dialogue regarding plat approvals and zoning changes and which tasks should be administrative in nature; there will be adjustments to HB462 relative to funding restrictions or financial penalties for cities that are not complying with the legislation. He is working with the Utah League of Cities and Towns (ULCT) regarding opportunities for negotiating changes to the bill and he encouraged Highland leaders to pay attention to the debate regarding the bill because there is little appetite for certain types of housing developments in Highland and surrounding cities. He stated there will also be a focus on State-wide regulations for short term rentals.

Representative Brammer then discussed investment and taxes; he will be part of the leadership of the Tax and Revenue Committee for the Legislature and they anticipate setting aside $400 million for tax cuts. The State has been running with a $1 billion surplus for several years, for a total budget of $26 billion; some Legislators want a flat rate cut while others want an immediate reimbursement and a rate cut, but the details of tax adjustments will are yet to be determined. The State will continue to invest heavily in transportation and education. Utah County is prime for increased growth, much more than Davis and Salt Lake Counties, and the Legislature will work to develop a formula that will tie investment directly to population growth, which requires transportation improvements. He concluded by discussing the general budget; he provided a graph illustrating the State's revenue sources and the manner in which funding is allocated between public education, social services, debt service, law enforcement, higher education, capital facilities, general government, and transportation.

Council Member Smith asked Representative Brammer to provide his definition of affordable housing. He stated Highland has some areas of high-density housing, but they do not seem to meet the State's definition of affordable. It seems that regardless of density, home prices and rental rates are high, and cities need some clear guidance on how to comply with affordable housing legislation. Representative Brammer stated this is a debate among the Legislature and there is also a discussion about whether the State should provide subsidies to make housing affordable. Some measures have been taken to increase supply with the thought that increased supply will reduce housing costs. He stated he understands the frustration of cities and noted that many legislators share in that frustration; his biggest concern is removing barriers that make housing more expensive. One of the biggest barriers is the land that is available for development; most development is being concentrated along the Wasatch Front, but there is a great deal of land in the State that is inaccessible or unavailable for desired zoning designations. He briefly discussed the relationship between corridor preservation and land planning; in areas of high growth, the State is unable to obtain the land needed for corridor preservation until it is too late, which means increased cost and reduced efficiency. The role of government is to build infrastructure to provide for increased supply; the role of the government is not to subsidize housing to reduce housing costs or force developers to build low-income housing. That would be a horrible manipulation of the market.

Council Member Smith stated it seems there is a real focus from the State Legislature on economic growth, but it seems that focus has been on quantity and not quality; he wished that there were foresight about the impact that decisions will have on residents' quality of live in the long term. He stated that it feels as if the Wasatch Front is turning into California and many residents are not comfortable with that change. Representative Brammer agreed;

he noted the State has shifted its focus on economic growth from one of incentivization to accommodation. Many businesses are now moving to Utah because of the increased population rather than financial incentives from the State. The State is concerned about quality of life, but it is hard to determine how to achieve high quality of life when growing at the rate that Utah is.

Mayor Ostler referenced HB 462; there has been a focus on increased housing stock rather than quality. He noted that over the last three years, the City has approved 17 percent more density, but each year the State is asking for more. He stated he feels Highland was too responsive to the legislation, and is now being punished. The City's housing affordability plan was rejected by the State, even though densities have been increased, and he is confused as to what the State wants from cities. Representative Brammer stated the Legislature legislates with a hammer rather than scalpel; some cities are worse than others in terms of approving affordable housing units or increased density and that has resulted in the State being punitive towards all cities. His personal opinion is that HB 462 should be given time to 'rest' before the State responds and tries to enforce or punish those that are not complying. Mayor Ostler agreed; he noted that Highland has approved many new units, but it will take six to eight years for developers to build them; he asserted that Highland does not have a housing shortage. Representative Brammer stated that many have taken a philosophical approach to the issue and that has been harmful to some cities. This led to brief high level discussion regarding the factors that control the housing market, after which Mayor Ostler asked if the State Legislature is considering legislation that would impact General Plan planning processes for cities. Representative Brammer stated that Legislators have discussed whether a land owner or developer would have a right to zoning that is identified in the General Plan without having to follow a lengthy zone change process. Mayor Ostler stated he feels this is an attempt to avoid public clamor; he noted that Highland's General Plan has not been updated since 2008 and he hopes the Legislature will give cities time to update their plans before making a law that entitles someone to zoning that is identified in an outdated plan. Representative Brammer stated he has not heard much about the Legislature's ideas for regulating the General Plan process for municipalities, but he advised Highland City should update its General Plan.

Council Member Rodela stated the Governor's budget was released a few weeks ago and she asked Representative Brammer how he aligns with the Governor's budgetary goals, specifically the recommended tax cuts. She stated that he has recommended tax cuts that total $1.3 billion over the next three years. Representative Brammer stated that one branch of the State's government holds the 'power of the purse' and it is not the Governor; however, he believes the Legislature is in agreement with the proposed property tax adjustment, rate cuts, and adjustments to food sales tax. He discussed hesitance to adjust the general fund for the State and noted tax credits are cumbersome and not good policy. He stated he will not support a straight rate cut, but would support a phased cut over a two year period.

Mayor Ostler thanked Representative Brammer for the information he provided tonight and for his representation of the community.

b. Employee Introduction – *Lina Costa Olsen, Communications Coordinator*
Lina Costa Olsen will introduce herself at the new Communications Coordinator for Highland City.

Communications Coordinator Costa Olsen introduced herself to the Council; she stated she is a second-year Masters of Public Administration (MPA) student at Brigham Young University (BYU) and she is excited to help with social media and administrative communication for the City.

Council Member Smith inquired as to the number of hours per week Ms. Olsen will be working for the City. Ms. Olsen stated that through March she will only be able to work seven hours per week, but after March, she will increase to 30 hours per week until November.

City Administrator Wells clarified the difference between the City's Events Coordinator and Communications Coordinator; events coordination will be handled by another individual.

3. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. Approval of Meeting Minutes *Administrative – Stephannie Cottle, City Recorder*
Regular City Council Meeting – November 1, 2022

Council Member Scott L. Smith MOVED that the City Council approve consent items 3a Meeting Minutes from November 1, 2022.

Council Member Timothy A. Ball SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

4. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – PARK OR PLANTER STRIPS *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Section 3-621 Park or Planter Strips to require xeriscaping in park strips and update the permitted tree list in park strips. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained on October 18, 2022, Commissioners Howden and Moore presented to the City Council. They proposed that new developments be required to xeriscape park strips, parkway detail, and planters. Councilmembers emphasized they like xeriscaping designs that include a certain amount of vegetation rather than 100 percent rock/hard surface. She summarized the details of the request and noted staff recommends the Chapter 10 definition of xeriscape be amended as follows:

> *Xeriscape. Xeriscape is interpreted to be landscaping in a manner that reduces the need for supplemental irrigation, conserves water and enhances the beauty of the property. ~~At least 25% of the xeriscape area within the front setback of a residence must contain plants, trees and shrubs~~. Residents should be conscientious of utilizing plants, trees and shrubs appropriate to the climate to avoid losing water to evaporation and run- off. Xeriscape ~~areas~~ shall consist of an attractive mix of plantings, rocks and other landscaping materials. For front yards and park strips, at least 25% of any xeriscape must contain plants, trees and shrubs.*

The proposed amendment requires xeriscape or water-wise landscaping methods in park strip areas of new subdivisions; it also removes the outdated tree list and refers to Section 2.36.160 (J) Tree Class Divisions in the Highland City Municipal Code for the permitted Class I trees. She concluded staff recommends the City Council

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hold a public hearing and approve the proposed amendment as recommended by the Planning Commission, with the additional amendment to the definition of xeriscape, based upon the following findings:

1. The amendment eliminates inconsistencies between the Development and Municipal Codes.
2. The amendment clarifies the definition of xeriscaping.

Council Member Smith asked if the updated tree list applies to park strips only. Ms. Smith stated that the ordinance identifies class one trees, but also several other types of trees that are allowed based upon area and width of the planting location. Residents do not always get informed regarding the types of trees that are allowed and staff will work on public education materials to help address this matter. Council Member Smith stated that the ordinance language is somewhat confusing, and a reader may not understand the differentiation between park strips and front yard for purposes of the types of trees that can be planted. Ms. Smith stated she understands and she noted that class one trees are specific to park strip and planter areas.

Council Member Peterson asked how the ordinance will be enforced. Ms. Smith stated that the City is typically made aware of a violation when a tree is planted that is too big and it causes sidewalks to buckle. A resident calls the City asking to have the sidewalk fixed, and the City informs them that their tree caused the problem and needs to be removed. Most of the City's code enforcement is complaint driven.

Council Member Rodela asked if information regarding allowed trees are given to those performing new construction projects in the City. Ms. Smith stated the City does not typically review landscaping plans for residential park strips; it is the responsibility of a homeowner to be proactive in determining the types of trees they are allowed to build. Mayor Ostler clarified that builders typically do not handle landscaping; it is more common for a resident to perform landscaping after they move into a home. Ms. Smith agreed; the City can advertise the ordinance amendments through the City's newsletter, website, and social media.

Mayor Ostler opened the public hearing at 7:53 p.m.

There were no persons appearing to be heard.

Mayor Ostler closed the public hearing at 7:53 p.m.

Council Member Kim Rodela MOVED that the City Council accept the findings and APPROVE the proposed amendment that requires new park strips to be xeriscape, updates the tree list, and revises the definition of xeriscape.

Council Member Scott L. Smith SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

5. ACTION: SELECTION OF A CONSULTANT FOR THE TRAFFIC CALMING AND PEDESTRIAN SAFETY MANUAL *General City Management – Andy Spencer, City Engineer/Public Works Director*

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The City Council will review the selection of a consultant engineer for the Traffic Calming and Pedestrian Safety Toolbox manual. (This was previously referred to as Traffic Control Toolbox). The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained that responsive to direction of City Council, the City is seeking a consultant to prepare a Traffic Calming and Pedestrian Safety manual and process. The purpose of this manual is to have a "toolbox" that the City can rely upon and a process to follow when adjustments to travel speed, signage, pedestrian safety, or other road conditions are requested by citizens. The intended result will be to adopt a process whereby citizens can raise traffic related concerns to the City and have those concerns evaluated in an unbiased manner. When an item is determined actionable, the manual will stipulate a predetermined process for obtaining neighborhood consensus, selecting acceptable traffic-calming or pedestrian-safety devices, implementation, and provide a recommended annual funding to allow for implementation. Mr. Spencer summarized the Request for Proposal (RFP) process for the service and indicated Wall Consulting Group (WCG) complied with the requirements outlined in the RFP. City staff finds WCG to be well qualified to complete the project and recommends award of the Traffic Calming and Pedestrian Safety Toolbox manual to the firm.

Council Member Smith inquired as to reasoning this project cannot be performed in-house by City staff. Mr. Spencer stated that it is important for the toolbox to be developed in a very public and impartial manner in order to avoid a public perception that the City has 'taken a side' on the matter of traffic calming or pedestrian safety. He would like for the manual to be developed impartially. He added that he is unsure City staff has the time to complete the project and that is cause for concern.

Mayor Ostler asked what information the City will gather through a private consultant that is not already available internally. Jeremy Searle, WCG, stated that Highland is not alone in struggling with this issue; there are many complaints in many other communities about speeding and/or pedestrian safety. WCG will implement a project that will be customized for Highland City that will be used to determine when and where to perform traffic calming measures. It is important to develop a manual that allows for data driven decisions; he will meet with Public Safety and Public Works officials to determine traffic calming measures that will or will not be successful in the City. This information will be used to create an official policy. He stated this type of process and manual will take pressure off City officials and staff when dealing with the public about a traffic and pedestrian safety issue.

Mayor Ostler asked for an example of a City that has undertaken a similar project and has achieved success. Mr. Searle stated WCG has worked most recently with the Utah Department of Transportation (UDOT) and Mountainland Association of Governments (MAG); the results of their work has been shared with some cities for traffic calming purposes. Additionally, WCG has most recently worked with American Fork, Salem, and West Point cities to develop traffic calming procedures. Mayor Ostler asked if the manual would provide a breakdown on different road classifications. Mr. Searle answered yes, and it will provide information about the types of roads for which certain traffic calming measures are not appropriate. Mr. Spencer added that the manual will also be a tool to help ascertain whether there is community consensus regarding a requested traffic calming device.

Mayor Ostler stated the intent of this agenda item is to determine if the Council wants to commission a study to inform traffic calming decisions, or if they feel they can work with staff to identify appropriate traffic calming projects at certain areas of the City responsive to the public. Council Member Rodela stated she believes the City needs to utilize an independent consultant to develop a traffic calming manual; one of the hardest things City Councils are asked to do is come up with policies and plans for matters they have no expertise in. This is an opportunity for the City to utilize a third party that can provide appropriate research and propose an appropriate plan/manual for the City. Council Member Ball stated that the Council's main function is to ensure safety and he feels the proposed cost for this study is reasonable; he agreed the City needs the expertise of a third party.

Council Member Timothy A. Ball MOVED that City Council approve a contract with Wall Consultant Group for the Traffic Calming and Pedestrian Safety Toolbox Manual in the amount of $34,397 and authorize the City

Administrator to sign the appropriate contract documents. In addition, direct staff to defer all action on traffic calming until the manual is completed and requests can be evaluated through the adopted process.

Council Member Kim Rodela SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*No*

The motion passed 4:1.

6. ACTION: PURCHASE CONTRACTS FOR STORAGE AND SECURITY IMPROVEMENTS FOR THE PI METER PROJECT *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will consider the approval of two contracts, Northwest Fence in the amount of $33,000 and Rugged Containers in the amount of $28,995.98 for the purpose of providing a storage facility to house the materials for the PI meter installation project. The combined cost of these improvements is $61,995.98. The Council will take appropriate action.

City Engineer/Public Works Director Spencer stated that in November 2022, the Council approved the purchase of meters and brass parts for the pressurized meter project. There may be as much as $5 million in parts in storage at the beginning of the project and staff recommends that the valuable items be stored in one place that is secure. Staff proposes the storage site be at well #2, which is out of sight for traffic on Timponogos Highway and surrounding areas. Storage containers and fencing will not be obtrusive to the neighbors and will have a minimal impact on adjacent properties. Staff proposes replacement of the existing chain-link fence and extension of the fenced area to the east to create a larger secure area. The new fencing will be black vinyl coated, chain-link fence and will have added barbed wire assembly on the top for security purposes. The total cost of the improvements is $61,995.98 and staff recommends use of funding from GL 53-40-50, PI Meter Grant, within the Fiscal Year (FY) 2023 budget.

Council Member Smith asked if this proposal meets the City's ordinances regarding fencing and storage containers. Mr. Spencer stated that the chain link fencing is existing, so it is grandfathered; the shipping containers will be hidden. He added that most of the City's facilities are secured with chain-link fence, and it may be appropriate for the Council to consider the City's compliance with a recent action to prohibit chain link fencing. Council Member Smith asked if the facility will be secured. Mr. Spencer answered yes, there are security cameras that provide alerts if someone is seen in the compound area around the well. Additionally, the shipping containers will be locked and lighted. He then discussed staff's evaluation of other optional locations for the storage containers; there is no perfect solution, but he feels that the area is a fair distance away from other properties and the presence of the storage containers should not be disturbing.

Council Member Peterson asked how long the storage containers will be needed. Mr. Spencer stated the project has an expected timeframe of three years; after the containers are no longer needed, they can be sold or relocated.

There was brief discussion about the type of security systems, with Mr. Spencer reiterating that an alert will be sent to City staff if someone is seen on the property inside the fenced area.

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Council Member Bills asked why staff is not using the land near the Public Works building for the storage. Mr. Spencer stated that there will a discussion later in this meeting regarding the appropriate use of that property; if the Council would like to delay action on this matter for two weeks, that would not be problematic. This led to high level discussion about other optional locations for the shipping containers and ultimately concluded to discuss the parks maintenance facility agenda item before making a decision on this matter. Mayor Ostler stated that this item will be discussed further after discussion of agenda item 10a.

Discussion of this matter resumed at 9:50 p.m.

Mr. Spencer stated that this location would not be a good side for the Parks Maintenance facility, and he is comfortable reiterating his recommendation to locate storage containers and additional fencing at the Well #2 site.

Council Member Scott L. Smith MOVED that City Council APPROVE the purchase of additional fencing and storage containers to be placed at Well #2 site in the amount of $61,995.98 and AUTHORIZE the City Administrator to sign the necessary contracts.

Council Member Brittney P. Bills SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

7. ACTION: PRELIMINARY PLAT – ABBIES ACRES *Land Use (Administrative) - Kellie Smith, Planner & GIS Analyst*

The City Council will consider a request by Peak Real Estate & Development LLC for preliminary plat approval of a 6-lot subdivision located at approximately 4943 W 11200 N. The City Council will take appropriate action.

Planner and GIS Analyst Smith summarized the application as follows:

1. The applicant is requesting preliminary plat approval of six (6) single-family residential lots located at approximately 4943 W 11200 N.
2. Drive and utility access to the site will be from 11200 N. One (1) of the lots will face S.R.92 using an existing driveway access.
3. The subdivision includes one 21,151 square foot lot. The rest of the lots are greater than 30,000 square feet.

Ms. Smith reviewed staff's analysis of the application specific to zoning, density, access and utilities; staff found that with proposed stipulations, the preliminary plat meets the following findings:

- The preliminary plat is consistent with the General Plan.
- The preliminary plat is compliant with R-1-40 Zoning requirements.

- The proposed subdivision meets the applicable requirements in Article 5-8 General Requirements of All Subdivisions in the Development Code.

She noted the Planning Commission held a public hearing on December 13, 2022. One resident that lived adjacent to the development participated in the public hearing. The resident requested that a wall or fence along the border of the subdivision be considered. The resident also expressed concern regarding traffic on 11200 N. The applicant was also present and shared that he would be more than happy to talk with the resident to see if they could come to a private agreement. The Planning Commission voted five to zero to recommend approval of the preliminary plat with the following stipulations:

1. The final plat shall be in substantial conformance with the preliminary plat received November 16, 2022.
2. The existing ditch along the east side of the property be abandoned by the Lehi Irrigation Company and filled by the developer.
3. All public improvements shall be installed as required by the City Engineer.
4. The civil construction plans shall meet all requirements as determined by the City Engineer
5. Right of way along 11200 N must be dedicated and improved to match the city standard park strip and sidewalk configuration as approve thy the city engineer.

Council Member Smith stated there is an existing home on lot six and he asked if the owner of that home owns all of lot six. Ms. Smith deferred to the applicant to answer that question.

Corey Jones, applicant's representative, stated that the property owner does own all of lot six; the plan is to keep the home on that property with a remodel. The owner has allowed a refugee family to live in the home for the last six to eight months and he is not sure how the home will be used moving forward. There will be a wall installed between the back two lots and lot six.

Council Member Smith stated that lots four and five are of an unusual shape and lot three is fairly small; he asked if that is dictated by the use of a cul-de-sac and regulations imposed by the City. Mr. Jones stated that when the applicant began working with planning on this project, they desired a longer cul-de-sac, but that would have required a development agreement and support from another property owner in the area; the other property owner refused to participate, so the cul-de-sac was shortened, which influenced the lot sizes and shapes.

Mayor Ostler asked Ms. Smith if the current version of the plat complies with the City's R-1-40 zoning ordinance, to which Ms. Smith answered yes.

Mayor Ostler invited public input on the item. There were no persons appearing to be heard.

Council Member Kim Rodela MOVED that the City Council accept the findings and APPROVE the preliminary plat for the Abbies Acres subdivision subject to the five (5) following stipulations recommended by Staff and the Planning Commission.

1. *The final plat shall be in substantial conformance with the preliminary plat received November 16, 2022.*
2. *The existing ditch along the east side of the property be abandoned by the Lehi Irrigation Company and filled by the developer.*
3. *All public improvements shall be installed as required by the City Engineer.*
4. *The civil construction plans shall meet all requirements as determined by the City Engineer*
5. *Right of way along 11200 N must be dedicated and improved to match the city standard park strip and sidewalk configuration as approve thy the city engineer.*

Council Member Sarah D. Petersen SECONDED the motion.

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The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

8. ACTION: APPROVAL OF DONATION AND NAMING RIGHTS AGREEMENTS FOR MOUNTAIN RIDGE PARK *General City Management – Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider approving the form and template contracts that will be used to record donations made to the City for Mountain Ridge Park, as well as the granting of naming rights for large donations. The Council will take appropriate action.

Mayor Ostler stated that he will not participate in discussion of this item due to a conflict of interest.

City Attorney Patterson explained the City Council has been pursuing and planning Mountain Ridge Park for a long time. As part of the process of budgeting for the park, the Council has generally approved of seeking and accepting donations from residents and others, including some larger potential donations from particular residents. On August 16, 2022, the Council indicated general support for a particular design for a large monument to recognize donors. No firm budget has been set for the monument yet. Staff has prepared forms to be used to record the names to be honored, provide a record to donors of their gift, and to provide a means by which the City can record the names that people would like to have honored as part of the donor monument. A template donation form has been prepared by staff to handle this for donations to the City. This is not meant to limit donations made to the Foundation, but just to ensure that if the City ever directly receives donations, we can appropriately record them. Donors in this category will be eligible for naming rights whether they donate directly to the City or through the Foundation. The form provides a space for individuals to describe what kinds of facilities they would like to donate for (e.g., a bench), a space to provide the name that will be added to the donor monument for the donation, and states that the City reserves the right to remove/alter a name if necessary to avoid inappropriate names and to protect the reputation and integrity of the City. In addition, for large donations, regardless of how they are received by the City, the Council has discussed providing special recognition and naming rights, such as naming a pavilion. In order to facilitate this, a separate agreement is recommended in order to establish the terms and conditions of those naming rights. The draft agreement provides, in short:

1. The donor describes what facility they are donating for (e.g., pavilion)
2. The donor can pick a name or statement to be honored, subject to city review for appropriateness.
3. That name or statement will be included on the general donor monument, in a plaque or other visible memorialization with the facility, and used on the City's website and other places to describe the facility (e.g., for reserving the pavilion)
4. The name or statement will continue with that facility for its useful life, and upon deconstruction/reconstruction/remodeling in the future, the donor has a first right of refusal to make another donation to obtain naming rights for the new/remodeled facility.

Mr. Patterson stated that the City Council may make any changes desired to these template forms. Further, the council should decide what the donation threshold is for special naming rights. Such threshold may be for

donations of $10,000 or more or higher. Staff recommends making the threshold higher (in the thousands at least) so as not incur too much administrative burden regarding naming rights for specific facilities.

Council Member Smith asked why someone would make a donation through the Foundation rather than directly to the City; he wondered if there was some misunderstanding about the purpose of the Foundation at the time it was created. Mr. Patterson stated that the City cannot accept funding for general fund purposes; if a specific purpose of project has been identified, a donation can be accepted. It is less common for a City to receive direct cash contributions and it is easier for a charitable organization, like the Foundation, to receive them and then work with the City regarding the manner in which the donation will be used. City staff cannot accept money on behalf of the Foundation. Council Member Smith stated that it is complicated and can be confusing when advertising different donation methods for different projects or purposes. Mr. Patterson stated that it may be easier for smaller donations to go to the foundation rather than the City; then the Foundation can make one large lump sum donation to the City for the Mountain Ridge project.

Council Member Kim Rodela MOVED that City Council APPROVE the use of the Donation Form and the Special Recognition and Naming Agreement, with naming rights being granted for donations of $10,000 or greater, with donor's selected names to be approved by the Council in the future.

Council Member Smith asked for additional discussion of the matter; he asked for more details about the donations relating to naming rights. He stated that some people may make a donation between $1,000 and $5,000 and it would be appropriate to recognize them; he asked how that will be handled. City Administrator Wells stated these are policy issues for the Council to determine; she stated recognition on a donor wall can be given for anyone who donates above a certain amount. However, naming rights are different, and staff feels that a bigger donation would be needed in order to secure naming rights. Additionally, donors who are seeking naming rights would be given the right of first refusal to make a future donation if and when the item with their name on it needs to be replaced.

Mayor Ostler asked the Council if they would like to allow people to donate tangible items, such as benches or trees, for the project and if they should be recognized for those donations. Council Member Ball stated he would like to allow that; he would also like to identify specific donation benchmarks, what those donations will provide for in the park project, and how the donor will be recognized.

Council Member Smith asked where the $10,000 donation threshold for naming rights came from. Mr. Patterson stated that he selected the $10,000 amount; smaller donations would be reduced if the City is purchasing plaques to recognize each donation.

Mayor Ostler stated staff is looking for an action on the special recognition agreement and donor form and he asked the Council if they would like to adjust the amounts that are included in the drafts of these documents.

Mr. Patterson stated that everyone who makes a donation will be recognized on the donor wall, but staff needs feedback regarding the donation level that will secure naming rights. Council Member Bills stated that Council Member Rodela has worked with the Parks, Trails, and Tree Committee to develop a process pertaining to donation levels and recognition; she suggested that information be discussed along with this current proposal to ensure a more holistic approach. Ms. Wells stated that would be appropriate, but it may be necessary to update costs for certain improvements.

Council Member Rodela withdrew her motion.

The Council discussed whether to approve the donation form before them this evening or to delay action on that matter until previously completed work can be reviewed along with this matter. Mr. Patterson suggested the

Council approve the contract and forms if they are comfortable with their layout and intent; the donation numbers can be plugged in at a later date following action of the Council. Council Member Smtih asked if the City is able to solicit donations for the project, similar to the manner in which the Foundation is soliciting donations. Mr. Patterson answered yes; the City can advertise in its newsletter or through other advertisement methods.

Council Member Kim Rodela MOVED that City Council APPROVE the use of the Donation Form and the Special Recognition and Naming Agreement, subject to Council approving the threshold for use of naming rights.

Council Member Scott L. Smith SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

9. EXPEDITED ITEMS

a. RESOLUTION: Designating the Value of Orphan Parcels for 2023 *General City Management - Kellie Smith, Planner & GIS Analyst*

The City Council will consider a resolution designating the value of orphan parcels for 2023. The Council will take appropriate action.

Planner and GIS Analyst Smith explained in 2021, the City Council discussed the process and procedures for the disposal of orphan property. The City Council adopted an orphan property disposal policy via Resolution No: 2021-15. Additionally, resolution No: 2021-09 was approved by the City Council on June 1, 2021. This resolution describes how the cost per square foot is determined in detail. That same process to determine the cost for purchases in 2021, was completed for 2022. The proposed resolution describes the same formula and solidifies the calculated cost for orphan parcels in 2023. Based upon determined methodology, the value for orphan parcels for 2023 is $4.71 per square foot.

Council Member Smith asked if these numbers are based upon property values determined in last year's property assessment process. Mr. Smith answered yes. City Administrator Wells clarified that some parcels are in the middle of the property acquisition process; the intention would be to honor the 2022 prices if a purchase contract has already been signed.

There was brief discussion among the Mayor, Council, and staff regarding the timing of annual property valuation and a property owner's ability to dispute a value assigned to their property. At the conclusion of this discussion, the Council concluded that it is important to be consistent in applying the same method for determining property value per square foot, even though there may be a big increase or decrease from year to year.

Council Member Kim Rodela MOVED that City Council ADOPT the Resolution designating the valuation of orphan parcels for 2023 at 4.71 sq ft. and if they are currently under contract, it will be at the contract value.

Council Member Sarah D. Petersen SECONDED the motion.

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The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Yes*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 5:0.

10. DISCUSSION ITEMS

a. Parks Division Operation Building – Bid Results *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will discuss the proposed City Parks Division operations building (parks building) and the recently received bids. The Council will take no action as this will be a discussion item only.

City Engineer/Public Works Director Spencer explained in the FY23 approved budget, the Council funded $900,000 for the parks building planned to be located at the Community Center. As a part of the discussion on Mountain Ridge Park funding, the Council reaffirmed a commitment to the parks building construction. Currently the selected and planned location is at the Community Center to build a new 4,000 sq. ft. facility. This construction will include the new 4,000 sq. ft. building, a covered downstairs entry connecting to the kitchen of the Community Center, a fuel building where two above ground fuel tanks will be stored, and a trash enclosure. The parking lot will be completed and will extend near the northerly property boundary. There will be precast concrete fencing on the east and northern side of the enclosed yard, and a tube-steel (wrought-iron appearance) fence on the west side of the enclosed yard. Staff recently bid out the construction of the facility at the Community Center. The project bids were received on December 21, 2022. The lowest bid is $989,362.38. Bidders were asked to provide a time of completion along with their bid. The lowest bidder provided 150 calendar days as their time of completion. The average time of completion from all bidders is 230 days. Mr. Spencer reiterated the FY23 Budget included $900,000 in GL 42-40-67, Building Capital. Of that funded amount, $885,500.00 is available for construction as $15,000 has been spent on the plan preparation. For this funding analysis, the lowest bid of $989,362.38. With a 15 percent contingency of $148,404.36, the likely maximum total construction cost is $1,117,766.74. The City would need to designate additional funds in the amount of $252,766.74 to fund this construction total. As the construction is likely to not be completed until early FY24, the additional funds could be designated in the FY24 budget year.

Mayor Ostler noted the original site for this project as at Mountain Ridge Park; the City solicited bids for that project about three years ago. Council Member Smith added that this project has been discussed for the past 10 years; there has been discussion of placing the facility at Highland Glen, Mountain Ridge, and at the Community Center. He acknowledged the increased cost of moving the facility to the mouth of the canyon, but there are four parks on 10400 North Street and there are advantages to locating the facility near those parks that require maintenance. The Arts Council is concerned about sharing their space, which he understands, but he wondered if there is a compromise that can be reached to provide for appropriate use of City facilities by all parties.

Mayor Ostler stated it has been difficult to decide where to locate the Parks Maintenance Facility; one of the concerns he has relates to traffic at the access point of the site. He also highlighted the concern from the Arts Council about usage of their space. He wondered if the proposed location is a 'band-aid' and if the layout of the facility is suitable. He stated there are other locations to consider. Mr. Spencer agreed there are other locations, but each of them are more expensive, especially the locations near well houses because the City would be required to keep all chemical storage a certain distance from well sites and basins would need to be buried to allow for

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well-wash out activities. He concluded that the cost would be approximately 30 to 40 percent higher at the other locations. He also discussed activities that will occur at the Parks Maintenance Facility that are not complimentary to other municipal uses or in close proximity to residential neighborhoods.

Council Member Bills stated the City also needs a Public Works Facility; she supports locating the Parks Maintenance Facility at the proposed location and would like to find a way to provide additional room instead of taking a portion of the Community Center. She is interested in a solution that utilizes this property, but also does not take away from the Community Center. Mr. Spencer stated the building can be enlarged, but that will reduce the amount of space for parking.

Council Member Peterson stated that she supports the construction of a Parks Maintenance Facility, but she does not like this location because it is in the middle of residential neighborhoods and across the street from a park. She does not feel people would enjoy visiting the park because they will be disturbed by the noise and dust generated at the Parks Maintenance Facility. She is also concerned about the impact to the Arts program and the Community Center; they use the facility during the day and these are not compatible uses. She stated she feels the solution up the canyon is a good option and would provide for room for growth.

Council Member Rodela agreed with Council Members Peterson and Bills; she agreed that the Parks Maintenance Facility needs to be constructed, but it is important to find the best location that will make it possible for the Parks Division to do all they need to do. She stated she wants to explore all options to make sure the correct decision is made the first time.

Council Member Ball stated he agrees with preserving the Arts Council's space; he supports exploring all options available as this is a decision that will impact the City and the Arts Council for many years to come.

This led to high level discussion and debate among the Mayor, Council, and staff regarding the best location for the facility; Mayor Ostler asked Mr. Spencer to identify his top three locations for the facility. Mr. Spencer stated that his answer will be based upon his belief that it will be hard to find a location in the City that does not result in a great amount of protest from residents and neighboring property owners; this will skew his answer. He feels a long term solution would be at the mouth of the canyon near the existing facility because industrial use of that area has already been accepted by the community. The use in that area could be expanded and good things could be done, but the cost will be higher. He noted that from a maintenance efficiency perspective, another good location would be the site on 10400 North, or somewhere in the heart of the City near the areas that the City is responsible for maintaining. Debate among the Council continued, with the majority agreeing that the most important criteria is long-term functionality; once the criteria that makes up long term functionality has been identified, a cost benefit analysis should be performed.

Council Member Peterson stated that spending money at the Community Center location is a short-term band aid and the project will need to be revisited again in the future. She supports finding a long term solution and indicated no dollar amount can be placed on a project that will help to create a sense of community.

City Administrator Wells summarized the discussion of the Mayor and Council; it is her understanding they would like to identify the site that will provide for the best long-term functionality of the facility and then perform a cost benefit analysis. She agrees with Mr. Spencer that the best long-term solution would be to expand the Public Works facility and add the Parks Maintenance facility there. However, if that is not a real possibility that will be supported by the Council, she is hesitant to solicit proposals and bids because this is a costly endeavor that will detract from the amount of funding that has been set aside for the project.

Council Member Smith stated that he can support locating the facility near the Public Works facility, but he would like an estimate of the annual increased costs associated with travelling to and from the facility to the parks that are maintained by the City.

Council Member Bills asked if staff could develop estimates about the long-term operational costs associated with locating the facility near the mouth of the canyon. Mr. Spencer stated that he can work on developing that information and can also work on other options identified by the Council. He noted that the current bid is only good for 30 days; he can gather enough information to provide for a general discussion among the Council at the next meeting before informing the bidder whether the Council will proceed with the project.

The Mayor moved back to item #6 on the agenda at 9:50 p.m.

11. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Alpine Food Storage – *Kurt Ostler, Mayor*

Mayor Ostler summarized past discussions of the Council regarding Alpine Food Storage's efforts to relocate; the Council agreed to extend their conditional use permit until the end of December. They have informed him that the lease was not finalized by the end of December, but they are still engaged in negotiations to secure their lease or find a new location.

Council Member Rodela stated this has been an ongoing situation for years and the City was kind enough to give them an extension. Council Member Smith asked if the Council should impose a penalty on Alpine Food Storage for each day they are without a license or in non-compliance with the terms of their license. City Attorney Patterson indicated staff has extended the license once and the Council also extended it an additional time; this is now a decision for the Council to make. Revocation of the license is up to the Council and if they continue to operate without a license, fees and penalties can be imposed.

Council Member Rodela stated it would be her recommendation that the City follow through with past commitments made and declare the license as expired; the operation is taking a toll on neighboring property owners and the Council needs to send the message to the community that they take these issues seriously.

Council Member Bills stated that she would be willing to give Alpine Food Storage a hearing in two weeks and to inform them that some members of the Council may not be supportive of extending their license. This will give them some additional time to secure a lease. She stated that she would not support extension of the license at this time.

Council Member Peterson agreed with Council Member Rodela; residents have an understanding that the City does not enforce its ordinances or decisions and while she wants to be flexible, she feels it is important to make a difficult decision on this issue. Council Member Ball agreed with Council Members Rodela and Peterson.

Mr. Patterson stated that a decision was already made by the Council and the license is essentially expired; the Council can decide whether to ask Alpine Food Storage to appear before them for continued discussion or a hearing. City Administrator Wells stated that she feels it would appropriate to give Alpine Food Storage a time frame to stop their operations; she suggested 30 days and noted it is unrealistic to expect them to cease operations tomorrow. She stated she feels there will be public backlash from the community responsive to the City deciding to shut down a business they love.

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Mayor Ostler stated that assuming Alpine Food Storage is able to secure a lease, they will not be able to move until the new space is built out. He stated that it will likely be another six months until they can move. However, Alpine Food Storage should have known that this would be the case and they seem to be testing the decision making of the City. The Council agreed; they indicated support for sending a letter giving Alpine Food Storage 30-days to move or cease operations. Mr. Patterson stated he can draft a letter communicating the City's position to Alpine Food Storage.

b. Mountain Ridge Baseball Field – *Erin Wells, City Administrator*

City Administrator Wells indicated that if a donor is going to dedicate $1.5 million to build a baseball field at Mountain Ridge Park, he will want that area secured and available to others through reservation only. She stated that he may be amenable to restricting a reservation program to only the first three years after the improvements are completed. She noted that it would be hard to walk away from the amount of money the donor is willing to contribute to the project; there are two other baseball fields that would be publicly accessible and just this field would be subject to a reservation program. She added if there is no agreement with SURF soccer for Mountain Ridge park, there will be additional space for baseball practices and other public access.

The Council discussed optional parameters for a field reservation program, after which they concluded that they understand the need to secure a very nice facility to protect from vandalism or misuse that will damage the field space. Ms. Wells stated she and Mr. Spencer will work with the donor to reach an agreement about a reservation program and the length of time after completion of the field that reservations will be required.

c. Encroachment/Purchase Update: Highland Hollow – *Kellie Smith, Planner & GIS Analyst*

Planner and GIS Analyst Smith provided an update on encroachment/property purchases in the Highland Hollow area; she presented a map identifying properties for which plans have been approved, plans are being developed, and meetings are scheduled with staff in the coming month. She noted there are other properties on which encroachment has occurred and staff continues to work toward communicating with these property owners. The Council may be asked to consider maintenance agreements for some of the properties in this area.

Mayor Ostler stated the next area of focus will be to the east and south of Highland Holow near the trail; he wondered if there are utilities located in the areas in which encroachment has occurred. Ms. Smith presented a map to identify other encroachments and indicated she will gather information about the improvements that have been done in the areas of encroachment.

d. Update on Wimbleton Sales and Purchase Requests – *Kellie Smith, Planner & GIS Analyst*

Planner and GIS Analyst Smith presented a map to identify the six properties that are subject to sales and purchase requests; some property owners are not interested in purchasing the property and staff is waiting for more residents to reach out to express interest in purchasing. City Administrator Wells stated that some residents want to buy more property than what has been designated by the Council. Staff's preference is to go subdivision by subdivision rather than considering piece meal purchase requests. There are reasons that other areas have not been made available for sale, but she asked if the Council wants to reconsider their decision on the areas for sale in Wimbleton to determine if other space can be made available to those interested in purchasing. Council Member Smith stated that he is willing to discuss the issue again and consider whether other property should be sold. Council Member Peterson stated she wants to stick with the decision that has already been made and move from subdivision to subdivision as mentioned by Ms. Wells. The Mayor and Council discussed the two options and concluded to hear additional requests for property purchase in the Wimbleton subdivision.

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e. Sign Code Update – *Kellie Smith, Planner & GIS Analyst*

Planner and GIS Analyst Smith explained that the catalyst for this update is the Ridgeview project; over the past year a great deal of temporary promotional signs have been placed in Ridgeview and there have been complaints about this activity. She has contacted builders and realtors about violations and many of them indicated that it is difficult to comply with the current version of the City ordinance. She then provided a comparison of the current code and the proposed code amendments and asked the Council if they would like to move forward with considering action on the proposal. The Council provided feedback about the need to consider regulations that are appropriate, but still provide business support.

f. Financial Report – *Tyler Bahr, Finance Director*

Finance Director Bahr provided the financial report; five months of Fiscal Year (FY) 2023 have lapsed and he has the following observations:

General Fund (page 1)

- Tax revenue at 23.9% includes property taxes that will come mainly in December and January; sales tax is on target with projections.
- Licenses and permits revenue is at 48.7%, slightly higher than projection due to building permits.
- Council expenditures show credit balance of $9,212.41 due to funds received for the connection road near Meier's to offset some of the cost of this project.
- Transfers from the General Fund at 74.5% of budget include those the Council authorized for Mountain Ridge Park

Open Space (page 2)

- Property sales revenue YTD of $22K has already met the projected budget of $10K.

Library (page 4)

- Property tax is received in December & January
- Fee revenue, including non-resident cards, is at $21K (53.1%)

Road Capital (page 8)

- Expenditures include work on 6800 West that will be reimbursed by MAG, the County, & Lehi City this fiscal year

Culinary Water (page 15)

- Service charges adopted budget based on prior rates; mid-year budget adjustment anticipated, consistent with new rates approved in June.

Impact Fees (Capital and Enterprise Funds)

- Variance from budgeted projections due to shifts in development activity – evaluating possible budget adjustments and changes to project timelines.

He then noted the sales tax projection in the Fiscal Year (FY) 2023 budget is $3.6 million; $333,714 was collected in November, with $957,624 collected year to date. At this time last year, the sales tax collections were $874,345, so this year the City has seen a 9.5 percent increase.

g. Future Meetings

- January 5, Budget Work Session, 6:30 pm, City Hall
- January 11, Lone Peak Public Safety District Board Meeting, 7:30 am, City Hall
- January 17, City Council Meeting, 7:00 pm, City Hall
- January 24, Planning Commission Meeting, 7:00 pm, City Hall

12. CLOSED SESSION

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The City Council may recess to convene in a closed session to discuss items, as provided by Utah Code Annotated §52-4-205.

There was no closed session.

ADJOURNMENT

Council Member Kim Rodela MOVED to adjourn the regular meeting and Council Member Scott L. Smith SECONDED the motion. All voted in favor and the motion passed unanimously.

The meeting adjourned at 10:46 pm.

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on January 3, 2023. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle, CMC
City Recorder

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HIGHLAND CITY

HIGHLAND CITY COUNCIL WORK SESSION MINUTES

Thursday, January 5, 2023

Waiting Formal Approval

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

YouTube Live: http://bit.ly/HC-youtube

Email comments prior to meeting: council@highlandcity.org

6:30 PM WORK SESSION

Call to Order – Mayor Kurt Ostler

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:30 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

PRESIDING: Mayor Kurt Ostler

COUNCIL MEMBERS PRESENT: Timothy A. Ball, Brittney P. Bills, Kim Rodela, Sarah D. Petersen, Scott L. Smith

CITY STAFF PRESENT: City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, City Engineer/Public Works Director Andy Spencer, Police Chief Brian Gwilliam, Fire Chief Brian Patten, Library Director Donna Cardon, Assistant Public Works Director Jeff Murdoch, Communications Coordinator Lina Costa Olsen

OTHERS PRESENT: Jon Hart

City Engineer/Public Works Director Spencer discussed the Pressurized Irrigation (PI) meter install project; contractors do not want to fix grass months after installing the meter and residents will want their good grass replaced. According to the contract, the contractor has 30 days to get vegetation or grass back alive, and if it dies, the resident will fix it at their own expense. Residents will need to be made aware that they will need to water the grass every day to ensure that it survives. Council Member Rodela stated she feels that a 30-day timeframe is reasonable so long as residents receive adequate communication and instruction regarding what their responsibility is.

Council Member Smith asked if the cost of the service would increase dramatically if the time frame were extended from 30 days to 60 days. Mr. Spencer stated that he does not believe the increase will be too significant if the time frame is extended to 45 or even 60 days, but anything beyond 60 days would likely be very costly.

Council Member Ball inquired as to the percentage of grass that will survive the meter install. Mr. Spencer stated that if residents take care of the grass as instructed, he believes only five percent of the cut grass will die; he recommended a 30–60-day timeframe for the contractor's responsibility to keep the grass alive. A majority of the Mayor and Council supported a 60-day timeframe. Mr. Spencer then stated that he had a pre-bid meeting with all prospective contractors today and informed them they would have 48 hours to dig and install meters and within one week of making the cut, the landscaping will be put back in place. One contractor communicated that they have had nothing but problems when they put the sod back immediately; they recommended waiting 30 days after meters are installed and then the contractor will come back and replace sod on an entire street. Mr. Spencer stated this makes him very nervous; he was much more comfortable with the idea of replacing landscaping immediately. He anticipates the City will receive many complaints if landscaping is not replaced for up to 30 days. The Council discussed the matter and indicated they feel the contractor needs to guarantee plantings for 60 days and that they need to finish the replacement of landscaping on a street within a week of completing the meter install.

The meeting began at 7:02 p.m.

1. FY 2024 HIGHLAND CITY BUDGET

The City Council will discuss priorities for the FY 2024 Budget. No formal action will be taken.

City Administrator Wells stated that the purpose of tonight's work session is for City Administration to provide the Council with an update on outside influences that are impacting the Highland City budget, conduct a priority discussion and ranking of budget priorities, have a discussion about the City's Open Space Fee, and decide on next steps. Relative to outside influences on the budget, she discussed an audit alert for the City. Audit alert 2022-01 requires the creation of a development fund to show revenues and expenses of development related activity outside of General Fund; staff has taken a phased approach to complying with the audit alert and they are attributing all applicable costs to a development related fund. They are also looking to see what other cities are doing in this area. High level discussion among the Council and staff centered on the manner in which development related activities are tracked by staff to determine they are allocated to the correct fund. Ms. Wells stated that the intention is to finalize the creation of the fund before the next FY.

Ms. Wells then discussed the status of the Pleasant Grove lawsuit relative to their transportation utility fee; a ruling of the court is anticipated this spring. The decision could have an impact on fees charged in Highland City, including the road fee, which generates $1.1 million each year, the public safety fee, which generates $862,000 every year, and the open space fee, which generates $300,000 every year. All road projects that are funded with the road fee, that have not yet been bid out, have been paused. Discussion centered on a reasonable timing of the court rendering a decision on the lawsuit and the projects and other items that are typically funded with the revenues of the road fee. Mayor Ostler stated it is his recommendation that the City begin the process of moving away from charging the road fee and public safety fee, with the understanding that it may take some time to finalize the removal of the fees and shifting to another revenue collection mechanism. Council Member Peterson stated she feels it makes more sense to move away from fees and include all costs for service in the City's property tax fee calculation; this is a more transparent process and one that will not be challenged in court. Council Member Smith stated that in the past residents have expressed support for a fee rather than increased property taxes. Mayor Ostler stated that is correct; residents feel that the fee will generate revenue that is deposited into a specific account that can be tracked rather than part of the general fund. They also supported the fact that an equal fee is charged to all homes in Highland, versus increased property taxes for certain homes depending upon their value. Ms. Wells stated that the City could implement a systemic property tax rate for certain services, such as roads and public safety; this would increase transparency relative to the manner in which property tax revenues will be used.

Council Member Ball inquired as to the necessary property tax percentage increase to make up what the City will be losing in fee revenue if the road and public safety fees are eliminated. Ms. Wells stated she has not completed that calculation yet. Finance Director Bahr stated that the current budget includes $1.9 million in property tax revenue; it would need to be more than doubled to generate the revenue currently being collected via fees. This generated ongoing high level discussion among the Council regarding their preference for a fee or increased taxes; Council Member Smith stated he would like to wait for a ruling to be made on the Pleasant Grove fee. He stated he is concerned about the optics of making a change now without a legal decision being made on the fees. Mayor Ostler stated that the City can wait, but it would be appropriate to begin communicating with residents about these issues. Council Member Ball agreed. Ms. Wells stated Administration can begin working on some messaging; she discussed some background information regarding the implementation of fees and taxes and some decisions of the Council that have been subject of a referendum for voters to decide upon. Council Member Peterson stated she is supportive of waiting to make a decision until the courts have rendered their decision on the Pleasant Grove lawsuit.

Ms. Wells then discussed future items, such as a City-wide fiber project, an expansion of the cemetery, a museum for the Daughters of the Utah Pioneers (DUP), and expansion of the Highland Glen Bike Park. The latter could be completed through an eagle scout project. The Council discussed funding options for some of the unfunded future projects, as well as opportunities for partnering with other community groups to fundraise for a project. Ms. Wells then asked if there are any other future projects that have not been included in Administration's list that the Council would like to explore or get more information on. The Council brainstormed and developed the following list:

- Community Center (Council Member Peterson)
- Safety Evaluation (Council Member Ball); work to include safety of trails and dead-end roads.
- Beacon Hill Park (Council Member Smith); he noted there was a plan for the Park, but the City is stuck at step 1.5 of a five-phase plan.
- Highland Glen Park (Council Member Smith)
- Filtration System at Highland Glen (Council Member Rodela)
- CERT Program (Mayor Ostler)

Ms. Wells then discussed ongoing projects, including Mountain Ridge Park; phase one of the park is scheduled to be completed this summer, though there is some questionability on the ninja course and soccer fields due to funding. Relative to Highland Glen, the City is still waiting for Sonntagg to send word that their equipment order has been finalized. Council Member Smith asked what is done with the old equipment that is ripped out of parks; he wondered if it can be surplussed and sold to generate some revenue that could be used for park improvements. Assistant Public Works Director Murdoch stated that playgrounds must be certified for safety purposes and the City cannot surplus something that is not certified. Ms. Wells stated that she can explore that matter further with City Attorney Patterson. Finance Director Bahr added that some metal pieces taken out of the park may be recycled, though that does not generate a large amount of money.

Still focusing on ongoing projects, Ms. Wells stated that Administration plans to include funding in the budget for phase one of pressured irrigation (PI) meter install, Well #4, and other ongoing projects identified in the City's Utility Master Plan. Additionally, Administration is working to implement a two-way texting system that allows staff to respond to text messages sent to the City identifying a problem in the City. Council Member Rodela stated she would like for the communication between the City and residents to be tracked in order to determine the amount of time it takes for the City to respond to a complaint or safety issue. Ms. Wells stated she assumes there will be timestamps on the communications; the City's work order system has the ability to generate reports that would include information on the City's response to a request for work. However, the two-way texting system is not a work order system; it is simply intended to generate an item that is sent to the work order system. Mayor Ostler stated he would like to see an additional step that allows the City to report back to the resident that the work they have requested has been completed.

Ms. Wells then conducted an activity among the Mayor and Council to rank pending projects in the City. Items included on the list of projects/purchases included:

- Additional funding for Parks Maintenance Building
- Staff COLA's separate from merit increases
- Contracted tree replacement.
- Cemetery connexes/ lean-to for equipment storage
- General Plan update
- Payroll processing software
- Dog park by Town Center
- Phase 1 on fence repair along Alpine Highway
- Mountain Ridge Park Maintenance
- Contract Fire Marshall for Building Department
- Increased funding for trail maintenance & expansion
- Update to 2016 Transportation Utility Fee Study
- Additional funding for park improvements: playgrounds, added amenities, other improvements.
- Capital facilities plan creation.
- General Fund study update

There was discussion among the Council regarding the scope of several of the projects/purchases included on the list; they also recommended minor adjustments to the scope of a few projects and the addition of a few more projects to the list, including the gravel pit recharge, Dry Creek Lake, and updating the Trails Master Plan. They then participated in an activity to rank each of the priorities. Ms. Wells summarized the results.

Item	Score	Rank
Additional funding for Parks Maintenance Building	22	1
General Plan update	22	1
Mountain Ridge Park Maintenance	22	1
Payroll processing software	21	4
Staff COLA's separate from merit increases	17	5
Dog park by Town Center	15	6
Cemetery connexes/ lean-to for equipment storage	14	7
Increased funding for trail maintenance & expansion	14	7
Phase 1 on fence repair along Alpine Highway	14	7
Additional funding for park improvements: playgrounds, added amenities, other improvements	13	10
Capital facilities plan creation	13	10
Contract Fire Marshall for Building Department	13	10
Contracted tree replacement	13	10
General Fund study update	13	10
Update to 2016 Transportation Utility Fee Study	10	15

Ms. Wells stated that this feedback will be considered along with available funding and will be used to inform Administration's tentative budget, which will be presented to the Council by May.

Ms. Wells then moved to the City's Open Space Fee; in the FY23 budget, the City's expenses are $600,000. Revenue sources for these expenses include $300,000 generated by the Open Space Fee, $270,000 in General

Fund revenue, and $30,000 from sale of property, interest earning, etc. Considerations for the Council include sales tax volatility, uncertainty on the Pleasant Grove fee court case, and other ranked priorities. Additionally, the Council should consider the original intent/purpose of Open Space subdivisions, the practical reality of Open Space subdivisions, and parks usage/programming. Options available to the Council include the following:

- Maintain status quo for the fee.
- Eliminate the fee.
  - Identify revenue source replacement.
- Reassess what should be open space and what should not.
  - Potential fee adjustment
  - Public involvement
  - Newsletter articles
  - May 11 – City Open House
  - May 18 – Community Budget Presentation

Mayor Ostler stated the thought is that any decision to eliminate the fee would be made in advance of the adoption of the FY24 budget; he asked the Council to consider the matter from that position in order to determine how the open space fee revenue would be replaced in the budget.

Council Member Smith stated that when the City increased public safety fees, residents were glad that the Council was supporting Public Safety employees. The same was true when the City increased its road fee because residents understood the revenue would be used to repair or improve roads. However, he has heard complaint after complaint about the open space fee and he proposes to eliminate it; he feels the replacement revenue is already available to the City. Sales tax revenue has increased year after year, and he does not believe that there will be an economic shift that would result in total loss of new sales tax revenue. Mayor Ostler agreed the open space fee has been contentious; he stated he and Council Member Smith do not pay the open space fee due to the location of their residences, but there are four Council Members who do. The concern among the public is that the fee is not evenly applied. Some subdivisions are paying the fee, though they do not have immediate access to open space. Others are getting a great benefit due to direct access to open space amenities. If the fees are eliminated, however, there are some park spaces that will become programmable and will need improvements such as bathroom facilities and parking area. He added that people will be coming into neighborhood parks and open space that are not designed for a great deal of people. He concluded that in 2005, there was a public vote on the open space fee; the question submitted to voters included information about maintenance and improvements to open space. The residents were opposed to eliminating the open space fee at a ratio of 66 to 33 percent. Council Member Smith stated the problem with the vote is that 75 percent of the City does not pay the fee, so a majority of voters will not vote to eliminate it. Mayor Ostler stated that if the Council decides to do away with the fee and other fees, in favor of increasing property taxes, people will believe that the City increased property taxes to pay for open space. Additionally, if the open space fee is eliminated, all open space/park property must be open to the public and programmed. Council Member Smith stated that all parks are public parks; there are differences between reservable parks and those that are not available through reservation. No one has said that parks in open space neighborhoods cannot be accessed by the public. Mayor Ostler stated that is correct but noted there is no public parking area for these spaces so they are difficult for the general public to access.

Council Member Rodela referenced Nob Hill Park in American Fork, which does not have public parking/access. It is designed just like the open space subdivision parks in Highland. Many other parks in other cities are similar to those in Highland subdivisions, but they are not reservable. Neighborhood parks are actually City parks, but not all parks are reservable in other cities. Mayor Ostler stated that if the City decides to eliminate the open space fee, the question will be asked as to the benefit those who do not live in an Open Space neighborhood have received. Council Member Rodela stated their benefit is that they are living in a City that is known for its trail system, large parks, and a great deal of open space. Mayor Ostler agreed, but noted that the reason that the Open Space subdivisions were designed was to give residents living in those areas a direct connection to that open

space. Council Member Ball agreed and those residents likely have increased property values and it would be easier for them to sell their home in a down market. Council Member Peterson agreed. Mayor Ostler stated that the developer benefitted from building an Open Space subdivision; he was able to charge more for building lots and homes; those living around those neighborhoods did not pay the fee, but will not get the same benefits if the fee is eliminated. Council Member Smith stated that his neighborhood is managed by a Homeowners Association (HOA); they pay for a park, but it is private. They also use Highland Glen Park and they do not pay an open space fee for it. Mayor Ostler stated that he is also concerned about issues arising from private parks when the park space in Open Space subdivision is declared open to the general public.

Mayor Ostler asked the Council to consider the implications of eliminating the fee and pursuing a property tax increase in the same year. Council Member Rodela stated that the entire community benefits from the presence of open space amenities. Mayor Ostler stated that is correct, but some do not have open space directly adjacent to their homes; he anticipates there will be complaints lodged by the residents of the City.

Council Member Bills asked Mayor Ostler if he believes the Council should make all of its decisions based on what benefits the majority. Mayor Ostler stated that depends on how a decision is applied; at the time the Open Space Fee was implemented, residents subject to paying the fee believed that they were part of an Open Space Special Service District (OSSSD). The agreements with those residents are now being changed. Council Member Bills asked Mayor Ostler if it is his opinion that the decision regarding the Open Space Fee was permanent and indefinite. Mayor Ostler stated the problem is that the fee was not applied fairly, and every Open Space subdivision is not the same. Council Member Peterson agreed and stated that the current Council has inherited a problem that should not exist and that is a result of previous decisions that were made; the Council must make a decision based upon today's conditions. Council Member Smith agreed and added that these decisions were made over 20 years ago and the population of the City has doubled since that time; Open Space neighborhoods are not growing, while the rest of the City is. The Open Space subdivision concept was great, but the design and implementation were problematic. He reiterated he supports eliminating the fee and looking for another source of revenue for open space maintenance. Council Member Peterson agreed and added that she thinks that the majority of the Open Space subdivision parks are already being used by the general public; in her neighborhood there are sports groups that are using the small field areas for sports practices and other activities without reserving them. Mayor Ostler asked if the Council would be concerned if the spaces were programmed for regular usage for recreation programs and other activities; some residents will be opposed to that type of activity as it will be occurring right in their backyard. He suggested some will want to continue to pay the fee in order to keep the open space private.

Mayor Ostler polled the Council to determine their position on the open space fee moving into the next FY; all Council Members voted to eliminate the fee July 1. Council Member Smith stated he would support eliminating the fee sooner than July 1 if that were an option. Mayor Ostler stated Administration will need to work to identify a replacement funding source for the money that is currently generated by the Open Space Fee. The Council indicated they feel that the $300,000 can be found in current funding sources and they included this issue among the top four critical issues for the upcoming budget. The Council then discussed the best method of communication between the City and residents about this issue and the potential to adjust other areas of the budget – and possibility consideration of a tax increase – to replace the revenue generated by the Open Space Fee. The Council expressed a strong desire to be very transparent relative to the discussion and decision making process regarding this issue. City Attorney Patterson added that the OSSSD will need to make the decision to eliminate the fee.

The Mayor and Council thanked staff for organizing this meeting and for the input they provided.

ADJOURNMENT

The meeting adjourned at 9:28 pm.

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on January 5, 2023. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle, CMC
City Recorder

DRAFT

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL STAFF REPORT
ITEM #3

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Rob Patterson, City Attorney

SUBJECT: Alpine Food Storage Business License Revocation Hearing

TYPE: **QUASI-JUDICIAL/ADMINISTRATIVE:** Decision on the potential revocation of a business license is a quasi-judicial action applying city code.

PURPOSE:

The City Council will conduct a hearing on whether to revoke the business license for Alpine Food Storage, operated by the Wadsworth's. The Council will take appropriate action and make a decision to revoke or renew the license.

BACKGROUND:

This is a public hearing regarding the potential revocation of the business license and home occupation license for David and Chirine Wadsworth, for the Alpine Food Storage business located at 11800 North 6000 West, Highland, Utah. This is a residential lot in the R-1-40 zone with an existing home, attached garage, and accessory structures.

The business has operated as a home occupation, and a license was first applied for in 2008. From 2019, and significantly escalating with the COVID 19 pandemic in early 2020, the City received complaints or otherwise became aware that the Alpine Food Storage business had significantly expanded its operations. With that expansion came significant impacts on neighbors due to customer and commercial traffic, which partially blocked or impeded traffic on the 6000 West 11800 North intersection, as cars and commercial trucks (Sysco, A-Z produce, and refrigerated truck deliveries), park on the shoulder of the streets, back out into traffic, park too close to the stop sign, and park on the north side of 11800 North with customers crossing 11800 North to access the business.

At certain points over the past 3 years, tents have been set up on the driveway in order to store and sell product; accessory structures have been used to store product; signs have been posted directing customers on where and how to park to access the business; Wadsworth family members have directed traffic and parking, and the use has expanded through most of the attached garage and into the home. Traffic and parking issues have not abated in connection with the lessening impacts of the pandemic. The City has continued to receive complaints.

Below is a summary of events that has led to this point:

<u>June through October 2020 (First Renewal and Extension)</u> – At the end of June 2020,

Alpine Food Storage's business license is up for renewal, but the city is aware of complaints and outstanding issues regarding the business. On July 2, 2022, the city administrator contacts the Wadsworths to remind them of home occupation regulations and to ask for a plan to bring the business into compliance. Letters and discussions are exchanged between the city attorney, city administrator, the Wadsworths, and their attorney.

In October 2020, the City Administrator and Mr. Wadsworth reach an informal agreement to allow the business to continue to determine whether the issues with the business were a limited issue arising out of the pandemic or a longer-term situation, with reporting required by Wadsworths on customer and traffic impacts. The license is then renewed.

June through August 2022 (Second Renewal and Extension) – Alpine food storage business license is again up for renewal, but the continuing outstanding issues cause city staff to issue a letter on August 24, 2021, informing the Wadsworths that the license cannot be renewed unless the Wadsworths reduce customer visits, stop the commercial deliveries, stop the exterior signage and employees outside the home, stop any use of the yard and accessory structures for the business, and reduce the use of the home and garage to city ordinance requirements, or the city would begin the license revocation process.

The Wadsworths submit a response on September 8, 2021, requesting the license be renewed and they be granted another extension to bring the business into compliance. The Wadsworths acknowledge that "the business has grown beyond the scope envisioned in the City ordinance," but that they could not return the business to how it was before. The Wadsworths explained that they were in the process of relocating their business.

On November 1, 2021, city staff issues a letter informing the Wadsworths that their license will be renewed, but that will be the last time. The city continues to receive complaints regarding the business and its impacts on neighbors and traffic. In April 2022, the city code compliance officer hand delivers a reminder notice that the Alpine Food Storage business license will expire on June 30 and will not be renewed.

August 2022 through Present (Third Renewal and Extension) – On August 16, 2022, the City Council conducted a revocation hearing regarding Alpine Food Storage. The Wadsworths were present at that hearing. During that hearing, after the City Attorney explained the history, complaints, and code issues with the business, Mr. Wadsworth indicated that he was not disputing any of the issues or violation, but rather asked the Council to grant an extension to allow them to continue operations while they compelted their relocation.

The City Council determined that the Wadsworths were in violation of the city's code regarding home occupations, but granted a limited extension to the business license to allow them additional time to complete the relocation of their business. Specifically, the Council voted to "authorize the renewal of the business license for Alpine Food Storage with the following stipulations:

1. Extending the license only until 12/31/2022 2.
2. During that interim, Alpine Food Storage will make a good faith effort to move their business to a location in a commercial district, possibly in Pleasant Grove

Based on the following findings: The business owners have had to deal with contingencies created by the Covid-19 pandemic and supply chain issues as well as other issues with construction that has been delayed because of the pandemic.

After the hearing, the City issued a business license, which, due to an oversight, contained the typical expiration date of June 2023.

At the beginning of January, the City issued a letter to the Wadsworths explaining that their license would expire and they would need to wind up their business within 30 days. The City also issued a notice regarding this hearing.

The Wadsworths have informed the City that the Pleasant Grove location has fallen through, but that they have found a second location, also outside of Highland, that may be workabl. To staff's knowledge, they are currently in the process of finalizing lease terms and moving the business.

APPLICABLE CODE:

Business & Home Occupation Licenses Required:

HCC § 5.04.030 License Required

Except as provided in Section 5.04.110, it is unlawful for any person, firm or corporation holding himself or itself out to the public as maintaining, carrying on or engaging in any business, trade, service or profession within the limits of the city without having first procured a license from the city. Any person, firm or corporation who shall fail to procure such license or comply with such provisions, either by an act of omission or commission, shall be deemed guilty of a misdemeanor. Each day during on or which a violation occurs or continues shall constitute a separate offense, and shall be punished by a fine in an amount not to exceed two hundred ninety-nine dollars or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment.

HCC § 5.08.020 Home Occupation License Required

To assure compliance with provisions of this title and Chapter 5.04 and **to protect the character of residential neighborhoods in the city**, a home occupation license shall be obtained according to the procedures and standards set forth in this title and Chapter 5.04 from the office of the city recorder before a dwelling unit in a residential or an agricultural zone may be used for these business purposes. Any person who fails to obtain a home occupation license, either by an act of omission or commission shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to punishment by a fine in an amount not to exceed two hundred ninety-nine dollars or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment. A home occupation license is required in addition to a business license.

Regulations and Requirements for Home Occupations:

HCC § 5.08.010 Definition

"Home occupation" means any use **conducted entirely within a building** and carried on by persons residing in the dwelling unit, which **use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof**. A business license does not automatically grant the privilege of conducting a business in a residential dwelling unit.

HCC § 5.08.040 Procedure
The mayor and/or city administrator may, upon application, grant a home occupation license which shall state the home occupation permitted, the conditions attached thereto, and any time limitations imposed thereon. **The license shall not be issued unless the applicant is in compliance with each one of the conditions listed in city ordinance and state law, and that the applicant has agreed in writing to comply with all said conditions.** All certificates of license shall be signed by the mayor and attested by the city recorder under the seal of the city.

HCC § 5.08.050 Conditions

L. All home occupation licenses shall expire annually on June 30th, and **may be renewed annually provided there have been no reported violations, complaints, or detrimental characteristics** which may, in the opinion of the city council or city zoning administrator, require termination of such occupation.

STAFF REVIEW:

A primary purpose of the City's home occupation regulations is "to protect the character of residential neighborhoods in the city." HCC § 5.08.020.

The operation of Alpine Food Storage business does not conform to the requirements of a home occupation. A home occupation is supposed to be "conducted entirely within a building," "clearly incidental and secondary to the use of the building for dwelling purposes," "not change the character" of the building from a residential structure." HCC § 5.08.010. Out of the 11 required conditions or standards for home occupations under HCC § 5.08.050, the business appears to violate 7 to 9 standards, highlighted below:

HCC § 5.08.050 Conditions
As a prerequisite to the issuance of a home occupation license, conditions must be observed at all times by the licensee and the licensee shall comply with the following:

A. Only bona fide residents of the premises, as defined by the city zoning ordinance, shall be employed by the licensee.

B. **The home occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.**

C. **The home occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent of the total main floor area of the residential structure; nor in the alternative, more than fifty percent of the total floor area of any attached garage wherein the license activity is conducted. The home occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.**

D. **The home occupation shall not display nor create outside the building any external evidence of the operation of the home occupation.**

E. **No display of any kind shall be visible from the exterior of the premises.**

F. **All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the home occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.**

G. **The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.**

H. There shall be complete conformity with fire, building, plumbing, electrical and health codes and to all state and city laws and ordinances.

I. **The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.**

J. **The home occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.**

K. Any special condition established by the city council and made of record in the home occupation license, as they deem necessary to carry out the intent of this section shall be met.

Conditions D, F, G, I, and J: These conditions prohibit home occupations from having traffic or other external impacts on adjacent properties or city facilities beyond those normally associated with residential properties. There is too much traffic, from both customers and commercial delivery vehicles. The Wadsworths, in a parking plan submitted to the city, designated approximately 44 parking spaces (most of which were on-street parking) to serve their business. That is roughly equivalent to a 9,000 to 11,000 square foot commercial building under the City's commercial zoning standards. The Wadsworths have employed family members as flaggers to direct traffic and parking. The traffic impacts neighbors with noise and nuisances from traffic obstruction, causes unsafe traffic and street usage as people park on the street, block views, and back out into traffic, and impacts city streets and street facilities far beyond normal residential homes.

When the Wadsworths first applied for their business license, they stated that there would be no more than 5-50 visits per week, and that they would not create unusual traffic. Based on staff review and resident complaints, they no longer comply with these requirements and stipulations.

Conditions B, C, D, and E: These conditions focus on how much of the home and yard is used for the home occupation, prohibit any home occupation from altering the residential feel and look of the home and yard, and require that home occupations take up no more than 25% of the main floor area of the home or no more than 50% of the area of an

attached garage. Home occupations cannot be operated in accessory structures or in the yard of a residence.

STAFF RECOMMENDATION:

As was the case in August 2022, the Alpine Food Storage business continues to violate several sections of the City's code regulating businesses and home occupations. Per the Council's prior direction, the business license should have expired and terminated after December 31, 2022. Because of the way the City staff issued the license, with an expiration date contrary to that set by the Council, this hearing is being held to ensure that all due process requirements are satisfied, and that the city procedures for business license revocations are satisfied.

While the Wadsworths may have found a suitable alternative location, the question for the Council is whether to allow another extension on this license while they complete their transition to the new location outside of Highland, or whether the Council should require the Wadsworths to end all business within Highland City immediately.

COUNCIL ACTION:

The City Council will hold a hearing and consider whether to revoke or renew the business license and home occupation license for Alpine Food Storage.

MOTION TO REVOKE:

I move that City Council revoke the business license and home occupation license for Alpine Food Storage, with the finding that the business does not meet the standards for a home occupation as described in the staff report and as acknowledged by the Wadsworths. The Council can draft additional or different findings or conditions.

MOTION TO RENEW:

I move that City Council authorize the renewal of the business license for Alpine Food Storage. The Council can include any findings or conditions supporting and/or limiting the renewal.

ATTACHMENTS:

1. Original Business License application
2. Correspondence between City and Wadsworths
3. January Notices from City to Wadsworths
4. Minutes from August 2022 Hearing

Attachment 1

Original Business License

Paid $30.00 3/4/08

#30

CITY OF HIGHLAND, UTAH
APPLICATION FOR LICENSE PRIVILEGES

HOME OCCUPATION LICENSE

FIRM OR HOME OCCUPATION NAME: DP & LC Wadsworth Family Business LLC DATE: 3-4-08

HOME OCCUPATION ADDRESS: 11800 No 6000 W

CITY: Highland ZIP: 84003 PHONE: 763-5493

NAME & TITLE OF PERSON APPLYING: David P. Wadsworth & ~~Letha~~ LChirine Wadsworth

ADDRESS OF PERSON APPLYING: Same as above

I HEREBY MAKE APPLICATION FOR LICENSE PRIVILEGES WITHIN THE CORPORATE LIMITS OF THE HIGHLAND CITY, UTAH, FOR THE FOLLOWING TYPE OF HOME OCCUPATION (STATE GENERAL CHARACTER OF HOME OCCUPATION):

Food Storage Bulk Ordering and Consulting

1. WILL CUSTOMERS VISIT THE HOME? (YES) (NO)
2. IF CUSTOMERS VISIT THE HOME, THEN HOW MANY TOTAL VISITS PER WEEK? (5-50 VISITS) (N/A)
3. WILL STOCK OR MERCHANDISE BE DISPLAYED AT THE HOME? (YES) (NO)
4. WILL THERE BE OTHER EMPLOYEES THAN FAMILY? (YES) (NO)
5. WILL THER BE UNUSUAL TRAFFIC CREATED IN THE NEIGHBORHOOD? (YES) (NO)
6. WILL ANY MATERIALS CONSIDERED FLAMMABLE, TOXIC, POISONOUS OR OTHERWISE HAZARDOUS BE KEPT AT THE HOME? (YES) (NO)
7. WHAT PERCENTAGE OF THE HOME WILL BE USED FOR BUSINESS? 10-15 %
8. A. WHAT IS YOUR STATE TAX #? _____ B. WHAT IS YOUR STATE LICENSE#? _____ (N/A)
9. WILL THE PROPOSED HOME OCCUPATION PHYSICALLY CHANGE THE APPEARANCE OF THE HOME? (YES) (NO)
10. WILL THE HOME OCCUPATION OCCUPY ANY OUTSIDE SPACE OR ACCESSORY BUILDING? (YES) (NO)
11. WILL THERE BE ANY OUTSIDE STORAGE OF MATERIALS, SUPPLIES, EQUIPMENT, ETC? (YES) (NO)
12. WILL ANY NOISE, THAT COULD BE HEARD BY NEIGHBORS, BE CREATED? (YES) (NO)
13. WILL THERE BE ADDITIONAL VEHICLES KEPT AT THE HOME OR OUTSIDE OF A GARAGE? (YES) (NO)
14. I, THE APPLICANT, HAVE READ AND UNDERSTAND THE HOME OCCUPATION REGULATIONS AND CONDITIONS ON THE REVERSE SIDE OF THIS APPLICATION AND AGREE TO ABIDE BY THESE REGULATIONS (YES) (NO)

I UNDERSTAND ALL HIGHLAND CITY LICENSE PRIVILEGE APPLICATIONS MAY BE EVALUATED BY THE POLICE, FIRE(IF APPLICABLE), HEALTH(IF APPLICABLE), AND ZONING. PRIVILEGE TO HAVE A HOME OCCUPATION IN HIGHLAND IS GRANTED ONLY BY THE MAYOR AND CITY COUNCIL. AT LEAST TEN WORKING DAYS ARE REQUIRED FOR INVESTIGATION PERIOD, AND THIS PERIOD MAY BE EXTENDED IF COMPLETE INVESTIGATION CANNOT BE COMPLETED DURING THIS PERIOD. I FURTHER UNDERSTAND THAT IN EVENT OF DISAPPROVAL OF A LICENSE REQUEST FOR ANY REASON, THE ENTIRE APPLICATION FEE MAY NOT BE REFUNDED AS IT MAY BE USED TO PARTIALLY DEFRAY THE COST OF THE BACKGROUND INVESTIGATION AND ADMINISTRATION AND THAT A LICENSE WILL ONLY BE ISSUED UPON COMPLETION AND SATISFACTION OF APPLICATION REQUIREMENTS, INVESTIGATION PROCESS AND APPROVAL OF THE MAYOR AND COUNCIL

APPLICANT'S SIGNATURE: _____

APPROVAL OF LICENSE PRIVILEGES IS BASED ON THE APPLICANT'S CONTINUAL COMPLIANCE TO ALL ITEMS NOTED IN THE APPLICATION AND MAY BE REVOKED IF APPLICANT IS FOUND IN VIOLATION.

APPROVAL/DISAPPROVAL/COMMENTS:

MAYOR AND CITY COUNCIL: _____ DATE: 4/14/08

As a prerequisite to the issuance of Home Occupation License, the licensee shall comply and observe the following conditions at all times:

A. Only bona fide residents of the premises, as defined by the City Zoning Ordinance, shall be employed by the licensee.

B. The Home Occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.

C. The Home Occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent (25%) of the total main floor area of the residential structure; nor in the alternative, more than 50% of the total floor area of any garage or outbuilding wherein the license activity is conducted. The Home Occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.

D. No display of any kind shall be visible from the exterior of the premises.

E. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the Home Occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.

F. The Home Occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

G. There shall be complete conformity with Fire Building, Plumbing, Electrical and Health Codes and to all State and City Laws and Ordinances.

H. The Home Occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.

I. The Home Occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.

J. Any special condition established by the City Council and made of record in the Home Occupation License, as they deem necessary to carry out the intent of this section shall be met.

K. All Home Occupation Licenses shall be valid until revoked as provided in Section 5.08.110 of the Highland City Code of Ordinance.

NOTE: EACH HOME OCCUPATION APPLICANT SHOULD CHECK WITH THEIR NEIGHBORHOOD HOMEOWNERS ASSOCIATION TO ASCERTAIN IF THEIR PERSPECTIVE BUSINESS IS IN CONFORMITY WITH THEIR ASSOCIATION BYLAWS, COVENANTS, AND RESTRICTIONS.

Form Update: 9/9/99

Fax 216-4588

David,

As requested, attached is the section of the Highland City Development Code which requires the notification of the neighbors for all home occupations. [Article 6, Section 3-614 (7)]. I've marked the area.

I told Chirine about the 500 feet requirement when she initially applied and she came back with only one name. When I contacted her to let her know there were more people within the 500 foot radius I was unsure if signatures were required and indicated the best thing would be to gather signatures but I would research the issue. There has been some back and forth on both our parts and I apologize if you feel you've gotten the "run around" as you mentioned.

Because we have no way to verify if phone calls are made, the notification has to be submitted in either a petition format, or as I mentioned yesterday, you can deliver envelopes and stamps and we will mail the notice for you.

Please let me know if you have other questions. My email is gina@highlandcity.org

Gina

within a rear yard if it has been designed and engineered by a licensed engineer, however, any wall in the rear yard shall not exceed eight (8) feet in height. Any construction of a retaining wall shall include a drainage plan which provides for containment of run off water on site or drainage to a City approved location. Any person constructing a retaining wall that requires engineering shall be required to apply for a retaining wall permit prior to construction which shall also include a stamped engineered plan for that wall at that location. Any resident who constructs a retaining wall within a public utility easement shall be financially responsible for removal or reconstruction if that easement is needed per Utah Law (UCA 54-3-27). A typical lot in Highland includes a 10 foot public utility easement entirely around the boundary of each lot. Any person constructing a retaining wall within a public utility easement where utilities do not exist shall install conduit. Retaining walls shall not be permitted within public utility easements where a storm drain, culinary water line, pressurized irrigation line, or sewer line is installed.

(6) Fences Along Open Space and Trails: Types of fences permitted along open space or a trail are defined as follows:

(a) Rear or side yards abutting a trail (may include open space) where the perpendicular distance between the rear or side property line and an adjacent private property line are less than 40 feet;

(i) Shall be a maximum of 4' in height open or solid, or 5' in height 55% open;

(b) Rear or side yards abutting a trail with adjacent open space behind which exceeds 40 feet in width:

(i) Fences may be a maximum of 4' in height, open or solid; or

(ii) 4' solid with a 2' extension that is a maximum of 55% open, or

(iii) Up to 6' in height if 55% open minimum;

(c) Rear or side yards abutting open space without a trail;

(i) Fences may be a maximum of 4' in height, open or solid, or

(ii) 4' solid with a 2' extension that is a minimum of 55% open, or

(ii Up to a maximum of 6' in height if 55% open, including those open spaces that abut streets;

(d) Property along open space or a trail larger than 30,000 square feet with large animal rights:

(i) Fences may be a maximum of 4' in height, open or solid, or

(ii) 4' if solid with a 2' extension which is a minimum of 55% open, or

(iii) Up to 6' in height if a minimum of 55% open.

(e) Common interior fences can be up to 6' solid.

3-613: Fractional Numbers. Any computation or measurement resulting in a fractional number shall be rounded down to the next smaller whole number.

3-614: Home Occupations. (Amended: 7/6/99, 7/18/2000, 5/2/06)

(1) Home occupations may be permitted as provided herein. Provided, however, a home occupation permit shall not be required for any of the uses listed in subsection (9) below. Any person desiring a home-occupation permit, as provided in this Section, shall file an application therefor with the Zoning Administrator.

(2) All home occupations, whether or not a permit therefor is required by this Section, shall be permitted only subject to and shall at all times comply with the following conditions.

(a) Home occupations will be permitted only in the following Zones: R-1-40, R-1-20 and A-1.

(b) The home occupation shall be conducted entirely within a building.

(c) The home occupation shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character of the building from that of a dwelling.

(d) The total area devoted to the home occupation within a building or buildings shall not exceed 25% of the living area of the dwelling; nor in the alternative, more than 50% of the total floor area of any garage or out building wherein the licensed activity is conducted.

(e) The home occupation shall be registered with and licensed by the business license division of the City and with all applicable state agencies. A separate license must be obtained for each branch establishment, or separate place of business, in which the business, trade, calling, profession or occupation is carried on, and for each separate kind of business, trade, calling, profession or occupation and each license shall authorize that business, trade, calling, profession or occupation described in such license, and only at the location or place of business which is indicated thereby.

(f) Entrance from the outside to the area of the dwelling used for the home occupation shall be the same entrance normally used by the residing family, except when otherwise required by the Utah State Department of Health or other state agency.

(g) The physical appearance of the dwelling, amount of traffic and parking, and other activities generated by the home occupation shall not be contrary to the intent of the zone in which the home occupation is located. The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

(h) The home occupation shall, and the structure in which it is conducted shall, comply with all fire, building, plumbing, electrical and health codes.

(I) The home occupation shall not be associated with nor produce odor, fumes, dust, light, glare, color, design, materials, construction, lighting, sounds, noises, vibrations, including interference with radio or television reception, that may be discernable beyond the premises or which disturb the peace and quiet of the neighborhood.

(j) All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the home occupation shall be garaged or stored entirely within the building or structure, or entirely behind the dwelling, out of view of the street.

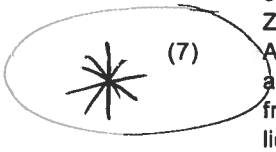
(k) Any special condition established by the City Council and made of record in the home occupation license as they deem necessary to carry out the intent of this section shall be met.

(3) Any permit issued pursuant to this Section may be revoked by the Zoning Administrator for failure of the holder of the permit to comply with the foregoing conditions. The Zoning Administrator shall likewise refuse to grant a renewal of such a permit for failure of the holder to comply with the foregoing conditions.

(4) The revocation or refusal to grant or renew a permit may be appealed to the Board of Adjustment. Likewise, any aggrieved party may appeal to the Board of Adjustment from the Zoning Administrator's decision to grant a renewal of such a permit.

(5) All home occupation permits issued pursuant to this Section shall be valid for a period of one year. The license year shall commence on July 1 and expire on June 30 of each year. Thereafter, all home-occupation permits shall be issued and renewed only in accordance with this Section, except as such use may be a nonconforming use which is allowed to continue by Section 3-201.

(6) The City Council shall by resolution or ordinance fix the amount of license fees and the terms and conditions thereof, copies of which shall be available for public inspection at the office of the city Zoning Administrator.



(7) All applications for the issuance of a home-occupation permit shall be accompanied by an application fee in such amount as may be specified by the City's standard fee schedule established from time to time by resolution of the City Council. Such fee shall be in addition to any business license fee which may be required by other provisions of this Code. The applicant shall be required to notify all residents within a 500' radius of the property lines of their request for a home occupation license. The applicant shall provide a legible vicinity map indicating the exact location

of their property and each property within ¼ mile (1,320 feet). The map shall include the address of the subject property.

(8) The Zoning Administrator, or his designee, may at all reasonable times enter the premises for which a home occupation permit has been issued to ascertain compliance with this Section. He may also inspect such premises prior to the issuance of a home occupation permit. Refusal by the owner or occupant of the premises to allow such inspection, when requested, shall be grounds for denial or revocation of a home-occupation permit.

(9) A home occupation permit shall not be required for use of a residence, which use is limited to receiving and sending mail and telephone calls.

(10) The City Council may, upon application, grant a home occupation license which shall state the home occupation permitted, the conditions attached thereto, and any time limitations imposed thereon. The license shall not be issued unless the City Council finds the applicant is in compliance with each one of the conditions listed in City Codes and State Law, and that the applicant has agreed in writing to comply with all said conditions. All certificates of license shall be signed by the Mayor and attested to by the Zoning Administrator under the Seal of the City.

3-615: All Lots Shall be on Record at the County Recorder's office.

(1) No building permit shall be issued for the construction of a dwelling or commercial or industrial structure which is to be located on a lot or parcel outside of an approved subdivision or large-scale development, the plat of which is recorded at the county recorder's office; except that a permit is for a nonconforming lot of record as defined in section 3-208.

(2) The Building Inspector shall require, prior to issuance of the building permit, that the applicant post with the City a Bond for the protection of the cities offsite improvements. Said bond will be released after occupancy and an inspection has been conducted to insure that no damage is evident in the improvements.

3-616: Rules For Locating Boundaries. Where uncertainty exists as to the boundary of any Zone, the following rules shall apply:

(1) Where the zone boundary is indicated as being approximately upon the center line of a street, alley or block, or along a property line, then unless otherwise definitely indicated on the map, the center line of such street, alley, or block, or such property line shall be so construed to be the boundary of such Zone.

(2) Whenever such boundary line of such Zone is indicated as being approximately at the line of any river, irrigation canal, or other waterway or railroad right-of-way, or public park or other public land or any section line, then in such case the center of such stream, canal, or waterway, or of such railroad right-of-way or the boundary line of such public land or such section line shall be deemed to be the boundary of such Zone.

(3) Where such Zone boundary lines cannot be determined by the above rules, their location may be found by the use of the scale appearing upon the Zoning Map.

(4) Where the application of the above rules does not clarify the Zone boundary location, the Board of Adjustment shall interpret the Map.

3-617: Amendments To Zoning Code. (Amended: April 11, 1995) The Zoning Code, including the Zoning Map, may be amended, but all proposed amendments shall be submitted first to the Planning Commission for its recommendations, which recommendations will be considered by the Planning Commission within thirty (30) days. For the Purpose of establishing and maintaining sound, stable, and desirable development within the City, it is declared to be public policy that amendments shall not be made to the Zoning Code and Map except to promote more fully the objectives and purposes of the General Plan, this code or to correct manifest errors. Any person seeking an amendment to this Zoning Code or Map shall submit to the Zoning Administrator a written petition designating a change desired, the reasons therefore, and wherein the proposed amendment would further promote the objectives and purposes of

#15 3/4/08

CITY OF HIGHLAND, UTAH
APPLICATION FOR LICENSE PRIVILEGES

BUSINESS LICENSE

FIRM OR BUSINESS NAME: D&M LC Wadsworth Family Business, LLC DATE: 3.4.08

BUSINESS ADDRESS: 11800 No 6000 W

CITY: Highland ZIP: 84003 PHONE: 763-5493

NAME & TITLE OF PERSON APPLYING: E. David P. Wadsworth and L Chirine Wadsworth

ADDRESS OF PERSON APPLYING: Same as above

CLASS OF LICENSE DESIRED: ( ) CLASS I ( ) CLASS II ( ) CLASS III (✓) CLASS IV

PERIOD OF TIME FOR WHICH THE LICENSE IS DESIRED TO BE ISSUED: _____, 199_ TO _____, 199_.

I HEREBY MAKE APPLICATION FOR LICENSE PRIVILEGES WITHIN THE CORPORATE LIMITS OF THE CITY OF HIGHLAND, UTAH, FOR THE FOLLOWING TYPE OF BUSINESS (STATE GENERAL CHARACTER OF BUSINESS):

Food Storage Bulk Ordering and Consulting

I UNDERSTAND THAT ALL HIGHLAND CITY LICENSE PRIVILEGE APPLICATIONS MAY BE EVALUATED BY THE POLICE, FIRE (IF APPLICABLE), HEALTH (IF APPLICABLE), AND ZONING. PRIVILEGE TO HAVE A BUSINESS IN HIGHLAND IS GRANTED ONLY BY THE CITY MAYOR & COUNCIL. AT LEAST TEN WORKING DAYS ARE REQUIRED FOR INVESTIGATION PURPOSES, AND THIS PERIOD MAY BE EXTENDED IF COMPLETE INVESTIGATION CANNOT BE COMPLETED DURING THIS PERIOD. I FURTHER UNDERSTAND THAT IN EVENT OF DISAPPROVAL OF A LICENSE REQUEST FOR ANY REASON, THE ENTIRE APPLICATION FEE MAY NOT BE REFUNDED AS IT MAY BE USED TO PARTIALLY DEFRAY THE COST OF BACKGROUND INVESTIGATION AND ADMINISTRATION AND THAT A LICENSE WILL ONLY BE ISSUED UPON COMPLETION AND SATISFACTION OF APPLICATION REQUIREMENTS, INVESTIGATION PROCESS AND APPROVAL OF THE CITY MAYOR & COUNCIL.

APPLICANT'S SIGNATURE: D.P. Wadsworth

APPROVAL/DISAPPROVAL/COMMENTS:

POLICE DEPT.: _____ DATE: _____

FIRE DEPT.: _____ DATE: _____

HEALTH DEPT.: _____ DATE: _____

ZONING: _____ DATE: _____

CITY MAYOR & COUNCIL: _____ DATE: _____

Form Update: 11/4/96

Attachment 2

Notices and Correspondence

MCDONALD|FIELDING
ATTORNEYS AT LAW

Dan McDonald
2100 W. Pleasant Grove Blvd., Suite 250
Pleasant Grove, Utah 84062
Email: dan@mcdonaldfielding.com
Telephone: (801) 372-0055
www.mcdonaldfielding.com

July 7, 2020

Nathan Crane, AICP
City Administrator / Community Development Director
Via Email: nathanc@highlandcity.org

Re: Renewal of Business License No. 30
DP & LC Wadsworth Family Business, LLC
11800 North 6000 West
Highland, UT 84003

Dear Mr.Crane:

This firm represents DP & LC Wadsworth Family Business, LLC, David P. Wadsworth and L. Chirine Wadsworth (collectively "Wadsworth(s)" or "Alpine Food Storage"), who own and operate a family food storage business, Alpine Food Storage, from a home owned by Mr. and Mrs. Wadsworth located at 11800 North 6000 West. I am writing in response to your July 2, 2020, email to Mr. Wadsworth.

Your letter said that you would "be happy to clarify or answer any questions that you have about these standards." One question that we have is whether the City is requiring Alpine Food Storage to re-apply for a home-occupation license.

As your July 2nd email indicates, the Wadsworths have operated Alpine Food Storage out of their home and have been licensed as a home occupation for approximately 12 years. As we understand the facts, the City initially issued a home occupation license in 2008. A copy of that license is attached as **Exhibit 1**. The City has not required Alpine Food Storage to re-apply for a home occupation license each year. In fact, it is my understanding that the City has only required Alpine Food storage to apply for an annual *business* license each year.

Alpine Food Storage's 2019 business license is attached as **Exhibit 2**. Since that license expired on June 30, 2020, Alpine Food Storage timely re-applied for a business license renewal on approximately June 26, 2020. Its application is attached as **Exhibit 3**. It is my understanding that in response to the business license application, you sent the July 2nd email attached as **Exhibit 4**.

It is my understanding that a business license and a home occupation license are two separate concepts under the Highland Municipal Code ("HMC"). Business licenses are governed by Chapter 5.04 of the HMC. Home occupation licenses are governed by a separate chapter, Chapter 5.08 of the HMC.

Since I see nothing in the HMC that requires Alpine Food Storage to annually make a re-application for a home occupation license (unlike a business license), I'm assuming that, instead of being intended to require a re-application for a home occupation license, your July 2nd email was a courtesy effort on your part to secure compliance before recommending city council revocation of the home occupation license under HMC § 5.08.100.A and/or denial of the business license under HMC § 5.04.160.

Assuming that was your intent, can we please have some additional time to demonstrate our compliance? Your letter was sent on July 2nd, which is the Thursday before the 4th of July holiday. Friday, July 3rd was a public holiday under Utah Code Ann. § 63G-1-301(1)(a)(vi) and –301(1)(c), which gave Alpine Food Storage just two business days to comply with your request. I was retained on Monday July 6th and plan to work diligently with Alpine Food Storage to sort through the issues you have raised.

The Wadsworths are forwarding to me the city's prior correspondence to bring me up to speed on the issues you have raised. I spoke with them about the situation at length today and they are committed to working diligently with me to address the concerns that you have raised in a professional and helpful manner.

We realize the City has concerns about the business based upon complaints that it has received and prior correspondence you have had with my clients. It seems that most of the concerns are due to the COVID-19 pandemic, which triggered a lot of panic buying of food storage products. We realize this may have created a spike in traffic at the home during the months of March and April, when panic buying was at its height. However, the panic buying has stopped and traffic at the home has largely returned to the normal levels under which it has operated for 12 years with few or no complaints from the neighbors. Alpine Food Storage has been a good neighbor and a law-abiding, tax-paying business for many years and hopes to remain so for many years to come.

I would think that thirty (30) days from the date of your email seems reasonable given the fact that HMC § 5.04.120.A gives businesses 30 days prior notice to re-apply before their business licenses expire. Also, I have a week-long family vacation planned during July 20-27 so, as a practical matter, I'd like to respond to the city's concerns, if I can, prior to July 20th. If given adequate time, I believe we can address your concerns and demonstrate our commitment to continued compliance with the home occupation licensing requirements.

If you would kindly let me know what your position is on these issues and questions I would sincerely appreciate it. Again, Alpine Food Storage wants to be a good neighbor. We're just trying to clarify (a) where we're at in the process established by city code and (b) how we can fairly address the concerns that have been raised in something better than a hurried response scuttled out over the 4th of July weekend. Many thanks, in advance, for your attention to these issues.

Sincerely,

MCDONALD FIELDING PLLC

Daniel J. McDonald

c: David P. Wadsworth
Rob Patterson (Via Email: rob@bcjlaw.net)

Check #3000 3/4/08

Exhibit 1

#30

CITY OF HIGHLAND, UTAH
APPLICATION FOR LICENSE PRIVILEGES

HOME OCCUPATION LICENSE

FIRM OR HOME OCCUPATION NAME: DP & LC Wadsworth Family Business LLC DATE: 3-4-08

HOME OCCUPATION ADDRESS: 11800 No 6000 W

CITY: Highland ZIP: 84003 PHONE: 763-5493

NAME & TITLE OF PERSON APPLYING: David P. Wadsworth - Leslie L Christine Wadsworth

ADDRESS OF PERSON APPLYING: Same as above

I HEREBY MAKE APPLICATION FOR LICENSE PRIVILEGES WITHIN THE CORPORATE LIMITS OF THE HIGHLAND CITY, UTAH, FOR THE FOLLOWING TYPE OF HOME OCCUPATION (STATE GENERAL CHARACTER OF HOME OCCUPATION):

Food Storage Bulk Ordering and Consultancy

1. WILL CUSTOMERS VISIT THE HOME? (YES) (NO)
2. IF CUSTOMERS VISIT THE HOME, THEN HOW MANY TOTAL VISITS PER WEEK? (5-50 VISITS) (N/A)
3. WILL STOCK OR MERCHANDISE BE DISPLAYED AT THE HOME? (YES) (NO)
4. WILL THERE BE OTHER EMPLOYEES THAN FAMILY? (YES) (NO)
5. WILL THER BE UNUSUAL TRAFFIC CREATED IN THE NEIGHBORHOOD? (YES) (NO)
6. WILL ANY MATERIALS CONSIDERED FLAMMABLE, TOXIC, POISONOUS OR OTHERWISE HAZARDOUS BE KEPT AT THE HOME? (YES) (NO)
7. WHAT PERCENTAGE OF THE HOME WILL BE USED FOR BUSINESS? 10-15 %
8. A. WHAT IS YOUR STATE TAX #? _____ B. WHAT IS YOUR STATE LICENSE#? _____ (N/A)
9. WILL THE PROPOSED HOME OCCUPATION PHYSICALLY CHANGE THE APPEARANCE OF THE HOME? (YES) (NO)
10. WILL THE HOME OCCUPATION OCCUPY ANY OUTSIDE SPACE OR ACCESSORY BUILDING? (YES) (NO)
11. WILL THERE BE ANY OUTSIDE STORAGE OF MATERIALS, SUPPLIES, EQUIPMENT, ETC? (YES) (NO)
12. WILL ANY NOISE, THAT COULD BE HEARD BY NEIGHBORS, BE CREATED? (YES) (NO)
13. WILL THERE BE ADDITIONAL VEHICLES KEPT AT THE HOME OR OUTSIDE OF A GARAGE? (YES) (NO)
14. I, THE APPLICANT, HAVE READ AND UNDERSTAND THE HOME OCCUPATION REGULATIONS AND CONDITIONS ON THE REVERSE SIDE OF THIS APPLICATION AND AGREE TO ABIDE BY THESE REGULATIONS (YES) (NO)

I UNDERSTAND ALL HIGHLAND CITY LICENSE PRIVILEGE APPLICATIONS MAY BE EVALUATED BY THE POLICE, FIRE(IF APPLICABLE), HEALTH(IF APPLICABLE), AND ZONING. PRIVILEGE TO HAVE A HOME OCCUPATION IN HIGHLAND IS GRANTED ONLY BY THE MAYOR AND CITY COUNCIL. AT LEAST TEN WORKING DAYS ARE REQUIRED FOR INVESTIGATION PERIOD, AND THIS PERIOD MAY BE EXTENDED IF COMPLETE INVESTIGATION CANNOT BE COMPLETED DURING THIS PERIOD. I FURTHER UNDERSTAND THAT IN EVENT OF DISAPPROVAL OF A LICENSE REQUEST FOR ANY REASON, THE ENTIRE APPLICATION FEE MAY NOT BE REFUNDED AS IT MAY BE USED TO PARTIALLY DEFRAY THE COST OF THE BACKGROUND INVESTIGATION AND ADMINISTRATION AND THAT A LICENSE WILL ONLY BE ISSUED UPON COMPLETION AND SATISFACTION OF APPLICATION REQUIREMENTS, INVESTIGATION PROCESS AND APPROVAL OF THE MAYOR AND COUNCIL

APPLICANT'S SIGNATURE: _____

APPROVAL OF LICENSE PRIVILEGES IS BASED ON THE APPLICANT'S CONTINUAL COMPLIANCE TO ALL ITEMS NOTED IN THE APPLICATION AND MAY BE REVOKED IF APPLICANT IS FOUND IN VIOLATION.

APPROVAL/DISAPPROVAL/COMMENTS:

MAYOR AND CITY COUNCIL: _____ DATE: 4/14/08

As a prerequisite to the issuance of Home Occupation License, the licensee shall comply and observe the following conditions at all times:

A. Only bona fide residents of the premises, as defined by the City Zoning Ordinance, shall be employed by the licensee.

B. The Home Occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.

C. The Home Occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent (25%) of the total main floor area of the residential structure; nor in the alternative, more than 50% of the total floor area of any garage or outbuilding wherein the license activity is conducted. The Home Occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.

D. No display of any kind shall be visible from the exterior of the premises.

E. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the Home Occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.

F. The Home Occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

G. There shall be complete conformity with Fire Building, Plumbing, Electrical and Health Codes and to all State and City Laws and Ordinances.

H. The Home Occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.

I. The Home Occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.

J. Any special condition established by the City Council and made of record in the Home Occupation License, as they deem necessary to carry out the intent of this section shall be met.

K. All Home Occupation Licenses shall be valid until revoked as provided in Section 5.08.110 of the Highland City Code of Ordinance.

NOTE: EACH HOME OCCUPATION APPLICANT SHOULD CHECK WITH THEIR NEIGHBORHOOD HOMEOWNERS ASSOCIATION TO ASCERTAIN IF THEIR PERSPECTIVE BUSINESS IS IN CONFORMITY WITH THEIR ASSOCIATION BYLAWS, COVENANTS, AND RESTRICTIONS.

Form Update: 9/9/99

Exhibit 2

License No. 30

Highland City
Business License

HIGHLAND CITY

Issued By:

Highland City
5400 W Civic Center Dr, Ste 1
Highland, Utah 84003
(801) 756-5751

Issued To:

DP & LC Wadsworth Family Business, LLC
David P. Wadsworth
11800 North 6000 West
Highland UT 84003

Fee Paid: $ 25.00

License Issued: 07/01/2019 Expires: 06/30/2020

License Type: HO - FEE

Type of Business: Food Storage, Bulk Ordering and Consulting

Place of Business: 11800 North 6000 West

Mayor

Licensing Official

This certifies the above named business has paid into the City Treasury the required license fee, is subject to provisions of the Ordinances of said City relating to Licenses, and is hereby duly authorized.
In witness whereof, I hereunto set my hand and affix the corporate seal of Highland City.

THIS LICENSE IS NOT TRANSFERABLE - THIS LICENSE SHOULD BE POSTED IN A CONSPICUOUS PLACE

Exhibit 3

HIGHLAND CITY

Highland City
5400 W. Civic Center Drive
Highland, UT 84003
(801) 772-4510

2019-2020 Business License Renewal

DP & LC Wadsworth Family Business, LLC
11800 North 6000 West
Highland UT 84003

ALL COMMERCIAL BUSINESSES, PRESCHOOL/CHILDCARE AND DANCE STUDIOS ARE REQUIRED TO HAVE A FIRE INSPECTION PRIOR TO THE RENEWAL OF THE BUSINESS LICENSE.

Please contact Lone Peak Fire Department at (801) 763-5365 to schedule your inspection.
A copy of your fire inspection form MUST accompany your renewal.

Please review the following section, provide missing information and make any corrections which apply to your business. If you are no longer doing business in Highland City, please indicate below so we may update our records.

Business License #: 30
Business Name: DP & LC Wadsworth Family Business, LLC
Business Address: 11800 North 6000 West, Highland UT 84003
Phone: 801-763-5493
Email: info@alpinefoodstorage.com
Mailing Address: 11800 North 6000 West, Highland UT 84003
State Sales Tax #: 13074158 -003-STC
Business Registration #:
Owner Name: Wadsworth, David P.
Owner Address: 11800 North 6000 West, Highland UT 84003
Owner Phone: 801-763-5493

Total License Fee Due: 30.00

LICENSE FEE IS DUE NO LATER THAN JULY 1, 2020

Payments received after August 1st will be assessed a 10% penalty every month the fee is delinquent.

EASY RENEWAL OPTIONS!

ONLINE: www.highlandcity.org

MAIL: 5400 W. Civic Center Dr., Ste 1, Highland, UT 84003 (send renewal form, payment and fire inspection)

IN PERSON: 5400 W. Civic Center Dr., Ste 1 (Monday - Thursday 7:30 am - 6:00 pm)

If you have any questions, contact Candice Linford at (801) 772-4510 or candice @highlandcity.org.

Business License #: 30

✓ The information is correct, and I wish to renew my business license for 2020-2021.

✓ I wish to renew my business license; however, please make the corrections as indicated.

____ I am no longer doing business in Highland City. Date Closed: _____

Signature: CH **Date:** 6.26.20

Fire Safety Inspection

Lone Peak Fire District

Submitted By: Dustin Mitchell
Date/Time Submitted: Jun 23, 2020 at 11:29

Business Information

Business Name:	Alpine Food Storage *	**Business Type:**	Food Storage
Address:	11800 N 6000 W *	**Phone Number:**	801-361-4933
Emergency Contact:	Chirine Wadsworth *	**Emergency Contact Phone Number:**	801-361-4933 *

General

Address Visible with 5" Lettering (505.1):	Pass
Fire Lane/Access Obstructed (503.1.1):	Pass
Remove waste, trash, and or weeds from exterior of building (304.1):	Pass

Electrical

Improper use of extention cords (605.5):	Pass	**Breakers not labeled (605.3.1):**	Pass
Protective covers missing (605.7):	Pass	**Defective or exposed wiring (605.3.5):**	Pass
Blank covers missing in breaker panel (605.7):	Pass	**Improper use of multi plug adapters (605.5):**	Pass
Breakers taped on (605.6):	Pass		

Fire Protection

Maintain access to stand pipes, fire hose, FDC, & sprinkler control valves (509):		**Annual fire sprinkler service & inspection (901.4/904.4) :**	
Fire riser room labeled:		**5 Year Test:**	
Spare sprinklers or wrench not available (13):		**FDC caps missing/damaged (912.4.1):**	
Semi Annual hood service and inspection (609):		**Incomplete system/unprotected areas (903):**	
		FDC Location:	

Fire Extinguishers

Insufficient number (906):	Pass	**Wrong type (904.12.5.2):**	Pass
Not mounted (906.7/906.9):	Pass	**Damaged/Discharged (906.2):**	Pass
Obstructed (906.6):	Pass	**Improperly located (906.5):**	Pass
Sign(s) indicating location (906.6):	Pass	**Annual maintenance/inspection (906.2):**	Pass

Flammable/Combustable Liquid

Improper use (610):

Improper storage (5704):

Improper dispensing (5704.2.7.5.2):

Improper container (5704):

Exits

Not open proper direction (50+occ) (1010.12.1):

Access blocked (103.1):

Door(s) locked (103.1):

Door(s) in need of repair (103.1):

Sign(s) not illuminated (100+occ) (604.6):

Directional signs needed (108.3/1009.10):

Emergency lighting functional (108.2):

Exit width maintained (min 36 inches):

Stairs=48 inches (1009.3):

Knox

Knox box (506.1):

Knox keys (506.1):

Knox box location:

Elevator

Annual inspection:

Elevator key (607.7):

Elevator key location:

Storage

Too close to celing (18"sprinklered/24"non) (315.3.1): Pass

Too close to furnace/water heater (36" min) (315.3): Pass

Blocking electrical panel (30" min) (605.3): Pass

Beneath unprotected stairways (315.3.2): Pass

Storage in unprotected attic space(s) 315.3.4: Pass

Blocking aisle ways (103.1): Pass

Compressed gas cylinder secured (603.4.2.3): N/A

Disorderly of excess combustibles (304.1.1): N/A

Storage rubbish, waste, and/or oily rags in metal containers (304): Pass

Improper storage of Hazardous Materials (603.4.2.1.3): N/A

Miscellaneous

Fire alarm system inspected (72): N/A

Occupant load posted (50+occ) (1004.3): N/A

Adequate Housekeeping inside & out: Pass

MSDS not posted or available (5703.5): N/A

Evacuation Plan (403.3.1): N/A

Fire hydrant obstructed (3' in all directions) (507.5.4): Pass

Notes

Notes:

Attachment:
Limit: 20

Attachment:
Limit: 20

Disposition

No Violations Noted: ☑

Follow up/Re-inspection required: ☐

Referred to Fire Marshal: ☐

Inspector(s)

Inspector I Member: Dustin Mitchell *

Date: Jun 23, 2020 *

Member: Christensen, Trenton *

Member: Gardner, Gregg

Representative Acknowledgement

Name: Chirine Wadsworth *

Email Address: info@alpinefoodstorage.com *

Signature Box: *

Alpine Food Storage

3956

HIGHLAND CITY

6/26/2020

30.00

Wells Fargo License #30 30.00

LMP100 M/P CHECK

Exhibit 4

Begin forwarded message:

From: Nathan Crane <NCrane@highlandcity.org>
Subject: Home Occupation Business License Application
Date: July 2, 2020 at 5:49:43 PM MDT
To: David Wadsworth <oslash71@comcast.net>
Cc: Rob Patterson <rob@bcjlaw.net>

David:

I wanted to give you a quick update on your businesses license application. We have received complaints and have been monitoring the use of the property. The business was licensed as a Home Occupation in 2008. Home occupations are required to meet a number of standards. Based on the complaints and site inspections, the use appears to no longer meet the required standards.

I have attached a copy of the application with the required standards. Please provide a written narrative addressing how the business meets the standards on page two and the questions on page of the application by the end of the business day on July 7, 2020. I would be happy to clarify or answer any questions that you have about these standards.

Please let me know if you have any questions or need additional information.

Nathan

Nathan Crane, AICP
City Administrator/Community Development Director
Phone: (801) 772-4567
Email: nathanc@highlandcity.org

HIGHLAND CITY

5400 West Civic Center Drive, Ste 1
Highland, UT 84003
Phone (801) 772-4510 Fax (801) 756-6903

APPLICATION FOR HOME OCCUPATION LICENSE

OFFICE USE ONLY

☐ Check ☐ CC ☐ Cash

Application Date: ____ / ____ / ____ License No: _____ Fee: $_____ Date Pd: ____/____/____

BUSINESS LICENSES ARE VALID JULY 1ST THROUGH JUNE 30TH. RENEWAL LETTERS ARE MAILED PRIOR TO JUNE 30TH EACH YEAR. PRINT CLEARLY OR TYPE AN ANSWER TO EVERY QUESTION. INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.

Business Name: _____

DBA (if applicable): _____

Business Address: _____

City: _____ State: _____ Zip: _____

Mailing Address (if different than business address): _____

City: _____ State: _____ Zip: _____

Business Telephone: _____ Business Fax: _____

Business Email: _____ Business Website: _____

Describe your business in detail:

Utah Code 10-1-203(7)(b) states that a home-based business which does not have an off-site impact is exempt from licensing fees.
Are you seeking this exemption? (Yes) (No)
If yes, please explain why: _____

Please answer the following: Please Circle

1. What percentage of the home will be used for the business? _____%
2. Will customers visit the home? (If yes, surrounding property owners within 300' radius must be notified) (Yes) (No)
3. If customers visit the home, how many total visits per week? _____
4. Will stock or merchandise be displayed at the home? (Yes) (No)
5. Will there be employees other than bona fide residents of the premises? (Yes) (No)
6. Will there be unusual traffic created in the neighborhood? Deliveries? (Yes) (No)
7. Will any materials considered flammable, toxic, poisonous or otherwise hazardous be kept at the home? (Yes) (No)
8. Will the proposed home occupation physically change the appearance of the home? (Yes) (No)
9. Will the home occupation occupy any outside space or accessory building? (Yes) (No)
10. Will the home occupation occupy any outside storage of material, supplies, equipment, etc.? (Yes) (No)
11. Will the business generate any noise that could be heard by neighbors? (Yes) (No)
12. Will there be additional business vehicles kept at the home or outside of a garage? (Yes) (No)
    If yes, number of vehicles _____; type of vehicles _____
13. I, the applicant, have read and understand the home occupation regulation and conditions on the reverse side of this application, and agree to abide by these regulations. (Yes) (No)

Business Entity Number: _____

Federal EIN: _____ State Sales Tax Number: _____

DOPL License Number (if required): _____

Federal License Number (if required): _____

Owner's Name: _____

Owner's Address: _____

City: _____ State: _____ Zip: _____

Owner's Telephone: _____ Owner's Email: _____

FEES

Class IV – Home Occupations

Home Occupation – Exempt	$0.00
Home Occupation – Administrative fee (printed license for exempt businesses)	$10.00
Home Occupation – Non-Exempt (unless specifically noted below)	$60.00
Home Daycares, Preschools and Dance Studios	$90.00
Home Occupation with Hazardous Materials	$90.00

As a prerequisite to the issuance of a Home Business License, the licensee shall comply and observe the following conditions at all times:

A. Only bona fide residents of the premises, as defined by the City Zoning Ordinance, shall be employed by the licensee.
B. The Home Occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.
C. The Home Occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent (25%) of the total main floor area of the residential structure; the Home Occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the main structure.
D. No display of any kind shall be visible from the exterior of the premises.
E. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the Home Occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.
F. The Home Occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.
G. There shall be complete conformity with the Building, Fire, Plumbing, Electrical, and Health Codes and to all State and City Laws and Ordinances.
H. The Home Occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.
I. The Home Occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernible beyond the premises or unreasonable disturb the peace and quiet of the neighborhood.
J. Any special condition established by the City Council or City Administrator and made of record in the Home Occupation License, as deemed necessary to carry out the intent of this section shall be met.
K. All Home Occupation Licenses shall be valid until revoked as provided in Section 5.08.110 of the Highland City Code of Ordinance.

Note: *Each Home Occupation applicant should check with their neighborhood homeowner's association to determine if their prospective business is in conformity with their association bylaws, covenants, and restrictions.*

I understand all Highland City business license applications may be evaluated by the police, fire, health, and zoning. The privilege to have a business license in Highland is granted only by the City Administrator through authority of the Mayor and City Council. At least 10 working days are required for an investigation period. This period may be extended if necessary to complete the investigation. I further understand that if the license is disapproved for any reason, the entire application fee may not be refunded, as the fee may be used to partially defray investigation and administration costs. A license will only be issued upon completion and satisfaction of all application requirements, investigation process and approval of the City Administrator. Approval of license is based on the applicant's continual compliance to all Highland City codes governing such businesses and may be revoked if applicant is found in violation.

Applicant's Signature: _____ Date: _____/_____/_____

Zoning Approval: _____ Date: _____/_____/_____

Comments: _____

Building Inspection (if necessary): _____ Date: _____/_____/_____

Fire Inspection: _____ Date: _____/_____/_____

* *Home Occupation Licenses do not require a fire inspection, except for Preschool/Daycare/Dance Studio businesses.*

City Administrator Approval: _____ Date: _____/_____/_____

BLAISDELL, CHURCH & JOHNSON, LLC
ATTORNEYS AT LAW

5995 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84123
rob@bcjlaw.net

DAVID L. CHURCH
ERIC TODD JOHNSON
ROBERT A. PATTERSON
LISA-MICHELLE CHURCH
DAVID R. BLAISDELL

TEL (801) 261-3407
FAX (801) 261-3503
CELL (801) 200-5910

July 9, 2020

Dan McDonald
MCDONALD | FIELDING
2100 W. Pleasant Grove Blvd., Suite 250
Pleasant Grove, Utah 84062

Sent via email

Re: Wadsworth Family Business/Alpine Food Storage License

Dear Mr. McDonald:

I am Highland City Attorney, and I was asked to respond to your letter dated July 7, 2020. The City appreciates the quick response and your clients' desire to address the City's concerns and to ensure that they and their business are in compliance with City requirements.

To address your questions, the email from Nathan Crane was in part a courtesy email seeking to advise your clients of potential issues and complaints that could impact the renewal of their business license and continued validity of their home occupation license if the issues are not addressed. No additional home occupation license or home occupation license renewal is necessary, and no revocation or other similar process has been started. The application that was attached serves as a reminder of the terms and conditions that apply to home occupations.

The other purpose of the email was to request a narrative or plan from your clients explaining how they will, moving forward, address and satisfy each of the terms and conditions that apply to home occupations. As you noted in your letter, parking and traffic volumes are a particular concern. While these issues may be related to the COVID-19 situation, the parking and traffic issues have not been limited to March and April, but appear to be an ongoing concern. The parking and traffic issues potentially implicate a number of home occupation standards, such as the extent of the use of the home and lot for commercial purposes, generation of excess traffic, generation of nuisances, and undue demand on public or community facilities.

Again, at this point, the City is looking for a plan from your clients addressing the home occupation standards and how your clients will ensure that they will be in compliance moving forward. The City will address whether additional enforcement or other proceedings are required after receiving your clients' response. On that note, the request for additional time to respond is granted. We will look for your response on or before August 3, 2020.

I hope that these clarifications give you and your clients the time and direction needed to resolve the concerns. The City would prefer that your clients be able to continue with their

business, so long as they can do so within the parameters of the home occupation ordinance. Please feel free to contact me with any additional questions.

Sincerely,

/s/ Robert A. Patterson
Highland City Attorney

MCDONALD|FIELDING
ATTORNEYS AT LAW

Dan McDonald
P.O. Box 1184
Pleasant Grove, Utah 84062
Email: dan@mcdonaldfielding.com
Telephone: (801) 372-0055
www.mcdonaldfielding.com

August 3, 2020

Nathan Crane, AICP
Highland City Administrator /
Community Development Director
Via Email: nathanc@highlandcity.org

Rob Patterson
Highland City Attorney
Via Email: rob@bcjlaw.net)

Re: DP & LC Wadsworth Family Business, LLC
11800 North 6000 West
Highland, UT 84003

Dear Messrs. Crane and Patterson:

As you know, this firm represents DP & LC Wadsworth Family Business, LLC, David P. Wadsworth and L. Chirine Wadsworth (collectively "Wadsworth(s)" or "Alpine Food Storage"), who own and operate a family food storage business, Alpine Food Storage, from a home owned by Mr. and Mrs. Wadsworth located at 11800 North 6000 West in Highland City. I am writing to address the concerns raised in your prior correspondence to the Wadsworths.

I first wanted to thank you for your patience. I was hoping to get you a response prior to the time I left for vacation but, due to my schedule, I was unable to do so. The fault is entirely mine and not the Wadsworths. I also thank you for the City's patience in working with the Wadsworths during these unprecedented times. In that regard, the Wadsworths sincerely appreciate and ask for the continued patience of the City.

The Wadsworths have experienced an unprecedented spike in business and traffic due to pandemic panic buying. They are trying to navigate between providing an essential service while complying with the City's regulations. The Wadsworths, like everyone else, hope the pandemic will end and/or the situation will normalize.

As I understand it, home occupation licensure is regulated by Chapter 5.08 of the Highland Municipal Code ("HMC"). As I think we agree, acting pursuant to Chapter 5.08, the City initially issued a home occupation license to the Wadsworths in 2008. No action has been taken to revoke that license. And a renewal application for that license is not required at this time. However, as stated in prior correspondence from the City, the City has concerns about the Wadsworths' compliance with the conditions for home occupation licensure set forth in Section

5.08.050 of the HMC. I will now attempt to address each of those conditions as they are set forth in the HMC.

I. REQUIREMENTS OF THE HOME OCCUPATION CODE

A. Only bona fide residents of the premises, as defined by the city zoning ordinance, shall be employed by the licensee.

This is a family-owned, family-operated business. The Wadsworths and their children are the only employees of the licensee.

B. The home occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.

No physical changes have been made to the dwelling from the time of licensure in 2008 through the present.

Additionally, as you can see from **Exhibit 1**, the dwelling is generally not visible from the public street (6000 West) because it is shielded by large evergreens, deciduous trees, and shrubs.

C. The home occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent of the total main floor area of the residential structure; nor in the alternative, more than fifty percent of the total floor area of any attached garage wherein the license activity is conducted. The home occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.

1. ***"wholly within a structure on the premises"***

The Wadsworths' home occupation has always been conducted from within the home and its attached garage, which is where product is stored. Customers come to the home, typically park in the driveway or along 6000 West, and then purchase product from within the inside of the garage so that transactions are completely shielded from public view.

In response to the COVID-19 pandemic, for their own safety and the safety of their guests, the Wadsworths recently opened the garage door to allow better circulation of air and to prevent potentially contaminated air from being enclosed or trapped within the garage.

Later, in response to the safety concerns of their guests, the Wadsworths moved product from inside the garage to tents placed on the driveway, which were

enclosed to prevent product from being visible from the public road. An example of how these tents have been utilized is shown in **Exhibit 2**. This is only a temporary measure during the pandemic. Also, if requested to do so by the City, the Wadsworths can and will remove these tents and go back to their fully-enclosed garage operations. But, for the time being, the Wadsworths would request an accommodation from the City to accommodate pandemic concerns.

2. ***"shall not exceed twenty-five percent of the total main floor area of the residential structure"***

The home occupation utilizes only approximately 17% of the entire residential structure if the garage is included.

3. ***"more than fifty percent of the total floor area of any attached garage"***

The home occupation has, at times, technically exceeded more than fifty percent of the total floor area of the attached garage. However, it is the Wadsworths' understanding that the City has been aware of this fact and allowed it because (a) the home occupation utilizes significantly less than 25% of the total main floor area of the residential structure and (b) the activities are conducted within the fully-enclosed and non-visible garage. If the City's policy has changed and the City is now requiring compliance with both the 25% *and* 50% thresholds the Wadsworths are unaware of any such policy change. This provision has not historically been interpreted to require compliance with both.

4. ***"use of any accessory building or yard space for storage"***

The Wadsworths do not use any accessory building or yard space for storage. With that said, however, *see* ¶ C.1, *supra,* discussing temporary accommodations to address the COVID-19 pandemic.

5. ***"nor shall any activities be conducted outside the building"***

The Wadsworths do not conduct business outside the residential structure. *But see* ¶ C.1, *supra,* discussing temporary accommodations to address the COVID-19 pandemic.

D. The home occupation shall not display nor create outside the building any external evidence of the operation of the home occupation.

The Wadsworths have not displayed signage or created other external evidence of the operation of the home occupation. As you can see from **Exhibit 1**, there is no evidence of the operation of the home occupation. *But see* ¶ C.1, *supra,* discussing temporary accommodations to address the COVID-19 pandemic.

E. No display of any kind shall be visible from the exterior of the premises.

See ¶ D, *supra.*

F. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the home occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.

There are no maintenance vehicles or equipment used with the home occupation. The only service vehicle or equipment used with the home occupation is a skid steer that is also used for lifting hay bales and other farming/home use applications. The skid steer is stored entirely behind the dwelling, out of view of the street.

There are no vehicles or equipment, maintenance, service or otherwise that bear any advertising related to the home occupation.

G. The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

The baseline pedestrian or vehicular traffic associated with this zone is difficult to gauge because, to our knowledge, there are no existing studies prepared by the City showing pedestrian counts or vehicular traffic counts on a zone-by-zone basis. However, much helpful information can be gleaned from City documents such as the General Plan.

The property sits at the southeast corner of the intersection between 11800 North and 6000 West, as **Exhibit 3** shows.

According to the General Plan, both 11800 North and 6000 West are identified as "major corridors" along with other "major corridors such as SR-92…." The General Plan also refers to 11800 North and 6000 West as "major roads" or "major …. routes." It is clear from the General Plan that these roads are intended to be a part of the City's major transportation network. These roads do, in fact, generate a tremendous amount of traffic and currently operate as major collectors. ***See* Exhibit 4.**

The pedestrian traffic in this area is also quite significant. The property is within walking distance of several institutional uses that generate a significant amount of foot traffic, as shown in **Exhibit 5**. There's a City-designed pedestrian walkway (which is part of the General Plan), a park, two churches, and an elementary school within a few blocks of the home, all of which serve hundreds upon hundreds of visitors and patrons.

With that baseline established, it can easily be established that the home occupation does not generate pedestrian or vehicular traffic in excess of that customarily associated with

the zone in which the use is located. The pedestrian and vehicular traffic generated by this home occupation is minuscule in comparison to the traffic generated by the institutional uses allowed in this zone.

H. There shall be complete conformity with fire, building, plumbing, electrical and health codes and to all state and city laws and ordinances.

The home is in compliance with all applicable codes. A copy of the most recent fire inspection is attached as **Exhibit 6**.

I. The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.

The home occupation does not create any such demand.

J. The home occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.

The home occupation does not create any such problems and we are unaware of any complaints to the contrary.

K. Any special condition established by the city council and made of record in the home occupation license, as they deem necessary to carry out the intent of this section shall be met.

We are unaware of any such special conditions.

II. OTHER CONCERNS MENTIONED BY THE CITY

As shown above, the Wadsworths' home occupation complies with every condition that is expressly set forth in the home occupation code provisions. Now I will address other concerns the City has raised. However, for the record, the Wadsworths object to the imposition of any requirements imposed by the City that are not required by law or expressly set forth in the HMC and hereby reserve all rights, without waiver.

A. Clear Vision Triangle.

The City has requested an informal site plan showing a clear vision triangle. The only sight triangle regulation I could find in the HMC is found in Section 2.36.160.D.3.j., which provides, "At the intersection of roadways, no plant material with a mature height greater than

thirty-six inches shall be planted within a sight triangle measuring twenty-five feet along the boundary of each of the intersecting curb lines, except where engineering standards indicate otherwise. No tree shall be planted in such a location that it would create a conflict with sight obstacle triangle."

The clear vision triangle concept is illustrated in 2.36.160.D.3.k, which is attached as **Exhibit 7**. The informal site plan you requested is attached as **Exhibit 8**. The Wadsworths have pruned trees recently to improve visibility. If there are still sight line problems the Wadsworths are willing to work with the City to remove them, although it appears that most of the trees near the intersection are actually not on the Wadsworth's property but are on the City's property and, therefore, would be the City's responsibility to manage/maintain.

B. Parking

Mr. Crane's prior email(s) asked the Wadsworths to identify how the area on the south side of the intersection of 6000 West and 118000 North will be restricted from parking, including the Wadsworth's driveway.

Section 10.12.020.A of the HMC provides that only "[t]he city upon obtaining the prior approval of the city council may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any street or highway where after it is determined that such stopping, standing or parking would unduly interfere with the free movement of traffic thereof. Such signs ***as placed by the city shall be official signs***, and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs." *Id.* (emphasis added). Those signs can only be placed and maintained by the City after review by the city engineer and approval by the mayor. *See* HMC § 10.12.030.A.

At one point, the Wadsworths contemplated posting their own signage directing guests where and where not to park. However, this appears to be the primary and exclusive jurisdiction of the City. In fact, it appears that it might be illegal for the Wadsworths to even attempt any type of parking signage or regulation. Section 10.12.020.B. of the HMC provides, "No person shall without the permission of the city place or cause to be placed on any street or sidewalk or on any building any sign preventing or forbidding the parking of vehicles in the street in front of any building or place of business."

While the Wadsworths cannot enforce the City's parking laws or restrict parking through parking signage, they have adopted a parking policy that is consistent with the parking requirements of the HMC. This policy, attached as **Exhibit 9**, will be distributed to the Wadsworths' guests as a reminder of the City's parking laws and policies and indicates the areas where the Wadsworths would request that their guests park (and not park). The Wadsworths would respectfully suggest that the City consider creating and posting "No Parking" signs in the areas of concern shown on Exhibit 9 and/or areas of concern to the City. The Wadsworths could then remind guests that, under HMC § 10.12.010.B, "[i]t shall be unlawful for any person to park

any vehicle on a street in violation of the restrictions as posted on any signs or other traffic control devices thereby restricting parking."

The Wadsworths are willing to modify and revise its parking policy to resolve any remaining concerns of the City.

C. Hours of Operation

The current hours of operation are as follows:

Mondays	2 p.m. – 6 p.m.
Tuesday – Friday	12 p.m. to 6 p.m.
Saturdays	10 a.m. to 3 p.m.
Sundays	Closed

The Wadsworths tried to schedule business by appointment, but it didn't work out. They intend to keep these hours of operation for the foreseeable future.

D. Deliveries

Just as people order product from Amazon and the product shows up at random times during the day, the Wadsworths' deliveries show up at random times during the day and, for the most part, cannot be scheduled. Typically drop offs occur during the day (at random times). Pick-ups rarely, if ever, occur. Since the Wadsworths' business isn't large enough to secure dedicated loads from freighters it is extremely difficult if not impossible to schedule delivery appointments. Generally speaking, the Wadsworths can no more control their delivery times any more than a resident in the neighborhood could schedule Amazon delivery times.

The Wadsworths deliberately stagger their orders in an effort to make sure that deliveries do not all show up at the same time. There are larger loads that sometimes require the skid steer for removal. But even these loads take only a few minutes and do not require the trucks to idle or be present at the property for more than a few minutes. Most, if not all, deliveries occur off of the public road on the gravel shoulder/frontage to the east of 6000 West.

III. CONCLUSION

The truth of the matter is that for 12 years now, the City has issued the Wadsworths a business license without hesitation. It is true that because of COVID the business has become "essential" and is drawing much attention—virtually all of the other food storage businesses have long since closed their doors. Because the Wadsworths' overhead has been minimal, they

were able to hang on until this time when their service has become "essential" to our community. The Wadsworths hope to make the resources they've acquired over the course of years accessible to those around them who now feel a more urgent need. This is their mission and their goal. And they are trying to do so in compliance with the restrictions that the City has put in place, and the mandates that have been made because of the coronavirus, such as social distancing, access to outside air where possible, and signage designed to announce their plan and policy regarding Covid19.

The Wadsworths have been good neighbors and have operated a law-abiding, tax-paying business for many years. They want to work with the City to resolve any remaining issues so they can continue to service these essential needs to the community. They ask for your patience as they, like the rest of the community, navigate the unknowns of Covid19. Please let me know if the City has any remaining issues or concerns that we have not addressed.

Sincerely,

MCDONALD FIELDING PLLC

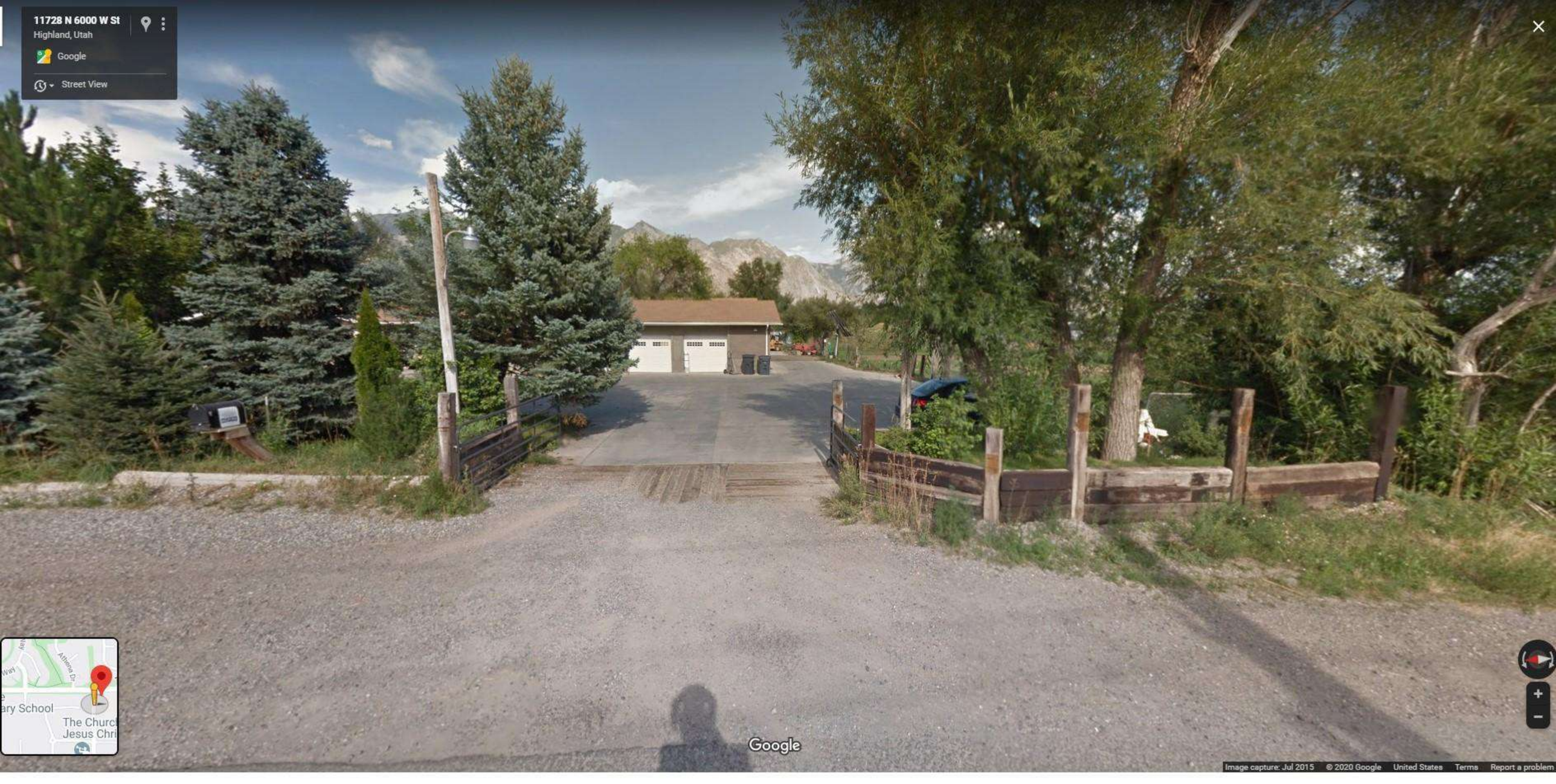
Daniel J. McDonald

c: David P. and Chirine Wadsworth

Encl. (Exhibits 1-9)

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 1
Street Views and Aerial


11728 N 6000 W St
Highland, Utah
Google
Street View
Google
Image capture: Jul 2015 © 2020 Google United States Terms Report a problem

11798 N 6000 W St
Highland, Utah
Google
Street View
Google
Image capture: Jul 2015 © 2020 Google United States Terms Report a problem

11798 N 6000 W St
Highland, Utah
Google
Street View
Google
Image capture: Jul 2015 © 2020 Google United States Terms Report a problem

Utah County Parcel Map

110270007

This cadastral map is generated from Utah County Recorder data. It is for reference only and no liability is assumed for any inaccuracies, incorect data or variations with an actual survey

Date: 7/6/2020

N

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 2
Temporary COVID Tents

August 3, 2020 Wadsworth Letter to Highland City

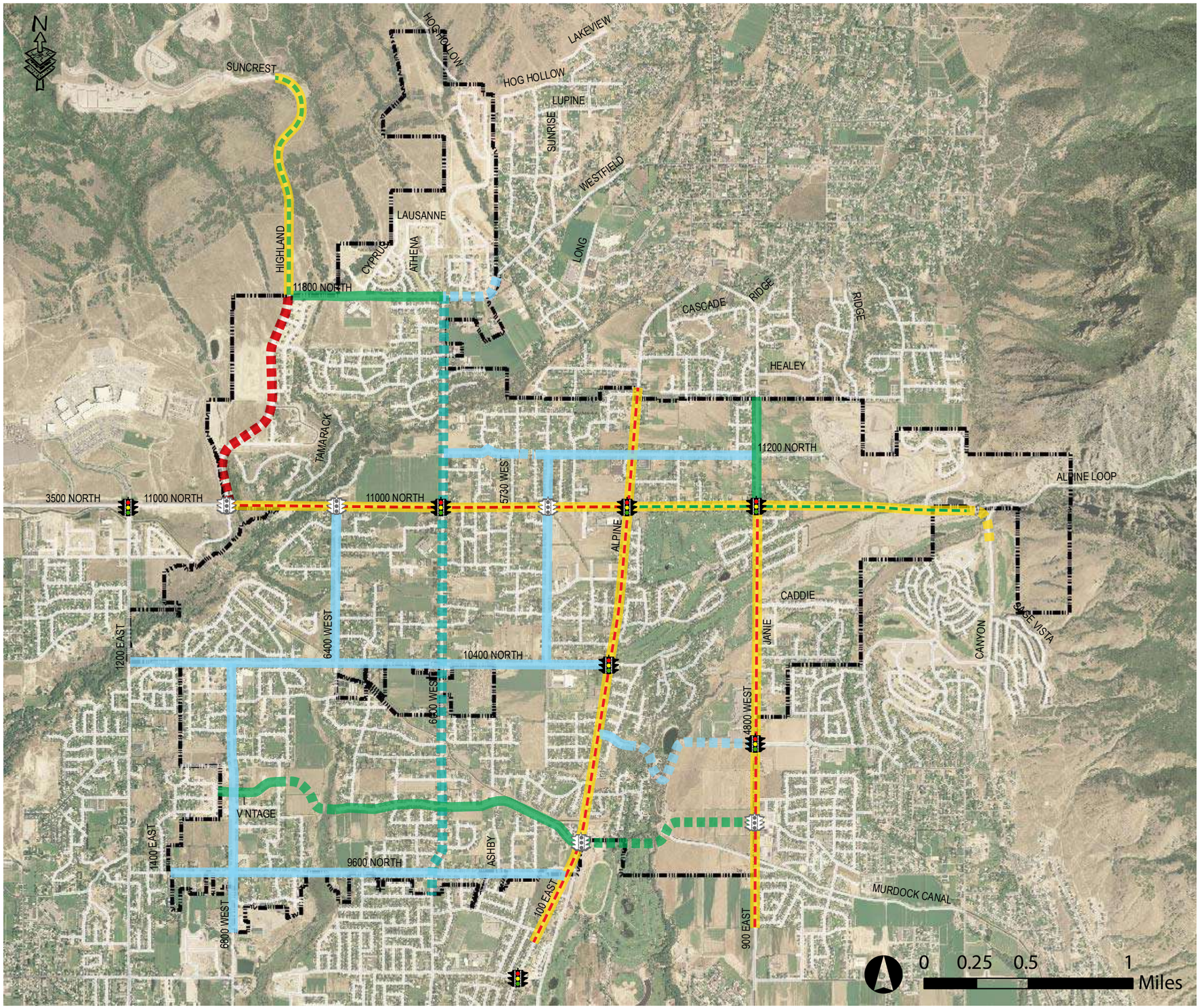
Exhibit 3
Aerial Photograph of Intersection

W 11800 N
W 11800 N
Westfield Rd
Westfield Rd
Westfield Rd
Westfield Rd
Westfield Rd
Westfield Rd
N 6000 W St
N 6000 W St
N 6000 W
N 6000 W St
11800 North 6000 West
Map
Google
Imagery ©2020 State of Utah, Map data ©2020
United States
Terms
Send feedback
20 ft

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 4
Traffic Sources

MAP 3-2
RECOMMENDED TRANSPORTATION NETWORK



5-Lane Arterial - Constructed
5-Lane Arterial - Proposed
3-Lane Major Collector - Constructed
3-Lane Major Collector - Proposed
3-Lane Minor Collector - Proposed
2-Lane Residential Collector - Constructed
2-Lane Residential Collector - Proposed
Other Jusidiction (State, County, Municipal)
Highland City
Existing Signals
Planned Signals

Highland City
General Plan Update

InterPlan Co.
Transportation Planning

LANDMARK DESIGN

Adopted February 19, 2008

- Implementation of the Parkway Detail along major corridors such as SR-92, SR-74, 11800 North, 10400 North, 4800 West, 6000 West, 6800 West, Highland Boulevard, and Beacon Hill Boulevard should be continued to enhance and preserve existing view corridors and the historically significant visual experience of the surrounding mountains. Special attention should be considered for the protection of views directed toward American Fork Canyon and the Lone Peak Wilderness Area.

Each of these corridors serve as "open space gateways" and are preeminent community image builders. They are all highly sensitive to visual and physical damage and disruption, particularly from careless development. For example, the mining operation located on the edge of SR-92 near the mouth of American Fork Canyon significantly reduces the visual appeal of the area, impacting the entry experience of the travelling public and greatly reducing the scenic surroundings.

DESIGN IDEA 3:
Improve the sense of arrival into the community

Special gateway treatments and entry nodes should be developed along key roadway corridors where one enters the community. These nodes should be located near the city limits as one enters Highland from adjacent communities. The nodes may incorporate a range of special treatments, including enhanced streetscape treatments and landscaping, special entry signage, and unique street lighting. Regardless of the final design selected, it is important that the treatment of each node is unified with the other nodes. This will provide a sense of visual order, and present a clear message that one is entering a special community.

Gateway Treatment in Boise, Idaho

Gateway Treatments and Entry Nodes should be created near the following intersections:

1. West Entry – SR-92 at Dry Creek crossing
2. South Entry 1 – 6000 West at 9600 North
3. South Entry 2 – Alpine Highway at 9600 North
4. South Entry 3 – 4800 West at 9600 North
5. East Entry – SR-92 near the mouth of American Fork Canyon

In addition to these five gateways/ arrival nodes, the area surrounding the intersection of SR-92/Alpine Highway should receive special design treatments that acknowledge one has arrived at Highland Town Center. This node should be slightly more elaborate and pedestrian-oriented than the entry nodes, indicating through special paving materials, artwork, signage, landscaping, and furnishings that one has arrived in the heart of the city.

Objectives

Highland City recognizes the importance of planning for a transportation system that meets the needs of its residents. The following objectives provide the framework from which priorities are determined for the City.

1. To facilitate the movement of people and vehicles within and through Highland City with maximum safety, convenience, economy, and efficiency. Included within the scope of this objective are cars, pedestrians, bicyclists, equestrians, and any other appropriate mode of travel;
2. To encourage land development policies that will protect the function and integrity of the major street system, minimize negative transportation impacts on residential areas, and generally enhance the well-being of the City in keeping with the expressed desires of the citizens of Highland City; and
3. To assist City officials in making the wisest use of public resources, monetary and otherwise.

Existing Transportation Conditions

The existing road network in Highland City is shown in Map 3-1. Most of the roads in Highland City are local streets due to its primarily residential nature. The major roads in the community that serve both intra-city and inter-city trips and that comprise the major north/south and east/west routes include:

- 11000 North (SR-92)
- Alpine Highway (SR-74)
- 4800 West
- 6000 West
- 10400 North
- 9600 North
- Highland Boulevard
- Canal Boulevard/9850 North
- 6800 West
- 11800 North

Traffic Volumes

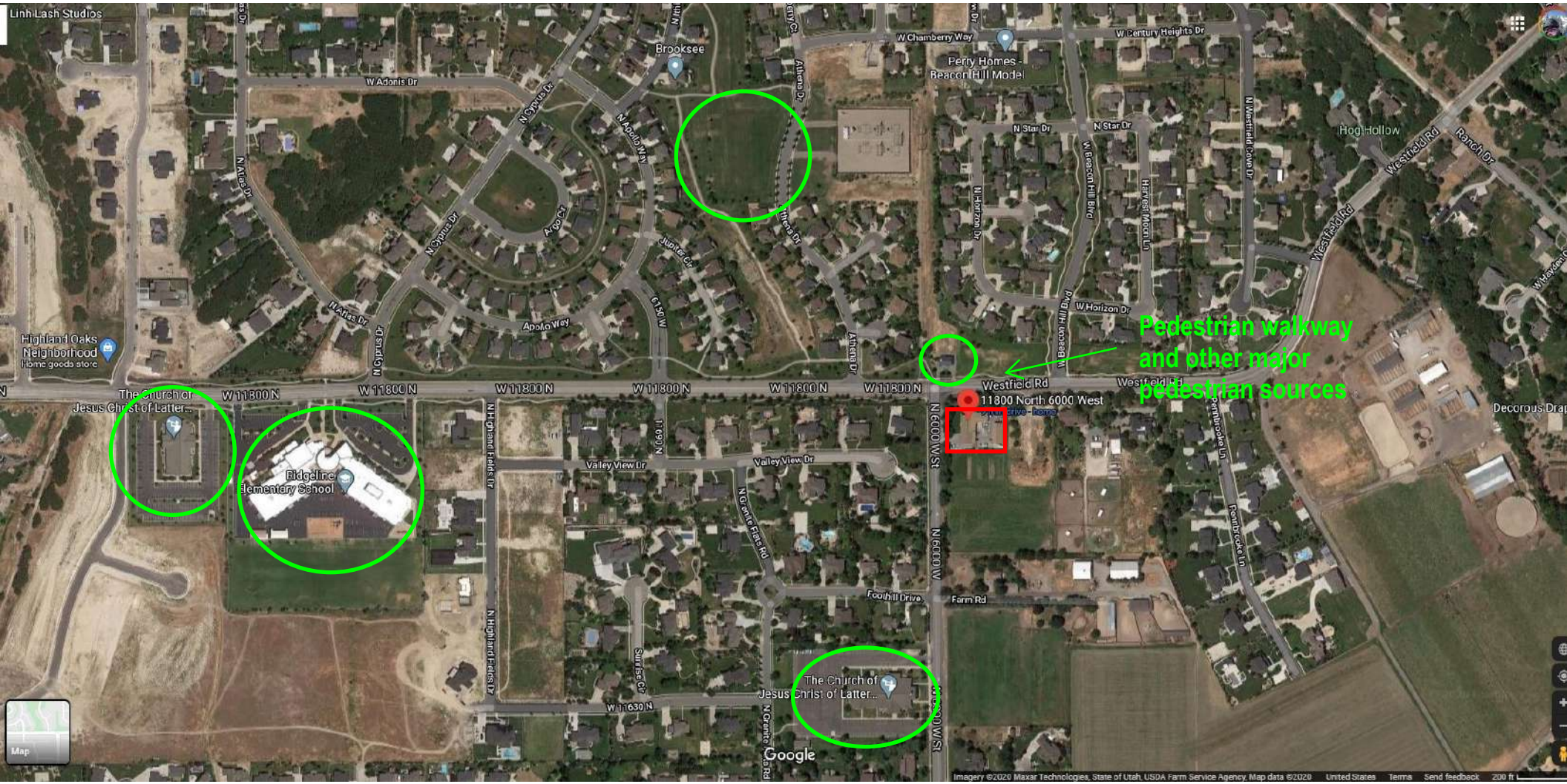
Traffic volumes on major Highland City roads for 2005 are also shown in Map 3-1.
Given the increase in population in the City in recent years, rising traffic volumes on City streets are not unexpected. Traffic growth on the two major highways, 11000 North (SR-92) and the Alpine Highway (SR-74), are discussed in detail below.

11000 North (SR-92)

Traffic on 11000 North has increased considerably in the last fifteen years as shown in Figure 3-1 below. Of even greater significance is growth in traffic volume in the last five years, owing to increased residential development experienced in the City. In addition, increased commercial development in a City with few other retail establishments also contributes to greater traffic volumes on key facilities such as 11000 North.

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 5
Pedestrian Sources


Pedestrian walkway and other major pedestrian sources
Linh Lash Studios
Brooksee
W Adonis Dr
W Chamberry Way
Perry Homes - Beacon Hill Model
W Century Heights Dr
N Star Dr
Hog Hollow
Westfield Rd
Ranch Dr
N Cyprus Dr
N Apollo Way
N Atlas Dr
Argo Cir
Jupiter Cir
Athena Dr
6150 W
Apollo Way
W Horizon Dr
Highland Oaks Neighborhood
Home goods store
W 11800 N
Westfield Rd
11800 North 6000 West
The Church of Jesus Christ of Latter...
Ridgeline Elementary School
N 6000 W St
11690 N
Valley View Dr
N Granite Flats Rd
Foothill Drive
Farm Rd
N Highland Fields Dr
Sunrise Cir
W 11630 N
Pembrooke Ln
Decorous Drap
Google
Map
Imagery ©2020 Maxar Technologies, State of Utah, USDA Farm Service Agency, Map data ©2020 United States Terms Send feedback 200 ft

Police Services

When Highland City was incorporated, it contracted with the Utah County Sheriff's Department for police services, and later contracted with Alpine City. That relationship eventually evolved into the Alpine Highland Public Safety District (AHPSD), which provided fire, police, and emergency medical services. The AHPSD was formed on July 1, 1996 and provided service until 1999 when Cedar Hills opted to join, and the Lone Peak Public Safety District (LPPSD) was formed.

The LPPSD provides emergency medical service, police services, and fire services to Alpine and Highland Cities, and emergency medical and fire services to Cedar Hills. The District is managed by a five-member board of elected officials from the involved cities and an Executive Committee made up of City administrators from the three cities.

The Alpine/Highland City Police Department currently employs 20 sworn officers and additional support staff. The Department recently received funding for an additional three sworn officers. These 23 officers provide police services and protection for approximately 25,000 individuals. As the City grows and experiences the challenges and changes associated with growth, it will be necessary to add police services and personnel to maintain an adequate level of service.

Ground breaking Ceremony for the new Fire Station, 2007.

Fire Protection

The Lone Peak Public Safety District also provides fire protection to the City. The LPPSD currently employs several fire and emergency services personnel, and recently received a Homeland Security grant to hire an additional nine employees. A new fire station has nearly completed construction in the Town Center. This building will provide more space for personnel and better access to Highland City.

Schools

There are several schools in Highland City. Table 2-2 identifies existing schools, their locations, contact information, and enrollment as of October 1, 2006. The schools shown on Map 2-1 are operated by the Alpine School District. Some Highland City students attend school outside of Highland City but closer to their neighborhoods; these include Legacy Elementary School and American Fork High School in American Fork.

Table 2-2. Highland City Schools

	Address	Phone	Enrollment (2005)
Elementary School			
Freedom Elementary **K-6**	10326 N. 6800 S.	766-5270	968 students
Highland Elementary **K-6**	10865 N. 6000 W.	756-8537	787 students
Ridgeline Elementary **K-6**	6250 W. 11800 N.		606 students

1) Westfield Office Building (northwest corner of Lone Peak Shopping Center).
2) Wells Fargo; Intermountain Health Care (IHC); new Office Building east of Wells Fargo north of IHC southeast corner SR-92, SR-74 (Residential Professional (RP) Zone).
3) Utah Community Credit Union (UCCU) southeast corner Town Center; Timpanogos Tire Mixed Use Office building north central Town Center; previously approved Office Mixed Use building west of UCCU southeast corner Town Center; previously approved Office Mixed Use building south of Wendy's, north central Town Center (Town Center Zone).
4) Two New approved Office/Retail Mixed Use buildings, northeast corner of Highland Marketplace (CR Zone).
5) Patterson Construction Office building, Storage Unit Office building, and four additional previously master planned, approved office buildings southern end of Highland Boulevard (Professional Office (P.O.) Zone).

Recently completed Patterson Office Building

Institutional

Existing public uses include Highland City Hall, which is located on the northwest corner of Alpine Highway (SR-74) and 10400 North; the Public Works Building, which is located on the north side of SR-92 (also referred to as 11000 N, or Canyon Road) near the eastern city limits and provide municipal office and service space; the Highland Public Utility Building, located at approximately 5550 North SR-92 (also referred to as 11000 N, or Canyon Road); the Highland Pump Station Building, located at 6000 West 11800 North; several water tanks, pressurized irrigation ponds, water booster pumps and pump houses; several parks, park pavilions and park structures or improvements typically associated with parks, trails and open space.

The largest institutional use is the State School site, which is located on the southeast edge of the community, adjacent to Lone Peak High School. This site is currently agricultural use.

City Hall

The existing City Hall will be replaced. A new City Hall located in the Town Center is under construction. This new 18,000 square foot building will house the City Administration, Finance, Utilities, Community Development and Engineering Departments, and include space for a library. How the old facility will be used is under discussion.

City Hall (a new building will be completed soon in the Town Center).

Courts and Public Safety

The Public Safety Building is also under construction. It will generally follow the same construction schedule and is approximately 16,000 square feet in size. The Public Safety Building will house the Justice Court and Police Department, and will also be located in the Highland Town Center Site facing City Hall.

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 6
Fire Inspection

Fire Safety Inspection

Lone Peak Fire District

Submitted By: Dustin Mitchell
Date/Time Submitted: Jun 23, 2020 at 11:29

Business Information

Business Name:	Alpine Food Storage *	**Business Type:**	Food Storage
Address:	11800 N 6000 W *	**Phone Number:**	801-361-4933
Emergency Contact:	Chirine Wadsworth *	**Emergency Contact Phone Number:**	801-361-4933 *

General

Address Visible with 5" Lettering (505.1):	Pass
Fire Lane/Access Obstructed (503.1.1):	Pass
Remove waste, trash, and or weeds from exterior of building (304.1):	Pass

Electrical

Improper use of extention cords (605.5):	Pass	**Breakers not labeled (605.3.1):**	Pass
Protective covers missing (605.7):	Pass	**Defective or exposed wiring (605.3.5):**	Pass
Blank covers missing in breaker panel (605.7):	Pass	**Improper use of multi plug adapters (605.5):**	Pass
Breakers taped on (605.6):	Pass		

Fire Protection

Maintain access to stand pipes, fire hose, FDC, & sprinkler control valves (509):		**Annual fire sprinkler service & inspection (901.4/904.4) :**	
Fire riser room labeled:		**5 Year Test:**	
Spare sprinklers or wrench not available (13):		**FDC caps missing/damaged (912.4.1):**	
Semi Annual hood service and inspection (609):		**Incomplete system/unprotected areas (903):**	
		FDC Location:	

Fire Extinguishers

Insufficient number (906):	Pass	**Wrong type (904.12.5.2):**	Pass
Not mounted (906.7/906.9):	Pass	**Damaged/Discharged (906.2):**	Pass
Obstructed (906.6):	Pass	**Improperly located (906.5):**	Pass
Sign(s) indicating location (906.6):	Pass	**Annual maintenance/inspection (906.2):**	Pass

Flammable/Combustable Liquid

Improper use (610):

Improper storage (5704):

Improper dispensing (5704.2.7.5.2):

Improper container (5704):

Exits

Not open proper direction (50+occ) (1010.12.1):

Access blocked (103.1):

Door(s) locked (103.1):

Door(s) in need of repair (103.1):

Sign(s) not illuminated (100+occ) (604.6):

Directional signs needed (108.3/1009.10):

Emergency lighting functional (108.2):

Exit width maintained (min 36 inches):

Stairs=48 inches (1009.3):

Knox

Knox box (506.1):

Knox keys (506.1):

Knox box location:

Elevator

Annual inspection:

Elevator key (607.7):

Elevator key location:

Storage

Too close to celing (18"sprinklered/24"non) (315.3.1): Pass

Too close to furnace/water heater (36" min) (315.3): Pass

Blocking electrical panel (30" min) (605.3): Pass

Beneath unprotected stairways (315.3.2): Pass

Storage in unprotected attic space(s) 315.3.4: Pass

Blocking aisle ways (103.1): Pass

Compressed gas cylinder secured (603.4.2.3): N/A

Disorderly of excess combustibles (304.1.1): N/A

Storage rubbish, waste, and/or oily rags in metal containers (304): Pass

Improper storage of Hazardous Materials (603.4.2.1.3): N/A

Miscellaneous

Fire alarm system inspected (72): N/A

Occupant load posted (50+occ) (1004.3): N/A

Adequate Housekeeping inside & out: Pass

MSDS not posted or available (5703.5): N/A

Evacuation Plan (403.3.1): N/A

Fire hydrant obstructed (3' in all directions) (507.5.4): Pass

Notes

Notes:

Attachment:
Limit: 20

Attachment:
Limit: 20

Disposition

No Violations Noted: ☑

Follow up/Re-inspection required: ☐

Referred to Fire Marshal: ☐

Inspector(s)

Inspector I Member: Dustin Mitchell *

Date: Jun 23, 2020 *

Member: Christensen, Trenton *

Member: Gardner, Gregg

Representative Acknowledgement

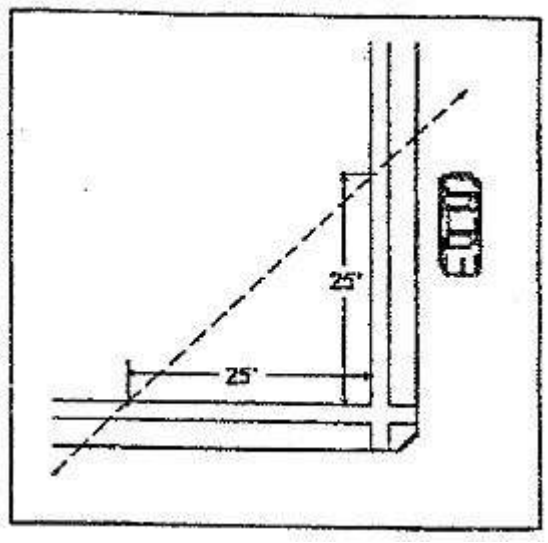
Name: Chirine Wadsworth *

Email Address: info@alpinefoodstorage.com *

Signature Box: *

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 7
City Code Sight Triangle Illustration



k. The clear vision area is maintained to provide an adequate field of vision for motorists and pedestrians at road intersections.

4. Additional Guidelines for New Residential Development. The guidelines for new residential development are included in the Highland City packet called "Subdivision Review and Approval Process and Application Forms." These include specific requirements regarding spacing, size, planting and bonding. The Highland "Tree Selection Guide" lists approved tree varieties. Subdivision landscape plans shall be reviewed by the community Parks, Trails, and Tree Commission before being submitted for approval.

5. Additional Guidelines for Commercial Development.

    a. Number. Deciduous shade trees shall be planted by the developer on both sides of streets, in landscaped common areas, and cul-de-sac islands. These trees shall be planted at a ratio of one per thirty feet, either lining the streets, or in groupings on the lot. These trees shall generally be located between the sidewalk or foot path and the edge of the street, within a planting strip no less than five feet in width.

    b. Size. The trees shall be of two inch caliper, measured at four inches above the root graft (or equivalent with the approval of the planning commission).

    c. Type. The type of tree shall be as per Highland "Tree Selection Guide", (or with review of the community Parks, Trails, and Tree Commission, and approval of the planning commission).

    d. Planting Options.

        i. The developer shall bond with the city for an amount equaling the total value of the trees in the development, prior to the recording of the final plat. The city forester shall procure, schedule and supervise the planting of the trees according to the landscape plan submitted by the developer on a lot-to-lot basis after each home is occupied. The trees shall be maintained by the homeowner in accordance with Highland City Tree Ordinance 1998-21; or

        ii. If the developer wishes to plant the trees himself to enhance his development and help sell lots, he may do so. He shall install a sprinkling system and maintain the trees. He will be bonded for fifty percent of the

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 8
Sight Triangle Site Plan

Utah County Parcel Map

110270007

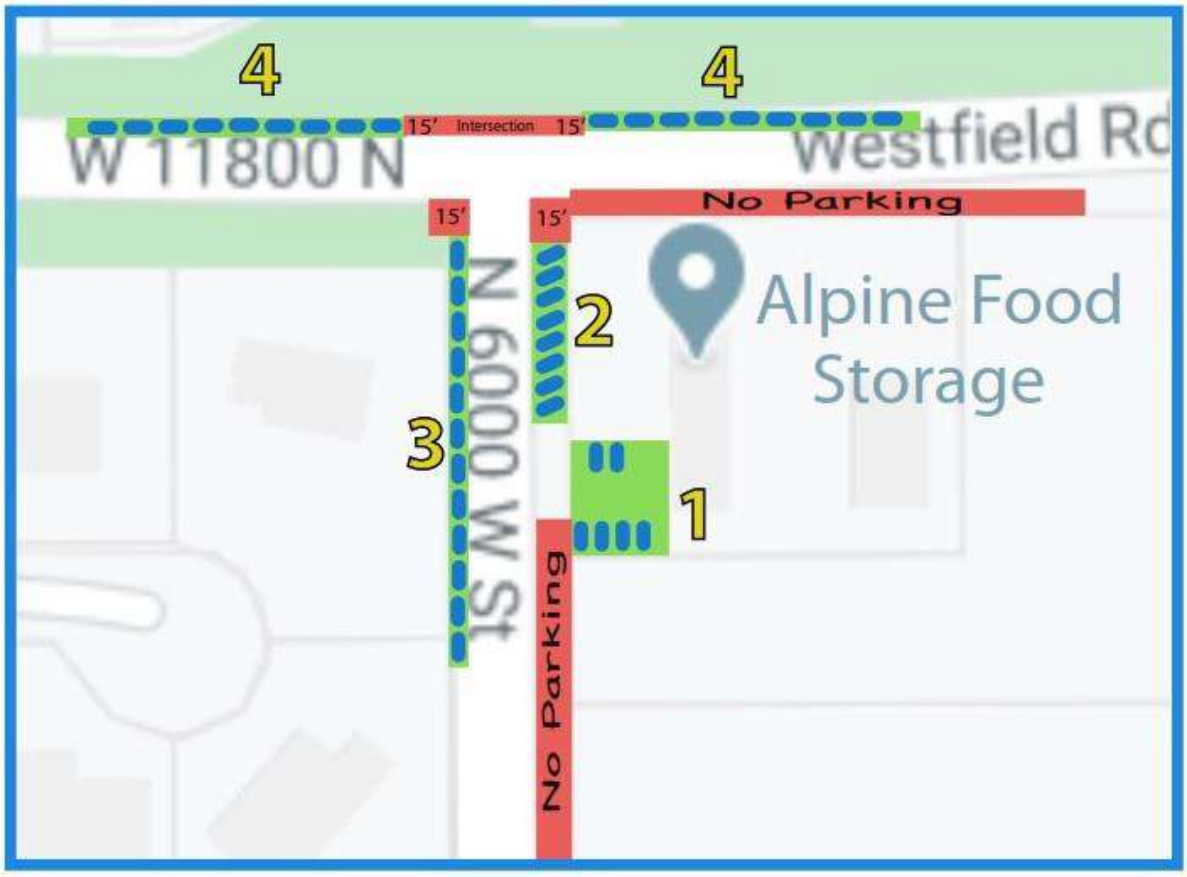
This cadastral map is generated from Utah County Recorder data. It is for reference only and no liability is assumed for any inaccuracies, incorect data or variations with an actual survey

Date: 7/31/2020

N

August 3, 2020 Wadsworth Letter to Highland City

Exhibit 9
Parking Policy



Alpine Food Storage
Parking Policy

No Interference With Traffic

Please park in such a way that your car does not interfere with traffic on the street.

No Parking

Please do not park in the areas marked "No Parking" in the map above.

Parking Preferences

We request that you park your vehicle according to the following preferences:

First Preference – Area 1: *Driveway (up to 6 cars).*

Second Preference – Area 2: *Do not obstruct the sight triangle or views of Westfield Road. Angled parking is preferred (no more than 8 cars).*

Third Preference – Area 3: *Parallel parking.*

Fourth Preference – Area 4: *Parallel parking*

No Illegal Parking

We remind you that under Highland Municipal Code § 10.12.010.B, "[i]t shall be unlawful for any person to park any vehicle on a street in violation of the restrictions as posted on any signs or other traffic control devices thereby restricting parking."

Vehicle Parking During Snow Days and December-March

We remind you of Highland Municipal Code § 10.08.040, which provides as follows:

A. It shall be unlawful to park any motor vehicles upon city streets from December 1st to March 31st between the hours of twelve a.m. to eight a.m. and any time snow is present so as to provide access to snow plows for snow removal. For purposes of this chapter "vehicle" shall be interpreted to be any vehicle which obstructs the movement of snow removal equipment or the piling of snow on the park strips, sidewalks, roadway or right-of-way.

B. A first violation of this section is punishable by an infraction. A subsequent violation of of this section is punishable by a Class "C" misdemeanor. Any vehicle parked in violation of this section may be removed by the city at owner's expense.

Vehicles parked on 6000 West or 118000 in violation of this provision are subject to being ticketed and/or reported to the police.

BLAISDELL, CHURCH & JOHNSON, LLC
ATTORNEYS AT LAW

5995 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84123
rob@bcjlaw.net

DAVID L. CHURCH
ERIC TODD JOHNSON
ROBERT A. PATTERSON
LISA-MICHELLE CHURCH
DAVID R. BLAISDELL

TEL (801) 261-3407
FAX (801) 261-3503
CELL (801) 200-5910

September 1, 2020

Dan McDonald
MCDONALD | FIELDING
2100 W. Pleasant Grove Blvd., Suite 250
Pleasant Grove, Utah 84062

Sent via email

Re: Wadsworth Family Business/Alpine Food Storage License

Dear Mr. McDonald:

We appreciate the time you and the Wadsworths have spent preparing the response to the City's concerns. We have reviewed your response to the City's questions and the plan you have provided. Unfortunately, the plan does not adequately address the City's concerns or explains how the DP & LC Wadsworth Family Business, LLC/Alpine Food Storage business will meet the home occupation standards now or in the future. The acknowledged violations of the home occupation standards, in conjunction with other, unaddressed issues, require Alpine Food Storage to either be scaled back or relocated. As such, it may be worthwhile for us to schedule a meeting so that we can discuss the changes that need to take place. The issues we see with the Alpine Food Storage business are summarized below.

The ultimate concern is that the Wadsworths' operation has outgrown the limits of the property's residential zoning. The definition of a "home occupation" is one that is "conducted entirely within a building," "is clearly incidental and secondary to the use of the dwelling for dwelling purposes," and, perhaps most importantly, "does not change the character" of the dwelling. HCC § 5.08.010. The Wadsworth property is zoned R-1-40, and "commercial and industrial use areas are strictly prohibited" within that zone. HDC § 3-4101(3). The Wadsworths are permitted to carry on a home occupation, so long as it does not become a commercial endeavor that alters the character of the property or becomes a primary use of the dwelling. The Alpine Food Storage business appears to be doing exactly that.

Under City Code § 5.08.050(C), (D) & (E), a home occupation must be conducted entirely within a structure on the premises, cannot use accessory buildings, yard space, or any outdoor area to conduct its business, and cannot display or create outside of the building "any external evidence of the operation of the home occupation." The Wadsworths, when they originally applied for their license (see attached), agreed that there would be no occupation of any outside space or accessory building, no outside storage of materials, supplies, and equipment, and no stock or merchandise displayed at the home at all. You acknowledge that Alpine Food Storage does not comply with these restrictions.

There are other external evidences of Alpine Food Storage that you have not fully acknowledged or addressed, including signage for parking, a flagger who directs people where to park, vehicular traffic and parking, and commercial deliveries. These are all external evidence of a significant commercial operation on the Wadsworth property that is not being wholly contained within the dwelling. These actions are not incidental to a residential home use. The response does not address how these issues will be resolved and eliminated.

These issues touch on another code requirement in 5.08.050(G), which prohibits a home occupation from generating traffic in excess of the traffic customarily associated with the R-1-40 zone. A normal residential lot does not have designated parking spots, a flagger to direct traffic, or consistent commercial deliveries by semi-trucks and other large box trucks. I am not aware of any residential home that has regular deliveries from Sysco, A-Z Produce, and refrigerated trucks.

As to customer trips and parking, the true problem is not whether there is sufficient signage to prevent people from parking in the wrong place. The issue is that a residential property is generating enough activity and traffic such that visitors are overflowing onto prohibited areas and the owners are required to create a parking policy and employ a family member to direct visitors to park in one of up to 44 identified parking spaces. For comparison, that level of parking is equivalent to a 9,000 to 11,000 square foot commercial building under the City's commercial zone.

This is not customary traffic for a single-family residential dwelling in the R-1-40 zone. As you have acknowledged, this is too much traffic to operate a business by appointment only, which how the Wadsworths were apparently originally able to manage their business within the home occupation restrictions. Instead, Alpine Food Storage has hours of operation, which have varied from 30 to 66 hours per week over the past several years (not just during the current COVID-19 situation), and a parking attendant to handle the customer volume. The response does not address how this traffic will be resolved and eliminated.

The Alpine Food Storage business also does not comply with the restrictions on how much of the Wadsworths' dwelling and garage may be dedicated to the business. Under City Code § 5.08.050(C), a home occupation "shall not exceed twenty-five percent of the total main floor area of the residential structure; nor in the alternative, more than fifty percent of the total floor area of any attached garage wherein the license activity is conducted." You acknowledge that Alpine Food Storage does not comply with these restrictions.

The City has not been aware of the Wadsworths' use of more than 50% of their garage to conduct their business, and such use is not and never has been permitted. The Wadsworths, when they originally applied for their license, stated that only 10-15% of their home would be used. I am unaware of any policy adopted by the City that contradicts the code's requirements. The code contemplates that only one structure would be used for the business—either the main structure or the garage. But even under a generous reading of the code that allows a home occupation to operate in both structures, the Wadsworths are still not in compliance as they cannot meet both the 25% and 50% usage limitation. The response does not address how these issues will be resolved and eliminated.

Ultimately, hours of operation, almost four dozen designated parking spaces managed by a parking attendant, the use of outdoor structures/accessory buildings/lawn space for storage and

display, commercial deliveries, and extensive use of both the residential structure and attached garage—all of this violates the City Code requirements governing home occupations found in section 5.08.050(C), (D), (E), & (G). Your response admits to several of these violations.

It very much appears that the Alpine Food Storage business has become a central use of the Wadsworth dwelling and property, instead of a "secondary" use that is "clearly incidental" to the residential use. Alpine Food Storage has simply outgrown its beginnings as a home occupation. Even if the Wadsworths were able to contain all goods within their garage—and to somehow do so within the limits on how much space can be dedicated to their business—such efforts will not resolve the traffic, parking, and delivery issues.

The City does not oppose the Wadsworths' business, but City code limits certain uses to certain zones. Alpine Food Storage has become a commercial enterprise that can no longer fit within the residential zone as a home occupation.

We would like the next steps in this process to be a meeting wherein we discuss the Wadsworths' plan to relocate their business or scale it back. We are also open to other creative options that can bring Alpine Food Storage into compliance. The City has been and continues to be willing to work with the Wadsworth to develop an appropriate plan and timeline for managing this process, especially as the COVID-19 emergency continues. However, such a plan must result in Alpine Food Storage complying with all requirements of City code, and the plan presented with your August 3, 2020, response does not do so.

If the Wadsworths do not intend to develop or comply with a plan to reduce or relocate their business, we will issue a formal recommendation on this matter and begin the notice and hearing process to review and potentially revoke or deny any license previously granted or being sought regarding Alpine Food Storage. Please note that the City reserves and retains all rights to enforce its home occupation, business license, and land use ordinances.

Sincerely,

/s/ Robert A. Patterson
Highland City Attorney

Enclosure:

DP & LC Wadsworth Family Business License Application

2 October 2020

BRIEF SUMMARY OF OUR FOOD STORAGE BUSINESS

In 2008, we organized a small Home-Occupation business. The steps we took to reach the decision to form such, is probably not relevant to the discussion.

In the early years, the "business" was almost non-existent. We had very few customers and very few deliveries in those early years. I believe I'm being quite generous in stating the following:

	CUSTOMERS / WEEK	**DELIVERIES / WEEK**
2008	20	1-2
2010	20	1-2

From 2012 – 2015, we had two additional children. Although we kept the business viable during those years, we did not do much to improve it or increase it, as my wife was busy with young children.

	CUSTOMERS / WEEK	**DELIVERIES / WEEK**
2012	20-30	1-3
2014	20-30	1-3

Between the years of 2016-2019 some of our older children became more involved, taking on more of the day-to-day involvement; and the business did start into a slow growth mode during those years. However, it remained relatively steady and slow.

	CUSTOMERS / DAY	**DELIVERIES / WEEK**
2016	10-15	2-5
2018	15-20	3-6
2019	15-25	3-6

2020

Through January and most of February there was virtually no change. However, on February 28 of this year, we began to notice a steady uptick; and by mid-March we were in what we might call "full-blown COVID mode."

As I look through the numbers, the actual spike started on about March 10, and began to fall again by April 5.

I think it's also worth noting that in March and April we closed on several days, because we simply could not keep up with demand; and on the days we were opened, we dramatically curtailed our hours of operation.

	CUSTOMERS / DAY	**DELIVERIES / WEEK**
Jan. 2020	15-25	3-6
Feb. 2020	25-40	3-6
March 2020	80-120	8-12
April 2020	100-130	8-14
May 2020	80-120	8-12
June 2020	60-90	6-10

	CUSTOMERS / DAY	**DELIVERIES / WEEK**
July 2020	60-90	6-9
Aug. 2020	50-80	6-9
Sept. 2020	50-80	5-9
Oct 2020	N/A	N/A

- The numbers are definitely falling.
- We have had no parking issues for months (since May).
- It's too soon to judge October; but, it would appear that the numbers continue to fall.
- Again, I argue that the spike was completely COVID related.
- I don't have Rob Patterson's exact quote in front of me; but it was something like, "clearly you've out-grown the garage." We secretly hope that is true. However, if the numbers continue to fall, and we settle back into the pre-COVID numbers, as per historical data, we won't be able to afford a retail space. We need time to really judge and understand the trend, either way. We ask the City to be patient.
- Please take into account that we are situated on a little Island in Highland. We have a farm to our south and east, and very bust streets to our north and west. Obviously, the zoning is what it is; but we ask the City for a little latitude given the proximity of neighbors, the barriers between our place and neighborhoods, etc. The traffic on 6000 West and on Westfield road are not impacted by our home. Those two streets are heavy with traffic, including constant truck traffic. That fact will not change regardless of our situation.
- We appreciate the patience and restraint demonstrated by the City. We simply ask for continued patience and restraint. The numbers are moving in the right direction by the City's standard. (We secretly wish, and we hope this business will eventually be able to sustain itself. That was not really our goal in the beginning; but, we would like to see it grow and blossom. The data is not in our favor.)
- We ask for continued patience. Please don't force dramatic action based on a pandemic that is beyond the control of us, or of the City.
- In 2018, we surveyed our customers. At that time, we learned that 90% of our customers reside within 5 miles of our home. We obviously have not conducted the same survey during this pandemic. We have no way of knowing if the pandemic has changed anything. However, the

point is that our customer base is quite close to us; and this becomes a critical piece of data as we consider the prospect for the future.

Rob Patterson

From: Nathan Crane <NCrane@highlandcity.org>
Sent: Tuesday, October 20, 2020 7:31 PM
To: David Wadsworth
Subject: Re: Pandemic Effect on Wadsworth Business

Dave:

Thank you for providing this information. I would like to continue monitor the situation for the remainder of the calendar year and look at the data again in January. Just a reminder that the number of customers and and deliveries is one part of the regulations relating to home occupations.

Nathan

Nathan Crane
City Administrator

> On Oct 6, 2020, at 7:06 AM, David Wadsworth <oslash71@comcast.net> wrote:
>
> Nathan
>
> I apologize. I added 1 bullet point at the end which, in my view, is a critical piece of data. I also renamed the file.
>
> Thank you
>
> dw
>
> <Pandemic Effect on Business v1.2.docx>

8 September 2021

To: Highland City Officials

From: David and Chirine Wadsworth

REQUEST FOR RE-ISSUED BUSINESS LICENSE

To Whom It May Concern:

At the request of Highland City officials, and with intent of renewing our Business License, we wish to submit the following, in the hopes of eventually reaching full compliance, again.

We first wish to thank City officials and others for patience, and the willingness to work with us in resolving some or all of the issues in question. We're thankful for the extension of time and the encouragement that has been offered. We're looking forward to resolving any lingering issues as quickly as possible.

- **Some Context and a Brief History of Alpine Food Storage**

Although we don't wish to bore you with meaningless history, we feel a few paragraphs may be helpful to bring some context to the situation.

- **Children and Farms**

Many years ago, when first married, and dreaming as newlyweds do, we hoped for children and a farm of some sort on which to raise them. Thankfully, we got the children, but still no farm.

We spent the early years of our marriage living in Wisconsin, among the rich farmland of the upper Midwest; and when we returned to Utah, we found a little home and property, which at the time was surrounded by farmland and open space.

Ours was, for a long time, the last house in Utah County, it seemed to us. Everything to the north and west of us was nothing but dirt and brush; and everything to the south and east was Andy Birrell's horse farm.

We homeschooled our children; and we hoped to find a way to keep them busy and productive during their school years.

- **The Beginning of Alpine Food Storage**

Through a series of circumstances and various events, we decided to start a little home business, which we thought might provide an opportunity for our children to work together, while interacting with others.

We went through the process to acquire a Highland City Business License; and we started like most home businesses start -- with practically nothing.

The business was very small, hardly noticeable by anyone; and it remained very small for many years – so small, and for so long that we wondered, often, if it was worth the trouble; and frankly as a business enterprise it was not worth the trouble; but as a way to keep our children engaged in something, with each passing month and every passing year, we managed to keep it going, although half-expecting it to fail at any time.

- **COVID Impact**

Then came COVID. With the pandemic, a surge came that, frankly, we had not anticipated, and could not have never foreseen. Demand for our small and inconsequential product offering had changed overnight.

Because our business was so small and so inconsequential, we had never been able to establish any ties with the big national distribution and supply chain specialists. Instead, we had over the years fostered relationships with local vendors – smaller and more specialized.

What we once thought was a disadvantage for us – not having access to the big national supply chain, now became a great advantage.

- **Failure of the National Supply Chain vs. Our Local Supply**

When the pandemic hit, the big, strong, national supply chain buckled under the pressure. However, while the national distribution stumbled, our little local supply stepped up. We had sources that typical grocers or big-box retailers did not have because of a very unstable supply chain. Where they could not get bathroom tissue or paper towels, for instance, we could. They could not get bottled water, grains, rice, flour, yeast, or cereals; but we could. So on and so forth. As a result of a nearly collapsed national distribution model during a crisis, cars and people lined the street in front of our place, with local people and neighbors trying to get access to these items that were unobtainable from usual outlets. We had multiple reports from first-time customers who had been directed to us by staff at Costco or Walmart, who had heard we had a certain item or items that they lacked.

Each day a shipment of rice or yeast would show up; and each day it would be gone. Bathroom tissue was in such short supply, that we had owners of apartment complexes near BYU buying case after case of ours. This was all happening in our garage, and should never be compared to a Costco or a Walmart; but, still, it was a lot of business for us and for our little space.

- **Staying Safe While Exposed**

For quite some time we worried about staying open during COVID, and the associate risk of exposing our family to a very serious illness. It was frightening to us because so many people were coming, and we felt completely exposed. But, when we would occasionally confide in a friend or an acquaintance that we felt we needed to close in order to avoid exposure, we were met with pleas from these people that we needed to remain open, because goods were so scarce.

With much thought, and even prayer, we determined to remain open, and to do our best to serve the community. We cleaned and sanitized, and cleaned and sanitized again, and again. We provided sanitizing agents for our customers and encouraged social distancing as much as possible.

From about March through May of 2020, things were just crazy; and it was during this time that the City apparently started getting complaints about traffic, parking, etc. We were overwhelmed. We didn't have enough help; and we couldn't hire any help, due to City Ordinances. We just pushed through and weathered the situation as best we could under the circumstances.

Since those 3-4 months in the Spring of 2020, things have become much more manageable. Again, we sincerely thank City officials and others, who have been very patient with the situation.

Please understand that we went from a situation where we hardly had enough business to stay open at all, to a situation where we had more business than we could manage – all in what seemed like a single over-night moment.

- **Efforts to Comply**

We are not denying that the business has grown beyond the scope envisioned in the City ordinance. The City is asking us to comply with the ordinance; but, we realize, at this point that to return the business from where it presently is back to a state of strict compliance, is virtually impossible. We would basically have to deny customers access and simply close. We just don't see going back to where we once were. We have been through too much and invested too heavily to simply return to where we were; and our customer base has grown beyond the scope of the ordinance.

In recent weeks and months, we have been searching for a way to move the business out of our garage, and into a more accommodating facility. We've looked at properties and options from American Fork to Lehi, and from Alpine to Highland. Some showed significant promise; and we pursued them with vigor; but so far our attempts to move and expand have run into some roadblock or another. Money and financial wherewithal are certainly challenges; but they're not our only challenge. There simply is not a lot of available space in the area; nevertheless, we continue to pursue every possible lead that we can find.

- **Traffic Concern**

We realize that most if not all complaints coming to the City have to do with traffic control. Traffic is an issue, for sure. 6000 West is a heavily traveled roadway. As stated earlier, when we first moved into the area 6000 West was little more than a lazy country road, with little traffic, and few passersby. However, with the explosive growth of housing in recent years, 6000 West carries a significant amount of traffic – residential traffic, construction traffic, school bus traffic, etc. It's no longer the once lazy road that it was. Fortunately, the three-way stop on the corner does a pretty good job of slowing traffic in the immediate area; but, 6000 West carries a lot of traffic.

We have trained our boys, and we continue to train them, when it comes to traffic. We realize that technically we shouldn't need traffic control at all. Clearly one might argue that a concern about traffic goes beyond the spirit of the ordinance; and, in normal circumstances, we would probably agree with such an argument. However, as much as one may look at 6000 West as a purely residential roadway, one must also concede that there is a lot more traffic on that road than the occasional resident racing home for dinner.

6000 West, as already noted, carries a large amount of traffic, of every shape and size; and, as such, we occasionally feel the need to help our customers exit our driveway, safely. However, we have instructed

and trained our boys that they should not stop traffic, or impede its flow. If that was happening, we hope it's now resolve; and we will continue to train and monitor. Our boys have been instructed only to act as the extended vision for the exiting customer, both to the left and to the right. At present, and going forward, the boys will not stop traffic or impede its flow, but will instead help the customer to exit during the normal gap in traffic.

- **Delivery Concerns**

Another concern expressed, which is very much related to traffic flow, has to do with delivery trucks.

We understand the concern, and we are constantly trying to minimize the impact of deliveries. Unfortunately, we have very little control over shipping and delivery schedules. However, we constantly make requests of our vendors to do their best to minimize the impact of their delivery schedules; and, to their credit, our vendors do try to accommodate our requests.

We try to keep any deliveries within a two-hour window, from 8:00 – 10:00, and we try to coordinate deliveries by days as well, in an effort to limit deliveries to specified days of the week. It's not always possible; but we work very closely with vendors and shippers to try to stay within these very tight parameters. Also, when a delivery truck is here, we do everything in our power to unload the delivery as quickly and efficiently as possible. Our boys, even though still young, have become experts at quickly, efficiently, and safely handling the unloading of an occasional pallet or two.

Again, while we understand both the intent and the spirit of the ordinance, and while we recognize that we're stretching that spirit on occasion, we are not doing so recklessly, or maliciously. We do everything we can to control and limit deliveries, and to get them on their way as quickly as possible. In the meantime, please note that between the effects of COVID and our ecommerce society, in truth, very few of the delivery trucks on 6000 west -- whether UPS, Amazon, dump trucks, concrete mixers, 18 wheelers, or even school buses delivering children – are bound for Alpine Food Storage; and those few are controlled and quickly moved out of the area. Again, we greatly appreciate the patience of City officials and neighbors.

- **Inventory and Warehousing**

Our inventory footprint is another area for concern. We have recently rented warehouse space in Pleasant Grove, and have increased our space at Highland Storage, all in an effort to reduce the size of our inventory footprint at home. Pleasant Grove is certainly not convenient for us; and Highland Storage presents its own challenges; nevertheless, between the two locations, we have significantly reduced our on-site footprint; and we continue to monitor and manage inventory, in order to limit build-up.

- **Website and eCommerce Solution**

We're in the process of building what we hope will be a very robust website and ecommerce solution. Our hope is that a viable web presence will relieve some of the in-person pressure that we're currently feeling, as well as hoping it will bring us some added revenue in the hopes of accelerating our ability relocate and expand.

Nothing is ever without challenges it seems. We started this website project some time ago; but sadly, our web developer at the time contracted COVID, fell very ill, and eventually succumbed to the disease.

Obviously, this has been devastating to his family; and there is no way to adequately express the sorrow we feel. Furthermore, as you might imagine, this development was devastating to our website effort. In recent weeks we've been able to contract with a different developer; and we're slowly starting to make progress again.

- **Relocation and Expansion**

Going forward, we are constantly looking for ways to better manage all aspects of this business, always bearing in mind the expectations from the City. It's certainly not easy; but we're doing everything we know how to do in this effort.

We realize that the City wants us to comply with the ordinance, or find a bigger and better location. We too very much want to find a bigger and better solution; and we are constantly on the look-out for opportunities. My brother is a commercial real estate agent and broker, and is very engaged in assisting us in this effort. We are looking for potential properties and solutions; and we appreciate any help or information the City can offer in this effort. We want to find a better location, and a better solution. It's on our minds always.

- **Request to Re-issue the Business license**

We feel we have a viable business; and we feel we have the vision and the expectation that it will soon cease being a nuisance to the City, but, instead, will actually become a great asset to the community. We have great hope for what we've started. While we obviously won't deny that there have been complaints about traffic and parking, etc., we feel that, in general, most people in the community are our friends, and want to see us succeed and grow.

We ask that the City reissue our Business License. We are willing to meet with officials, including the City Council if necessary, on a regular or periodic basis to report on our efforts and to minimize any negative impact from our situation. We want to be good neighbors; and we want to be positive citizens of the community. Highland is our home. With the growth of recent years, we're surely, by now, among the "old-timers" of Highland. We've been in the same place for 23 years now; that's got to place us among the old-timers.

We realize we're asking the City to do something that is perhaps far removed from normalcy; but, we ask, again, to please re-issue our license, and allow us to continue to find a way to relocate and expand. We're willing to report back every quarter or ever 6 months, or whatever is convenient and warranted; and we will do our best to comply with every request of the City or neighborhood during this time of transition.

We view this as a temporary request. It's difficult to place a time limit on it. We hope we can find a solution within the next year or so; and as already stated, we will report back as often as requested.

Please re-issue the license. Please allow us to continue operating; and we hope soon to put any complaints well behind us.

FW: Regarding Our Business Move

1 message

Brent Wallace <bwallace@highlandcity.org> Wed, Aug 10, 2022 at 3:38 PM
To: Rob Patterson <rob@publicprivatelaw.com>

-----Original Message-----
From: Code Compliance
Sent: Wednesday, April 27, 2022 2:45 PM
To: Rob Patterson <rob@publicprivatelaw.com>
Subject: FW: Regarding Our Business Move

Rob, I received this just as I was preparing to personally deliver the letter we had reviewed yesterday. Though this provides a more complete back story, I don't think it really changes the city's position and I am still going to deliver the letter today.

Brent

-----Original Message-----
From: David Wadsworth <oslash71@gmail.com>
Sent: Wednesday, April 27, 2022 2:28 PM
To: Code Compliance <codecompliance@highlandcity.org>
Subject: Regarding Our Business Move

Mr. Brent Wallace

I appreciated your visit. I was a little surprised, mostly because when I opened the door to see to the safety of our customers, you were standing there; and you caught me a bit flat-footed. However, I welcome your visit, and greatly appreciate your input.

I want to restate and re-emphasize some of what I said in our earlier visit.

We are fully aware of the situation with the business and the City. The two are not compatible under the current circumstances. We're aware of the traffic and safety risks involved. Although it may seem so to the casual observer, we are not ignoring or disregarding the requests of the City.

Not that it necessarily matters, but I would like to try to explain our efforts at the moment.

This business was never really intended to be what it has become. For more than 25 years I've worked in a different arena, doing very different things. Our family was supported by my job. Our home business was intended to be an opportunity for our children to do something. I was raised on a farm; and we wanted to try to give our children the experience of working and being responsible for something.

With the recent interactions with the City concerning the situation, and after a great deal of consideration, we decided it might be best if I were to quit my job, a career that I have been working on for what seems a lifetime, so we could focus our efforts on trying to comply with the City's requests. You might appreciate how difficult such a decision is, to quit doing what one has been doing for 25 year; but so it is. As of late last year, this business is now our only source of income; and our full effort, at least our full business effort, is in finding a way to relocate the business, grow it, and expand it.

We have engaged with multiple real estate specialists. I have personally reached out to various owners and developers. This business is our focus. We realize the City wants us out; but, frankly, we want it relocated because simply unable to function as we want in such tight circumstances.

We're not independently wealthy. That should be obvious to anyone. We're reaching out to potential investors, trying to refine our business plan, and seeking private funding.

Will we be out by the end of June? I don't know. I truly want to say yes; but I don't know. That's what we're working

towards.

What I'm saying in summary is this — We are very appreciative of the patience shown by the City. We are in no way trying to thumb our nose, as it were, at the City.

When we bought our home, we were quite literally the last home in Utah County. There were no homes around us. Where the homes are to the East and North of us, was just brush and dirt. Indeed, in those days, we were governed by Utah County, not Highland City.

I realize that things have changed. Homes are everywhere around us now. We want to be good neighbors, and an asset to the community. We're grateful, as I said, for the patience shown by the City. Our intention is to relocate the business as soon as can properly be arranged, not only because the City has requested it, but, perhaps more critically, because the business is simply too suppressed. It has far out-grown our facilities and capabilities here.

I'm happy to discuss this in greater detail as time allows; but you can rest assured that we are in the process and the preparation of relocating. Again, this is our only focus now. We've burned the ships as it were. I've quit my work; and I'm not looking for a new job. This is my job. It's got to work, or we're in big trouble. I hope you can understand that.

Thank you

David Wadsworth
801 362-6887

Highland City
5400 West Civic Center Drive, Suite 1
Highland, UT 84003
Phone (801) 756-5751
www.highlandcity.org

4/21/2022

David Wadsworth
Alpine Food Storage
11800 N 6000 W
Highland City, UT. 84003

David Wadsworth:

I appreciate the time you spent visiting with me yesterday. I have included information below regarding licensing requirements and the conditions required to qualify for a Home Occupation License. Your current license expires on 6/30/2022 so time is of the essence. The conclusion that was drawn from our conversation was that you are no closer to moving your business or complying with the conditions of licensing than you were on 6/30/2021. It appears that because of the growth of your business that staying in your current location is not at all feasible.

5.08.020 Home Occupation License Required

To assure compliance with provisions of this title and Chapter 5.04 and to protect the character of residential neighborhoods in the city, a home occupation license shall be obtained according to the procedures and standards set forth in this title and Chapter 5.04 from the office of the city recorder before a dwelling unit in a residential or an agricultural zone may be used for these business purposes. Any person who fails to obtain a home occupation license, either by an act of omission or commission shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to punishment by a fine in an amount not to exceed two hundred ninety-nine dollars or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment. A home occupation license is required in addition to a business license.
HMC (Ord. 1995-5 (part))

https://highland.municipalcodeonline.com/book?type=ordinances#name=5.08.020_Home_Occupation_License_Required

5.08.050 Conditions
As a prerequisite to the issuance of a home occupation license, conditions must be observed at all times by the licensee and the licensee shall comply with the following:

1. Only bona fide residents of the premises, as defined by the city zoning ordinance, shall be employed by the licensee.
2. **The home occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood**.
3. The home occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent of the total main floor area of the residential structure; nor in the alternative**, more than fifty percent of the total floor area of any attached garage** wherein the license activity is conducted. The home occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.
4. The home occupation shall not display nor create outside the building any external evidence of the operation of the home occupation.
5. No display of any kind shall be visible from the exterior of the premises.
6. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the home occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.
7. **The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located**.
8. There shall be complete conformity with fire, building, plumbing, electrical and health codes and to all state and city laws and ordinances.
9. The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.
10. The home occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.
11. Any special condition established by the city council and made of record in the home occupation license, as they deem necessary to carry out the intent of this section shall be met.
12. All home occupation licenses shall expire annually on June 30th and may be renewed annually provided there have been no reported violations, complaints, or detrimental characteristics which may, in the opinion of the city council or city zoning administrator, require termination of such occupation.

HMC (Ord. 1995-5 (part); Ord. 1999-14; Ord. No. 2008-16, § 3(Exh. B), 9-2-2008)

Please contact me if you have any questions or need additional information. I can be reached at (801) 772-4511 or bwallace@highlandcity.org.

Sincerely,

Brent Wallace
Code Compliance

HIGHLAND CITY

Highland City
5400 West Civic Center Drive, Suite 1
Highland, UT 84003
Phone (801) 756-5751
www.highlandcity.org

6/27/2022

David Wadsworth
Alpine Food Storage
11800 N 6000 W
Highland City, UT 84003

RE: Alpine Food Storage, Notice of Hearing on Business License Revocation/Denial
July 19, 2022, Highland City Hall, 6:00 PM

David Wadsworth for Alpine Food Storage:

This is an official notice regarding the business license for Alpine Food Storage, which has not been renewed and is scheduled for a revocation/denial hearing before the City Council on **Tuesday, July 19, at the Highland City Hall, 5400 West, Civic Center Drive, at 6:00 PM**, prior to the normal city council meeting scheduled for that night. If the hearing is held, you are welcome to appear and address the Council yourself, to be represented by an attorney, and/or submit relevant documents or other written information. To submit a document, please send it to me by email at rob@publicprivatelaw.com by Wednesday, July 13, 2022.

I received the update regarding the potential lease in Pleasant Grove that you sent last week. That is very encouraging news, and that location will hopefully be suitable for your needs and business. Because this relocation is not yet finalized, we will keep the Alpine Food Storage business license scheduled for a hearing and review with the Highland City Council on July 19 for the time being, with the hope that this is resolved beforehand.

Please keep the City informed as to the status of the business and the potential relocation. You can send updates to me or to Brent Wallace, the City's Code Compliance Officer, with whom you've communicated. If the business stops all operations within Highland or relocates to a suitable place within Highland prior to July 19, we may be able to avoid needing to have a hearing before the City Council. Hopefully everything works out for you and your business, and this matter can come to a close. If the business has not been relocated by July 19, we will hold the hearing and discuss the status of Alpine Food Storage with the City Council.

Sincerely,

Robert Patterson
Highland City Attorney

Attachment 3

January 2023 Correspondence

HIGHLAND CITY

Highland City
5400 West Civic Center Drive, Suite 1
Highland, UT 84003
Phone (801) 756-5751
www.highlandcity.org

January 4, 2023

David & Chirine Wadsworth
Alpine Food Storage
11800 N 6000 W
Highland City, UT 84003

RE: Alpine Food Storage, Business License Expiration

Dear Wadsworths:

On August 16, 2022, the Highland City Council conducted a hearing regarding the extension and/or revocation of the business license for Alpine Food Storage. Pursuant to the City Council's decision on that day, the business license for Alpine Food Storage was allowed to be extended up through December 31, 2022, with the condition that you engage in efforts to relocate your business.

Although you have attempted to relocate the business to at least two different locations, it appears that those efforts have not been successful, and the business continues to be operated from your home. Further, as explained during the hearing, the business cannot continue to operate in that location, as it is not a valid home occupation or other allowed use under the applicable zoning regulations. So although the City Council would like your business to succeed, the Council cannot allow continued commercial operations and impacts in a residential area that is not zoned and designated for those kinds of operations and impacts.

Accordingly, the business license for Alpine Food Storage has now expired and is not being renewed. You will need to wind down and terminate all Alpine Food Storage business operations at the 11800 North 6000 West, Highland City location within the next 30 days.

Sincerely,

Robert Patterson
Highland City Attorney

Highland City
5400 West Civic Center Drive, Suite 1
Highland, UT 84003
Phone (801) 756-5751
www.highlandcity.org

1/24/2023

Alpine Food Storage
C/O Chirine & David Wadsworth
11800 N 6000 W
Highland City, UT 84003

RE: Alpine Food Storage, Notice of Hearing on Business License Revocation/Denial
February 7, Highland City Hall, 7:00 PM (subject to prior agenda items)

Dear Wadsworths:

This is an official notice regarding a hearing to terminate and revoke the business/home-occupation license for Alpine Food Storage. As stated in the previous letter dated January 4, 2023, the business license for Alpine Food Storage was extended by the City Council up through December 31, 2022. This extension period has expired, and the Council has not authorized further extensions of the business with its current operations.

Per Highland City Code sections 5.04.160 and 5.08.100, you are given official notice of a revocation/denial hearing regarding the Alpine Food Storage business license before the City Council on **Tuesday, February 7, 2023, at the Highland City Hall, 5400 West, Civic Center Drive.** The meeting will begin at **7:00 PM**, and the hearing will take place as soon after 7:00 PM as permitted by the agenda for that meeting. You are welcome to appear and address the Council yourself, to be represented by an attorney, and/or submit relevant documents or other written information to explain why the license should not be revoked. To submit a document, either bring it with you to the meeting or send a copy to me by email at rob@publicprivatelaw.com as early as possible. You do not need to appear if you do not wish to; however, failing to appear will cause you to waive and lose the right to present your side of the story to the Council.

The City is still hopeful that you will be able to secure a new lease and continue your business operations in a new location. But because the extension period for the license previously granted by the City Council has expired, and because continuation of the Alpine Food Storage business in its current location and with its current operations is not permitted under city code, the City is following the process to formally revoke the license.

Sincerely,

Robert Patterson
Highland City Attorney

Attachment 4

Minutes from August 16, 2022, Hearing

HIGHLAND CITY

HIGHLAND CITY COUNCIL MINUTES

Tuesday, August 16, 2022

Approved October 4, 2022

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

YouTube Live: http://bit.ly/HC-youtube

Email comments prior to meeting: council@highlandcity.org

6:00 PM HEARING: ALPINE FOOD STORAGE

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:03 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

PRESIDING: Mayor Kurt Ostler

COUNCIL MEMBERS PRESENT: Timothy A. Ball (arrived at 6:16 p.m.), Brittney P. Bills, Kim Rodela, Scott L. Smith

CITY STAFF PRESENT: City Attorney Rob Patterson, Interim City Administrator Erin Wells, City Recorder Stephannie Cottle, City Treasurer/Business License Official Candice Linford, Code Compliance Officer Brent Wallace

OTHERS PRESENT: David and Chirine Wadsworth

6:00 PM HEARING: ALPINE FOOD STORAGE

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:03 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

City Attorney Patterson provided an introduction regarding potential revocation of the Alpine Food Storage business license; he presented a vicinity map to orient the Council to the location of the subject property, which is located in a R-1-40 zone. The business license was first issued in 2008 and allowed for usage of 10 to 15 percent of the home. Other restrictions placed upon the business include:

- 5-50 customers per week, no unusual traffic
- No stock/merchandise displayed at home
- No outside yard/accessory structure usage
- No additional vehicles kept outside of garage

The original plan for the business operation was delivery/by appointment only business. In 2020 the City received complaints about the business operation and the City Administrator sent a notice to the licensee reminding them of the home occupation standards that applied to the operation of the business. There was some discussion with legal counsel confirming that the business did not meet home occupation standards and City staff reached an informal agreement to renew the business license subject to reporting on traffic and other issues. The intent of

this renewal was to determine whether the changes in the business were related to the COVID-19 pandemic and would be resolved as the pandemic ended. A second license renewal/extension was granted in 2021; traffic and other issues were still present and City staff requested a plan from the owner regarding modification and scaling of their operations to secure license renewal. The Wadsworth's submitted a plan explaining they had rented warehouse space in Pleasant Grove and were searching for a way to relocate their store. The license was renewed in 2021 with the explanation that this would be the last extension/renewal. He discussed the current status of the business; the license has yet to be renewed after expiration on June 30 and a notice of hearing for July 19 was postponed after discussion with Wadsworth's on their plan and process of relocating to a soon-to-be constructed building in Pleasant Grove. The Wadsworth's have communicated their deposit is paid, but there is no lease agreement, the building is incomplete and will not be finished until the end of November. He briefly summarized the complaints the City has received regarding the business:

- Cars backing out of driveway, parking on side of roads, angled parking
- Flagger that waves down and directs traffic
- Delivery truck traffic
- Large number of customer visits
- Additional code issues were noticed by city staff in investigating complaints

Mr. Patterson summarized the City's home occupation standards and concluded that the inappropriate business usage from 2020 has not been abated and the business does not meet home occupation standards relating to traffic, accessory structure/yard use, and percentage of the home that is used for the business. The business also does not qualify as a proper commercial use as the area is zoned R-1-40 and commercial development is prohibited in that zone. At this time, staff recommends the Council hold a public hearing and allow the Wadsworth's to present their case. After consideration of all evidence presented this evening, the Council can make a determination regarding the business license.

Mayor Ostler stated that he has visited with the Wadsworth's at their property, and he was hopeful they could find a location for their business in Highland. However, he does understand they have been working with a developer to secure a space in Pleasant Grove. They recognize their business is going to continue to grow and it is appropriate to find a larger place to accommodate that growth. He invited input from the Wadsworth's regarding the timing of their move to Pleasant Grove.

Council Member Ball arrived at 6:16 p.m.

David Wadsworth stated he is grateful for the opportunity to present his case; he is not disputing anything Mr. Patterson has said, as all of it is true. He is in the process of relocating, but that process has been very difficult, with significant COVID-19 related impacts.

Council Member Smith inquired as to the location in Pleasant Grover where the business will be relocated. Chirine Wadsworth indicated it is the Old Post Office building at the end of the street, with three additional buildings that can be used as office and warehousing space. There is also sufficient parking at the site, but the interior of the building is being renovated as it was formerly used as a gymnasium/fitness center.

Discussion centered on the timing of the move, with Mr. Wadsworth stated that he would like 90 days to vacate the current space and relocate to the Pleasant Grove space. He stated that he looked at a space in Highland, but it was located next to a Macy's grocery store and there is a restriction on any other sales of fresh produce within a certain distance of Macy's. This restriction made it impossible for him to locate there because fresh produce is one of his best sellers from his business.

Council Member Smith stated the business has been successful in this area and many of the customers are likely from Highland; he asked if the Wadsworth's are concerned about the impact to their business with a move to Pleasant Grove. Mr. Wadsworth answered yes, but noted that he could not find a location that would be suitable for the business that is reasonably close to his current location. His first choice was Highland, but the current arrangement with moving to Pleasant Grove feels right to them at this time. He discussed negotiations for the

lease of the building and concluded by asking for 90 days from the City to continue to operate his business until the move can be completed.

Council Member Rodela asked if there is any way for the Wadsworth's to scale back their business during that 90-day period to abate the violations. Mr. Wadsworth stated that he is not sure how he could scale it back without securing more space.

Mayor Ostler stated he would be supportive of extending the business license until the end of 2022, as he feels it may be difficult to complete the move within 90 days. Council Member Smith asked Mr. Wadsworth if that would be helpful. Mr. Wadsworth answered yes. Council Member Smith stated he would be willing to support a six-month extension of the expired business license.

Discussion among the Council and the Wadsworth's centered on activities that have been occurring on their property that have led to citizen complaints; this included heavy truck traffic that impacts safety of motorists and other residents in the area; on-street parking; and private citizens directing traffic on the street.

Council Member Bills asked if the Wadsworth's have applied for the needed permits to relocate their business to Pleasant Grove. Mr. Wadsworth stated the building is existing, so he does not need to apply for a building permit; rather, he is working with the building owner on the buildout/renovation of the space to accommodate his business. Council Member Bills stated that she does not want to impose an unreasonable timeline on the Wadsworth's; she then asked if there is a way for the Wadsworth's to limit the number of customers coming to their home by offering a delivery service for products purchased. Ms. Wadsworth stated the home occupation license restricts them from hiring employees; therefore, they do not have sufficient staffing to offer a delivery service.

Continued discussion among the Mayor and Council centered on any past decisions that have been made regarding business licenses that should be relied upon as a precedent for the decision regarding the Alpine Food Storage business license; Council Member Ball stated he feels the Wadsworth's have made a genuine effort to comply with the City's home occupation ordinances and he does not see a reason to deny extension of the license. Council Member Rodela disagreed; she noted that this issue has been ongoing for two years and problems have not been resolved; the Wadsworth's received a letter indicating that the most recent renewal of the license would be the last one, but now the Council is considering allowing further extensions. She feels this sets an expectation that the City does not stand by its word, which is a bad precedent to set. This led Mr. Patterson to briefly review the timeline of events as mentioned above. Council Member Smith stated he appreciates Council Member Rodela's position, but he feels there are extenuating circumstances in this case; the business has been impacted by COVID-19, as has the owner of the building they are seeking to relocate to. They have been actively looking for a new location and he is concerned about making a decision that would put them out of business at a time that they are trying to relocate and actually grow. He stated he is supportive of extending the business license to the end of 2022.

Council Member Ball asked Mr. Patterson for advice regarding the appropriate language to use in a motion to extend the business license that would not create a precedent for similar situations in the future. Mr. Patterson advised the Council accordingly, noting that if the Council crafts findings supporting their decision, it would help to alleviate potential future concerns about unfair or inconsistent application of City ordinances.

Council Member Bills stated she would not feel comfortable asking someone to shut down their business tomorrow; however, she also is not comfortable granting any extensions past December 31, 2022. She stated she is hopeful that the Wadsworth's will be able to relocate prior to that deadline. Council Member Rodela agreed; her position was based upon the history of this situation, during which the business has been given several opportunities to comply. She added she is sad to see the business leave Highland City and wished they could have found a new location within City limits.

Scott L. Smith MOVED that the City Council authorize the renewal of the business license for Alpine Food Storage with the following stipulations:

1. *Extending the license only until 12/31/2022*
2. *During that interim, Alpine Food Storage will make a good faith effort to move their business to a location in a commercial district, possibly in Pleasant Grove*

Based on the following findings:
The business owners have had to deal with contingencies created by the Covid-19 pandemic and supply chain issues as well as other issues with construction that has been delayed because of the pandemic.

Council Member Timothy A. Ball SECONDED the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	*Yes*
Council Member Brittney P. Bills	*Yes*
Council Member Sarah D. Petersen	*Absent*
Council Member Kim Rodela	*Yes*
Council Member Scott L. Smith	*Yes*

The motion passed 4:0.

The hearing adjourned at 6:51 pm.

7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler
Invocation – Council Member Kim Rodela
Pledge of Allegiance – Council Member Timothy A. Ball

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:04 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Council Member Kim Rodela and those in attendance were led in the Pledge of Allegiance by Council Member Timothy A. Ball.

PRESIDING:	Mayor Kurt Ostler
COUNCIL MEMBERS PRESENT:	Timothy A. Ball, Brittney P. Bills, Kim Rodela, Scott L. Smith
CITY STAFF PRESENT:	Interim City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, , City Engineer/Public Works Director Andy Spencer, Police Chief Brian Gwilliam, Deputy Fire Chief Jake Beck, Library Director Donna Cardon
OTHERS PRESENT:	Jon Hart, Logan Fawcett, BJ Ryan, Wesley Warren, Brian Braithwaite, Todd Trane

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

AGENDA NEXT

HIGHLAND CITY

CITYCOUNCIL AGENDA REPORT ITEM #4

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Kellie Smith, Planner & GIS Analyst

SUBJECT: **PUBLIC HEARING/ORDINANCE:** General Plan Amendment – Moderate Income Housing Element

TYPE: **GENERAL PLAN UPDATE (LEGISLATIVE)**

PURPOSE:

The City Council will hold a public hearing to consider a request by Highland City Staff to update the Moderate Income Housing Element of the General Plan to be compliant with Utah State Code. The City Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the City Council hold a public hearing, discuss the proposed amendment and Planning Commission recommendation, and **APPROVE** the proposed General Plan amendment with any changes the City Council determines necessary that are compliant with the requirements from House Bill 462.

PRIOR COUNCIL DIRECTION:

On August 16, 2022, the City Council had a discussion item that addressed possible adjustments to existing Moderate Income Housing (MIH) strategies in the General Plan as well as an implementation plan for each of the strategies. The City Council indicated that they wanted to keep the existing implementation measures and did not want to add any new strategies.

On September 6, 2022, the City Council approved the amendment recommended by Planning Commission with a change to the ADU section that would state, “On an ongoing basis the city will monitor ADU’s and will also seek citizen input.”

At the December 6 City Council meeting, staff made the Councilmembers aware of a notice of non-compliance received from the State. Staff would work on drafting more specific timelines and benchmarks for the Planning Commission and City Council’s review.

BACKGROUND:

The Highland City General Plan was adopted in 2008 and included a Moderate Income Housing (MIH) element. During the legislative session in 2018, HB 259 provided specific strategies cities must consider adopting in their MIH plans. In 2019, the City Council updated the General Plan to be consistent with this update.

In 2022, HB 462 updated those strategies from HB 259 in 2018 and required implementation elements that include a timeline that has specific benchmarks for each chosen strategy, but provides flexibility for the municipality to make adjustments. Municipalities were required to update their general plans by October 1, 2022.

The amendment approved by the City Council was submitted to the State before October 1, 2022. On November 18, 2022, Highland City received a notice of non-compliance from the Department of Workforce Services (see Attachment #2). Staff attended a training provided by the State, where it was explained that the only way the Moderate Income Housing Element would comply with Utah State Code is by matching the wording in the State's strategies verbatim. The State is also requiring a 5-year timeline with more specific benchmarks.

Staff developed the drafted amendment based on prior Council and Mayor input or what we thought the Council may be amenable to with the new understanding of what the state is requiring. The new proposed amendment was reviewed by the State's Moderate Income Housing Program Manager on January 5, 2023. Staff was notified that the proposed amendment addressed all of the deficiencies described in the notice of non-compliance.

State Definitions
For reference, the State defines the following:

- "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.
- "Housing affordability" means the ability of a household to occupy a housing unit paying no more than 30% of the household's income for gross housing costs, including utilities.
- "Moderate income housing unit" means a housing unit where a household whose income is no more than 80% of the area median income is able to occupy the housing unit paying no more than 30% of the household's income for gross housing costs, including utilities.

According to the US Census, the median household income in 2021 for Utah County was $82,893. 80% of the median household income is $66,314. To determine what is considered affordable housing, the State takes 30% of this household income, which comes out to $19,894.32. When this amount is divided by the 12 months of the year, to be considered affordable, a housing payment including utilities could be no more than approximately $1,658 a month.

SUMMARY OF THE REQUEST:

Below are the proposed implementation measures with a specific timeline and benchmarks for each strategy. The Planning Commission recommended keeping strategies E, N, and U (bolded), and remove the density phrase from the 2024 benchmark in U.

1. **E – create or allow for, and reduce regulations related to, internal or detached accessory dwelling units in residential zones;**

2023	**Include in the City's annual survey a question to gauge support for detached accessory dwelling units in residential zones.**
2025	**Review the results of the annual survey. If there is significant support for detached accessory dwelling units, work with the Planning Commission and City Council to update the Development Code to allow for them; if there is not significant support from the residents, determine an alternative way to reduce regulations for internal accessory dwelling units.**

2. **N – implement a mortgage assistance program for employees of the municipality, an employer that provides contracted services to the municipality, or any other public employer that operates within the municipality.**

2024	**Work with the Mayor and Council to determine what a mortgage assistance program for municipal employees would look like, who it would include, and where possible funding would come from. Work on drafting the program.**
2025	**Adopt the mortgage assistance program for municipal employees and include it in the budget.**

3. **U – develop a moderate income housing project for residents who are disabled or 55 years old or older;**

2024	**Work with the Planning Commission and City Council to draft an age-restricted senior housing residential zone** that requires a density higher than the City's typical residential zoning**. Work with the Planning Commission and City Council to determine areas in the City where this zoning could be approved.**
2025	**Adopt the new senior housing zone and work with the State on application of that zone to State owned property adjacent to North County Blvd.**
2028	**If no property owners have requested to rezone in appropriate areas, rezone areas determined to be appropriate by the Planning Commission and City Council.**

4. F – zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near major transit investment corridors, commercial centers, or employment centers;

2023-2025	Permit the remaining 425 lots for the townhomes, carriage lots, and cottage lots that have yet to apply for building permits in the Ridgeview Planned Development.
2024	Remove the requirement to include a commercial aspect in Planned Development (PD) Districts.

2026	Work with the Planning Commission and City Council to update the Land Use Plan in the General Plan to allow for higher density housing adjacent to Commercial Retail, Commercial-1, and appropriate Planned Development zones.
2027	Work with the Planning Commission and City Council to research and draft an ordinance creating a residential zone with higher density such as a senior housing zone.

5. H – amend land use regulations to eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities;

2023	Examine and update regulations for the Senior Care Assisted Living Overlay Zone to reduce or eliminate parking requirements.
2024 + Ongoing	Annually, evaluate transit options within Highland City. Work with Utah Transit Authority to determine if there are additional planned transit options. Based on findings, update regulations of zones near transit corridors to reduce parking requirements.

6. O – apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing, an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity, an entity that applies for affordable housing programs administered by the Department of Workforce Services, an entity that applies for affordable housing programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, an entity that applies for services provided by a public housing authority to preserve and create moderate income housing, or any other entity that applies for programs or services that promote the construction or preservation of moderate income housing;

2023	Work with MAG to qualify for the Community Development Block Grant (CDBG) to help Highland City identify regional MIH priorities.
2024	Update the General Plan to set goals, policies, and implementation measures that contemplate the regional priorities identified by MAG.
2026	Work with the Housing Authority of Utah County to determine if there are properties or vacant land available in Highland City to develop affordable housing.

STAFF REVIEW:

HB462 requires that a municipality include a minimum of three (3) of the twenty-four (24) strategies listed in Utah Code. Municipalities that select at least five (5) strategies would qualify for enhanced prioritization of state TIF/TTIF (Transportation Investment Fund/Transit Transportation Investment Fund) and ARPA (American Rescue Plan Act)

local match program funds. There has been discussion in the current legislative session to enhance the penalty for non-compliance up-to and including withholding B&C Road funds. As of the writing of this report, staff is unaware of bill language that has been filed outlining these added penalties.

To be compliant, the strategies adopted must be verbatim to the State Code. The timeline and benchmarks the City has discretion over so long as they reasonably work toward accomplishing the associated strategy.

PLANNING COMMISSION ACTION:

The Planning Commission held a public hearing on January 24, 2023. No resident comment was made. Commissioners discussed which strategies they wanted to keep and strategies that they wanted to remove.

The Planning Commission voted 6:1 to recommend **APPROVAL** of the proposed amendment with a change to only include strategies E, N, and U and remove the density phrase from the 2024 benchmark. The Planning Commission also noted that the definition of a municipal employee for strategy N would be defined later. Staff added the phrase, "who it would include" to strategy N to address this.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO APPROVE:

I move that the City Council **APPROVE** the proposed amendment to the Moderate Income Housing Element of the General Plan as originally drafted by staff.

MOTION TO APPROVE THE PLANNING COMMISSION RECOMMENDATION:

I move that the City Council **APPROVE** the proposed amendment to the Moderate Income Housing Element of the General Plan as recommended by the Planning Commission.

ALTERNATIVE MOTION:

I move that the City Council **APPROVE** the proposed amendment to the Moderate Income Housing Element of the General Plan with the following changes: (The City Council will need to draft appropriate changes).

ATTACHMENTS:

1. Ordinance (*without* the changes recommended by the Planning Commission)
2. Ordinance (*with* the changes recommended by the Planning Commission)
3. Notice of Non-Compliance – Department of Workforce Services
4. Utah State Code 10-9a-403

ATTACHMENT #1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING THE MODERATE INCOME HOUSING ELEMENT IN THE HIGHAND CITY GENERAL PLAN AS SHOWN IN FILENAME (GP-22-01).

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the "Commission") and the Highland City Council (the "City Council") were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Commission held public hearing on this Ordinance on January 24, 2023; and

WHEREAS, the City Council held a public hearing on this Ordinance on February 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1. That the Highland City General Plan is hereby amended as shown on "Exhibit A", attached and incorporated herein by reference.

SECTION 2. That the Mayor, the City Administrator, and the City Recorder are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance shall take effect immediately after posting.

SECTION 4. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct, and independent of all other provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023.

HIGHLAND CITY, UTAH

_____

Kurt Ostler
Highland City
Mayor

ATTEST:

_____

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

ATTACHMENT #1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING THE MODERATE INCOME HOUSING ELEMENT IN THE HIGHAND CITY GENERAL PLAN AS SHOWN IN FILENAME (GP-22-01).

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WHEREAS, the Commission held public hearing on this Ordinance on January 24, 2023; and

WHEREAS, the City Council held a public hearing on this Ordinance on February 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1. That the Highland City General Plan is hereby amended as shown on "Exhibit A", attached and incorporated herein by reference.

SECTION 2. That the Mayor, the City Administrator, and the City Recorder are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance shall take effect immediately after posting.

SECTION 4. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct, and independent of all other provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023.

HIGHLAND CITY, UTAH

_____

Kurt Ostler
Highland City
Mayor

ATTEST:

_____

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

Goals and Policies

With the zoning pattern already established and a mostly infill expectation for new development, support for alternative housing types is a difficult goal to achieve. The City can still find creative ways to make a reasonable allowance for affordable housing types that would be acceptable and even welcomed by residents. The City may choose to focus on solutions, such as basement accessory dwelling units, senior housing (some of which may include deed restrictions to maintain affordability) and multi-family housing mixed-use developments The goals, policies, and implementation measures below build on these ideas.

Goal: Support for alternative housing type.

Policy: Proactively encourage the development of moderate income and senior housing as follows:

Implementation Measure: amend land use regulations to eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities;

~~Examine regulations for Senior Housing projects in the land use code with the specific examination of parking requirements for such.~~

Timeline and Implementation Plan:

2023	Examine and update regulations for the Senior Care Assisted Living Overlay Zone to reduce or eliminate parking requirements.
2024 + Ongoing	Annually, evaluate transit options within Highland City. Work with Utah Transit Authority to determine if there are additional planned transit options. Based on findings, update regulations of zones near transit corridors to reduce parking requirements.

Implementation Measure: develop a moderate income housing project for residents who are disabled or 55 years old or older;

Timeline and Implementation Plan:

2024	Work with the Planning Commission and City Council to draft an age-restricted senior housing residential zone that requires a density higher than the City's typical residential zoning. Work with the Planning Commission and City Council to determine areas in the City where this zoning could be approved.
2025	Adopt the new senior housing zone and work with the State on application of that zone to State owned property adjacent to North County Blvd.
2028	If no property owners have requested to rezone in other appropriate areas, rezone other areas determined to be appropriate by the Planning Commission and City Council.

~~Within the next five (5) years, the City will update the Development Code to add regulations for an age-restricted senior housing residential zone. Over the next ten (10) years, if the last large undeveloped properties in Highland are proposed to be developed, the City will~~

~~review the properties for potential Senior Housing projects.~~

Implementation Measure: zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near major transit investment corridors, commercial centers, or employment centers; ~~Review and consider updating the regulations in mixed-use zones in the land use code to provide for a greater variety of housing types.~~

Timeline and Implementation Plan:

2023-2025	Permit the remaining 425 lots for the townhomes, carriage lots, and cottage lots that have yet to apply for building permits in the Ridgeview Planned Development.
2024	Remove the requirement to include a commercial aspect in Planned Development (PD) Districts.
2026	Work with the Planning Commission and City Council to update the Land Use Plan in the General Plan to allow for higher density housing adjacent to the Commercial Retail and Commercial-1 Zones.
2027	Work with the Planning Commission and City Council to research and draft an ordinance creating a residential zone with higher density such as a senior housing zone.

~~As most of Highland's mixed-use developments are relatively new, over the next twenty (20) years, the City will continue to monitor the mixed-use developments for potential redevelopment.~~

Implementation Measure: apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing, an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity, an entity that applies for affordable housing programs administered by the Department of Workforce Services, an entity that applies for affordable housing programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, an entity that applies for services provided by a public housing authority to preserve and create moderate income housing, or any other entity that applies for programs or services that promote the construction or preservation of moderate income housing; ~~Explore potential programs or partnerships with the Mountainlands Association of Governments (MAG).~~

Timeline and Implementation Plan:

2023	Work with MAG to qualify for the Community Development Block Grant (CDBG) to help Highland City identify regional MIH priorities.
2024	Update the General Plan to set goals, policies, and implementation measures that contemplate the regional priorities identified by MAG.
2028	Work with the Housing Authority of Utah County to determine if there are properties or vacant land available in Highland City to develop affordable housing.

~~Within the next five (5) years, the City will do a comprehensive update of the General Plan. As part of this comprehensive update, the City will work with MAG to qualify for the Community Development Block Grant (CDBG) to help Highland City identify regional MIH priorities. This will help the City make goals, policies, and implementation measures to address those priorities.~~

Implementation Measure: create or allow for, and reduce regulations related to, internal or

detached accessory dwelling units in residential zones; ~~Review and update the regulations for the Accessory Dwelling Unit (ADU) within the land use code for potential modifications and incentives to encourage the creation of additional housing options for residents.~~

Timeline and Implementation Plan:

2023	Include in the City's annual survey a question to gauge support for detached accessory dwelling units in residential zones.
2025	Review the results of the annual survey. If there is significant support for detached accessory dwelling units, work with the Planning Commission and City Council to update the Development Code to allow for them; if there is not significant support from the residents, determine an alternative way to reduce regulations for internal accessory dwelling units.

~~On an ongoing basis, the City will monitor ADUs and will also seek citizen input.~~

I**mplementation Measure:** implement a mortgage assistance program for employees of the municipality, an employer that provides contracted services to the municipality, or any other public employer that operates within the municipality.

Timeline and Implementation Plan:

2024	Work with the Mayor and Council to determine what a mortgage assistance program for municipal employees would look like and where possible funding would come from. Work on drafting the program.
2025	Adopt the mortgage assistance program for municipal employees and include it in the budget.

Policy: Maintain quality housing stock and the current aesthetic style of Highland City.

Implementation Measure: Adopt design guidelines for medium and higher density housing based on residents' opinions and perceptions of the community character. The guidelines should not be cost prohibitive to affordable housing.

ATTACHMENT #2:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING THE MODERATE INCOME HOUSING ELEMENT IN THE HIGHAND CITY GENERAL PLAN AS SHOWN IN FILENAME (GP-22-01).

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the "Commission") and the Highland City Council (the "City Council") were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Commission held public hearing on this Ordinance on January 24, 2023; and

WHEREAS, the City Council held a public hearing on this Ordinance on February 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1. That the Highland City General Plan is hereby amended as shown on "Exhibit A", attached and incorporated herein by reference.

SECTION 2. That the Mayor, the City Administrator, and the City Recorder are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance shall take effect immediately after posting.

SECTION 4. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct, and independent of all other provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023.

HIGHLAND CITY, UTAH

_____

Kurt Ostler
Highland City
Mayor

ATTEST:

_____

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

Goals and Policies

With the zoning pattern already established and a mostly infill expectation for new development, support for alternative housing types is a difficult goal to achieve. The City can still find creative ways to make a reasonable allowance for affordable housing types that would be acceptable and even welcomed by residents. The City may choose to focus on solutions, such as basement accessory dwelling units, senior housing (some of which may include deed restrictions to maintain affordability) and multi-family housing mixed-use developments The goals, policies, and implementation measures below build on these ideas.

Goal: Support for alternative housing type.

Policy: Proactively encourage the development of moderate income and senior housing as follows:

Implementation Measure: develop a moderate income housing project for residents who are disabled or 55 years old or older;

Timeline and Implementation Plan:

2024	Work with the Planning Commission and City Council to draft an age-restricted senior housing residential zone. Work with the Planning Commission and City Council to determine areas in the City where this zoning could be approved.
2025	Adopt the new senior housing zone and work with the State on application of that zone to State owned property adjacent to North County Blvd.
2028	If no property owners have requested to rezone in appropriate areas, rezone areas determined to be appropriate by the Planning Commission and City Council.

~~Within the next five (5) years, the City will update the Development Code to add regulations for an age-restricted senior housing residential zone. Over the next ten (10) years, if the last large undeveloped properties in Highland are proposed to be developed, the City will review the properties for potential Senior Housing projects.~~

Implementation Measure: create or allow for, and reduce regulations related to, internal or detached accessory dwelling units in residential zones; ~~Review and update the regulations for the Accessory Dwelling Unit (ADU) within the land use code for potential modifications and incentives to encourage the creation of additional housing options for residents.~~

Timeline and Implementation Plan:

2023	Include in the City's annual survey a question to gauge support for detached accessory dwelling units in residential zones.
2025	Review the results of the annual survey. If there is significant support for detached accessory dwelling units, work with the Planning Commission and City Council to update the Development Code to allow for them; if there is not significant support from the residents, determine an alternative way to reduce regulations for internal accessory dwelling units.

~~On an ongoing basis, the City will monitor ADUs and will also seek citizen input.~~

Implementation Measure: implement a mortgage assistance program for employees of the municipality, an employer that provides contracted services to the municipality, or any other public employer that operates within the municipality.

Timeline and Implementation Plan:

2024	Work with the Mayor and Council to determine what a mortgage assistance program for municipal employees would look like, who it would include, and where possible funding would come from. Work on drafting the program.
2025	Adopt the mortgage assistance program for municipal employees and include it in the budget.

Policy: Maintain quality housing stock and the current aesthetic style of Highland City.

Implementation Measure: Adopt design guidelines for medium and higher density housing based on residents' opinions and perceptions of the community character. The guidelines should not be cost prohibitive to affordable housing.

ATTACHMENT #3:

State of Utah
SPENCER J. COX
Governor
DEIDRE HENDERSON
Lieutenant Governor

Department of Workforce Services
CASEY R. CAMERON
Executive Director
GREG PARAS
Deputy Director
NATE MCDONALD
Deputy Director
KEVIN BURT
Deputy Director

November 18, 2022

To: Mayor and City Council
Highland City

From: Department of Workforce Services
Housing and Community Development Division

Re: Moderate Income Housing Report 2022—Notice of Non-Compliance

Dear Highland City Mayor and City Council,

Thank you for submitting the Annual Moderate Income Housing Report. Following review of the submitted plan and report, the Housing and Community Development Division has determined that the submission does not fulfill the requirements set forth in State Code section 10-9a-408. Please see the below description of deficiencies and actions the city must take to comply with the Code.

Section 10-9a-403(2)(b)(iii) notes that cities shall include a recommendation to implement three or more of the moderate-income housing strategies. HB 462, passed in 2022, included substantive changes to the strategies, which requires communities to update their general plans with the new language. The implementation measures in the submitted general plan do not reflect the State Code language for Strategies E, F, H, O, or U.

Deficiency Corrective Action: Update the general plan to include the exact language from the code 10-9a-403(2)(b)(iii) for Strategies E, F, H, O, and U.

Section 10-9a-403(2)(c) notes that the City shall draft implementation plans that establish a timeline for implementing selected strategies, identify specific measures and benchmarks for implementing each selected strategy, and provide flexibility for the municipality to adjust as needed. Additionally, section 10-9a-408(2)(c) requires each municipality's report starting in 2023 to describe action taken by the municipality towards implementation of the selected strategies, including how each land use decision or regulation supports the implementation of the moderate income housing strategies, barriers encountered, accessory dwelling unit information, the market's response to the strategies and implementation plans, and recommendations to the State regarding how the State can support the municipality in implementing strategies. Thus, implementation plans in the 2022 reporting year must be of a sufficient quality to show specific

details on actionable tasks, timelines for implementation, measures used to demonstrate progress, and what resources the municipality will use to achieve the strategies selected.

The City's submission does not include measures or benchmarks to show progress for the Implementation Measure: *Review and consider updating the regulations in mixed-use zones in the land use code to provide for a greater variety of housing types*. The city should consider and document what is involved in the monitoring, if there are indicators which inform code updates for moderate income or higher density housing, what the schedule of ongoing activities are, etc.

The Implementation Measure: *Review and update the regulations for the Accessory Dwelling Unit (ADU) within the land use code for potential modifications and incentives to encourage the creation of additional housing options for residents* is considered ongoing with no future activities or timeline described. If a strategy has been implemented, is complete, or is ongoing, measures and a specific timeline and tasks for program monitoring, review, or continued implementation must be included.

It is unclear which State strategy the Implementation Measure: *Adopt design guidelines for medium and higher density housing based on residents' opinions and perceptions of the community character. The guidelines should not be cost prohibitive to affordable housing*, is related to. This action does not include any timeline or benchmarks for an implementation plan.

> **Deficiency Corrective Action:** The City must update the general plan to identify actionable and specific benchmarks or measures and timelines for Goal 3 strategies 4, 5, 6, and 7; Goal 2 Strategies 3 and 4; and Goal 1 strategies 5 and 6 to support implementation.

Please review the State Code sections referenced and submit your report using the form found here: https://jobs.utah.gov/housing/affordable/moderate/reporting/.

Section 10-9a-408(6) allows for each community 90 days from the date after this notice is sent to come into compliance with State Code. Per section 10-9a-408(7)(b), **failure to cure the described deficiencies in your municipality's report by February 16, 2023, will make your community ineligible for Utah Department of Transportation (UDOT) Transportation Investment Fund of 2005, including the Transit Transportation Investment funding and the Governor's Office of Planning and Budget (GOPB) Covid-19 Local Assistance Matching Grant for the 2024 fiscal year.**

The Housing and Community Development Division is available to help you work through the noted deficiencies. We want to work with you to meet the requirements of the Code. If you have any questions or concerns, please contact Alyssa Gamble at angamble@utah.gov.

Sincerely,

Alyssa Gamble
Program Manager – Moderate Income Housing Database
Housing and Community Development
Department of Workforce Services

ATTACHMENT #4:

Effective 6/1/2022

10-9a-403 General plan preparation.

(1)

(a) The planning commission shall provide notice, as provided in Section 10-9a-203, of the planning commission's intent to make a recommendation to the municipal legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing the planning commission's recommendation.

(b) The planning commission shall make and recommend to the legislative body a proposed general plan for the area within the municipality.

(c) The plan may include areas outside the boundaries of the municipality if, in the planning commission's judgment, those areas are related to the planning of the municipality's territory.

(d) Except as otherwise provided by law or with respect to a municipality's power of eminent domain, when the plan of a municipality involves territory outside the boundaries of the municipality, the municipality may not take action affecting that territory without the concurrence of the county or other municipalities affected.

(2)

(a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning commission's recommendations for the following plan elements:

(i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing for residents of various income levels, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate;

(B) includes a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(C) except for a city of the fifth class or a town, is coordinated to integrate the land use element with the water use and preservation element; and

(D) except for a city of the fifth class or a town, accounts for the effect of land use categories and land uses on water demand;

(ii) a transportation and traffic circulation element that:

(A) provides the general location and extent of existing and proposed freeways, arterial and collector streets, public transit, active transportation facilities, and other modes of transportation that the planning commission considers appropriate;

(B) for a municipality that has access to a major transit investment corridor, addresses the municipality's plan for residential and commercial development around major transit investment corridors to maintain and improve the connections between housing, employment, education, recreation, and commerce;

(C) for a municipality that does not have access to a major transit investment corridor, addresses the municipality's plan for residential and commercial development in areas that will maintain and improve the connections between housing, transportation, employment, education, recreation, and commerce; and

(D) correlates with the population projections, the employment projections, and the proposed land use element of the general plan;

(iii) for a specified municipality as defined in Section 10-9a-408, a moderate income housing element that:

(A) provides a realistic opportunity to meet the need for additional moderate income housing within the next five years;

(B) selects three or more moderate income housing strategies described in Subsection (2)(b)(iii) for implementation, including one additional moderate income housing strategy as provided in Subsection (2)(b)(iv) for a specified municipality that has a fixed guideway public transit station; and

(C) includes an implementation plan as provided in Subsection (2)(c); and

(iv) except for a city of the fifth class or a town, a water use and preservation element that addresses:

(A) the effect of permitted development or patterns of development on water demand and water infrastructure;

(B) methods of reducing water demand and per capita consumption for future development;

(C) methods of reducing water demand and per capita consumption for existing development; and

(D) opportunities for the municipality to modify the municipality's operations to eliminate practices or conditions that waste water.

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that municipalities shall facilitate a reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people of various income levels living, working, or desiring to live or work in the community; and

(B) to allow people with various incomes to benefit from and fully participate in all aspects of neighborhood and community life;

(ii) for a town, may include, and for a specified municipality as defined in Section 10-9a-408, shall include, an analysis of how the municipality will provide a realistic opportunity for the development of moderate income housing within the next five years;

(iii) for a town, may include, and for other municipalities, shall include, a recommendation to implement three or more of the following moderate income housing strategies:

(A) rezone for densities necessary to facilitate the production of moderate income housing;

(B) demonstrate investment in the rehabilitation or expansion of infrastructure that facilitates the construction of moderate income housing;

(C) demonstrate investment in the rehabilitation of existing uninhabitable housing stock into moderate income housing;

(D) identify and utilize general fund subsidies or other sources of revenue to waive construction related fees that are otherwise generally imposed by the municipality for the construction or rehabilitation of moderate income housing;

(E) create or allow for, and reduce regulations related to, internal or detached accessory dwelling units in residential zones;

(F) zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near major transit investment corridors, commercial centers, or employment centers;

(G) amend land use regulations to allow for higher density or new moderate income residential development in commercial or mixed-use zones near major transit investment corridors;

(H) amend land use regulations to eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities;

(I) amend land use regulations to allow for single room occupancy developments;

(J) implement zoning incentives for moderate income units in new developments;

(K) preserve existing and new moderate income housing and subsidized units by utilizing a landlord incentive program, providing for deed restricted units through a grant program, or, notwithstanding Section 10-9a-535, establishing a housing loss mitigation fund;
(L) reduce, waive, or eliminate impact fees related to moderate income housing;
(M) demonstrate creation of, or participation in, a community land trust program for moderate income housing;
(N) implement a mortgage assistance program for employees of the municipality, an employer that provides contracted services to the municipality, or any other public employer that operates within the municipality;
(O) apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing, an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity, an entity that applies for affordable housing programs administered by the Department of Workforce Services, an entity that applies for affordable housing programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, an entity that applies for services provided by a public housing authority to preserve and create moderate income housing, or any other entity that applies for programs or services that promote the construction or preservation of moderate income housing;
(P) demonstrate utilization of a moderate income housing set aside from a community reinvestment agency, redevelopment agency, or community development and renewal agency to create or subsidize moderate income housing;
(Q) create a housing and transit reinvestment zone pursuant to Title 63N, Chapter 3, Part 6, Housing and Transit Reinvestment Zone Act;
(R) eliminate impact fees for any accessory dwelling unit that is not an internal accessory dwelling unit as defined in Section 10-9a-530;
(S) create a program to transfer development rights for moderate income housing;
(T) ratify a joint acquisition agreement with another local political subdivision for the purpose of combining resources to acquire property for moderate income housing;
(U) develop a moderate income housing project for residents who are disabled or 55 years old or older;
(V) develop and adopt a station area plan in accordance with Section 10-9a-403.1;
(W) create or allow for, and reduce regulations related to, multifamily residential dwellings compatible in scale and form with detached single-family residential dwellings and located in walkable communities within residential or mixed-use zones; and
(X) demonstrate implementation of any other program or strategy to address the housing needs of residents of the municipality who earn less than 80% of the area median income, including the dedication of a local funding source to moderate income housing or the adoption of a land use ordinance that requires 10% or more of new residential development in a residential zone be dedicated to moderate income housing; and

(iv) in addition to the recommendations required under Subsection (2)(b)(iii), for a municipality that has a fixed guideway public transit station, shall include a recommendation to implement:
(A) the strategy described in Subsection (2)(b)(iii)(V); and
(B) a strategy described in Subsection (2)(b)(iii)(G), (H), or (Q).

(c)
(i) In drafting the implementation plan portion of the moderate income housing element as described in Subsection (2)(a)(iii)(C), the planning commission shall establish a timeline for

implementing each of the moderate income housing strategies selected by the municipality for implementation.

(ii) The timeline described in Subsection (2)(c)(i) shall:

(A) identify specific measures and benchmarks for implementing each moderate income housing strategy selected by the municipality, whether one-time or ongoing; and

(B) provide flexibility for the municipality to make adjustments as needed.

(d) In drafting the land use element, the planning commission shall:

(i) identify and consider each agriculture protection area within the municipality;

(ii) avoid proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture; and

(iii) consider and coordinate with any station area plans adopted by the municipality if required under Section 10-9a-403.1.

(e) In drafting the transportation and traffic circulation element, the planning commission shall:

(i)

(A) consider and coordinate with the regional transportation plan developed by the municipality's region's metropolitan planning organization, if the municipality is within the boundaries of a metropolitan planning organization; or

(B) consider and coordinate with the long-range transportation plan developed by the Department of Transportation, if the municipality is not within the boundaries of a metropolitan planning organization; and

(ii) consider and coordinate with any station area plans adopted by the municipality if required under Section 10-9a-403.1.

(f) In drafting the water use and preservation element, the planning commission:

(i) shall consider:

(A) applicable regional water conservation goals recommended by the Division of Water Resources; and

(B) if Section 73-10-32 requires the municipality to adopt a water conservation plan pursuant to Section 73-10-32, the municipality's water conservation plan;

(ii) shall include a recommendation for:

(A) water conservation policies to be determined by the municipality; and

(B) landscaping options within a public street for current and future development that do not require the use of lawn or turf in a parkstrip;

(iii) shall review the municipality's land use ordinances and include a recommendation for changes to an ordinance that promotes the inefficient use of water;

(iv) shall consider principles of sustainable landscaping, including the:

(A) reduction or limitation of the use of lawn or turf;

(B) promotion of site-specific landscape design that decreases stormwater runoff or runoff of water used for irrigation;

(C) preservation and use of healthy trees that have a reasonable water requirement or are resistant to dry soil conditions;

(D) elimination or regulation of ponds, pools, and other features that promote unnecessary water evaporation;

(E) reduction of yard waste; and

(F) use of an irrigation system, including drip irrigation, best adapted to provide the optimal amount of water to the plants being irrigated;

(v) shall consult with the public water system or systems serving the municipality with drinking water regarding how implementation of the land use element and water use and preservation element may affect:

(A) water supply planning, including drinking water source and storage capacity consistent with Section 19-4-114; and
(B) water distribution planning, including master plans, infrastructure asset management programs and plans, infrastructure replacement plans, and impact fee facilities plans;
(vi) may include recommendations for additional water demand reduction strategies, including:
(A) creating a water budget associated with a particular type of development;
(B) adopting new or modified lot size, configuration, and landscaping standards that will reduce water demand for new single family development;
(C) providing one or more water reduction incentives for existing development such as modification of existing landscapes and irrigation systems and installation of water fixtures or systems that minimize water demand;
(D) discouraging incentives for economic development activities that do not adequately account for water use or do not include strategies for reducing water demand; and
(E) adopting water concurrency standards requiring that adequate water supplies and facilities are or will be in place for new development; and
(vii) for a town, may include, and for another municipality, shall include, a recommendation for low water use landscaping standards for a new:
(A) commercial, industrial, or institutional development;
(B) common interest community, as defined in Section 57-25-102; or
(C) multifamily housing project.
(3) The proposed general plan may include:
(a) an environmental element that addresses:
(i) the protection, conservation, development, and use of natural resources, including the quality of:
(A) air;
(B) forests;
(C) soils;
(D) rivers;
(E) groundwater and other waters;
(F) harbors;
(G) fisheries;
(H) wildlife;
(I) minerals; and
(J) other natural resources; and
(ii)
(A) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters;
(B) the regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas;
(C) the prevention, control, and correction of the erosion of soils;
(D) the preservation and enhancement of watersheds and wetlands; and
(E) the mapping of known geologic hazards;
(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;
(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:
(i) historic preservation;

(ii) the diminution or elimination of a development impediment as defined in Section 17C-1-102; and
(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;
(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;
(e) recommendations for implementing all or any portion of the general plan, including the adoption of land and water use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;
(f) provisions addressing any of the matters listed in Subsection 10-9a-401(2) or (3); and
(g) any other element the municipality considers appropriate.

Amended by Chapter 282, 2022 General Session
Amended by Chapter 406, 2022 General Session
Amended by Chapter 406, 2022 General Session, (Coordination Clause)

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #5

DATE: February 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment – Record Drawings
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:
The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Section 5-9-111 of the Development Code to clarify details regarding record drawings or as-builts for completed subdivisions. The City Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends the City Council hold a public hearing, accept the findings, and recommend **APPROVAL** of the proposed amendment relating to record drawings of completed subdivisions.

PRIOR COUNCIL DIRECTION:
Not applicable.

BACKGROUND:
The Engineering Department has been working with several developers in attempt to get more accurate record drawings for completed subdivisions. The current Code requires record drawings to be provided in order to give the City an updated plan set of what was actually constructed in the field, but the Code lacks specificity on what exactly is required which has led to confusion for developers and staff.

Record drawings include actual survey points for each public improvement and utility that is placed in the ground. They show how the improvements may have changed from the approved plans for various reasons based on field conditions during construction.

Record drawings are a necessary part of the development process as the Engineer of Record is liable for the design and must ensure that the project meets engineering and safety standards for all deviations from that engineering plan.

SUMMARY OF THE REQUEST:
The proposed amendment requires the following for record drawings:

1. PDF showing the improvements installed per the approved construction plans marked as “AB”.

a. All improvements must be shown in actual location with a horizontal control based off of the Utah County GIS Coordinate System, station and offset, or other control measures approved by the City Engineer.
b. Points shall be listed with the dimensions of the improvements; the document shall include a reference table with all of the points.
c. The survey points shall be from open-trench or pre-burial conditions, where applicable.

2. CAD files with the survey points for the public improvements.
3. Engineer of Record Stamp certifying the locations of the completed public improvements on the document.

The public improvements and record drawings of the improvements must be accepted and approved by the City Engineer prior to any release of bond monies or beginning of any warranty period.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on January 11, 2023.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It is consistent with the desires of the Engineering Department.
2. It clarifies details outlined in existing Code requirements.

PLANNING COMMISSION ACTION:

The Planning Commission held a public hearing on January 24, 2023. No resident comment was made. The Planning Commission discussed the liability of correct survey points, and potentially having City Staff do the survey points rather than the developer.

The Planning Commission voted 6:1 to recommend **APPROVAL** of the proposed amendment.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO APPROVE:

I move that the City Council **APPROVE** the proposed amendment to Section 5-9-111 of the Development Code relating to record drawings of completed subdivisions.

ATTACHMENTS:

1. Ordinance

ATTACHMENT 1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SEVERAL SECTIONS OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO RECORD DRAWINGS OF COMPLETED SUBDIVISIONS AS SHOWN IN FILENAME TA-23-01.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the "Commission") and the Highland City Council (the "City Council") were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on January 24, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on February 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Several sections of the Development Code relating to model homes are hereby amended as shown on "Exhibit A" attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from February 7, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023

HIGHLAND CITY, UTAH

_____
Kurt Ostler
Highland City Mayor

ATTEST:

_____

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

5-9-111 Record Drawings ~~Completion~~

Upon completion of public improvements, a record drawing detailing the actual location of all public improvements shall be filed with the City Engineer. ~~A complete improvement plan "as built" shall be filed with the City Engineer upon completion of said improvements.~~ The record drawings submitted to the City shall include the following:

1. PDF showing the improvements installed per the approved construction plans marked as "AB".
    a. All improvements must be shown in actual location with a horizontal control based off of the Utah County GIS Coordinate System, station and offset, or other control measures approved by the City Engineer.
    b. Points shall be listed with the dimensions of the improvements; the document shall include a reference table with all of the points.
    c. The survey points shall be from open-trench or pre-burial conditions, where applicable.
2. CAD files with the survey points for the public improvements.
3. Engineer of Record Stamp certifying the locations of the completed public improvements on the document.

~~The "as built" plans shall be drawn on reproducible copies of the original tracings and certified as to accuracy and completeness by the subdivider's licensed engineer. Upon receipt and acceptance of the "as built" plan and City Engineer approval of the required improvements~~The public improvements and record drawings of the improvements must be accepted and approved by the City Engineer, prior to the final release of performance guarantee monies and beginning of any warranty period ~~, the City Engineer will recommend formal acceptance by the Zoning Administrator and release of any escrow or guarantee funds, with the exception of the one year escrow of monies and the one year Performance Bond~~ per Chapter 6, Guarantee of Performance, in this Code.

(Amended 5/20/08)

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #6

DATE: February 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment – Model Homes
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:
The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend several sections of the Development Code relating to model homes in residential zones. The City Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends the City Council hold a public hearing, accept the findings, and **APPROVE** the proposed amendment relating to model homes in residential zones.

PRIOR COUNCIL DIRECTION:
On January 17, 2023, Staff communicated the need to update the Development Code for the regulation of model homes. The Council agreed that approval of model homes should be done administratively, but wanted to keep some regulations in place.

BACKGROUND:
Several model homes have been operating in the Ridgeview development for each of the builders. In working with the builders to bring them to compliance on signage, staff realized that the Development Code requires a conditional use permit in several residential zones, but does not address model homes in Planned Developments. Because there are several model home building permits being reviewed for other subdivisions, staff determined it necessary to update the Development Code.

SUMMARY OF THE REQUEST:
1. The proposed amendment adds model homes as a permitted use in R-1-40, R-1-20, R-1-30, Town Center Overlay Urban Subdivision, and Town Center Transitional Housing Overlay zones and refers to Section 3-617 in Supplementary Regulations. The amendment also removes model homes as a conditional use in each of these zones.
2. The proposed amendment details the regulations for a model home in Section 3-617: Model homes used for the sale of homes/lots within a subdivision in Highland are a permitted use in all residential zones, provided that the model home conforms to the following requirements:
    1. The maximum number of personnel shall not exceed three (3) at any given time, not including visitors.

2. All parking and traffic created by the use must follow typical traffic laws, with the same number of off-street parking spaces provided with the model home as required for other similar residential units within the zone.
3. Signage shall be regulated by the existing sign ordinance.
4. Outdoor lighting shall be limited to outdoor and landscape lighting permitted in a residential setting as defined in the Municipal Code.
5. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.
6. Model homes shall obtain a business license and follow typical business license regulations that are not specified in this Code.
7. If any portion of the model home is used as a sales office or for other commercial purposes, such portion shall comply with applicable ADA requirements.
8. Garages used as sales offices shall be converted back before occupancy is permitted.
9. All homes permitted under this section shall have a final inspection prior to conversion as a residential use.
10. No model home use shall exceed two (2) years. An extension may be approved by the Zoning Administrator if it is determined not to create an undue burden upon residents of the immediate area and the applicant is actively marketing homes/lots related to the model home within Highland.

CITIZEN PARTICIPATION:
Notice of the public hearing held at the Planning Commission meeting was posted on the state and city websites and three public places on January 11, 2023. Notice of the public hearing held at the City Council meeting was posted on the state and city websites and three public places on January 25, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW/FINDINGS:
The proposed amendment meets the following findings:
1. It addresses model homes in all residential zones, including Planned Developments.
2. It is consistent with the intent of the existing regulations for model homes.

Concern was raised by the City Council regarding truth in advertising. City staff is currently drafting a text amendment for the existing sign ordinance to address this concern.

PLANNING COMMISSION ACTION:
The Planning Commission held a public hearing on January 24, 2023. No resident comment was made. Commissioners discussed landscaping and xeriscaping requirements for the model homes. Staff clarified that the model home would be expected to meet typical landscaping requirements for the residential zone. Commissioner Abbott asked about ADA regulations for model homes. The City Attorney said he would do research and be prepared with potential requirements before the amendment is reviewed by the City Council.

The Planning Commission voted 7:0 to recommend **APPROVAL** of the proposed amendment.

After the Planning Commission meeting, the City Attorney worked with staff to draft an

additional regulation relating to ADA requirements. 2.7 in the summary above is the addition drafted based on the Planning Commission's question regarding ADA requirements.

FISCAL IMPACT:
This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO APPROVE:
I move that the City Council **APPROVE** the proposed amendment to several sections of the Development Code relating to model homes in residential zones as recommended by the Planning Commission with the addition regarding ADA requirements.

ATTACHMENTS:
1. Ordinance

ATTACHMENT 1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SEVERAL SECTIONS OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO MODEL HOMES AS SHOWN IN FILENAME TA-23-02.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the "Commission") and the Highland City Council (the "City Council") were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on January 24, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on February 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Several sections of the Development Code relating to model homes are hereby amended as shown on "Exhibit A" attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from February 7, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023

HIGHLAND CITY, UTAH

_____
Kurt Ostler
Highland City Mayor

ATTEST:

_____
Stephannie Cottle

Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

3-4102 Permitted Uses

19. Model Homes. Please refer to Article 6 Supplementary Regulations Section 3-617 Model Homes.

3-4108 Conditional Uses

~~8. Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:~~

~~a. Model home is used for lot/home sales within the city.~~
~~b. The maximum number of personnel shall not exceed three at any given time.~~
~~c. Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.~~
~~d. No model home use shall exceed two years except as provided for in 3-4108(14)(k) in this ordinance.~~
~~e. Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.~~
~~f. Signage shall be regulated by existing sign ordinance.~~
~~g. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.~~
~~h. Garages used as sales office shall be converted back before occupancy is permitted.~~
~~i. All homes permitted under this section shall have a final inspection prior to conversion as residential use.~~
~~j. All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.~~
~~k. Extension. If the applicant requests an extension prior to the expiration date of approval, has paid an extension fee, and the Model Home still meets the requirements as originally approved and identified above, the City Council may consider a one (1) year extension for a Model Home Conditional Use Approval. If it becomes evident that the Model Home has been in violation of the requirements and conditions of the original Conditional Use approval during the Model Home period as determined below (ii-iii), the City Council shall not approve the extension request. The following conditions shall apply for an extension:~~

~~i. The subdivision or subdivision phase has not sold at least 80% of the available lots within that development; and~~
~~ii. The City has not received three (3) or more written complaints from surrounding residents indicating the model home has violated a requirement or condition of approval for a Model Home (as listed above) prior to the application for the Council extension; and~~

~~(1) That the written complaints submitted have been submitted by at least three (3) separate individuals (residents) who reside within that subdivision or subdivision phase or live within a 500 foot radius from the model home; and~~
~~iii. The City has not issued a citation or more than two (2) written warnings specifically related to violations of the requirements or conditions of approval for that Model Home as part of the Conditional Use Approval and as defined within this Code during the previously approved period.~~

(1) Two (2) written warnings may include warnings for the same violation, may include one (1) warning for two (2) separate violations, or may include any variation of warnings exceeding an accumulation of two (2).

iv. The applicant has notified the residents within the subdivision or subdivision phase at least ten (10) days prior to the City Council consideration of the extension.

v. In any case a model home may not receive extensions where the model home would exist for more than a total of five (5) years (a maximum of three (3) extensions may be granted) or until 80% of the lots are sold within that subdivision, whichever comes first.

(1) In any case the model home shall cease to operate when the subdivision or subdivision phase has sold more than 80% of the available lots.

vi. Applicant may not request an extension prior to 60 days of the expiration date.

3-4202 Permitted Uses

16. Model Homes. Please refer to Article 6 Supplementary Regulations Section 3-617 Model Homes.

3-4208 Conditional Uses

7. Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:
   a. Model home is used for lot/home sales within the city.
   b. The maximum number of personnel shall not exceed three at any given time.
   c. Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
   d. No model home use shall exceed two years except as provided for in 3-4208(12)(k) in this ordinance.
   e. Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
   f. Signage shall be regulated by existing sign ordinance.
   g. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.
   h. Garages used as sales office shall be converted back before occupancy is permitted.
   i. All homes permitted under this section shall have a final inspection prior to conversion as residential use.
   j. All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.
   k. Extension. If the applicant requests an extension prior to the expiration date of approval, has paid an extension fee, and the Model Home still meets the requirements as originally approved and identified above, the City Council may consider a one (1) year extension for a Model Home Conditional Use Approval. If it becomes evident that the Model Home has been in violation of the requirements and conditions of the original Conditional Use approval during the Model Home period as determined below (ii-iii), the City Council shall not approve the extension request. The following conditions shall apply for an extension:

      i. The subdivision or subdivision phase has not sold at least 80% of the available lots within that development; and
      ii. The City has not received three (3) or more written complaints from surrounding residents indicating the model home has violated a requirement or condition of

~~approval for a Model Home (as listed above) prior to the application for the Council extension; and~~

~~(1) That the written complaints submitted have been submitted by at least three (3) separate individuals (residents) who reside within that subdivision or subdivision phase or live within a 500 foot radius from the model home; and~~

~~iii. The City has not issued a citation or more than two (2) written warnings specifically related to violations of the requirements or conditions of approval for that Model Home as part of the Conditional Use Approval and as defined within this Code during the previously approved period.~~

~~(1) Two (2) written warnings may include warnings for the same violation, may include one (1) warning for two (2) separate violations, or may include any variation of warnings exceeding an accumulation of two (2).~~

~~iv. The applicant has notified the residents within the subdivision or subdivision phase at least ten (10) days prior to the City Council consideration of the extension.~~

~~v. In any case a model home may not receive extensions where the model home would exist for more than a total of five (5) years (a maximum of three (3) extensions may be granted) or until 80% of the lots are sold within that subdivision, whichever comes first.~~

~~(1) In any case the model home shall cease to operate when the subdivision or subdivision phase has sold more than 80% of the available lots.~~

~~vi. (vi) Applicant may not request an extension prior to 60 days of the expiration date.~~

3-4252 Permitted Uses

16. Model Homes. Please refer to Article 6 Supplementary Regulations Section 3-617 Model Homes.

3-4258 Conditional Uses

~~5. Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:~~

~~a. Model home is used for lot/home sales within the city.~~

~~b. The maximum number of personnel shall not exceed three at any given time.~~

~~c. Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.~~

~~d. No model home use shall exceed two years except as provided for in 3-4208(12)(k) in this ordinance.~~

~~e. Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.~~

~~f. Signage shall be regulated by existing sign ordinance.~~

~~g. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.~~

~~h. Garages used as sales office shall be converted back before occupancy is permitted.~~

~~i. All homes permitted under this section shall have a final inspection prior to conversion as residential use.~~

~~j. All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.~~

k. Extension. If the applicant requests an extension prior to the expiration date of approval, has paid an extension fee, and the Model Home still meets the requirements as originally approved and identified above, the City Council may consider a one (1) year extension for a Model Home Conditional Use Approval. If it becomes evident that the Model Home has been in violation of the requirements and conditions of the original Conditional Use approval during the Model Home period as determined below (ii-iii), the City Council shall not approve the extension request. The following conditions shall apply for an extension:

i. The subdivision or subdivision phase has not sold at least 80% of the available lots within that development; and

ii. The City has not received three (3) or more written complaints from surrounding residents indicating the model home has violated a requirement or condition of approval for a Model Home (as listed above) prior to the application for the Council extension; and

(1) That the written complaints submitted have been submitted by at least three (3) separate individuals (residents) who reside within that subdivision or subdivision phase or live within a 500 foot radius from the model home; and

iii. The City has not issued a citation or more than two (2) written warnings specifically related to violations of the requirements or conditions of approval for that Model Home as part of the Conditional Use Approval and as defined within this Code during the previously approved period.

(1) Two (2) written warnings may include warnings for the same violation, may include one (1) warning for two (2) separate violations, or may include any variation of warnings exceeding an accumulation of two (2).

iv. The applicant has notified the residents within the subdivision or subdivision phase at least ten (10) days prior to the City Council consideration of the extension.

v. In any case a model home may not receive extensions where the model home would exist for more than a total of five (5) years (a maximum of three (3) extensions may be granted) or until 80% of the lots are sold within that subdivision, whichever comes first.

(1) In any case the model home shall cease to operate when the subdivision or subdivision phase has sold more than 80% of the available lots.

vi. Applicant may not request an extension prior to 60 days of the expiration date.

3-4742 Permitted Uses

7. Model Homes. Please refer to Article 6 Supplementary Regulations Section 3-617 Model Homes.

3-4748 Conditional Uses

3. Model homes used for the sale of homes/lots within the Town Center Urban Subdivision in Highland, provided that the model home thereof conforms to the following requirements and subject to a conditional use permit:

a. Model home is used for lot/home sales within the Town Center Urban Subdivision Overlay.

b. The maximum number of personnel shall not exceed three at any given time.

c. Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.

d. No model home use shall exceed two years.

~~e. Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.~~

~~f. Signage shall be regulated by existing sign ordinance and in addition to said ordinance, no model home shall display banners, flags, or balloons. Each model home sign shall be allowed within the immediate front yard with a maximum size of 48" x 96" with a height from ground level not to exceed 10'.~~

~~g. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.~~

~~h. Garages used as sales office shall be converted back before occupancy is permitted.~~

~~i. All homes permitted under this section shall have a final inspection prior to conversion as residential use.~~

3-4762 Permitted Uses

7. Model Homes. Please refer to Article 6 Supplementary Regulations Section 3-617 Model Homes.

3-4768 Conditional Uses

~~3. Model homes used for the sale of homes/lots within the Town Center Urban Subdivision in Highland, provided that the model home thereof conforms to the following requirements and subject to a conditional use permit:~~

~~a. Model home is used for lot/home sales within the Town Center Urban Subdivision Overlay.~~

~~b. The maximum number of personnel shall not exceed three at any given time.~~

~~c. Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.~~

~~d. No model home use shall exceed two years.~~

~~e. Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.~~

~~f. Signage shall be regulated by existing sign ordinance and in addition to said ordinance, no model home shall display banners, flags, or balloons. Each model home sign shall be allowed within the immediate front yard with a maximum size of 48" x 96" with a height from ground level not to exceed 10'.~~

~~g. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.~~

~~h. Garages used as sales office shall be converted back before occupancy is permitted.~~

~~i. All homes permitted under this section shall have a final inspection prior to conversion as residential use.~~

3-617 ~~Reserved~~Model Homes

Model homes used for the sale of homes/lots within a subdivision in Highland are a permitted use in all residential zones, provided that the model home conforms to the following requirements:

1. The maximum number of personnel shall not exceed three (3) at any given time, not including visitors.
2. All parking and traffic created by the use must follow typical traffic laws, with the same number of off-street parking spaces provided with the model home as required for other similar residential units within the zone.
3. Signage shall be regulated by the existing sign ordinance.
4. Outdoor lighting shall be limited to outdoor and landscape lighting permitted in a residential setting as defined in the Municipal Code.
5. A model home shall operate only between the hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday.

~~1.~~6. Model homes shall obtain a business license and follow typical business license regulations that are not specified in this Code.
7. If any portion of the model home is used as a sales office or for other commercial purposes, such portion shall comply with applicable ADA requirements.
8. Garages used as sales offices shall be converted back before occupancy is permitted.
9. All homes permitted under this section shall have a final inspection prior to conversion as a residential use.
10. No model home use shall exceed two (2) years. An extension may be approved by the Zoning Administrator if it is determined not to create an undue burden upon residents of the immediate area and the applicant is actively marketing homes/lots related to the model home within Highland.

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #7

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Andy Spencer, City Engineer/Public Works Director

SUBJECT: **ACTION:** PI Meter Construction Contract with Hydro Vac Excavation

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will consider approving a construction contract with Hydro Vac Excavation, LLC for the installation of PI meters. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the approval and award of a construction contract with Hydro Vac Excavation, LLC for the installation of PI meters.

PRIOR COUNCIL DIRECTION:

City Council has previously accepted grant funding through the Bureau of Reclamation and Utah State Department of Water Resources for the installation of PI meters and provided direction to proceed with preparations for the PI meter project.

Project Funding		
BOR Water Smart Grant	$2,000,000	(requires 1:1 local match)
State of Utah Grant	$5,000,000	(requires 30% local match)
Highland City	$2,800,000	
Current Anticipated Cost	$9,800,000	

BACKGROUND:

Recent state legislative action requires that all secondary water be metered. Highland City has pursued funding sources for the PI meter project as outlined above. We have currently contracted with Mountainland Supply for the materials portion of the project. The next step in the process is to commence with the selection of a contractor to begin installations.

In December of 2022, the City placed out to bid the installation portion of the PI meter project. Bidding was solicited through the Utah State procurement website (Sciquest). The bid opening date was on January 17th, 2023. We received a total of six bids. Of the six bids received, J&C Testing provided the lowest bid of $175,750. Due to the deficiency in information submitted with the J&C Testing bid it is considered as non-responsive. Hydro

Vac Excavation, LLC was the second lowest bidder at $656,150. The City Council would also include a 10% contingency in the authorization for a contract award for a total of $721,765. Hydro Vac has a great deal of experience with PI meter installations having installed meters in Lehi, American Fork, Lindon, and several other cities in Utah. All the references we have contacted are very pleased with the work they have performed.

The bid documents provide at the City's option for an extension of the contract for the ensuing years of meter installation. The bid from Hydro Vac includes a 10% increase for the installation of meters in 2024 and 2025. The City will evaluate the performance in 2023 before making decisions relative to future years.

FISCAL IMPACT:

Funding for this expense will be taken from GL 53-40-50, PI Meter Grant with the City's match coming from 53-40-60, PI Capital. The City's portion is included in the PI utility rate study and fund balance is sufficient for the City's portion. It is anticipated that this construction will be completed in FY23 and FY24. Staff is monitoring current PI projects to determine if a budget adjustment is necessary in FY23. The remaining expenses for this project will be included in the FY24 Budget.

MOTION TO APPROVE:

I move that City Council APPROVE the construction contract with Hydro Vac Excavation, LLC in an amount up to $721,765 and AUTHORIZE the City Administrator to sign the necessary contracts.

MOTION TO DENY:

I move that City Council DENY the construction contract for construction of pressurized irrigation meters. *(City Council to provide further guidance to staff in motion for denial.)*

ATTACHMENTS:

1. Bid Tabulation
2. Letter of Award Recommendation
3. Summary from the City Attorney regarding award of the bid to the lowest responsive bidder.
4. Bid Received from J&C Testing
5. Bid Received from Hydro Vac
6. Overall PI Meter Project Budget Update

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

				K.W Robinson		J & C Testing		Next Construction		BD Bush Excavation		Hydro Vac Exc.		New Element Construction	
include relocation of homeowner items and does not have above ground utility conflicts															
A1	**3/4" METER W/ 3/4" SERVICE**	10	EA	$1,198.94	$11,989.40	$100.00	$1,000.00	$1,335.00	$13,350.00	$620.00	$6,200.00	$400.00	$4,000.00	$486.00	$4,860.00
A2	**1" METER W/ 1"SERVICE**	320	EA	$1,107.20	$354,304.00	$100.00	$32,000.00	$1,350.00	$432,000.00	$620.00	$198,400.00	$400.00	$128,000.00	$492.00	$157,440.00
A3	**1" METER W/ 1-1/4" SERVICE**	10	EA	$1,198.94	$11,989.40	$100.00	$1,000.00	$1,375.00	$13,750.00	$620.00	$6,200.00	$400.00	$4,000.00	$504.00	$5,040.00
TYPE B INSTALLATION - Installation includes the removal of valving, filters, pipe in the City valve box and relocated to a new box (no move to parkstrip)															
B1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$1,382.25	$6,911.25	$100.00	$500.00	$1,497.00	$7,485.00	$725.00	$3,625.00	$500.00	$2,500.00	$560.00	$2,800.00
B2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$1,212.32	$60,616.00	$100.00	$5,000.00	$1,520.00	$76,000.00	$725.00	$36,250.00	$500.00	$25,000.00	$565.00	$28,250.00
B3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$1,382.25	$6,911.25	$100.00	$500.00	$1,540.00	$7,700.00	$725.00	$3,625.00	$500.00	$2,500.00	$578.00	$2,890.00
TYPE C INSTALLATION - Improvements are in shrubbery, above ground utility conflict or other conflicts (can not be moved to parkstrip)															
C1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$1,507.36	$7,536.80	$100.00	$500.00	$1,825.00	$9,125.00	$900.00	$4,500.00	$550.00	$2,750.00	$633.00	$3,165.00
C2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$1,337.20	$66,860.00	$100.00	$5,000.00	$1,850.00	$92,500.00	$900.00	$45,000.00	$550.00	$27,500.00	$639.00	$31,950.00
C3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$1,507.36	$7,536.80	$100.00	$500.00	$1,875.00	$9,375.00	$900.00	$4,500.00	$550.00	$2,750.00	$652.00	$3,260.00
TYPE D INSTALLATION - Improvements are in concrete, near large trees or other similar difficult locations (can not be moved to parkstrip)															
D1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$2,007.04	$10,035.20	$100.00	$500.00	$2,000.00	$10,000.00	$1,200.00	$6,000.00	$550.00	$2,750.00	$658.00	$3,290.00
D2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	10	EA	$1,912.14	$19,121.40	$100.00	$1,000.00	$2,025.00	$20,250.00	$1,200.00	$12,000.00	$550.00	$5,500.00	$664.00	$6,640.00
D3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$2,007.04	$10,035.20	$100.00	$500.00	$2,050.00	$10,250.00	$1,200.00	$6,000.00	$550.00	$2,750.00	$676.00	$3,380.00
TYPE E INSTALLATION - Installation moved to parkstrip															
E1	**3/4" METER W/ SINGLE 3/4" SERVICE** Installation in park strip and no ball valve required	10	EA	$1,412.83	$14,128.30	$100.00	$1,000.00	$1,900.00	$19,000.00	$755.00	$7,550.00	$500.00	$5,000.00	$639.00	$6,390.00
E2	**1" METER W/ SINGLE 1"SERVICE** Installation in park strip and no ball valve required	100	EA	$1,327.75	$132,775.00	$100.00	$10,000.00	$1,925.00	$192,500.00	$755.00	$75,500.00	$500.00	$50,000.00	$646.00	$64,600.00
E3	**1" METER W/ SINGLE 1-1/4" SERVICE**	10	EA	$1,412.83	$14,128.30	$100.00	$1,000.00	$1,950.00	$19,500.00	$755.00	$7,550.00	$500.00	$5,000.00	$658.00	$6,580.00

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

	Installation in park strip and no ball valve required														
E4	**3/4" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	10	EA	$1,600.12	$16,001.20	$100.00	$1,000.00	$3,925.00	$39,250.00	$755.00	$7,550.00	$500.00	$5,000.00	$695.00	$6,950.00
E5	**1" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	480	EA	$1,507.56	$723,628.80	$100.00	$48,000.00	$3,950.00	$1,896,000.00	$755.00	$362,400.00	$500.00	$240,000.00	$700.00	$336,000.00
ADDITIONAL COSTS															
F1	**MOBILIZATION**	1	LS		$75,229.37				$64,000.00		$21,924.00		$20,000.00		$10,000.00
F2	**CONCRETE REMOVAL & REPLACEMENT**	200	SF	$24.31	$4,862.00	$25.00	$5,000.00	$45.00	$9,000.00	$45.00	$9,000.00	$20.00	$4,000.00	$14.00	$2,800.00
F3	**ADDITIONAL COST TO PLANT SHRUBS PER METER**	60	EA	$64.06	$3,843.60	$80.00	$4,800.00	$162.00	$9,720.00	$75.00	$4,500.00	$50.00	$3,000.00	$25.00	$1,500.00
F4	**ADDITIONAL COST TO PLANT TREE (1-1/2")**	40	EA	$314.53	$12,581.20	$200.00	$8,000.00	$100.00	$4,000.00	$85.00	$3,400.00	$100.00	$4,000.00	$100.00	$4,000.00
F5	**ADDITIONAL COST FOR SERVICE BETWEEN 24"- 48"**	200	EA	$1,798.23	$359,646.00	$100.00	$20,000.00	$450.00	$90,000.00	$275.00	$55,000.00	$100.00	$20,000.00	$150.00	$30,000.00
F6	**INSTALL BALL VALVE**	100	EA	$462.22	$46,222.00			$113.00	$11,300.00	$35.00	$3,500.00	$300.00	$30,000.00	$35.00	$3,500.00
F7	**ADDITIONAL COST TO INSTALL MXU**	1,090	EA	$195.40	$212,986.00			$75.00	$81,750.00	$75.00	$81,750.00	$25.00	$27,250.00	$35.00	$38,150.00
F8	**INSTALL POLYMER CONCRETE BOX** 17"x30" Dimensions	5	EA	$1,364.90	$6,824.50	$50.00	$250.00	$170.00	$850.00	$215.00	$1,075.00	$500.00	$2,500.00	$125.00	$625.00
F9	**PROVIDE DWARF BURNING BUSH (2 GAL)**	200	EA	$134.93	$26,986.00	$46.00	$9,200.00	$139.95	$27,990.00	$55.00	$11,000.00	$32.00	$6,400.00	$18.00	$3,600.00
F10	**PROVIDE ARISTOCRAT FLOWERING PEAR** 1-1/2" Caliper Tree	40	EA	$419.53	$16,781.20	$280.00	$11,200.00	$234.99	$9,399.60	$280.00	$11,200.00	$350.00	$14,000.00	$240.00	$9,600.00
F11	**REMOVE EXISTING TREE**	40	EA	$735.26	$29,410.40	$200.00	$8,000.00	$640.00	$25,600.00	$120.00	$4,800.00	$250.00	$10,000.00	$450.00	$18,000.00
ADDITIVE/ALTERNATE BID ITEMS															
					$2,269,880.57		**$175,450.00**		**$3,201,644.60**		**$999,999.00**		**$656,150.00**		**$795,260.00**
1A	**PERCENTAGE INCREASE FOR 2024 INSTALLATION**		PERCENTAGE		**7%**		**5%**		**10%**		**5%**		**10%**		**5%**
2A	**PERCENTAGE INCREASE FOR 2025 INSTALLATION**		PERCENTAGE		**11%**		**10%**		**15%**		**5%**		**10%**		**10%**

BT Engineering

Highland City
Attn: Andy Spencer, PE
5400 W. Civic Center Drive, Suite 1
Highland, UT 84003

January 23, 2023

RE: 2023 PI Meter Installation Project
Recommendation for Contract Award

Dear Andy:

We have reviewed the bids for the referenced project and recommend that the project be awarded to Hydro Vac Excavation (Hydro Vac) Their total bid cost is $656,150.00.

Hydro Vac is the lowest responsible bidder. They possess the required Utah Contractors License to perform this type of work. They also have a great deal of recent experience to complete a job of this complexity. Hydro Vac has completed similar projects in the past for a number of communities in Utah County.

The City received a total of 6 bids. Please note that Hydro Vac's bid amount was the second lowest of the bidders. J&C Testing provided a bid of $175,750.00 for the project and was the low bidder. We believe that their bid was nonresponsive as only a bid schedule and bid bond was provided. The bid documents clearly detail that the submitted bid provide the bid bond with signature, acceptance of the addendum and a list of qualifications and previous work experience.

Due to the importance of the project, the complexities of the meter installation, and the funding requirements from the Bureau of Reclamation Grant (Bureau), we feel the J&C Testing bid is non-responsive.

Please call if we can answer any questions or be of further assistance.

Respectfully,

Tavis Timothy, PE
Project Manager

JOHNSON, PATTERSON & YELLOWHORSE
ATTORNEYS AT LAW

P.O. BOX 831
PLEASANT GROVE, UTAH 84062
rob@publicprivatelaw.com

ERIC TODD JOHNSON
ROBERT A. PATTERSON
JOEL YELLOWHORSE

TEL (801) 895-4364
CELL (801) 200-5910

February 1, 2023

To: Highland City Council
From: Rob Patterson, City Attorney
Date: February 1, 2023
Subject: Rejection of Materially Incomplete and Non-Responsive Bid

Dear Highland City Council:

This memorandum explains the legal basis for the recommended rejection of the apparent low bid on the Highland City 2023 PI Meter Installation Project ("Project"). The low bid on the Project was submitted by J & C Testing, in the amount of $175,750.00 ("J & C Bid"). This is approximately $500,000 less than the next lowest bidder. For the reasons described herein, I recommend that the City Council reject the J & C Bid and, if a contract is being awarded for this solicitation, award the contract to the next lowest responsive and responsible bidder.

Pursuant to the documents soliciting bids for the Project ("Bid Documents"), the City has "the right to reject any or all bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids," and if the Contract is being awarded, the City "will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is lowest." (Bid Documents 00 10 00 §§ 19.1, 19.6).

The Bid Documents require bids to contain certain information, documentation, and signatures, including the City's Bid Form with all attachments. (Bid Documents 00 10 00 § 15.1) The J & C Bid was lacking the entire Bid Form, lacking the proper signature page, lacking an actual signature by J & C Testing, and missing other documentation as to J & C Testing's experience and qualifications, as required by the Bid Documents. Under the terms of the Bid Documents and the City's solicitation policies and procedures, the City may and should reject the J & C Bid for being materially incomplete and nonconforming.

Further, a portion of funding for this Project is being obtained from the federal government and is accordingly subject to certain terms and requirements contained in the federal grant contract documents and applicable federal regulations. These federal requirements similarly support the rejection of the J & C Bid, as follows:

> Grant Contract, II.3 (2 CFR §200.318(h): "The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the

terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources"

Grant Contract, II.3 (2 CFR §200.320):

> (b)(1): "Sealed Bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price."
>
> (b)(1)(ii)(E): "Any or all bids may be rejected if there is a sound documented reason."

The federal requirements are clear that Highland City can and should reject nonconforming or nonresponsive bids when necessary. Further, these requirements mandate that Highland City follow its standard procurement and solicitation policies and procedures. As described, Highland City's standard procurement and solicitation policies would warrant and require rejection of the J & C Bid.

For these reasons, I recommend that the Highland City Council reject the J & C Bid. If a contract is to be awarded, I recommend it be awarded to the next lowest responsible bidder.

Sincerely,

Robert A. Patterson
Highland City Attorney

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	TYPE A INSTALLATION - Improvements in grass/mulch landscaping, does not include relocation of homeowner items and does not have above ground utility conflicts				
A1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 100.00	$ 1000.00
A2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	320	EA	$ 100.00	$ 32000 .00
A3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 100.00	$ 1000.00
	TYPE B INSTALLATION - Installation includes the removal of valving, filters, pipe in the City valve box and relocated to a new box (no move to parkstrip)				
B1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
B2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$ 100.00	$ 5,000.00
B3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
	TYPE C INSTALLATION - Improvements are in shrubbery, above ground utility conflict or other conflicts (can not be moved to parkstrip)				
C1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
C2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$ 100.00	$ 5000.00
C3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
	TYPE D INSTALLATION - Improvements are in concrete, near large trees or other similar difficult locations (can not be moved to parkstrip)				
D1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
D2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 100.00	$ 1000.00
D3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 100.00	$ 500.00
	TYPE E INSTALLATION - Installation moved to parkstrip				
E1	**3/4" METER W/ SINGLE 3/4" SERVICE** Installation in park strip and no ball valve required	10	EA	$ 100.00	$ 1000.00
E2	**1" METER W/ SINGLE 1"SERVICE** Installation in park strip and no ball valve required	100	EA	$ 100.00	$ 10,000.00
E3	**1" METER W/ SINGLE 1-1/4" SERVICE** Installation in park strip and no ball valve required	10	EA	$ 100.00	$ 1000.00
E4	**3/4" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	10	EA	$ 100.00	$ 1000.00
E5	**1" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	480	EA	$ 100.00	$ 48,000.00

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
ADDITIONAL COSTS					
F1	**MOBILIZATION**	1	LS	$ INC	$ INC |
F2	**CONCRETE REMOVAL & REPLACEMENT**	200	SF	$ 25.00	$ 5000.00
F3	**ADDITIONAL COST TO PLANT SHRUBS PER METER**	60	EA	$ 80.00	$ 4800.00
F4	**ADDITIONAL COST TO PLANT TREE (1-1/2")**	40	EA	$ 200.00	$ 8200.00
F5	**ADDITIONAL COST FOR SERVICE BETWEEN 24"- 48"**	200	EA	$ 100.00	$ 20,000.00
F6	**INSTALL BALL VALVE**	100	EA	$ INC	$ INC
F7	**ADDITIONAL COST TO INSTALL MXU**	1,090	EA	$ INC |	$ INC.
F8	**INSTALL POLYMER CONCRETE BOX** 17"x30" Dimensions	5	EA	$ 50.00	$ 250.00
F9	**PROVIDE DWARF BURNING BUSH (2 GAL)**	200	EA	$ 46.00	$ 9200.00
F10	**PROVIDE ARISTOCRAT FLOWERING PEAR** 1-1/2" Caliper Tree	40	EA	$ 280.00	$ 11,200
F11	**REMOVE EXISTING TREE**	40	EA	$ 200.00	$ 8000.00
				TOTAL BID AMOUNT	$ 175,750.00

ADDITIVE/ALTERNATE BID ITEMS

1A	**PERCENTAGE INCREASE FOR 2024 INSTALLATION**	PERCENTAGE	% 5
2A	**PERCENTAGE INCREASE FOR 2025 INSTALLATION**	PERCENTAGE	% 10

UNITED FIRE & CASUALTY COMPANY
118 Second Avenue SE, PO Box 73909
Cedar Rapids, Iowa 52407-3909 319-399-5700
(A Stock Company)

BID BOND

KNOW ALL BY THESE PRESENTS, that we

J&C TESTING & SERVICE, INC

1134 500 N CENTERVILLE, UT 84014-1721

as Principal, hereinafter called the Principal, and the UNITED FIRE & CASUALTY COMPANY, a corporation duly organized under the laws of the State of IOWA, as Surety, hereinafter called the Surety, are held and firmly bound unto

HIGHLAND CITY CORPORATION

5328 W 10400 N HIGHLAND, UT 84003-9567

as Obligee, hereinafter called the Obligee, in the sum of 05 % of Bid

Dollars ($ 5%), for the payment of which sum well and truly to be made, the said principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

METER INSTALLATION

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 16th day of January, 2023.

J&C TESTING & SERVICE, INC

By _____ (Seal)
(PRINCIPAL)

Jeff Tingey President
(TITLE)

(WITNESS)

UNITED FIRE & CASUALTY COMPANY (Seal)
(SURETY)

By _____
(ATTORNEY-IN-FACT)

(WITNESS)

CONT 0001 0899

UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA
UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX
FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA

Bond No.: W4233421
Obligee: HIGHLAND CITY CORPORATION 5328 W 10400 N
HIGHLAND, UT 84003-9567

CERTIFIED COPY OF POWER OF ATTORNEY

(original on file at Home Office of Company – See Certification)

KNOW ALL PERSONS BY THESE PRESENTS, That UNITED FIRE & CASUALTY COMPANY, a corporation duly organized and existing under the laws of the State of Iowa; UNITED FIRE & INDEMNITY COMPANY, a corporation duly organized and existing under the laws of the State of Texas; and FINANCIAL PACIFIC INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

VAL T. STRATFORD, TANNER MERRILL, COLBY STRATFORD, MICHAEL CRANDALL, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed $15,000,000.00
and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed. The Authority hereby granted shall expire May 17th, 2023 unless sooner revoked by UNITED FIRE & CASUALTY COMPANY, UNITED FIRE & INDEMNITY COMPANY, and FINANCIAL PACIFIC INSURANCE COMPANY.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw duly adopted by the Boards of Directors of UNITED FIRE & CASUALTY COMPANY, UNITED FIRE & INDEMNITY COMPANY, and FINANCIAL PACIFIC INSURANCE COMPANY.

"Article VI – Surety Bonds and Undertakings"

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal of the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 16th day of January ,2023 .

UNITED FIRE & CASUALTY COMPANY
UNITED FIRE & INDEMNITY COMPANY
FINANCIAL PACIFIC INSURANCE COMPANY

By: Dennis J Richmann
Vice President

State of Iowa, County of Linn, ss:
On this 16th day of January ,2023 before me personally came Dennis J. Richmann to me known, who being by me duly sworn, did depose and say; that he resides in Cedar Rapids, State of Iowa; that he is a Vice President of UNITED FIRE & CASUALTY COMPANY, a Vice President of UNITED FIRE & INDEMNITY COMPANY, and a Vice President of FINANCIAL PACIFIC INSURANCE COMPANY the corporations described in and which executed the above instrument; that he knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.

Judith A. Jones
Iowa Notarial Seal
Commission number 173041
My Commission Expires 04/23/2024

Judith A Jones
Notary Public
My commission expires: 04/23/2024

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations.
this 16th day of January , 2023 .

By: Mary A Bertsch
Assistant Secretary,
UF&C, UF&I & FPIC

Inquiries: Surety Department 118 Second Ave SE Cedar Rapids, IA 52401

Hydro Vac Excavation, LLC - Bid

ADDENDUM #1

PLANS, BIDDING DOCUMENTS, AND TECHNICAL SPECIFICATIONS FOR HIGHLAND CITY 2023 PI METER INSTALLATION PROJECT

BID OPENING DATE: JANUARY 17, 2023 @ 3:00 PM

January 11, 2023

TO: ALL PLAN HOLDERS

The following clarifications, changes, additions, and/or deletions are hereby made a part of the above-listed project as fully and completely as if the same were set forth therein. Contractors bidding the project shall conform to these revisions and acknowledge receipt of this Addendum on the Bid Form.

GENERAL INFORMATION & CLARIFICATIONS

A1.1 The City has provided an inventory of the existing PI project. The Invitation to Bid and Instruction to Bidders provide information. The location of the website is: https://highlandut.maps.arcgis.com/apps/instant/attachmentviewer/index.html?appid=53097d1886b7466b867d650b5157ffab

The Instruction to Bidders provided the following information: The inventory provides individual meter box pictures of the majority of the proposed sites. As an observation legend: Grey Dots are existing meters, Blue Dots appeared to be simple installations, Orange Dots appeared to have some conflicts, Red Dots appeared to have more conflicts than Orange and would typically be more difficult that Orange.

A2.1 Attached to the addendum are additional clarifications as provided by the City that were discussed within the Prebid meeting and are made part of this Addendum.

A3.1 The City when possible, will close valves to shut down the water lines in the area where meters are being installed. It is likely that the valves will be turned off during the work hours and then turned back on for night time resident watering. When the water lines, due to existing valving, are not available to be turned off, Contractor shall utilize clamps on the water services.

A4.1 Item F7, Additional costs for the install of MXUs will only be provided if the Contractor is not provided an MXU at the same time as the meter installation.

A5.1 The removal of trees are provided in a separate bid item F11, see revised bidding requirements and technical specifications for additional information.

A6.1 The City purchased size of the Concrete Polymer vaults will be 17" x 30".

A7.1 Contractor employees shall have matching shirts or work vests with the name of the company on the outside as identification.

A8.1 The Warranty Period for the piping portion, trench compaction, and surface improvements will be for a full irrigation season or October 31, 2024. A special exception for sod, shrubs, plants and trees which will have a Warranty Period of 60 Days from the completion of the meter improvements, including landscaping. If vegetation requires replanting the 60 Day Warranty Period will begin again for those plantings.

BIDDING REQUIREMENTS

A1.23 DOCUMENT 00400 – Bid Form

REPLACE the Bid Form with the attached revised Bid Form with the following changes:

- Item F5 should read 'Additional Cost For Service Between 24 to 48 inches deep'.
- REVISE Item F8 concrete box size to 17"x30" Dimensions.
- REVISE Item F10 bid quantity to 40
- ADD Item F11 – 'Remove Existing Tree'

TECHNICAL SPECIFICATIONS

A1.24 SECTION 01025 – Measurement and Payment

a. REMOVE the following in Paragraph 1.2.D.2.b) : removal and disposal of trees

b. REPLACE the following in Paragraph 1.2.O.2: Payment also includes a one-month warranty from the time of placement. WITH Payment also includes a ***60-Day*** warranty from the time of placement.

c. ADD the following paragraphs to Basis of Payment for all Meter Installation Items, A1 through E5:

When the MXU is provided at the same time as the Meter, payment also includes the installation of MXU in the meter box; drilling a hole into the box for the radio and all other operations and materials required to complete this portion of the work as herein described and as shown on the drawings.

Programming of the meter will be completed by the City and is not included in the installation of the MXU.

d. ADD the following Paragraph 1.2.Q

Q. BID ITEM NO. F11 – REMOVE EXISTING TREE

1. **METHOD OF MEASUREMENT** This bid item shall not be measured by each tree removed from the project site as directed by City Staff.

2. **BASIS OF PAYMENT** Work completed under this bid item shall be paid for at the contract unit bid price for each removed on private property and identified by the city as needing to be removed and shall be considered complete compensation for all labor, equipment, and materials, including but not limited to excavation, root cutting, removal and disposal of trees, removal and disposal of stumps and roots to 6" below grade, backfilling, compaction, and other operations and materials required to complete the item.

END OF DOCUMENT

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	TYPE A INSTALLATION - Improvements in grass/mulch landscaping, does not include relocation of homeowner items and does not have above ground utility conflicts				
A1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 400	$ 4,000
A2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	320	EA	$ 400	$ 128,000
A3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 400	$ 4,000
	TYPE B INSTALLATION - Installation includes the removal of valving, filters, pipe in the City valve box and relocated to a new box (no move to parkstrip)				
B1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 500	$ 2,500
B2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$ 500	$ 25,000
B3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 500	$ 2,500
	TYPE C INSTALLATION - Improvements are in shrubbery, above ground utility conflict or other conflicts (can not be moved to parkstrip)				
C1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 550	$ 2,750
C2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	50	EA	$ 550	$ 27,500
C3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 550	$ 2,750
	TYPE D INSTALLATION - Improvements are in concrete, near large trees or other similar difficult locations (can not be moved to parkstrip)				
D1	**3/4" METER W/ 3/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 550	$ 2,750
D2	**1" METER W/ 1"SERVICE** Installation is near existing box and includes ball valve	10	EA	$ 550	$ 5,500
D3	**1" METER W/ 1-1/4" SERVICE** Installation is near existing box and includes ball valve	5	EA	$ 550	$ 2,750
	TYPE E INSTALLATION - Installation moved to parkstrip				
E1	**3/4" METER W/ SINGLE 3/4" SERVICE** Installation in park strip and no ball valve required	10	EA	$ 500	$ 5,000
E2	**1" METER W/ SINGLE 1"SERVICE** Installation in park strip and no ball valve required	100	EA	$ 500	$ 50,000
E3	**1" METER W/ SINGLE 1-1/4" SERVICE** Installation in park strip and no ball valve required	10	EA	$ 500	$ 5,000
E4	**3/4" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	10	EA	$ 500	$ 5,000
E5	**1" METER ON DUAL SERVICE** Installation in park strip and no ball valve required	480	EA	$ 500	$ 240,000

HIGHLAND CITY - 2023 PI METER INSTALLATION
BID SCHEDULE - REV 1-11-22

NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	ADDITIONAL COSTS				
F1	MOBILIZATION	1	LS	$ 20,000	$ 20,000
F2	CONCRETE REMOVAL & REPLACEMENT	200	SF	$ 20	$ 4,000
F3	ADDITIONAL COST TO PLANT SHRUBS PER METER	60	EA	$ 50	$ 3,000
F4	ADDITIONAL COST TO PLANT TREE (1-1/2")	40	EA	$ 100	$ 4,000
F5	ADDITIONAL COST FOR SERVICE BETWEEN 24"- 48"	200	EA	$ 100	$ 20,000
F6	INSTALL BALL VALVE	100	EA	$ 300	$ 30,000
F7	ADDITIONAL COST TO INSTALL MXU	1,090	EA	$ 25	$ 27,250
F8	INSTALL POLYMER CONCRETE BOX 17"x30" Dimensions	5	EA	$ 500	$ 2,500
F9	PROVIDE DWARF BURNING BUSH (2 GAL)	200	EA	$ 32	$ 6,400
F10	PROVIDE ARISTOCRAT FLOWERING PEAR 1-1/2" Caliper Tree	40	EA	$ 350	$ 14,000
F11	REMOVE EXISTING TREE	40	EA	$ 250	$ 10,000
				TOTAL BID AMOUNT	$ 656,150.00

ADDITIVE/ALTERNATE BID ITEMS

1A	PERCENTAGE INCREASE FOR 2024 INSTALLATION	PERCENTAGE	% 10
2A	PERCENTAGE INCREASE FOR 2025 INSTALLATION	PERCENTAGE	% 10

2023 PI Meter Installation Project
Pre-bid meeting
January 5, 2023

Highland City staff held a pre-bid meeting for the 2023 PI Meter Installation Project. The objective of this meeting was to provide an overview of the project and address specific project-related requirements as well as answer potential bidder questions. The bullet points below are a summary of the meeting.

- This project will be funded through state and federal grants as well as some in-house monies. As such, bidders are encouraged to carefully read and understand ***Article 22 – Buy America Domestic Procurement Preference and Article 23 – Small & Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.*** The successful contractor will be required to meet these requirements.

- Bids will be received until 3:00 pm on January 17, 2023. They will then be immediately opened and read aloud in the City Council Chambers.

- All bidders must complete all bidding documents including the Bidder Qualifications and Experience and List of Subcontractors forms. A Bid Bond is required at bid submittal. The successful bidder will be required to submit a Payment Bond and Performance Bond following acceptance of the bid. Project will be awarded based primarily on the lowest overall cost to the City, and will be made to a responsive, responsible Bidder whose Bid complies with all the requirements prescribed.

- Clarification has been made for Bid Schedule item F5 to read: Additional Cost for Service Between 24" – 48".

- Clarification has been made to Bid Schedule item F7 – Additional Cost to Install MXU. A contractor provision has been made should the meter MXU devices not be available when installation begins. The cost of this line item would be the cost for the contractor to go back and install the MXU after the installation of the meter has taken place.

- Additional costs under F9 and F 10 are a placeholder knowing that there will be different kinds of trees and shrubs that will need to be replanted. If a tree or shrub needs to be removed, the contractor will replace it with the same species. Any alteration or change must be approved by the resident and documented.

- ADDITIVE/ALTERNATE BID ITEMS on the bid schedule are for future phases of the meter installation project. Upon mutual consent of the contractor and Highland City, the additional 2 phases of the meter installation project may be added to the original contract. Bidders should provide a percent increase to the bid pricing for the next 2 subsequent years.

- Meters and parts have been ordered and we anticipate having all materials available for a start date of July 1, 2023, however, if we receive these prior, the successful contractor may start sooner. The substantial completion date is October 1, 2023 with a final completion date of

November 1, 2023. Warranty for the project will be a full irrigation season, through October of 2024.

- Bidders are encouraged to review and become familiar with **Section 01 10 00 Summary of Work,** roughly page 145 in the bid documents.

- The City does not allow work on Sundays. The Contractor may work on Saturday, however the City will not have a representative present to shut down water lines, provide City furnished parts or inspect/pass off work.

- A staging area will be provided at approximately 4000 West 11000 North (SR-92). The area is on the north side of the road just west of the entrance road into the Kilgore gravel pit. The contractor must have all equipment off the streets at night. There is water available at this location and could be used to store planted materials as well.

- No permit will be required for this work however Highland City strongly recommends sufficient traffic control and advanced warning signage be utilized.

- The bid includes 2 areas within Highland that have been constructed since the year 2000. Most are dual connections between 2 lots. In some instances, services may need to be relocated to the park strip. This would be the exception and not the standard. A link has been provided under 1.6 Examination and Procurement Documents in the Invitation to Bid. This link provides all bidders with the location of the meters as well as 3 photographs showing the 2'x4' area around the PI box and the existing condition of the service. A legend on the right-hand side denotes the overall PI box inspection status. The contractor shall provide a before and after picture of the improvements.

- Highland City will provide all materials to complete the meter installation within the box and to the toe nipple on the service side (see design details). The contractor is responsible to provide any materials needed to reconnect the resident beyond the PI meter box.

- The contractor shall not have the residents out of water for more than 24 hours. All holes shall be covered with plywood or alternate material, landscaping with sod shall be placed within 48 hours with trees and shrubs being replaced by the weeks end. The contractor shall warranty all landscape repairs, including sod, shrubs and trees for 30 days. PLEASE NOTE THAT THE CITY COUNCIL HAS REVISED THE WARRANTY PERIOD FOR VEGETATION TO **60 DAYS** PER THE ADDENDUM.

- Highland City will shut down the pressurized irrigation main line for daily work for streets that have isolation valves. Water will be turned back on upon coordination with the contractor and City staff at the end of the day.

- A construction flyer will be prepared by Highland City and distributed by the contractor to all residents of a given work area within a minimum of 48 hours before their meter installation.

- Services in this Phase 1 area are generally no deeper than 2 feet. In future phases, there may be some up to 4 feet deep due to additional landscaping fill.

DOCUMENT 00 43 00 PENAL SUM FORM

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address)*:
Hydro Vac Excavation, LLC
1193 North 2300 West
Lehi, Utah 84043

SURETY *(Name and Address of Principal Place of Business)*:
Great American Insurance Company
301 East 4th Street
Cincinnati, Ohio 45202

OWNER *(Name and Address)*:
Highland City
5400 W Civic Center Dr, Suite 1
Highland, Utah 84003

BID
Bid Due Date: January 17, 2023
Description: 2023 PI Meter Installation Project

BOND
Bond Number: Bid bond
Date *(Not earlier than Bid due date)*:
Penal sum Five percent of amount bid (Words) $ 5% of amount bid (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER	**SURETY**
_____ (Seal)	Great American Insurance Company (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	By: _____
Signature	Signature (Attach Power of Attorney)
Cody Warren	Kevin W. Andrews
Print Name	Print Name
Owner	Attorney-in-Fact
Title	Title
Attest: _____	Attest: _____
Signature	Signature
Owner	Surety Department Manager
Title	Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than FIVE

No. 0 14862

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
KEVIN W. ANDREWS	ALL OF	ALL
STEPHANIE GARAHANA	SANDY, UTAH	$100,000,000
BRETT D. MAYER		
GAYLE WOOD		
STACIE R. HANSON		

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 1st day of OCTOBER , 2020 .

Attest

GREAT AMERICAN INSURANCE COMPANY

Assistant Secretary

Divisional Senior Vice President

MARK VICARIO (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 1st day of OCTOBER , 2020 , before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

SUSAN A KOHORST
Notary Public
State of Ohio
My Comm. Expires
May 18, 2025

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisonal Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 17th day of January , 2023 .

Assistant Secretary

DOCUMENT 00 30 00
BID FORM

Project Identification:
2023 PI Meter Installation

ARTICLE 1 - BID RECIPIENT

1.1 This Bid Is Submitted To: **HIGHLAND CITY**

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

ARTICLE 2 - BIDDER'S ACKNOWLEDGMENTS

2.1 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitations those dealing with the dispositions of Bid security. The Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.1 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date
ADDENDUM #1	JANUARY 17TH, 2023 3:00 P.M.
_____	_____
___	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

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

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-5.03, and (2) reports and

drawings of Hazard Environmental Conditions, if any, at the Site that have been identified in SC-5.06 as containing reliable "technical data."

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

F. Based on the information and observations referred to in Paragraph 3.1.E above, Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

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

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

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

J. Bidder will submit written evidence of its authority to do business in the State or other jurisdiction where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 - BIDDER'S CERTIFICATION

4.1 Bidder further represents that:

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

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.1.D:

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

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

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

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

ARTICLE 5 - BASIS OF BID

5.1 Bidder will complete the Work in accordance with the Contract Documents for the following price(s) within the attached Bid Schedule: HIGHLAND CITY – PI METER INSTALLATION PROJECT, BID SCHEDULE.

Unit Prices have been computed in accordance with paragraph 13.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the contract Documents.

ARTICLE 6 - TIME OF COMPLETION

6.1 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.2 Bidder accepts the provisions of the Agreement as to liquidated damage.

ARTICLE 7 - ATTACHEMENTS TO THIS BID

7.1 The following documents are attached to and made a condition of the Bid:

A. Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check);

B. Document 00 45 00 – List of Subcontractors;

C. Evidence of authority to do business in the state or jurisdiction of the Project; or a written covenant to obtain such license within the time frame for acceptance of Bids.

ARTICLE 8 - DEFINED TERMS

8.1 The terms used in this Bid with the initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 - BID SUBMITTAL

9.1 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____ SEAL, if required by State

By: _____

(Individual's signature)

Doing business as:

_____

A Partnership

Partnership Name: _____ SEAL, if required by State

By: _____

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed):

_____

A Corporation

Corporation Name:

_____

State or Jurisdiction of Incorporation: _____

Type (General Business, Profession, Service, Limited Liability):

_____

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed):

_____

Title: _____ CORPORATE SEAL, if required by State

Attest _____

(Signature of Corporate Secretary)

Date of Qualification to do business in _____ [State or other jurisdiction where Project is located] is ___/___/_____

A Joint Venture

Name of Joint Venture:
HYDRO VAC EXCAVATION

First Joint Venture Name: JEROMY NIELSON

SEAL, if required by State

By: Jeromy Nielson
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed):
JEROMY NIELSON

Title: OWNER

Second Joint Venture Name:
CODY WARREN

SEAL, if required by State

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed):
CODY WARREN

Title: OWNER

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is party to the venture should be in the manner indicated above.)

Bidder's Business address: 1193 NORTH 2300WEST, LEHI, UTAH, 84043

Business Phone No. (801) 870-1741

Business FAX No. (____) N/A

Business E-Mail Address
hydrovacutah@gmail.com

State Contractor License No. 11522812-5501. (If applicable)

Employer's Tax ID No. 83-3717192

Phone and FAX Numbers, and Address for receipt of official communications, if different from Business contact information:

_____

_____

9.2 Bid submitted on JANUARY 17TH, , 2023 .

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address)*:

SURETY *(Name and Address of Principal Place of Business)*:

OWNER *(Name and Address)*:
Highland City
5400 W Civic Center Dr, Suite 1
Highland, Utah 84003

BID
Bid Due Date:
Description:

BOND
Bond Number:
Date *(Not earlier than Bid due date)*:
Penal sum _____ $ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER	**SURETY**
_____ (Seal)	_____ (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	By: _____
Signature	Signature (Attach Power of Attorney)
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	Attest: _____
Signature	Signature
_____	_____
Title	Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

DOCUMENT 00 44 00
BIDDER QUALIFICATIONS AND EXPERIENCE

PART 1 GENERAL

1.1 BIDDER

The Bidder shall provide the following information. Failure to comply with this requirement will render the Bid non-responsive and may cause its rejection. Additional sheets shall be attached as required.

A. Name: HYDRO VAC EXCAVATION

B. Address: 1193 NORTH 2300WEST, LEHI, UTAH, 84043

C. Telephone number: 1-801-870-1741

D. CONTRACTOR's License Primary Classification: B-100
State License No. 11522812-5501

Supplemental Classifications held, if any. R-100

E. Number of years as a contractor in Construction Work of this type: 5

F. A certified copy of financial statement prepared during current fiscal year as prepared for bank or bonding company will not be required with submission of the bid, but may be required by the OWNER of the apparent successful bidder prior to award as part of the evaluation and review process.

J. List of current jobs now under construction (use additional sheets if necessary):

	Client Reference	Telephone No.	Dollar Amt.	Type of Job
1.	AMERICAN FORK	801-404-6129	950,000.00	SECONDARY METER INSTALLATION
2.	LINDON CITY	801-796-7954	1.5 MILLION	SECONDARY METER INSTALLATION
3.	LEHI CITY	801-368-6357	1.8 MILLION	SECONDARY METER INSTALLATION
4.				

K. List similar projects completed within the last ten years (use additional sheets if necessary).

	Client Reference Telephone No.	Dollar Amt.	Type of Job
1.	SOUTH JORDAN 801-253-5230	500,000	SECONDARY WATER METER INSTALLATION
2.	DRAPER WATER PRO 801-571-2232	3 MILLION	SECONDARY WATER METER INSTALLATION
3.	BERG CIVIL ENGINEERING 801-616-1677		
4.	HEBER CITY	1.5 MILLION	SECONDARY WATER METER INSTALLATION
5.	SPRINGDALE	500,000	SECONDARY WATER METER INSTALLATION
6.	PAYSON CITY	2 MILLION	SECONDARY WATER METER INSTALLATION

L. Have you ever failed to complete any work awarded to you? If so, when, where and why?

WE HAVE NEVER FAILED TO COMPLETE ANT WORK N/A

PART 2 REPORT

2.1 BIDDER STATUS REPORT

A. BIDDER affirms the following information is true and correct.

1. Number of employees: 30

2. BIDDER's firm is: (check the following as applicable)
   [X] Independently owned and operated.
   [___] An affiliate of*
   [___] A subsidiary of*
   [___] A division of*
   [___] A business with gross revenue in excess of $_____
   [___] A business with gross revenue below $_____

   * PARENT COMPANY:

Name: HYDRO VAC EXCAVATION

Address: 1193 NORTH 2300 WEST, LEHI, UTAH, 84043

Telephone Number: 801-870-1741

Facsimile Number: _____

PART 3 EXECUTION

3.1 EFFECTIVE DATE

A. BIDDER executes this status report and declares it to be a supplement to the Bid and in effect as of JANAUARY 17TH, 2023, 2023.

3.2 BIDDER'S SUBSCRIPTION

A. BIDDER's Signature: Jeromy Nielson

B. Please print BIDDER's name here: JEROMY NIELSON

C. Title: OWNER

END OF DOCUMENT

DOCUMENT 00 45 00
LIST OF SUBCONTRACTORS

The bidder shall list below the names and business address of each subcontractor who will perform Work under this Contract in excess of five percent (0.05) of the total bid price and shall also list the portion of the work which will be done by such subcontractor. After the opening of proposals, no changes or substitutions will be allowed without the written approval of the Owner.
NOTE: Attach additional sheets if required.

WORK TO BE PERFORMED	SUBCONTRACTOR'S NAME AND ADDRESS
1. AAA BARRICADE	P.O. BOX 96 LEHI, UTAH
2. ECKLES PAVING	P.O. BOX 68 SPRINGVILLIE UTAH
3. CW CONCRETE, ASPHALT REMOVAL	1193 NORTH 2300 WEST, LEHI, UTAH
4. NIELSON PLUMBING	625 NORTH 2670 WEST, LEHI, UTAH
5. PETERSON CONCRETE	2002 WEST 1500 NORTH, LEHI, UTAH
6.	

- END OF DOCUMENT -

HIGHLAND CITY
City Wide Pressurized Irrigation Meter Installation
Estimated Costs & To Date Expenditures

MOUNTAIN LAND - METER & FITTINGS			Total Price
PI METERS MOUNTAINLAND CONTRACT			*$ 2,820,554.84*
FITTING MOUNTAINLAND CONTRACT			*$ 1,786,076.56*

YEAR 1 - CONSTRUCTION			Total Price
2023 PI METER INSTALL			$ 656,150.00

YEAR 2 & 3 ESTIMATED CONSTRUCTION COSTS			Total Price
PI RES/PRIVATECONSTRUCTION			*$ 2,644,616.70*

ADDITIONAL CITY COSTS			Total Price
City Parts & Construction			$ 610,756.25
Conex & Fence			$ 70,000.00
Engineering Assistance			$ 20,000.00
PI Staff with Truck - 2.5 yrs			$ 250,000.00
Utility Rate Analysis			$ 15,000.00
Public Involvement			$ 50,000.00
Vac Trailer			$ 200,000.00
		Subtotal	*$ 1,215,756.25*

COSTS TO DATE			Total Price
PLANNING & ENGINEERING COSTS			*$ 46,480.00*

Total Budget Estimate $ 9,810,000.00
Year 1 Costs with Meters, Fittings & Construction $ 5,309,261.40
Projected Additional Costs $ 3,860,372.95
Estimated Contingency $ 640,365.65

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #8a

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Andy Spencer, City Engineer/Public Works Director

SUBJECT: **ACTION:** Approval of Sensus AMI Agreement

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:
The City Council will consider authorization of an agreement for software that facilitates daily communication from the pressurized irrigation meter to the citizen or business owner. Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends approval of the agreement.

PRIOR COUNCIL DIRECTION:
The Council previously approved the purchase of Sensus meters and hardware to facilitate the pending PI meter project.

BACKGROUND:
Per the requirements of the grants received for the PI meter project, the citizens must be able to access their daily PI water usage data. In the case of the Sensus water meters, this is achieved via two radio towers that will be placed in the City. They will appear like power poles to most observers. One will be located at Well #1 on 5600 West, the other will be located at Hog Hollow PI Pond. The power poles are 40-foot tall with an 8-foot antennae on top of the pole. Sensus completed a study to ensure the placement and height of the radio towers will be sufficient to serve the City.

The Sensus requires that the City enter into a 5-year agreement for the software to operate the system. In 2018 the City entered into an agreement that defined the lease of the radio frequency from the FCC that the City currently uses to read the culinary meters via a drive-by method. This agreement builds on that agreement.

In the future, the City will be able to equip the culinary (drinking water) meters with compatible communication devices. At that time, both the culinary and PI meters usage will be available daily to the citizens.

To use this service, citizens will need to create an account login, there will be no additional charge to the citizens.

FISCAL IMPACT:

The cost of the services associated with this agreement is $26,925 for the first year. Ensuing years will be similar; however, as more connections are added to the system, there will be some adjustments in charges. Funding for this expense in calendar year 2024 will included in GL 53-40-17, PI Radio Maintenance & Tower Rent within the FY2024 budget. The initial expenditure will paid through the PI meter project funds which are a combination of user rates and grant revenues. This account is GL 53-40-50, PI Grant Expenditures.

MOTION TO APPROVE:

I move that City Council APPROVE the agreement with Sensus for the PI meter project and AUTHORIZE the City Administrator to sign the agreement.

ATTACHMENTS:

1. New Sensus Agreement
2. 2018 Agreement.

New Agreement

Software as a Service Agreement

between

Highland City
("Customer")

and
Sensus USA Inc.
("Sensus")

IN WITNESS WHEREOF, the parties have caused this Software as a Service ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: 5 Years ("Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for an additional term of 5 years ("Renewal Term"). The "Term" shall refer to both the Initial Term and the Renewal Term.

Sensus USA Inc.		**Customer: Highland City**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

Contents of this Agreement:

Agreement
- Exhibit A Software
- Exhibit B Technical Support

Agreement

1. **General**
   A. **Agreement Generally.** The scope of this Agreement includes usage terms for Sensus' hosted Software solution, technical support, and supporting terms and conditions for an advanced metering infrastructure solution that Customer has purchased from Sensus' authorized distributor. Customer is not paying Sensus directly for the services provided by Sensus under the Agreement; rather, Customer shall pay Sensus' authorized distributor pursuant to a separate agreement between Customer and such authorized distributor.
2. **Software.**
   A. **Software as a Service (SaaS).** Sensus shall provide Customer with Software as a Service, as defined in Exhibit A, only so long as Customer is current in its payments for such services.
   B. **UCITA.** To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.
3. **Spectrum**
   A. **Spectrum Lease.** The parties previously entered into a spectrum manager lease on 1/10/2018 (the "Spectrum Lease"), which is hereby specifically incorporated by reference.

4. **Equipment.**
   A. **Purchase of Equipment.** Customer is not required to purchase any equipment under this Agreement. In the event Customer elects to purchase equipment, Customer shall purchase all Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") from Sensus' authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Sensus' authorized distributor. If Customer elects to purchase any equipment or services directly from Sensus, or if Customer pays any fees or other costs to Sensus, then Sensus' Terms of Sale shall apply. The "Terms of Sale" are available at: http://www.sensus.com/TC, or 1-800-METER-IT.
   B. **THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE**.
5. **Services.**
   A. **Installation of Equipment.** Installation services for Field Devices, other goods, and RF Field Equipment will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement
   B. **Technical Support**. Sensus shall provide Customer the technical support set forth in Exhibit B.
   C. **Project Management.** Sensus' authorized distributor will provide project management services to Customer. Any project management of the FlexNet System provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
   D. **Training.** Sensus' authorized distributor will provide Customer with training on the use of the FlexNet System. Any training provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
   E. **IT Systems Integration Services.** Except as may otherwise be provided herein, integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement. Any integration work shall be subject to a separate agreement which describes the scope and pricing for such work.
6. **General Terms and Conditions.**
   A. **Infringement Indemnity.** Sensus shall indemnify and hold harmless Customer from and against any judgment by a court of competent jurisdiction or settlement reached from any litigation instituted against Customer in the United States by a third party which alleges that the FlexNet System provided hereunder infringes upon the patents or copyrights of such third party, provided that Sensus shall have the right to select counsel in such proceedings and control such proceedings. Notwithstanding the foregoing, Sensus shall have no liability under this indemnity unless Customer cooperates with and assists Sensus in any such proceedings and gives Sensus written notice of any claim hereunder within fourteen (14) days of receiving it. Further, Sensus shall have no liability hereunder if such claim is related to; (i) any change, modification or alteration made to the FlexNet System by Customer or a third party, (ii) use of the FlexNet System in combination with any goods or services not provided by Sensus hereunder, (iii) Customer's failure to use the most recent version of the Software or to otherwise take any corrective action as reasonably directed by Sensus, (iv) compliance by Sensus with any designs, specifications or instructions provided by Customer or compliance by Sensus with an industry standard, or (v) any use of the FlexNet System other than for the Permitted Use. In the event the FlexNet System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Sensus, the FlexNet System is likely to become the subject of an infringement claim, Sensus, at its sole discretion and expense, may; (i) procure for Customer the right to continue using the FlexNet System or (ii) modify or replace the FlexNet System so that it becomes non-infringing. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SENSUS' ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT.
   B. **Limitation of Liability.** Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the greater of; (a) the total amount paid by Customer directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
   C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and Customer's obligations hereunder shall cease and the Software License and Spectrum Lease shall immediately cease.
   D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure.
   E. **Intellectual Property Rights.**

i. Software and Materials. No Intellectual Property is assigned to Customer hereunder. Excluding Customer Data, Sensus shall own or continue to own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works (the "Sensus IP"). To the extent, if any, that any ownership interest in and to such Sensus IP does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Sensus IP. Customer agrees not to reverse engineer any Sensus Products purchased or provided hereunder.

ii. Customer Data. Notwithstanding the prior paragraph, as between Customer and Sensus, Customer remains the owner of all right, title or interest in or to any Customer Data. "Customer Data" means solely usage data collected by the Field Devices. To avoid doubt, Customer Data does not include non-End User usage data collected by the Field Devices, Software, or FlexNet System, such as network and equipment status information or the like.

iii. Consent to Use of Customer Data. Customer hereby irrevocably grants to Sensus a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such Customer Data and any other data or information provided to Sensus, to (1) provide the Service; (2) analyze and improve the Service; (3) analyze and improve any Sensus equipment or software; or (4) for any other internal use. As used herein, "Service" means Sensus' obligations under this Agreement.

iv. Access to Customer Data. Within 45 days of Customer's written request, Sensus will provide Customer a copy of the previous 24 months CMEP interval file and deliver the file to a drop location specified by Customer.

F. **Data Privacy.** Customer acknowledges that Sensus and its Affiliates (collectively, "Xylem") will collect and process personal data for the purposes outlined in this Agreement. Xylem's data privacy policy is available at https://www.xylem.com/en-us/support/privacy/. Customer acknowledges that it has read and understood Xylem's privacy policy and agrees to the use of personal data outlined therein. The collection and use of personal data by Customer is Customer's responsibility.

G. **Confidentiality.** Except as may be required under applicable law, court order, or regulation, or to the extent required to perform and enforce this Agreement, both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.

H. **Compliance with Laws.** Customer shall comply with all applicable country, federal, state, and local laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. Customer shall not take any action, or permit the taking of any action by a third party, which may render Sensus liable for a violation of applicable laws.

i. **Export Control Laws**. Customer shall; (i) comply with all applicable U.S. and local laws and regulations governing the use, export, import, re-export, and transfer of products, technology, and services; and (ii) obtain all required authorizations, permits, and licenses. Customer shall immediately notify Sensus, and immediately cease all activities with regards to the applicable transaction, if the Customer knows or has a reasonable suspicion that the equipment, software, or services provided hereunder may be directed to countries in violation of any export control laws. By ordering equipment, software or services, Customer certifies that it is not on any U.S. government export exclusion list.

ii. **Anti-Corruption Laws**. Customer shall comply with the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.; laws and regulations implementing the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the U.N. Convention Against Corruption; the Inter-American Convention Against Corruption; and any other applicable laws and regulations relating to anti-corruption in the Customer's county or any country where performance of this Agreement, or delivery or use of equipment, software or services will occur.

I. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.

J. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.

K. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.

L. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("Disputes") shall first be resolved by mediation between the Parties. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.

M. **Acknowledgement of Events**. The parties acknowledge and agree that the global COVID-19 pandemic ("COVID-19") is ongoing, dynamic, unpredictable, and as such may impact the ability of Sensus to meet its obligations under this Agreement. The parties agree that, for so long as there is an impact of COVID-19 on Sensus' performance, all performance efforts by Sensus will be on a reasonable efforts basis only and Sensus shall not be responsible for failure to meet its obligations, to the extent that it is precluded from doing so as a result of COVID-19. The parties shall work, in good faith, to make any reasonable adjustments that may be required as a result of COVID-19.

N. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.

O. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.

P. **Four Corners.** This written Agreement, including all of its exhibits and the Spectrum Lease, represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. Any additional writings shall not modify any limitations or remedies provided in the Agreement. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement. Without limiting the generality of the foregoing, no purchase order placed by or on behalf of Customer shall alter any of the terms of this Agreement. The parties agree that such documents are for administrative purposes only, even if they have terms and conditions printed on them and even if and when they are accepted and/or processed by Sensus. Any goods, software or services delivered or provided in anticipation of this Agreement (for e.g., as part of a pilot or because this Agreement has not yet been

signed but the parties have begun the deployment) under purchase orders placed prior to the execution of this Agreement are governed by this Agreement upon its execution and it replaces and supersedes any such purchase orders.

Q. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.

7. **Definitions. As used in this Agreement, the following terms shall have the following meanings:**

A. **"*Affiliate*"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.

B. "***Confidential Information***" means any and all non-public information of either party, including all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, FlexNet System performance, FlexNet System architecture and design, FlexNet System software, other business and financial information of either party, and all trade secrets of either party.

C. **"*End User*"** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.

D. "***Field Devices***" means the SmartPoint Modules .

E. "***FlexNet Base Station***" identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an R100 unit) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.

F. **"*FlexNet System*"** is comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, Spectrum Lease, and other equipment provided to Customer hereunder. The FlexNet System only includes the foregoing, as provided by Sensus. The FlexNet System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.

G. "***Force Majeure***" means an event beyond a party's reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.

H. ***"Hosted Software"*** means those items listed as an Application in Exhibit A.

I. "***In/Out Costs***" means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.

J. "***Intellectual Property***" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

K. "***LCM***" identifies the load control modules.

L. **"*Ongoing Fee*"** means the annual or monthly fees, as applicable, to be paid by Customer to Sensus' authorized distributor during the Term of this Agreement.

M. "***Patches***" means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.

N. "***Permitted Use"*** means only for reading and analyzing data from Customer's Field Devices in the Service Territory. The Permitted Use does not include reading third devices not provided by Sensus or reading Field Devices outside the Service Territory.

O. ***"R100 Unit"*** identifies the Sensus standalone, mounted transceiver that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station or directly to the RNI by TCP/IP backhaul communication, as the case may be.

P. **"*Release*"** means both Updates and Upgrades.

Q. **"*Remote Transceiver*"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.

R. **"*RF Field Equipment*"** means, collectively, FlexNet Base Stations, R100 units (if any) and Remote Transceivers (if any).

S. **"*RNI*"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.

T. **"*RNI Software*"** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.

U. ***"Service Territory"*** identifies the geographic area where Customer utilizes Sensus equipment to provide services to End Users as of the Effective Date. This area will be described on the propagation study in the parties' Spectrum Lease filing with the FCC.

V. **"*Server Hardware*"** means the RNI hardware.

W. ***"SmartPoint™ Modules"*** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that communicate with the relevant devices and transmit those communications by radio frequency to the relevant piece of RF Field Equipment.

X. **"*Software*"** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement. The Software does not include any third party software.

Y. **"*Updates*"** means releases of the Software that constitute a minor improvement in functionality.

Z. **"*Upgrades*"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.

AA. **"*WAN Backhaul*"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

Exhibit A
Software

Software as a Service

1. **Description of Services.**

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if both; (i) pricing for the application of Software as a Service has been provided to the Customer; and (ii) the Customer is current in its payments to Sensus' authorized distributor for such application of Software as a Service.

A. **Software as a Service Generally.**

Software as a Service is a managed service in which Sensus will be responsible for the day-to-day monitoring, maintenance, management, and supporting of Customer's software applications. In a Software as a Service solution, Sensus owns all components of the solution (server hardware, storage, data center, network equipment, Sensus software, and all third-party software) required to run and operate the application. These software applications consist of the following (each an "Application"):

- Sensus Analytics
  - Enhanced Package

The managed application systems consist of the hardware, Sensus Software, and other third-party software that is required to operate the software applications. Each Application will have a production, and Disaster Recovery (as described below) environment Test environments are not provided unless otherwise specifically agreed by Sensus in writing. Sensus will manage the Applications by providing 24 x 7 x 365 monitoring of the availability and performance of the Applications.

B. **Use of Software as a Service.** Subject to the terms of this Agreement, Sensus shall make Software as a Service available to Customer to access and use solely for the Permitted Use and solely for so long as Customer is current in its payments to Sensus or its authorized distributor for Software as a Service. The Software as a Service term commences on the date that Sensus first makes Software as a Service available to Customer for use, and ends upon the earlier of: (i) the expiration or termination of the Agreement; (ii) breach by Customer of this exhibit or the Agreement; or (iii) Customer's termination of Software as a Service as set forth in paragraph (C) below.

C. **Termination of an Application.** Customer shall have the option at any time before the end of the Term to terminate any Application by giving Sensus one hundred twenty (120) days prior written notice. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate any Application, Customer acknowledges that; (a) Customer shall pay all applicable fees, including any unpaid Software as a Service fees due in the current calendar year plus a ten percent (10%) early termination fee, where such fee is calculated based on the annual Software as a Service fee due in the current calendar year; and (b) Software as a Service for such Application shall immediately cease. If Customer elects to terminate the RNI Application in the Software as a Service environment but does not terminate the Agreement generally, then upon delivery of the notice to Sensus, Customer shall purchase the necessary (a) RNI hardware from a third party and (b) RNI software license at Sensus' then-current pricing. No portion of the Software as a Service fees shall be applied to the purchase of the RNI hardware or software license.

D. **Software as a Service means only the following services:**

i. Sensus will provide the use of required hardware, located at Sensus' or a third-party's data center facility (as determined by Sensus), that is necessary to operate the Application.

ii. Sensus will provide production and disaster recovery environments for Application.

iii. Sensus will provide patches, updates, and upgrades to latest Sensus Hosted Software release.

iv. Sensus will configure and manage the equipment (server hardware, routers, switches, firewalls, etc.) in the data centers:
   (a) Network addresses and virtual private networks (VPN)
   (b) Standard time source (NTP or GPS)
   (c) Security access points
   (d) Respond to relevant alarms and notifications

v. Capacity and performance management. Sensus will:
   (a) Monitor capacity and performance of the Application server and software applications 24x7x365 using KPI metrics, thresholds, and alerts to proactively identify any potential issues related to system capacity and/or performance (i.e. database, backspool, logs, message broker storage, etc.)
   (b) If an issue is identified to have a potential impact to the system, Sensus will open an incident ticket and manage the ticket through resolution per Exhibit B, Technical Support.
   (c) Manage and maintain the performance of the server and perform any change or configuration to the server, in accordance to standard configuration and change management policies and procedures.
   (d) Manage and maintain the server storage capacity and performance of the Storage Area Network (SAN), in accordance to standard configuration and change management policies and procedures.
   (e) Exceptions may occur to the system that require Sensus to take immediate action to maintain the system capacity and performance levels, and Sensus has authority to make changes without Customer approval as needed, in accordance to standard configuration and change management policies and procedures.

vi. Database management. Sensus will:
   (a) Implement the data retention plan and policy, and will provide the policy upon request.
   (b) Monitor space and capacity requirements.
   (c) Respond to database alarms and notifications.
   (d) Install database software upgrades and patches.
   (e) Perform routine database maintenance and cleanup of database to improve capacity and performance, such as rebuilding indexes, updating indexes, consistency checks, run SQL query/agent jobs, etc.

vii. Incident and Problem Management. Sensus will:
   (a) Proactively monitor managed systems (24x7x365) for key events and thresholds to proactively detect and identify incidents.
   (b) Respond to incidents and problems that may occur to the Application(s).
   (c) Maintain policies and procedures for responding to incidents and performing root cause analysis for ongoing problems.
   (d) Correlate incidents and problems where applicable.
   (e) Sensus personnel will use the self-service portal to document and track incidents.

(f) In the event that Sensus personnel is unable to resolve an issue, the issue will be escalated to the appropriate Subject Matter Expert (SME).
(g) Maintain responsibility for managing incident and problems through resolution and will coordinate with Customer's personnel and/or any required third-party vendor to resolve the issue.
(h) Provide telephone support consistent with Exhibit B, Technical Support in the case of undetected events.

viii. Security Management. Sensus will:
(a) Monitor the physical and cyber security of the server and Application(s) 24x7x365 to ensure system is highly secure in accordance with NIST Security Standards.
(b) Perform active intrusion prevention and detection of the data center network and firewalls, and monitor logs and alerts.
(c) Conduct period penetration testing of the network and data center facilities.
(d) Conduct monthly vulnerability scanning by both internal staff and external vendors.
(e) Perform anti-virus and Malware patch management on all systems.
(f) Install updates to virus protection software and related files (including virus signature files and similar files) on all servers from the update being generally available from the anti-virus software provider.
(g) Respond to any potential threat found on the system and work to eliminate any virus or malware found.
(h) Adhere to and submit certification to NERC/CIP Cyber Security standards.
(i) Monitors industry regulation/standards regarding security – NERC, FERC, NIST, OpenSG, etc. through the dedicated Sensus security team.
(j) Provide secure web portal access (SSL) to the Application(s).

ix. Backup and Disaster Recovery Management. Sensus will:
(a) Perform daily backups of data providing one (1) year of history for auditing and restoration purposes.
(b) Back-up and store data (on tapes or other storage media as appropriate) off-site to provide protection against disasters and to meet file recovery needs.
(c) Conduct incremental and full back-ups to capture data, and changes to data, on the Application(s).
(d) Replicate the Application(s) environments to a geographically separated data center location to provide a full disaster recovery environment for the Application production system.
(e) Provide disaster recovery environment and perform fail-over to Disaster Recovery environment within forty-eight (48) hours of declared event.
(f) Generate a report following each and any disaster measuring performance against the disaster recovery plan and identification of problem areas and plans for resolution.
(g) Maintain a disaster recovery plan. In the event of a disaster, Sensus shall provide the services in accordance with the disaster recovery plan.
(h) In the case of a disaster and loss of access to or use of the Application, Sensus would use commercially reasonable efforts per the Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO) specified herein to restore operations at the same location or at a backup location within forty-eight (48) hours.
(i) The Application shall have a RTO of forty-eight (48) hours.
(j) The RPO shall be a full recovery of the Application(s), with an RPO of one (1) hours, using no more than a twenty-four (24) hour old backup. All meter-related data shall be pushed from each Base Station/TGB restoring the database to real-time minus external interfaced systems from the day prior.
(k) Data from external interfaced systems shall be recreated within a forty-eight (48) hour period with the assistance of Customer personnel and staff, as needed.

E. **Customer Responsibilities:**
i. Coordinate and schedule any changes submitted by Sensus to the system in accordance with standard configuration and change management procedures.
ii. Participate in all required configuration and change management procedures.
iii. Customer will log incidents related to the managed Application with Sensus personnel via email, web portal ticket entry, or phone call.
iv. Responsible for periodic processing of accounts or readings (i.e., billing files) for Customer's billing system for billing or other analysis purposes.
v. Responsible for any field labor to troubleshoot any SmartPoint modules or smart meters in the field in populations that have been previously deployed and accepted.
vi. First response labor to troubleshoot FlexNet Base Station, R100s, Remote Transceivers or other field network equipment.
vii. Responsible for local area network configuration, management, and support.
viii. Identify and research problems with meter reads and meter read performance.
ix. Create and manage user accounts.
x. Customize application configurations.
xi. Support application users.
xii. Investigate application operational issues (e.g., meter reads, reports, alarms, etc.).
xiii. Respond to alarms and notifications.
xiv. Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades.

F. **Software as a Service** does not include any of the following services:
i. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
ii. Any integration between applications, such as Harris MeterSense, would require a Professional Services contract agreement to be scoped, submitted, and agreed in a signed writing between Sensus and all the applicable parties.

If an item is not listed in subparagraphs in item (D) above, such item is excluded from the Software as a Service and is subject to additional pricing.

2. **Further Agreements**

A. System Uptime Rate.
i. Sensus (or its contractor) shall manage and maintain the Application(s) on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the managed Application(s) via internet or point to point connection (i.e., Managed-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate, cumulative across all Applications, shall be calculated as follows:

System Uptime Rate = 100 x (TMO – Total Non-Scheduled Downtime minutes in the Month)

ii. **Calculations**

a. ***Targeted Minutes of Operation*** or ***TMO*** means total minutes cumulative across all Applications in the applicable month minus the Scheduled Downtime in the Month.

b. ***Scheduled Downtime*** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.

c. ***Non-Scheduled Downtime*** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

iii. **Exceptions**. Exceptions mean the following events:

- Force Majeure
- Emergency Work, as defined below; and
- Lack of Internet Availability, as described below.

a. **Emergency Work**. In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Application(s) ("Emergency Work"). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the Application(s) by the Customer is made available (the "Managed Systems"). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.

b. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus' networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

iv. **System Availability.** For each month that the System Uptime Rates for the production RNI falls below 99.0%, Sensus will issue Customer the following Service Level Credits:

System Uptime Rate per calendar month	Service Level Credit
Less than 99.0% but at least 97.5%	5% of the monthly RNI SaaS Fees in which the service level default occurred (Note: SaaS fees are pre-paid annually and for purposes of SLA Credits are computed on a monthly basis.)
Less than 97.5% but at least 95.0%	10% of the monthly RNI SaaS Fees in which the service level default occurred
Less than 95.0%	20% of the monthly RNI SaaS Fees in which the service level default occurred

Service Level Credits for any single month shall not exceed 20% of the RNI SaaS Fee associated with the month in which the service level default occurred. Sensus records and data will be the sole basis for all Service Level Credit calculations and determinations, provided that such records and data must be made available to Customer for review and agreement by Customer. To receive a Service Level Credit, Customer must issue a written request no later than ten (10) days after the Service Level Credit has accrued. Sensus will apply each valid Service Level Credit to the Customer's invoice within 2 billing cycles after Sensus' receipt of Customer's request and confirmation of the failure to meet the applicable Service Level Credit. Service Level Credits will not be payable for failures to meet the System Uptime Rate caused by any Exceptions. No Service Level Credit will apply if Customer is not current in its undisputed payment obligations under the Agreement. Service Level Credits are exclusive of any applicable taxes charged to Customer or collected by Sensus. Sensus shall not refund an unused Service Level Credits or pay cash to Customer for any unused Service Level Credits. Any unused Service Level Credits at the time the Agreement terminates will be forever forfeited. THE SERVICE LEVEL CREDITS DESCRIBED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDY FOR SENSUS' FAILURE TO MEET THE SYSTEM UPTIME REQUIREMENT OR ANY DEFECTIVE SAAS PERFORMANCE. IN NO EVENT SHALL THE AGGREGATE AMOUNT OF SERVICE LEVEL CREDITS IN ANY ANNUAL PERIOD EXCEED 20% OF THE ANNUAL RNI SAAS FEE.

B. Data Center Site-Security. Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Managed Systems:

i. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.

ii. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.

iii. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.

iv. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.

v. Dry pipe pre-action fire detection and suppression systems are provided.

vi. Data circuits are available via multiple providers and diverse paths, giving access redundancy.

C. Responsibilities of Customer.

i. Customer shall promptly pay all Software as a Service fees.

ii. Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the Application(s), Managed Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the Application(s).

iii. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop

environment used by Customer to access the Application(s) managed by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Managed Systems in a secure manner via the public Internet.

iv. Upon receiving the system administrator account from Sensus, Customer shall create username and passwords for each of Customer's authorized users and complete the applicable Sensus registration process (Authorized Users). Such usernames and passwords will allow Authorized Users to access the Application(s). Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the Application(s) and Managed Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the Application(s) application through Customer's account, account ID, usernames or passwords.

v. Customer shall be responsible for the day-to-day operations of the Application(s) and FlexNet System. This includes, without limitation, (i) researching problems with meter reads and system performance, (ii) creating and managing user accounts, (iii) customizing application configurations, (iv) supporting application users, (v) investigating application operational issues, (vi) responding to alarms and notifications, and (vii) performing over-the-air commands (such as firmware updates or configuration changes).

3. **Sensus Analytics**

Sensus Analytics is a cloud-based solution and data platform that allows storage and retrieval of raw reads and data from other sources for analysis, exportation, and inquiry or reporting. The platform provides applications and reporting capabilities.

A. Essential Package. The Essential Package of the Sensus Analytics Application shall consist of the following modules:

i. Device Access
   a. Allows search for meter details by using data imported from the billing system or the Sensus Device ID or AMI ID.
   b. Allows a view of the meter interval or register reads.
   c. Meter data is available to be copied, printed, or saved to certain user programs or file formats, specifically CSV, PDF, and Spreadsheet.
   d. Allows the current and historical data to be viewed.
   e. Allows the current usage to be compared to historical distribution averages.
   f. Allows the user to see the meter location on a map view.
   g. Allows notifications for an event on a single meter to be forwarded to a Customer employee.
   h. Allows details to be viewed about a meter – (dependent on the data integrated from other systems).

ii. Meter Insight (provides the following)
   a. # of active meters.
   b. # of orphaned meters with drill down to the list of meters.
   c. # of inactive meters with usage drill down to the list of meters.
   d. # of stale meters with drill down to the list of meters.
   e. # of almost stale meters with drill down to the list of meters.
   f. # of meters where no read is available with drill down to the list of meters.
   g. # of meters with maximum threshold exceptions with drill down to the list of meters.
   h. # of meters with minimum threshold exceptions with drill down to the list of meters.
   i. # of unknown radios with drill down to the list of meters.

iii. Report Access
   a. Allows the user to see meter alarms and choose a report from a list of standard reports.
   b. Master Route Register Reads: Shows the latest reads for all meters within specified time window.
   c. Meter Route Intervals Reads: Allows users to inspect intervals of a single meter over a period of time.
   d. Master Route No Readings: List all meters that are active in the system, but have not been sending reads within the specified time window.
   e. Consumption Report: List meters' consumption based on meter readings within the specified time window.
   f. Zero Consumption for Period: List meters whose readings do not change over a period of time.
   g. Negative Consumption: Shows the number of occurrences and readings of negative consumption for the last 24hr, 48hr and 72hr from the entered roll up date.
   h. High Low Exception Report: Displays meters whose reads exceed minimum or/and maximum threshold, within a time range.
   i. Consumption vs Previous Reported Read: Compares latest reading (from RNI) with last known read received from CIS.
   j. Consumption Exception 24 hour Report: This report shows meters that satisfy these two conditions: (1) The daily average consumptions exceed entered daily consumption threshold; (2) The number of days when daily thresholds are exceeded are greater than the entered exception per day threshold.
   k. Endpoint Details: Shows the current state of meters that are created within the specified time range.
   l. Orphaned Meters: List meters that are marked as 'orphaned', which are created as of entered Created as of parameter.
   m. Billing Request Mismatch: Displays meters in a billing request that have different AMR id with the ones sent by RNI. It also shows AMR id in billing request that have different meter Id in the RNI. Users must enter which billing request file prior to running the report.
   n. All Alarms Report: List all alarms occurred during a time window. Users can select which alarm to show.

iv. Billing Access
   a. Initiate the creation of billing export files formatted to the import needs of the billing system.
   b. Receive billing request files from the billing system to identify what meters to include in the billing export file in the case where billing request file option is used.
   c. Provides a repository of past billing files that were either used for billing preparation or actually sent to the billing system.
   d. Will store created billing files for a period of three years unless otherwise denoted.
   e. The system will allow creation of test files before export to the billing system.

v. Billing Adaptor

a. The underlying configurator and tools mapping the extraction of billing data to enable integration to the utility's billing system.

vi. Data Store
   a. Allows storage of meter reading data including Intervals, Registers, and Alarms to be stored.
   b. Stored data is available online for reports and analysis.
   c. Data will be retained for 3 years. Additional duration can be purchased.

B. Enhanced Package. The Enhanced Package shall consist of the modules listed above in the Essential Package, as well as the following additional modules:

i. Alarm Insight
   a. Allows the user to summarize and filter alarms by a date range.
   b. Allows the user to review all alarm types on a single screen.
   c. The user can filter out the alarms not wanted on the screen.
   d. Alarm totals can be visualized.
   e. Adds a view of trending alarms over time.
   f. Click to drill down on an alarm to gain more information on specific events.
   g. Click to analyze a specific event on a particular device.

ii. Alert Manager
   a. Allows creation of alert groups who will be notified when an alarm occurs.
   b. Users can manage alert groups by adding and removing group members.
   c. Allows selection of notification method for how end users in the group will be notified; email or SMS (text message).
   d. Allows creation of an alert from the available system events from smart points and assign to a group.
   e. Monitors the systems meters for events. When an event is triggered, all users in the group will be notified.

C. Integration of Sensus Analytics. Sensus shall provide integration support services to Customer only to the extent specifically provided below:

i. Sensus shall provide Customer with a simple flat file specification known as VFlex for the integration of the Customer's back office system to the Sensus Analytics modules. The VFlex shall contain the following types of information: Device ids, end users in the system, end user status, end user account information, end user name, and other end user details. This flat file may be delimited or fixed width. Customer shall produce this file and transmit it to the FTP location designated by Sensus. When sent to the Sensus FTP servers, this file exchange will enable the system to become operational with the Customer's systems. Customer shall produce this file and transmit it to the FTP location designated by Sensus. Sensus will provide reasonable support to explain to Customer the required vs. optional fields that are in the specification, testing and validation of the file format and content.

ii. In scope and included integration efforts: kick-off meeting to engage all required parties, mapping the Customer's fields to the VFlex specification, validation of expected output, and a two (2) hour system review of Sensus Analytics application and integration with the Customer's system (conducted remotely).

iii. Out of scope and subject to additional charges will be the transformation of data where business logic including code must be written to modify the field content or format of the data to meet the VFlex specification.

iv. Sensus' integration services consist of four (4) hours of assistance (remote or on-site, as determined by Sensus). If additional time is needed to complete the integration efforts, Sensus shall invoice Customer for additional fees on an actual time and materials basis.

v. **If an item is not listed in subparagraphs (i) or (ii) above, such item is excluded from the integration of Sensus Analytics Support and is subject to additional pricing.**

vi. **Data Import.** The Sensus Analytics Application contains adapters for the import of data from; (a) Customer's FlexNet System; and/or (b) AutoRead application for handheld and drive by systems, as applicable.

vii. **Customer Acknowledgements.**
   a. Customer acknowledges that the Sensus Analytics Application provides up to fifty (50) user logins for Customer's use.
   b. Customer acknowledges and agrees the Sensus Analytics Application is based upon the actual number of End Users within Customer's Service Territory. Pricing may increase if Customer's Service Territory or actual number of End Users expands.
   c. Customer acknowledges that all data related to the Sensus Analytics Applications is geographically hosted within the United States of America. Customer accepts the geographic location of such hosting, and indemnifies Sensus for any claims resulting therefrom.
   d. Customer acknowledges and agrees that the Intellectual Property provisions of this Agreement apply in all respects to Customer's access to and use of the Sensus Analytics Applications.
   e. Customer is responsible for validating the data analyzed by the Sensus Analytics Applications. Sensus makes no promises of improving Customer's operations or saving Customer money, nor is Sensus liable for any damages resulting from decisions made by Customer related to Customer's use of Sensus Analytics.

4. **Third Party Software.**

A. RedHat Linux. If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:

By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription:	End User License Agreement:
Red Hat Enterprise Linux	http://www.redhat.com/licenses/rhel_rha_eula.html
JBoss Enterprise Middleware	http://www.redhat.com/licenses/jboss_eula.html

Exhibit B
Technical Support

1. **Introduction**

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).

b) The local distributor.

c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

2. **Support Categories**

2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products, Sensus Lighting Control, and Demand Response Management System (FlexNet Home).

2.2. Proactive reporting and resolution of problems.

2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.

2.4. Responding to service requests and product changes.

2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

3. **Support Hours**

3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00 a.m. EST to 8:00 p.m. EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

4. **Support Procedures**

4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a SalesForce ticket.

4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state based on where the call originated. The Customer Service Associate or Technical Support Engineer will require a brief description of the problem symptoms, or error messages depending on nature of the incident. The nature of the problem and severity levels will be mutually agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into SalesForce for ticket creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

A. Severity Levels Description:

Sev1 Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM). Not able to generate billing files.

Sev2 Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

Sev3 The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.

4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-served basis. A 1st level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.

a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.

b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.

c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the SalesForce system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. **Response and Resolution Targets.**

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction (24 hours).	• Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into SalesForce Knowledge Base.
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur (48 hours).	• Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into SalesForce Knowledge Base.
3	1 Business Day	30 business days	• Answer to question is provided. • Satisfactory workaround is provided. • Fix or workaround incorporated into SalesForce Knowledge Base. • Fix incorporated into future release.

6. **Problem Escalation Process**.

6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.

6.1.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.

6.1.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the SalesForce ticket number and the reason why the issue is being escalated.

6.1.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given SalesForce ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions**.

7.1. Sensus provides online documentation for Sensus products, and all Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the product documentation.

7.2. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific contract or statement of work. For example: specialized systems integration services or out of warranty network equipment repair.

Existing Agreement

FCC Notification for Spectrum Manager Lease
Ownership Disclosure Information
and
Spectrum Lease Agreement
("Agreement")

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer, coupled with Ownership Disclosure Information required for the FCC lease and Part (2) is a Spectrum Lease Agreement between Sensus as Lessor and Customer as Lessee. Together, these two parts create the Agreement.

The number of pages in this Agreement is indicated below, and Customer represents that it has received, reviewed, and completed the entire Agreement. By their signatures below, the parties agree to the terms and conditions set forth in this Agreement. The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.

Sensus USA Inc. & Sensus Spectrum, LLC (together, "Sensus")	**Customer:**
Sensus USA Inc. Signature: _____ Name: Colin Flannery Title: Vice President Date: _____	Signature: Van Bond Name: Van Bond Title: Water Division Supt. Date: November 21, 2017
Sensus Spectrum, LLC Signature: _____ Name: Colin Flannery Title: Vice President Date: _____	Customer contact person for FCC filings: Name: Van Bond Phone: 801-772-4515 Email: vanb@highlandcity.org Customer FRN: 87-0344281 Customer Tax ID: 12053145-002-STC

SENSUS

Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

Customer / Lessee Information

1

Customer/Lessee Name: Highland City		
Attention To: Van Bond	**Name of Real Party in Interest**:	
Street Address: 5400 W Civic Center Dr., Suite #1		**City**:Highland
State: Utah	**Zip**: 84003	**Phone**:801-756-5751
Fax: 801-756-6903	**Email**: candice@highlandcity.org	

Is Customer contact information same as above? ☐Yes ☒No (If No, complete box 2 below)

Additional Customer/Lessee Contact Information

2

Company Name: Highland City		
Attention To: Water Department		
Street Address: 5400 W Civic Center Dr., Suite #1		**City**: Highland
State: Utah	**Zip**: 84003	**Phone**: 801-756-5751
Fax 801-756-6903	**Email**: candice@highlandcity.org	

3

Customer/Lessee is a(n) (Select one): ☐Individual I ☐ Unincorporated Association I ☐Trust
☒Government Entity I ☐Corporation I ☐ Limited Liability Company I ☐General Partnership
☐Limited Partnership I ☐Limited Liability Partnership I ☐Consortium I ☐ Other _____

4

FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: _____. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does not have a Form 602 on file.
Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file.

5

Customer Tax ID:12053145-002-STC

6

Individual Contact For FCC Matters

Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system.

Name Van Bond	
Title: Water Division Superintendent	
Email: vanb@highlandcity.org	Phone: 801-772-4515

Ownership Disclosure Information

7

Customer/Lessee to list the names of the President and all Board Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a President/Board member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.

	US Citizen?	Ownership Disclosure?
Mayor: Mark S. Thompson	☒Yes ☐No	☐Yes ☒No
Council Member: Brian Braithwaite	☒Yes ☐No	☐Yes ☒No
Council Member: Ed Dennis	☒Yes ☐No	☐Yes ☒No
Council Member: Tim Irwin	☒Yes ☐No	☐Yes ☒No
Council Member: Dennis Lebaron	☒Yes ☐No	☐Yes ☒No
Council Member: Rod Mann	☒Yes ☐No	☐Yes ☒No
Council Member:	☐Yes ☐No	☐Yes ☐No
Council Member:	☐Yes ☐No	☐Yes ☐No
Council Member:	☐Yes ☐No	☐Yes ☐No
Council Member:	☐Yes ☐No	☐Yes ☐No

8

Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	☐Yes ☒No

9

Basic Qualification Information

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	☐Yes ☒No
2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	☐Yes ☒No
3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	☐Yes ☒No

10

Customer/Lessee Certification Statements

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	☒Yes
2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	☒Yes
3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (*See* Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	☒Yes
4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	☒Yes

5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	☒Yes
6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	☒Yes
7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	☒Yes
8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.	☒Yes

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

First Name:	MI:	Last Name:	Suffix:
Van		Bond	
Title: Water Division Supt.		Customer Name: Highland City	
Signature:		Date: 11.21.2017	
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).			

Part 2: SPECTRUM LEASE AGREEMENT

Background

A. Customer has bought or will buy or use FlexNet equipment manufactured by Sensus;
B. Sensus is leasing spectrum to Customer to operate the FlexNet equipment;
C. The spectrum that Sensus is leasing is authorized by Sensus' FCC License(s); and
D. Sensus is leasing spectrum to Customer in the area where FlexNet equipment will be operated (the "Service Area").

Agreement

A. **Spectrum Lease.** Sensus hereby grants to Customer and Customer accepts a spectrum manager lease ("Lease") over the frequencies of the FCC License and solely within Customer's Service Area. (The frequencies of the FCC License within Customer's geographic Service Area are called the "Leased Spectrum"). Customer shall pay the ongoing fees to either Sensus or Sensus' authorized distributor for the use of the Leased Spectrum, as directed by Sensus.

B. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will; (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.

C. **Lease Application.** In order to complete the FCC lease application, Customer will:
   i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
   ii. Give Sensus the coordinates of the boundaries of Customer's Service Area or, alternatively, approve Sensus' estimation of the same.
   iii. If Customer has not already done so; Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
   iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.

D. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Area and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.

E. **Term of Spectrum Lease.** Unless terminated earlier (because for example Customer stopped using the FlexNet equipment), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and Customer's underlying agreement with Sensus and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.

F. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; or (c) upon Customer's breach of this Agreement.

G. **FCC Compliance.** The following FCC requirements apply
   i. Pursuant to 47 CFR 1.9040(a);
      (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
      (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
      (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
      (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
      (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
   ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,

(a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and

(b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.

H. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.

I. **Limitation of Liability.** Each parties' liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively, "Causes of Action") shall be limited to direct damages. Neither party shall be liable for any indirect, incidental, special or consequential damages. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. The limitations on liability set forth in this Agreement are fundamental inducements to both parties to enter into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give the maximum protection permitted under law.

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###

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #8b

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Rob Patterson, City Attorney

SUBJECT: **RESOLUTION/ORDINANCE:** Council Procedures, Personnel Policy, and City Officers Update

TYPE: **GENERAL CITY MANAGEMENT / MUNICIPAL CODE UPDATE (LEGISLATIVE)**

PURPOSE:

The City Council will discuss draft updates to the Council's rules of procedure, the City's personnel policies, and sections of the Highland Municipal Code related to council meeting procedures and the appointment and removal of city officers. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Council adopt the proposed changes to the council and personnel policies and City Municipal Code.

PRIOR COUNCIL DIRECTION:

On October 18, 2022, the city council reviewed and discussed the Highland City form of government and the allocation, delegation, and division of power between the mayor, council, and city administrator. As part of that discussion, the council directed staff to work on updates to the city code and council rules of procedure to clarify questions regarding who on city staff is a city "officer," how city officers are appointed and removed, how the council can and should interact with staff, and how agendas are set and presented.

On January 17, 2022, staff presented the draft changes and draft documents on these matters for the council to review and provide feedback on. The Council provided additional direction on the city administrator's role in appointing officers, the methods of removing city officers, and on removing agenda items added by council members.

BACKGROUND:

As discussed on January 17, 2022, staff have prepared a number of changes to the city's ordinances governing city officers to clarify who is an officer and to create a new, financial director office; clarify how city officers may be removed from office; update some confusion in how department heads are managed and removed; establish parliamentary and other meeting procedures and policies for the city council.

The City Council reviewed these changes and asked staff to include three additional

changes from what was proposed by staff:

1. City officers are to be appointed by the mayor, with the advice—but not necessarily the consent—of the city administrator, and with the advice and consent of the city council.

Related Documents: Ordinance with Code Changes

It was discussed that the city administrator should be involved in the process of appointing city officers, because the city administrator will be managing and overseeing the day-to-day operations and work of those officers. This change allows the administrator to give advice to the mayor, but does not condition appointment on the administrator's advice or consent. Ultimate appointment power still resides with the mayor, as appointee, and the council, to give consent to the appointment.

2. City officers may be removed in one of three ways:

A. By the city administrator with the consent of the mayor and majority of city council members;

B. By the city administrator with the consent of all city council members, without the consent of the mayor; and

C. By the mayor with the consent of a majority of the city council members, without the consent of the city administrator.

Related Documents: Resolution Amending Personnel Policies, Ordinance with Code Changes

The third removal option—"C"—was modified by the council. As originally proposed, the mayor could remove an officer only with the unanimous consent of the city council. After discussion, the council directed that this be changed to allow the mayor to remove an officer with the consent of a simple majority of the city council.

3. In the City Council Procedures and Policies, two city council members can add any action item to an agenda, which can only be removed or rescheduled at the request or with the approval of both of the requesting council members

Related Documents: Resolution Adopting Council Procedures and Policies § 3.1 (B) – (C)

The original draft allowed for the removal or rescheduling of an agenda item added at the request of two council members with the approval of only one of the two members. After discussion, the council asked that this be changed to require the approval of both requesting council members.

The remainder of the documents is left unchanged from the version reviewed by Council on January 17, 2023, except for the correction of a few typos.

FISCAL IMPACT:
No fiscal impact is expected.

PROPOSED ACTION:
Because the proposed changes require amending city code as well as adopting new or amended policies and procedures, the Council should make three separate motions:

Motion 1: I move that the Council ADOPT the Highland City Ordinance amending Title 2 of the Highland City Code regarding municipal officers.

Because some of these amendments would modify the mayor's powers—the power of removal of officer's power—the mayor can and should vote

Motion 2: I move that the Council ADOPT the Highland City Resolution adopting the City Council Procedures and Policies dated February 7, 2023

Motion 3: I move that the Highland City Council ADOPT the Highland City Resolution amending portions of the Highland City Personnel Policies related to city officers and department heads.

ATTACHMENTS:
1. Ordinance 2023-XX, Amending City Code Related to City Officers
2. Resolution 2023-XX, Adopting Council Procedures and Policies
3. Resolution 2023-XX, Amending Highland City Personnel Policies

AN ORDINANCE OF HIGHLAND CITY AMENDING PORTIONS OF HIGHLAND CITY MUNICIPAL CODE TITLE 2, CHAPTER 4, AND ADOPTING HIGHLAND MUNICIPAL CODE TITLE 2, CHAPTER 22, RELATED TO CITY OFFICERS

WHEREAS, Highland City has previously adopted ordinances regarding the appointment and removal of certain city officers; and

WHEREAS, the appointment and removal of city officers is a power traditionally granted to the mayor, pursuant to Utah Code § 10-3b-104; and

WHEREAS, the Highland City Council may remove or alter powers granted to the mayor pursuant to Utah Code § 10-3b-104 and Utah Code § 10-3b-303, and delegate some or all of such powers to the council or to the city administrator; and

WHEREAS, the Highland City Council is authorized pursuant to state law, Utah Code § 10-6-157, to create a municipal office for a director of finance; and

WHEREAS, the Mayor and Council of the Highland City, Utah, desire to clarify the number and type of municipal officers, including a finance director, the procedure for the appointment of new city officers, and the permissible methods of removing a city officer;

NOW, THEREFORE, BE IT ORDAINED BY the City Council of Highland City, Utah:

SECTION 1, The Highland City Council hereby amends Title 2, Chapter 4, Sections 030 and 080 of the Highland Municipal Code, as shown in Exhibit A, attached and incorporated herein.

SECTION 2. The Highland City Council hereby creates the office of Highland City Finance Director as an at-will, appointed officer, as set forth in Highland City Municipal Code and the Highland City Personnel Policies and Procedures Manual, and adopts Highland City Municipal Code Title 2, Chapter 22, as shown in Exhibit B, attached and incorporated herein.

SECTION 3. All previously adopted Highland City standards in conflict with the standards and specifications adopted pursuant to Section 1 and Section 2 are hereby repealed as of the effective date of this ordinance.

SECTION 4: If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

SECTION 5: This ordinance shall become effective upon its adoption and publication as prescribed by law.

PASSED AND ADOPTED by the Highland City Council, February 7, 2023.

HIGHLAND CITY, UTAH

_____
Kurt Ostler, Mayor

ATTEST:

_____
Stephannie Cottle, City Recorder

COUNCILMEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Kurt Ostler	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐
MAYOR		
Kurt Ostler	☐	☐

EXHIBIT A
Amendments to HMC Title 2, Chapter 4

2.04.030 Appointment Of City ~~Treasurer and City Recorder~~ Officers

A. On or before the first Monday in February following a municipal election, the mayor, with the advice of the city administrator, and with the advice and consent of the city council, shall ensure that ~~appoint~~ a qualified person is or already has been appointed to each of the following offices: ~~of city recorder and city treasurer. The city recorder shall be ex officio the city auditor and shall perform the duties of such office.~~

1. City recorder;
2. City treasurer;
3. City engineer;
4. City attorney;
5. City finance director;
6. City justice court judge; and
7. Any other office created by the city council.

B. The city administrator shall be appointed as set forth in Title 2, Chapter 14.

2.04.080 Terms Of Office; ~~Remove~~ Removal From Office

Except as otherwise may be provided by law, the term of office of the appointive officers in Section 2.04.030 shall be ~~until the election next following their appointment and until their respective successors are chosen and qualified~~ indefinite, except that they may vacate their office at any time upon notice to the mayor or city administrator, and they may be ~~sooner~~ removed by the city administrator with either the consent of the mayor and majority of the members of the city council or the consent of all members of the city council without the consent of the mayor. The officer may also be removed by the mayor with the consent of a majority of the members of the city council. ~~mayor with the concurrence of a majority of the members of the city council, or by the city council with the concurrence of the mayor.~~

EXHIBIT B
Adoption of HMC Title 2, Chapter 22

2.22 City Finance Director

2.22.010 Office Created

A. There is hereby created the office of finance director, which shall filled by a qualified person who is appointed and removed as set forth in Title 2, Chapter 4.

B. The office of finance director shall be exempt from the protections described in Utah Code § 10-3-1105(1)(a).

2.22.020 General Duties

A. The duties of the finance director are perform or assist with audits, accounting, budget preparation and amendments, and other financial duties and responsibilities as assigned.

B. The finance director shall provide regular reports to the city council and mayor on the budget and financial status of the City.

2.22.030 Additional Duties

The finance director shall perform such other duties as may be required by city ordinance, by direction of the mayor, city council, city administrator, or by law.

A RESOLUTION APPROVING AND ADOPTING THE CITY OF HIGHLAND CITY COUNCIL PROCEDURES AND POLICIES

WHEREAS, the Highland City Council is authorized and required, pursuant to Utah Code § 10-3-606, to adopt rules of order and procedure to govern parliamentary order and procedure for council meetings and other council actions;

WHEREAS, the Highland City desires to update its existing rules of order and procedure to conform to current practices;

NOW THEREFORE, BE IT RESOLVED by the Highland City Council as follows:

SECTION 1. The City Council approves and adopts the City of Highland City Council Procedures and Policies dated February 7, 2023, attached hereto as Exhibit A.

SECTION 2. All other procedures, policies, and rules regarding or related to City Council policies and procedures are hereby repealed.

SECTION 3. This resolution shall take effect immediately upon adoption.

RESOLVED AND PASSED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH, this _____ day of _____, 2023.

_____
Kurt Ostler, Mayor

ATTESTED:

_____
Stephannie Cottle, City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

Form of Council Procedures and Policies

CITY OF HIGHLAND

CITY COUNCIL
PROCEDURES AND POLICIES

February 7, 2023

The purpose of this document is to outline the procedures and operations of City Council meetings, agenda formation, and Council requests to allow Highland City to operate in an efficient and orderly manner, as authorized by Utah State Code § 10-3-606. Nothing in this document is intended to detract or take away from the powers, duties, or processes outlined in Utah State or Highland City Municipal Code.

1. INTRODUCTION

1.1 Form of Government: Highland City has a six-member council form of government, one of whom is the Mayor. The City has also chosen to create the office of City Administrator. As such, the City's administrative and legislative powers are divided between the City Council, Mayor, and Administrator.

1.2 Mayor: The Mayor is the chief executive officer of the City, with the powers and duties granted by state and city code, except to the extent such powers and duties have been granted to the City Administrator by city ordinance. The Mayor's duties are generally to preside over all Council meetings, see that city ordinances and contracts are enforced and carried out, manage Council agendas, appoint city officers and board and committee members, and exercise ceremonial functions. The Mayor, except in limited circumstances, is a nonvoting member of the Council.

1.3 Council: The Council is the governing body of the City and exercises all legislative and administrative powers and functions not granted to the Mayor, City Administrator, or other person or entity specified by state statute or city ordinance.

1.4 City Administrator: The City Administrator is the chief administrative officer of the city with the duties and responsibilities established by city code. The City Administrator directs the daily operations of City, oversees, hires, and manages staff, prepares and monitors the City budget under the direction of the Mayor, implements and monitors the progress of City construction and other projects, creates Council agendas in coordination with the Mayor and other city officers, and implements the policies and direction established by the Council. The City Administrator is an authorized signor for the issuance of City funds. The City Administrator is accountable to the Mayor and City Council as a whole.

1.5 City Officers: Under state and city code, there are certain city staff that are appointed by the Mayor with the advice of the Administrator and the advice and consent of the Council. These officers are generally supervised and managed by the City Administrator, but also report to and take direction from the Mayor and City Council on certain tasks and the implementation of Council policy and direction.

A. City Attorney (General Counsel): The City General Counsel is an attorney who serves as the legal advisor for the City as a corporate entity. The general responsibilities of the City General Counsel are to provide legal counsel on Council policies and priorities, draft and review ordinances and contracts, and to advise the City as legal matters arise. The City Attorney cannot represent individual Council Members or the Mayor, however, individual Council Members and the Mayor may ask for counsel regarding official duties and obligations. The City Attorney cannot provide legal services to members of the public. Generally, communications between the City Attorney and city representatives are protected by attorney-client privilege. However,

communications between the attorney and individual City representatives may not be privileged as to other City representatives, and the attorney may discuss matters with other appropriate City officials as the attorney may determine is necessary to protect the City. Communication with the City Attorney should generally be channeled through the Mayor, Council, City Administrator, and appointed officers.

B. City Attorney (Prosecutor): The City Prosecutor is an attorney who prosecutes violations of City code and state law within the city. The City Prosecutor reviews violations referred to them and uses their discretion to determine whether, how, and in what manner to prosecute a particular matter, including the negotiation of plea bargains and similar arrangements. The Prosecutor generally operates under the direction of the Mayor and City Administrator, but is not typically given direction on handling specific cases.

C. City Engineer: The City Engineer is also the City's public works director. The Engineer reviews plans, projects, and plats, oversees the city's utility systems, roads, and other infrastructure, and manages and prioritizes public construction and improvement projects. The Engineer also develops and enforces construction and design standards and other requirements in connection with new development and provides technical and professional experience and oversight in the development process. The City Engineer operates under the direction of the City Administrator, but is also responsible for reporting on and making recommendations regarding the City projects, property, and systems to the Council and Mayor.

D. City Finance Director: The City Finance director takes on certain auditing, reporting, and other finance duties and responsibilities that would otherwise belong to the City Recorder. The City Finance Director helps perform or oversee auditing and reporting requirements mandated by law and helps prepare, monitor, and report on the City's budget. The City Finance Director is an authorized signor for the issuance of City funds. The City Finance Director makes regular reports to the City Council on the financial status of the City. The City Finance Director generally operates under the direction of the City Administrator, but also works directly with and takes direction from the Mayor and Council on budgetary matters.

D. City Recorder: The City Recorder is responsible for making and keeping records of all City Council meetings, including meeting minutes and recordings, as well as keeping, managing, and facilitating appropriate public access to all official City records, such as Council decisions, ordinances, resolutions, and contracts. The City Recorder countersigns most City contracts and maintains and uses the City seal. The City Recorder is also the City's election official. The City Recorder is primarily responsible for posting agendas and notices of meetings. The City Recorder operates under the direction of the City Administrator, but should be contacted by elected officials to access city records, to provide notice of special or emergency meetings, and to add items to an agenda.

E. City Treasurer: The City Treasurer is the custodian for all money, bonds, or other securities of the City, oversees the receipt of all money payable to the

City and the issuance of receipts for such money, oversees business licenses issuance, renewal, and compliance issues, and is an authorized signor for the issuance of City funds. The Treasurer assists with accounting and other financial duties as assigned, consistent with state law and sound accounting and fraud prevention practices. The City Treasurer operates under the direction of the City Administrator and City Finance Director,

F. Justice Court Judge: The justice court judge hears and decides criminal and other cases under the judge's jurisdiction, as defined by state law. The judge does not directly report to any city official. The judge's work and tenure are subject to state-wide statutes, rules, and regulations on judicial conduct, court proceedings, reporting, and related matters.

G. Police and Fire Chiefs: These officers are appointed and managed by the Lone Peak Public Safety District Board.

1.6 City Staff: City Staff are all other City employees who are not appointed officers. City Staff are hired, managed, and dismissed by the City Administrator pursuant to the personnel policies and regulations adopted by the City Council.

2. GENERAL RULES OF MEETINGS

2.1 Public Meetings: All official meetings of the City Council and other meetings where a quorum of the City Council is present (except where State or local law allows for closed sessions) shall be open to the public. A quorum consists of three (3) Council Members, not including the mayor. Records, recordings, and minutes of meetings shall be kept and made available to the public as expeditiously as possible, in accordance with state law.

2.2 Location: The default location for all meetings is Highland City Hall, 5400 West Civic Center Drive, Highland, UT 84005. Other locations may be used for non-regular meetings as designated by the Mayor, and the location for regular meetings may be changed by the Mayor, or at the written request of at least three (3) Council Members subject to appropriate notice. Electronic meetings may be held in accordance with state and city code.

2.3 Types of Meetings:

A. Regular Meetings: The City Council shall meet at least once per month in accordance with the annual meeting schedule as approved or as amended.

B. Special Meetings: Special City Council meetings may be called by the Mayor or any two (2) Council Members by giving written notice to the City Recorder and City Administrator. Written notice may be provided by email. Notice of special meetings shall be provided to the City Council, Mayor, and the public as required by law.

C. Emergency Meetings: Emergency Meetings may be called by the Mayor or any two (2) Council Members to consider matters of an emergency or otherwise urgent nature. The best practicable public notice shall be given.

D. Closed Meetings: The City Council may move into a Closed Meeting (also known as an Executive Session) to discuss topics provided for under state law. Moving into a Closed Meeting requires a two-thirds (2/3) vote of the City Council present (4 votes if 5 members present, 3 votes if 4 members present).

E. Work Sessions: The City Council may meet informally in Work Sessions (open to the public) to review upcoming programs of the City, to receive progress reports on current programs or projects, and to discuss policy issues. No final action may be taken in a Work Session.

F. Retreats: The City Council may meet informally in Retreats (open to the public) to discuss a variety of issues facing the City. While broad general direction may be given, no final action may be taken in a Retreat.

G. Electronic Meetings: The City Council may conduct electronic meetings where one (1) or more of its members participate remotely by telecommunication in accordance with state and city code. Members so participating shall be considered present at the meeting for all purposes, and shall be afforded every opportunity to participate in the discussion of agenda items and cast their vote on issues coming to the Council for a vote.

3. AGENDA PROCEDURE

3.1 The Mayor, City Council, and City Administrator may establish or add items to the City Council's agenda as set forth herein:

A. The City Administrator, together with the City Recorder and other City officers and staff, has the primary responsibility for creating and posting an agenda in advance of each meeting. The items on the agenda created by the City Administrator shall be those items previously requested or considered by the Mayor or City Council, items requested by residents or other appropriate parties, and other items that the City Administrator determines are appropriate for the Council to consider.

B. The Mayor may add or remove any item on an agenda, provided that if an item was requested by two (2) or more Council Members, the Mayor shall not remove or reschedule the item without the approval of both of the requesting Council Members.

C. Two (2) or more Council Members may add any item to the agenda by providing a written request to the mayor or city administrator outside of a meeting prior to the scheduled Council meeting or by formally requesting the item during a Council meeting. Requested items shall be added to the next available agenda. At the request of both of the requesting Council Members, the item may be removed from the agenda or postponed to a future agenda.

3.2 Discussion items may be placed on any agenda by the Mayor, City Administrator, and any single Councilmember, though no final action can be taken. If desired, items can be referred to a future agenda for further discussion and potential action.

3.3 Agenda Reports and Presentations:

A. City staff, under the direction of the City Administrator, shall prepare a staff report for all non-discussion items on an agenda. The staff report shall describe applicable legal standards and considerations, factual background and historical information, and staff's recommendation based on the same. Staff shall also prepare a presentation for such items that staff will present to the City Council during the meeting.

B. If an item was requested by Council Members or the Mayor, the requesting person(s) shall be entitled to provide additional reports, materials, information, and presentations beyond those prepared by City staff. Such material shall be provided to staff as soon as possible prior to the meeting if the requester desires the material to be included with the agenda and staff reports. Staff shall include, publicize, and post such material with the posting of the agenda and staff reports if possible. The requesters shall be entitled to present any desired materials or information to the City Council during the meeting in addition to materials presented by staff.

4. MEETING MANAGEMENT

4.1 Presiding Officer: The Presiding Officer for all meetings shall be the Mayor, or, if the Mayor is absent, the Mayor Pro Tempore designated by the Council.

4.2 General Rules: The Presiding Officer shall conduct all meetings in accordance with these simplified rules of order. Strict adherence to these rules is not required, and meetings shall be managed to allow for orderly, civil, and productive decision-making. The Presiding Officer shall open and introduce each item on the agenda in order, unless they believe there is a good reason to go out of order. The Presiding Officer shall generally allow a free-for-all discussion of each item, but may limit comments and discussion by time or topic in order to preserve order, civility, and decorum. The City Council may, with a motion, a second, and majority vote, suspend or modify the rules of order for any portion of a meeting.

4.3 Ending Discussion: The Presiding Officer may end a discussion and, if appropriate, call for a vote on an item at any time if the Presiding Officer believes that there has been sufficient discussion on an item. The City Council also may, with a motion (i.e., calling the question), a second, and at least a majority affirmative vote, end any debate or discussion and allow for, if appropriate, a motion to be made on the item being discussed.

4.4 Motions to be Clear: The Presiding Officer shall ensure that all motions submitted for a vote are clearly understood by the City Council and that individual Councilmembers have the opportunity to ask any clarifying questions.

4.5 Call for Vote: The Presiding Officer shall call for a voice vote or a roll call vote. A roll call vote shall be taken for all ordinances, resolutions, or actions which may create a liability against the City. The Presiding Officer shall announce the result of the vote. The meeting minutes shall indicate the results of the vote and the vote of each Council Member for all roll call votes. In general, Council Members should vote "yea" or "nay" on all items and should not abstain from voting unless they are

recusing themselves from the decision. In the event a Council Member abstains or otherwise refuses to vote, the abstention does not count as either a "yea" or "nay" vote. If abstention results in a tie vote (e.g., 2-2), the Mayor votes.

5. ORDER OF BUSINESS

The general rule as to the order of business in meetings shall be as outlined below. Each of these items are held only as needed and as directed by the Mayor. The Presiding Officer, or the Council though a motion, a second, and majority vote, may adjust the order of business as expedient.

A. Call to Order, Invocation, and Pledge of Allegiance

B. Public Comments - Time is set aside for the public to express their ideas, concerns, and comments on items not set for a public hearing. No formal action is taken on items brought up during public comments, but the City Council may direct staff to follow-up on items and/or schedule them with necessary public notice for future meetings.

C. Presentation Items - Informational presentations or updates that do not require formal Council action, but may include direction given to staff for future formal consideration.

D. Consent Items - Minutes of preceding meetings, items that have previously received a preliminary approval by the City Council, administrative matters, and other items that are routine but require final or formal approval by the City Council. Council may vote on all items at once or may pull one or more items from Consent for further discussion.

E. Action Items - Items that are scheduled for City Council consideration. This may include ordinances, resolutions, agreements, public hearings, or other city business. The steps for each item shall be generally as follows, with the Council permitted to ask clarifying questions throughout the process as necessary, provided that for expedited items, the process may be shortened or streamlined:

(1) Presiding Officer calls the item;

(2) Staff gives a brief report and recommendation;

(3) The individual who requested the item presents (Mayor, Council, applicant, etc.);

(4) The Presiding Officer opens a public hearing and allows public comment if the item requires a public hearing;

(5) Requester may, if invited by the Presiding Officer, give a response;

(6) The City Council discusses and may request clarification or additional input from the staff or applicants through the Presiding Officer

(7) City Council takes action on the issue.

F. City Reports, Communication, and Discussion Items - These items are meant to be informational, facilitate discussion, or introduce potential future agenda items. These items do not require formal City Council action, and may be added by the Mayor, Council, Administrator, or Staff. Typical items would be upcoming action items, community events, announcements, reporting back by staff on previous tasks, or reports by Council Members on their assignments or items of concern.

G. Executive Session – The agenda generally includes an item allowing for a closed session. The Council will specify the reason for the closed session during the meeting if necessary.

6. PUBLIC COMMENT

6.1 Purpose: The Council may wish to take public comment on an issue to be better informed prior to making a decision on the issue. Public comment is not required for all issues, though some Council items require a formal Public Hearing as outlined in Utah State Code.

6.2 In all cases where the Council is hearing from the public, in the interest of maintaining a fair and efficient meeting, the following guidelines shall be adhered to unless specifically permitted by the Presiding Officer, who retains flexibility in managing public comment.

A. The Presiding Officer may designate a maximum duration for the public comment period and for individual comments. Individual comments shall generally be limited to three (3) minutes, and repetition of comments should be discouraged. The Presiding Officer retains discretion to limit, disallow, or allow comments as appropriate.

B. Each person addressing the City Council shall be called forward and shall state their name and city of residence for the record. All remarks shall be addressed to the City Council as a body, and not to any specific member(s) thereof or to staff. The Council Members may request clarification or additional input from the staff, applicants, or the general public through the Presiding Officer during the public comment.

C. The Presiding Officer closes the public comment period. No further remarks by the public will be heard once the period is closed, unless specifically invited by the Presiding Officer. If an item involves an application or request from a resident or other person, the Presiding Officer may allow such person to respond to the public comments.

7. TYPES OF MOTIONS AND RECONSIDERATION

7.1 Motions: Except where specific requirements are given in State or Municipal code, all motions shall require a second and a minimum of three (3) affirmative votes to be approved.

7.2 Motions Requiring A Two-Thirds Vote: Motions to move into a closed meeting or to expel a member of the City Council or the public shall require a motion, a second, and two-thirds (2/3) vote of the Council: votes with 5 or 6 voters require a minimum of 4 affirmative votes, and votes with 4 or fewer voters require a minimum of 3 affirmative votes.

7.3 Motions to Reconsider a Decision: Any two (2) Council Members, one of which voted in the majority on a motion approved by the City Council, may request a reconsideration of the action at the same meeting. Reconsideration shall follow the two-step process below:

A. A Council Member makes and another seconds the motion to reconsider. One of these must have voted in the majority on the motion approved by the City Council earlier. The Council may discuss whether to reconsider the item. A motion to reconsider must be approved by a majority vote.

B. Motion on the Item: When the majority vote to reconsider the item, the discussion and subsequent vote on the item may only take place at the same meeting as the original action. Otherwise, the item must become a new item on a future agenda with appropriate public notice.

7.4 Other Motions: The City Council may make other motions as appropriate. Appendix A contains is a summary of common motions and related procedures.

8. MAYOR, COUNCIL, AND STAFF INTERACTION

8.1 Mayor/Council/Administrator Relationship. Maintaining regular and open communication among the Mayor, Councilmembers, and the City Administrator regarding key projects and issues is important so that all remain well-informed and so that each individual can effectively perform their roles, duties, and obligations.

8.2 Mayor/Council/Staff Relationship. Staff, including all City Officers, are overseen and managed by the City Administrator. The Mayor and Council Members should not attempt to influence the actions, decisions, recommendations, workloads, work schedules, or priorities of Staff, nor should the Mayor or any individual City Council member issue orders, discipline, or direction to, or attempt to adjust the employment conditions of any subordinate of the City Administrator, either publicly or privately. The primary exception to this is for City Officers who work directly with the Mayor and City Council on particular projects, such as the City Engineer on a public construction project, the City General Counsel on a pending legal matter, or the City Finance Director on the City budgeting process. Otherwise, the Mayor and Council Members should work to develop and enact policy and direction priorities through the public meeting and agenda process that the City Administrator and Staff can execute. Below are guidelines for Council Members to follow when interacting with Staff:

A. The Mayor and Councilmembers may reach out to Staff directly to request information that is readily available, or to discuss questions about a minor issue, or to receive an update on a particular project.

B. The Mayor and Councilmembers should direct requests for information that is not readily available, or that will require Staff to dedicate time to researching an issue to the City Administrator as they are better equipped to manage work-flow.

C. The Mayor and Council Members should place requests for new policies or staff projects on an agenda, as either a discussion or action item, in order to allow the entire elected body to be part of the discussion and determine the appropriate direction.

APPENDIX A – Motion Procedures and Examples

1. INITIAL MOTION

At the appropriate time, a Council Member makes a motion that explains what action the Council Member would like the Council to take. If the Council does not wish to take action regarding an item, then a Motion to Table is appropriate.

> "I move that the City Council adopt Ordinance Number 2022-01 rezoning Developer XYZ's property"

The Council Member may then add additional statements or findings to the motion.

> "...and find that the rezone will be in the public interest and provide for a community need for agricultural property that is not being met."

Findings are not always required. Often resolutions and ordinances will be drafted with a preamble ("WHEREAS...") that explains the purpose and need for the resolution or ordinance. In those circumstances, no additional statements or findings are necessary, unless the Council Member wants to change anything about the document as written:

> "I move that the City Council adopt Ordinance Number 2022-01, with the change to require a 20 foot front yard setback instead of a 30 foot front yard setback."

2. SECONDING A MOTION

Each motion must be seconded (supported) by a different City Council Member with language along of the lines of, "I second the motion." If no Council Member seconds the motion, the motion dies, and the Council may have further discussions or make alternative motions, such as to approve with different terms, continue, table, or reject the item.

3. DISCUSSION

After a motion is made and seconded, the Presiding Officer then asks if the Council has any further questions, discussions, or motions to make regarding the pending motion. Sometimes a Council Member will want to amend the initial motion to clarify or change something about how the motion was presented:

> "I move to amend the pending Motion to require a 25 foot front yard setback."

This motion must be seconded and voted upon. As with any other motion, if there is no second, or if a majority does not vote in favor of the motion to amend, then that motion fails, and the Presiding Officer calls for further discussion or a vote on the original motion.

4. VOTE

After any final discussion or additional motions, the Presiding Officer calls for a vote on the motion. In general, motions must be supported by a majority of those present, with a minimum of 3 affirmative votes. Votes may be voice votes, where all members vote "yea" or "nay" at the same time, or roll call votes, where each member is called by name to give their vote. Roll call votes are required for resolutions, ordinances, and anything that creates a liability against the City, such as a contract.

COMMON MOTIONS

GENERAL MOTION: "I move to adopt/approve/accept [DESCRIBE ITEM]"

MOTION ON A CONTRACT: "I move to approve the [NAME OF CONTRACT] with [PERSON OR ENTITY] and authorize the Mayor/Chair/City Administrator to execute the same."

MOTION ON A RESOLUTION OR ORDINANCE: "I move to adopt/reject Resolution/Ordinance number X."

MOTION TO AMEND: "I move to amend the pending motion as follows"

Alters a pending motion. Any motion may be amended by any member including the original maker of the motion. Informal amendments to the motion may be made as long as the original motioner and the seconder agrees with the amendment. Other formal amendments require a second. Debate and voting on the motion to amend occurs first and is decided before returning to the motion itself.

MOTION TO CONTINUE: "I move to continue Agenda Item #X to the following meeting."

Continues an item for further discussion. The Council may set a specific date and time or give general direction for staff to bring the item back later. The Council may give direction on additional information desired by the Council.

MOTION TO TABLE: "I move to table Agenda Item #X."

Suspends current discussion of an item without a decision and without rescheduling it for further consideration. The Council may give direction on when or if to bring the item back to the Council.

MOTION TO CALL THE QUESTION: "I move to call the question on Agenda Item #X."

Ends discussion and debate on an item and calls for a vote. If the motion to call the question is seconded, a vote is taken immediately on whether to end debate on the matter. If the motion passes, then the underlying matter is put to a vote without further discussion or debate.

MOTION TO RECONSIDER: "I move to reconsider Agenda Item #X."

Reconsiders an item already voted on during a meeting. Any two (2) Council Members, one of which voted in the majority on a motion approved by the City Council at the same meeting as the motion to reconsider, may request a reconsideration of the action. Motion to reconsider requires a second and majority vote. If a Council Member would like to reconsider an action taken at a previous city council meeting, the item must be brought forward as an action item on a future meeting agenda. If a special meeting is held to reconsider an item, the same number of council members must be present at the special meeting as were present at the meeting where the original action was taken.

A RESOLUTION AMENDING THE HIGHLAND CITY PERSONNEL POLICIES AND PROCEDURES

WHEREAS, the Highland City Council is authorized, pursuant to Utah Code § 10-3-1103 and Utah Code § 10-3-717, to adopt personnel policies and procedures to govern Highland City officers, staff, and other personnel;

WHEREAS, the Highland City desires to update its existing personnel policies to conform to current city ordinances and procedures regarding city officers and department heads;

NOW THEREFORE, BE IT RESOLVED by the Highland City Council as follows:

SECTION 1. The City Council approves and adopts the amendments to the Highland City Personnel Policies and Procedures Manual, attached hereto as Exhibit A.

SECTION 2. Only those portions of the Highland City Personnel Policies and Procedures Manual expressly described and set forth herein are amended; all other sections, policies, and provisions of the Personnel Policies and Procedures Manual not expressly amended herein remain in effect.

SECTION 3. All other versions of the Highland City Personnel Policies and Procedures Manual are hereby superseded and replaced.

SECTION 4. This resolution shall take effect immediately upon adoption.

RESOLVED AND PASSED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH, this _____ day of _____, 2023.

_____
Kurt Ostler, Mayor

ATTESTED:

_____
Stephannie Cottle, City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

Amendments to Highland City Personnel Policies and Procedures Manual

SECTION 10: TERMINATION OF EMPLOYMENT

1. TYPES OF TERMINATION.

Any involuntary termination or termination of any employee who is allowed to resign, in lieu of an involuntary termination, ~~may~~ should be reviewed with legal counsel before termination is pursued. ...

G. Appointed Positions ~~and Department Heads~~. Appointed positions ~~and department heads~~ may be discharged at any time with or without cause ~~for no reason~~ by the City Administrator with either the consent of the Mayor and majority of the members of the City Council, or the consent of all members of the City Council without the consent of the Mayor. Appointed positions may also be removed by the mayor with the consent of a majority of the members of the city council.

H. Department Heads. Department heads may be discharged at any time with or without cause by the City Administrator. The City Administrator should review such potential discharge with legal counsel and the Mayor before termination is pursued.

...

6. SEVERANCE

A. This section applies only to the following individuals whose employment is not otherwise governed by a written contract. If an appointed officer or department head has a written contract, the terms of such contract supersede any contrary term or provision set forth herein:

(1) Appointed officers:

(~~1~~a) Police Chief (if subject to this policy)
(~~2~~b) Fire Chief (if subject to this policy)
~~(3) City Librarian~~
(~~4~~c) City Engineer
(~~5~~d) City Recorder
(~~6~~e) City Treasurer
(~~7~~f) City Attorney
(g) Justice Court Judge
~~(8) Public Works Director~~
(h~~9~~) City Finance Director
~~(10) Community Development Director~~

~~(11) Assistant to the City Administrator~~
(~~12~~i) City Administrator
(j) Other offices created by statute or ordinance

(2) Department heads (if role is not filled by an appointed officer):

(~~3~~a) City Librarian
(~~8~~b) Public Works Director
(~~10~~c) Community Development Director
(~~11~~d) Assistant to the City Administrator
(e) Other department heads as established by policy

B. Definitions.

(1) "For Cause" in this section means:

(a) Criminal conduct, regardless of whether criminal charges were filed or a conviction was obtained.
(b) Repeated violation of City policies and procedures.
(c) Misconduct.
(d) Negligent or inadequate performance of one's duties.
(e) Harassing behavior that creates a negative work environment for others.
(f) Dishonesty.
(g) Misuse of City funds or property.
(h) Insubordination.

(2) "Severance" means twelve (12) weeks' salary or earnings, plus vacation time and any accrued overtime comp time that has accrued prior to and up to the date of separation, less all applicable deductions and withholdings. A person paid severance is not entitled to any additional accrual or payment of ~~vacation,~~ sick-time~~,~~ or administrative comp time.

C. No notice is required prior to discharge of those individuals listed in subsection ~~5~~6(A)~~, who may be discharged by the mayor with the affirmative consent of the majority of the City Council~~.

D. An employee listed in subsection ~~5~~6(A) with at least one year of service who is discharged from the City for any reason other than for cause, shall receive ~~twelve (12) weeks'~~ severance. ~~In addition to severance, the terminated employee shall be paid for vacation time that has accrued prior to the date of separation. A terminated employee shall not be paid for accrued sick leave or administrative comp time, which expire upon termination.~~

E. Severance is contingent upon an employee signing the City's severance and release agreement.

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #8c

DATE: February 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Rob Patterson, City Attorney
SUBJECT: **RESOLUTION:** Appointment of City Officers
TYPE: **GENERAL CITY MANAGEMENT (LEGISLATIVE)**

PURPOSE:
The City Council will consider consenting to and ratifying the appointment of all city officers. The Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends the Council consent to the appointment of all city officers as currently serving.

PRIOR COUNCIL DIRECTION:
The Council has discussed and adopted changes to the City's code and policies regarding City officers, including the creation of a new office—the City Finance Director.

BACKGROUND:
In connection with the draft changes to the City's policies and codes regarding city officers, city staff reviewed all current officers to determine when or if they were appointed by the mayor with the advice and consent of the city council. Upon review, it was unclear for some officers when or if they were actually appointed in accordance with city code. Further, the city council has considered and will have likely adopted a city code amendment that creates the new office of city finance director.

Accordingly, staff believed it would be helpful and clarifying for the city council to officially ratify the appointments that have previously been made and confirm all city staff that are currently operating as city officers. This will not change any employment status or position of any of the named employees or officers.

FISCAL IMPACT:
No fiscal impact.

PROPOSED ACTION:
I move that the Highland City Council ADOPT the Highland City Resolution ratifying and consenting to the appointment of all Highland City Officers.

ATTACHMENTS:

1. Resolution 2023-XX, Appointing Highland City Officers

A RESOLUTION CONSENTING TO AND RATIFYING THE APPOINTMENT OF CITY OFFICERS

WHEREAS, the Highland City code requires all city officers to be appointed by the mayor with the advice and consent of the city council;

WHEREAS, the Mayor has appointed certain individuals to serve in the various city offices;

WHEREAS, the Highland City Council desires to provide its advice and consent to such appointments and, in the case where individuals have previously been serving in such office, to ratify and confirm such existing appointments:

NOW THEREFORE, BE IT RESOLVED by the Highland City Council as follows:

SECTION 1. The City Council consents to the following individuals serving in the following appointed offices:

a. City Attorney (General Counsel): Johnson, Patterson & Yellowhorse, Robert Patterson

b. City Attorney (Prosecutor): James "Tucker" Hansen

c. City Engineer: Andrew Spencer

d. City Finance Director: Tyler Bahr

e. City Recorder: Stephannie Cottle

f. City Treasurer: Candice Linford

g. City Justice Court Judge: Kelly Schaeffer-Bullock

h. City Police and Fire Chiefs: As appointed by the Lone Peak Public Safety District

SECTION 2. Nothing herein shall replace, terminate, alter, modify, amend, or supersede any existing contract, policy, or condition of employment related to the employment and service of such individuals as such may currently exist.

SECTION 3. This resolution shall take effect immediately upon adoption.

RESOLVED AND PASSED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH, this _____ day of _____, 2023.

_____

Kurt Ostler, Mayor

ATTESTED:

_____

Stephannie Cottle, City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

AGENDA

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #9a

DATE: February 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Andy Spencer, City Engineer/Public Works Director

SUBJECT: **DISCUSSION:** Parks Division Operation Building

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will discuss the proposed City Parks Division operations building (parks building) and the recent decision to place the parks building at the Community Center site. The Council will take no action as this will be a discussion item only.

STAFF RECOMMENDATION:

Staff recommends City Council discuss potential site plan options at the Community Center and provide staff further direction.

PRIOR COUNCIL DIRECTION:

On January 17, 2023, the City Council denied the bids that were received for the parks building and directed staff to further investigate placing the parks building at the Community Center site.

BACKGROUND:

Staff has considered the options for the site plan at the Community Center. Staff has narrowed the options considered to a final choice between two options.

Option #8 places the building along the eastern site property line with the building openings facing west. This option allows for more separation between the buildings and may facilitate better the use of a metal structure. Option #8 provides 26 new parking spaces for the Community Center. It also allows for an additional entrance to the Community Center from Alpine Highway.

Option #9 places the building 9-feet away from the Community Center with the building openings facing north. This provides the most parking for the Community Center. with 34 new parking spaces. With this layout, an access to Alpine Highway would still be added, but would be restricted to City vehicles only as it would enter directly into the Parks Building yard.

There has been recent discussion amongst the Council regarding the structure constructed at the northwest corner of Alpine Highway and Canal Blvd. This structure is 5,600 sq. ft. and 35-tall to the roof peak. The parks building is proposed as +/-6,500 sq. ft. The roof height will be approximately 30-feet. As such, the parks building will be a similar size and scale to the building located at the northwest corner of Alpine Highway and Canal Blvd. In either option, the parks building will be a contrast both from a size and architectural standpoint to the existing Community Center. That contrast will be especially evident in Option #9 as the parks building is only 9-feet away from the Community Center. In either case, Council may want to consider a different construction methodology to more closely align with the existing Community Center building and minimize the contrast.

Both options have additional drawings included that show the anticipated daytime and overnight parking when the parks building is operating at peak staffing. It is anticipated that winter usage at the parks building will be contained within the fenced enclosure.

FISCAL IMPACT:

The cost estimates for Option #8 for a wood construction to match the existing structure is $1,818,921 or $1,639,896 for a metal structure. For Option #9, costs are estimated as $1,852,638 for a wood structure or a metal structure is estimated at $1,672,073.

ATTACHMENTS:

1. Parks Building Site Design Option #8 (3 pages)
2. Parks Building Site Design Option #9 (3 pages)
3. Photo of an existing building of similar size and configuration. (2 pages)

HIGHLAND CITY

COST ESTIMATES

Unit Price

- **Wood Framed Building, $ 200 /SF**
- **Metal Building, $ 175 /SF**
- **Site Work $ 12 /SF**

Area

- **Building, 6,510 SF**
- **Site Work, 29,297 SF**

Cost Estimate

- **Wood Framed Building, $ 1,302,000**
- **Metal Building, $ 1,139,250**
- **Site Work, $ 351,564**
- **+10% Contingency**

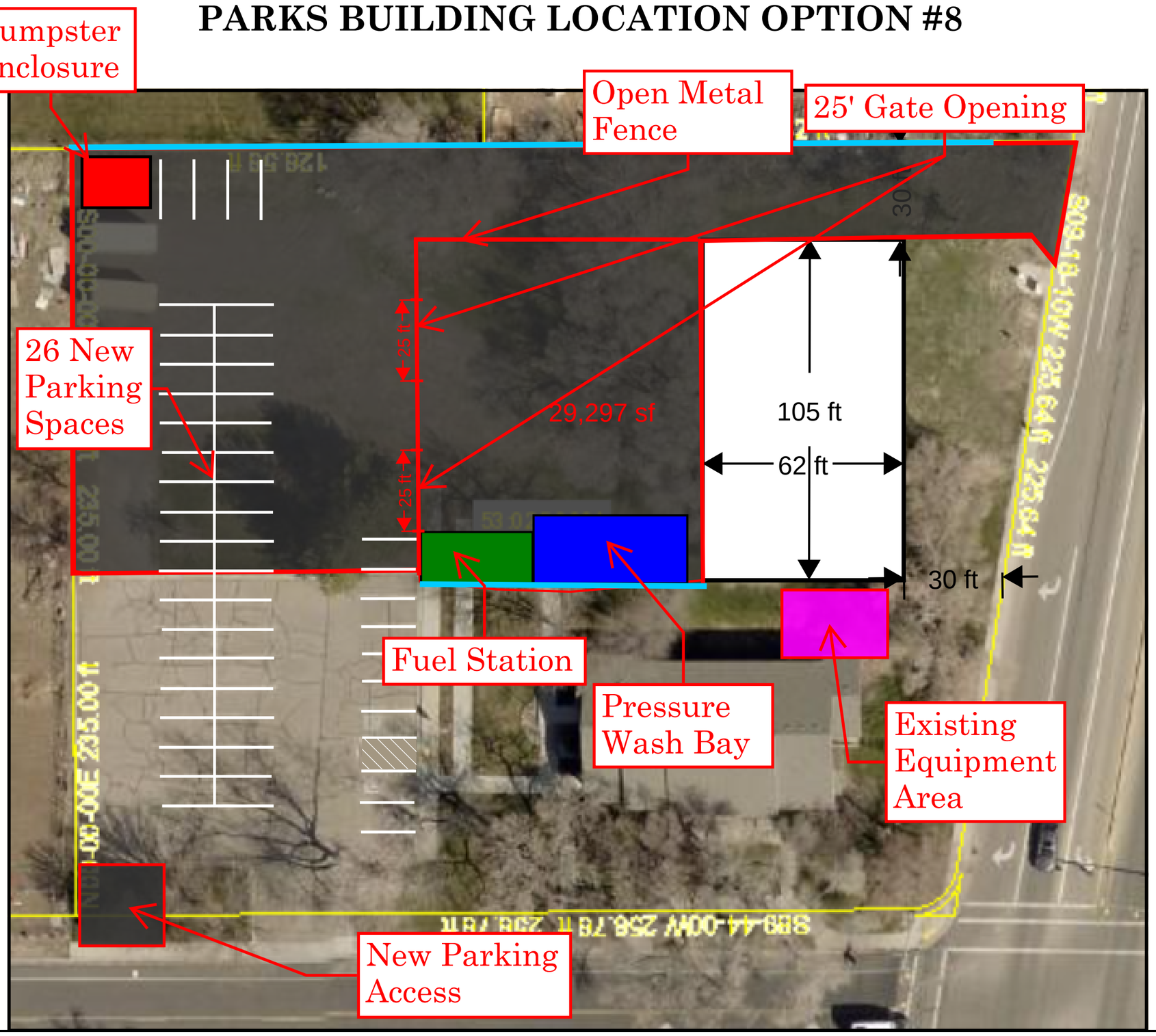
Total (Wood Framed Building):

$ 1,818,921

Total (Metal Building):

$ 1,639,896

PARKS BUILDING LOCATION OPTION #8



HIGHLAND CITY

COST ESTIMATES

Unit Price

- Wood Framed Building, $ 200 /SF
- Metal Building, $ 175 /SF
- Site Work $ 12 /SF

Area

- Building, 6,510 SF
- Site Work, 29,297 SF

Cost Estimate

- Wood Framed Building, $ 1,302,000
- Metal Building, $ 1,139,250
- Site Work, $ 351,564
- +10% Contingency

Total (Wood Framed Building):

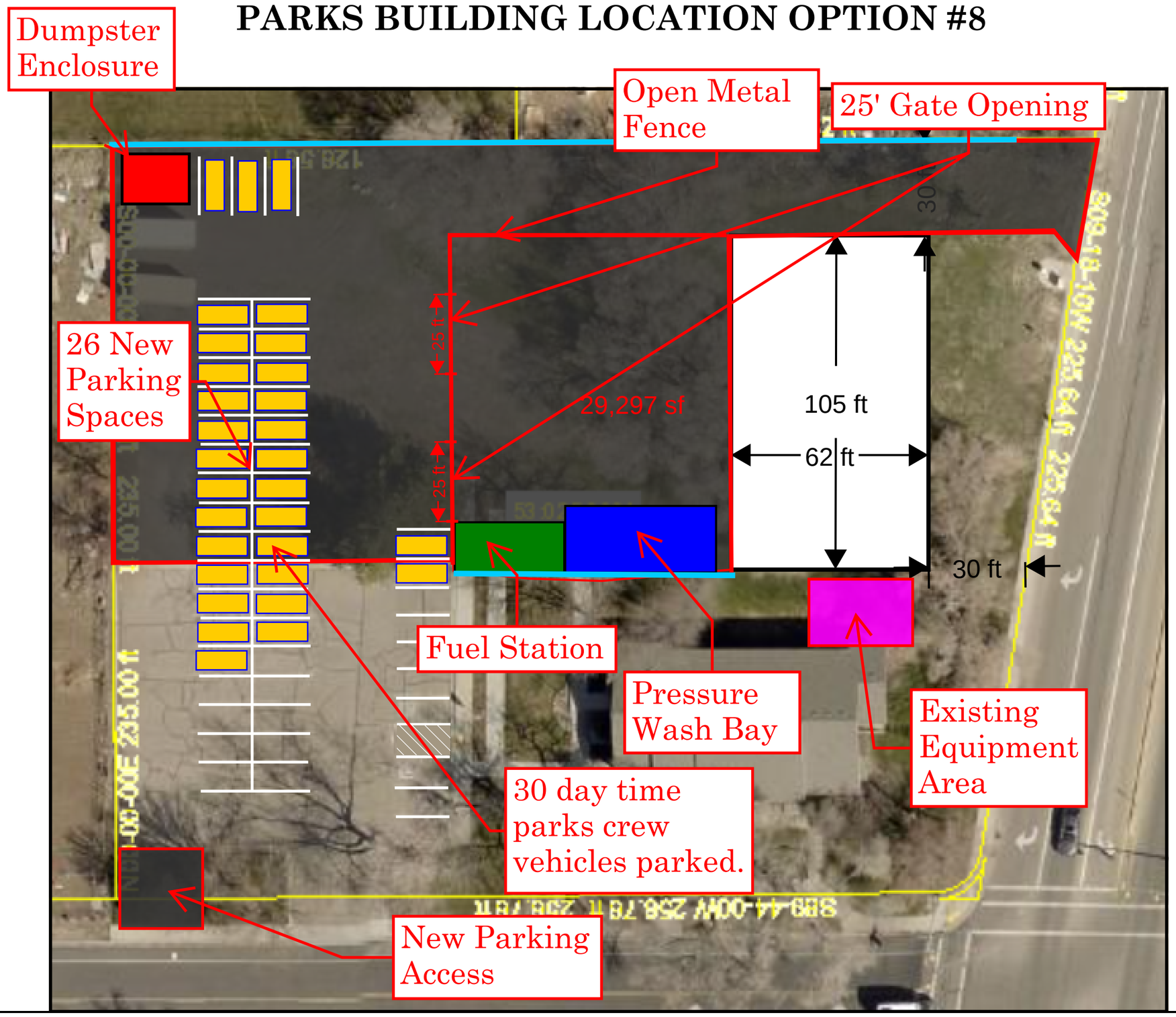
$ 1,818,921

Total (Metal Building):

$ 1,639,896

Day time Parking

PARKS BUILDING LOCATION OPTION #8



HIGHLAND CITY

COST ESTIMATES

Unit Price

- **Wood Framed Building, $ 200 /SF**
- **Metal Building, $ 175 /SF**
- **Site Work $ 12 /SF**

Area

- **Building, 6,510 SF**
- **Site Work, 29,297 SF**

Cost Estimate

- **Wood Framed Building, $ 1,302,000**
- **Metal Building, $ 1,139,250**
- **Site Work, $ 351,564**
- **+10% Contingency**

Total (Wood Framed Building):

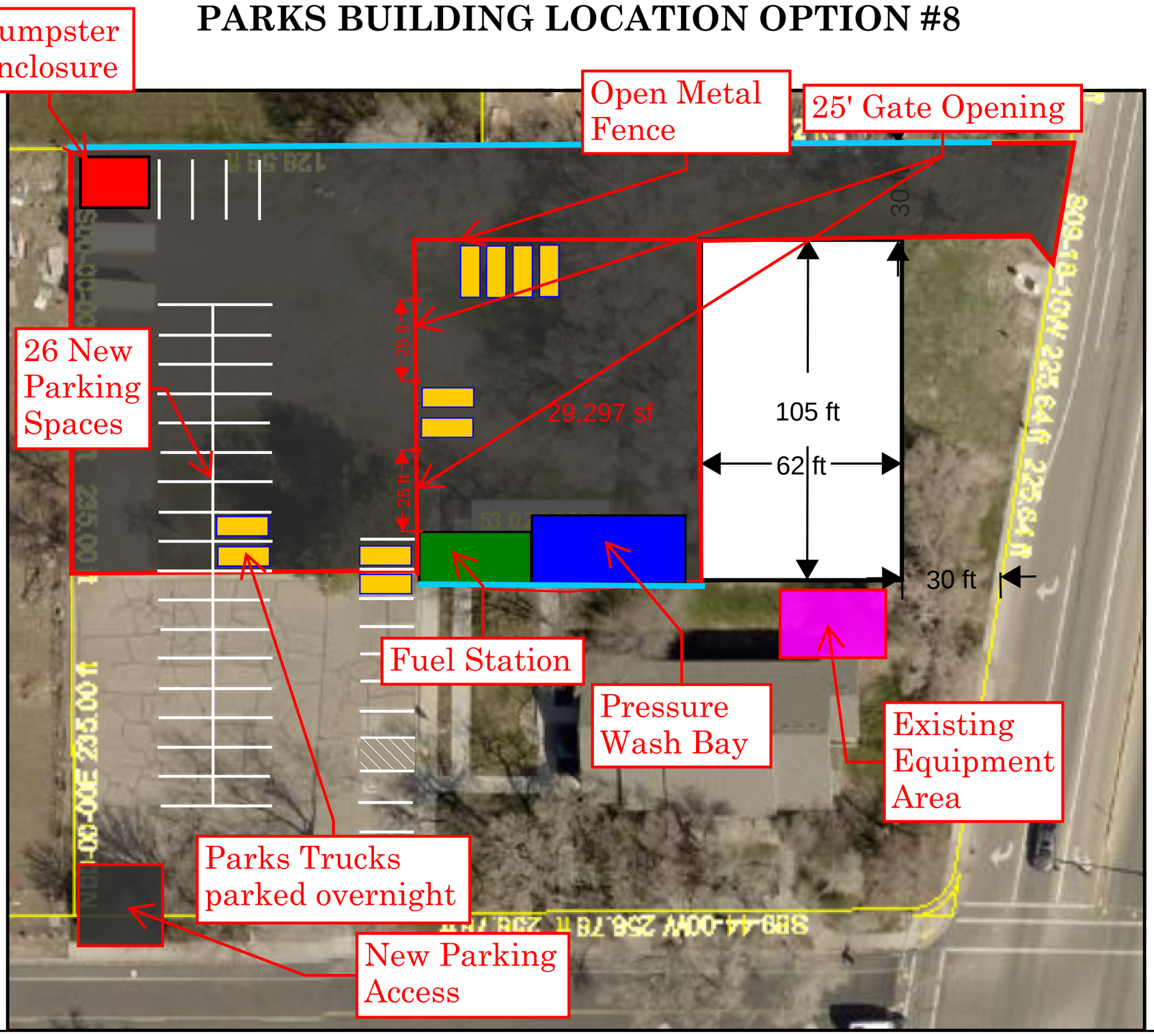
$ 1,818,921

Total (Metal Building):

$ 1,639,896

Overnight Parking

PARKS BUILDING LOCATION OPTION #8



HIGHLAND CITY

COST ESTIMATES

Unit Price

- Wood Framed Building, $ 200 /SF
-Metal Building, $ 175 /SF
- Site Work $ 12 /SF

Area

- Building, 6,566 SF
- Site Work, 30,918 SF

Cost Estimate

- Wood Framed Building, $ 1,313,200
- Metal Building, $ 1,149,050
- Site Work, $ 371,016
- +10% Contingency

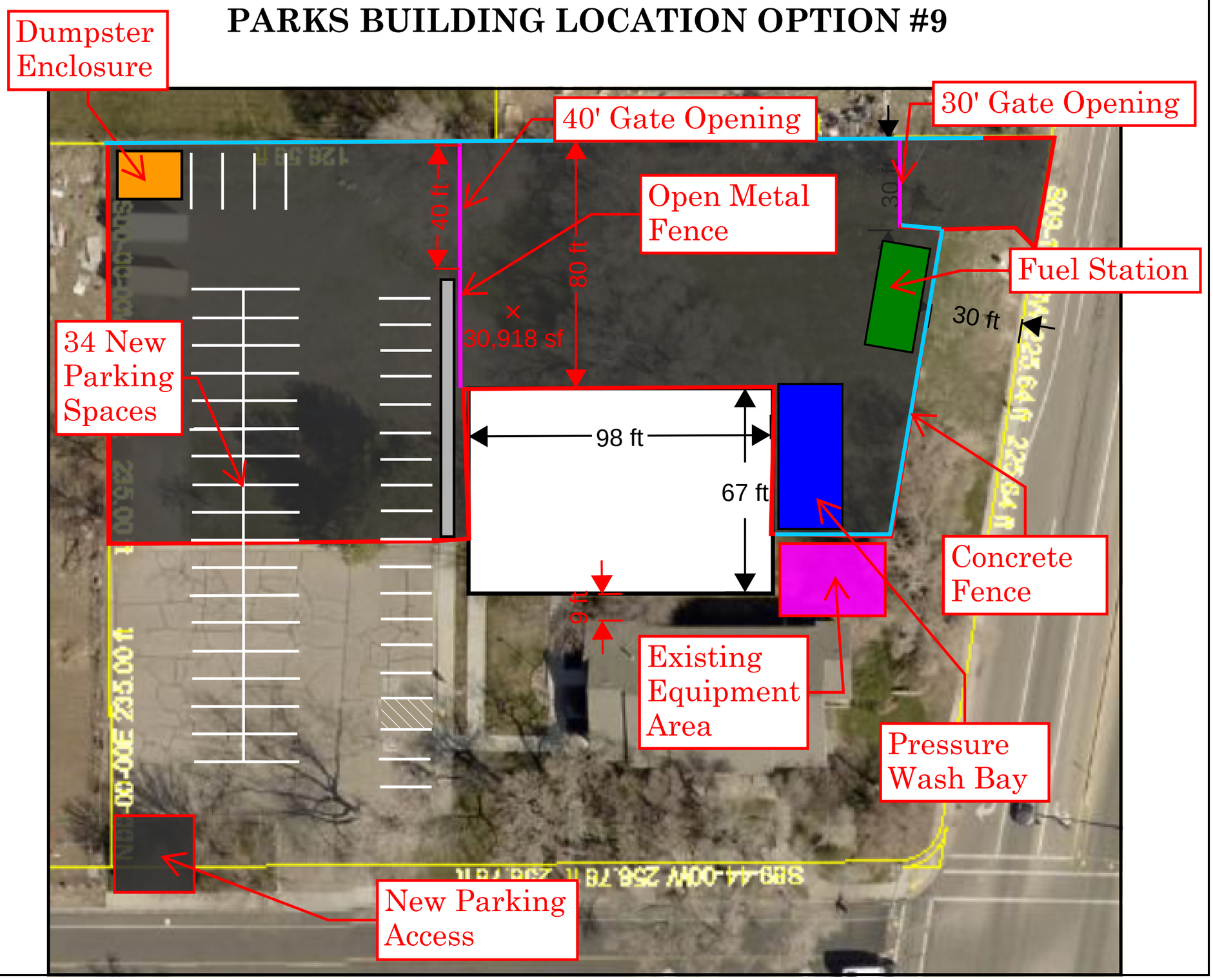
Total (Metal Building):

$ 1,672,073

Total (Wood Framed Building):

$ 1,852,638

PARKS BUILDING LOCATION OPTION #9



HIGHLAND CITY

COST ESTIMATES

Unit Price

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-Metal Building, $ 175 /SF
- Site Work $ 12 /SF

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- Site Work, 30,918 SF

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- Metal Building, $ 1,149,050
- Site Work, $ 371,016
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Total (Metal Building):

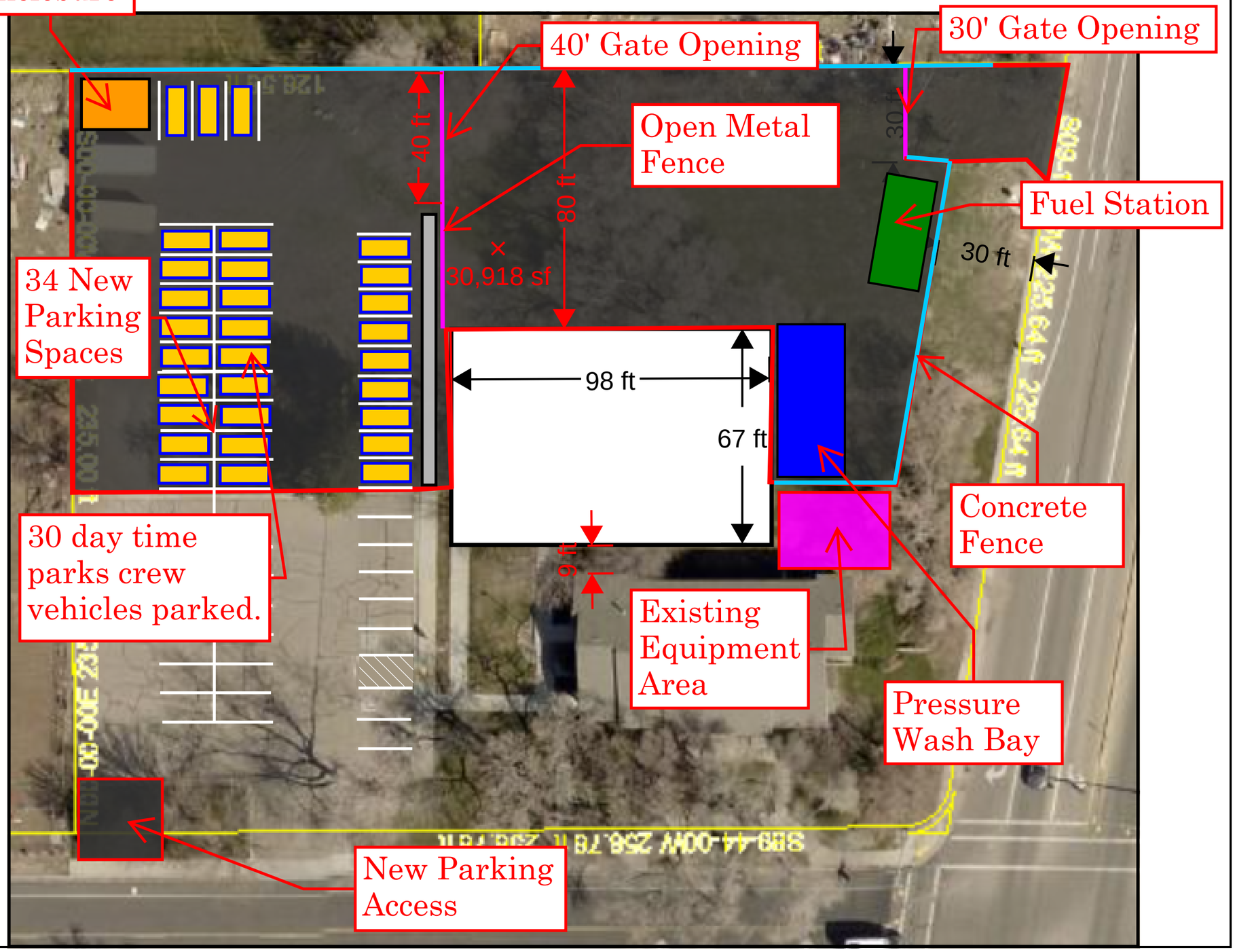
$ 1,672,073

Total (Wood Framed Building):

$ 1,852,638

Day Time Parking

PARKS BUILDING LOCATION OPTION #9



HIGHLAND CITY

COST ESTIMATES

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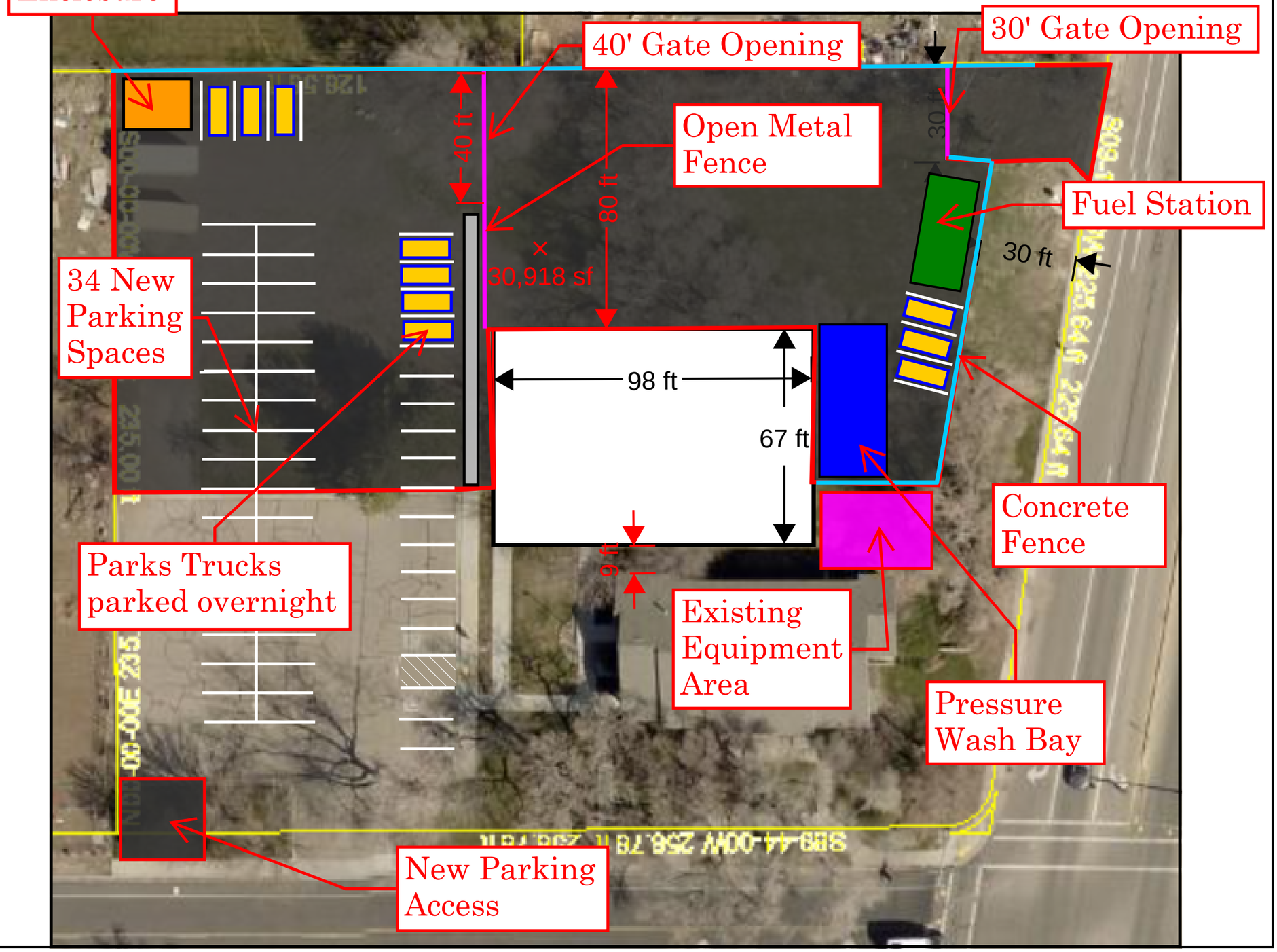
Overnight Parking

PARKS BUILDING LOCATION OPTION #9



Lehi City Public Works Shop
2538 N 300 W
Lehi, UT 84043
A portion of the Lehi City Water & Sewer Building is shown in the sample photo
6500 sqft
Lehi Water & Sewer
2538
2538
Google