NEXT

HIGHLAND CITY COUNCIL AGENDA

Tuesday, March 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

7:00 PM REGULAR SESSION

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

1. UNSCHEDULED PUBLIC APPEARANCES

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

2. PRESENTATIONS

a. Department Presentation: Human Resources - *Jess Andra, Pam Stagg, and Sherrie Nielsen* **(7:10 pm – 5 min)**
City Council will hear a report from the Human Resources Department. Jess Andra will introduce herself as the new HR Generalist.

b. Legislative Updates (7:15 pm – 30 min)
Highland City Legislators will present an update highlighting recently passed legislation which may affect Highland City.

3. CONSENT ITEMS (7:45 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 17, 2023

4. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – SIGNS *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst* (7:50 pm – 15 min)

The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Article 7 Signs in the Development Code to update several regulations regarding temporary signage in residential and commercial zones. The City Council will take appropriate action.

5. PUBLIC HEARING/ORDINANCE: PERFORMANCE ASSURANCE CODE UPDATES *General City Management – Rob Patterson, City Attorney* **(8:05 pm – 10 min)**

The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Chapter 6 Guarantee of Performance to establish a minimum term length for performance guarantees, require warranty assurances to be cash deposits, and clarify and update related regulations. The City Council will take appropriate action.

6. ORDINANCE: CEMETERY CODE UPDATE *General City Management – Stephannie Cottle, City Recorder* **(8:15 pm – 15 min)**

The City Council will consider an amendment to the Highland City Municipal Code Chapter 13.48 City Cemetery Policies and Regulations. The Council will take appropriate action.

7. PUBLIC HEARING/RESOLUTION: FEE SCHEDULE UPDATE - HEADSTONE SETTING FEE *General City Management – Stephannie Cottle, City Recorder* **(8:30 pm – 5 min)**

The City Council will hold a public hearing to consider an amendment to the Highland City Fee Schedule to include a headstone setting fee in the Highland City cemetery. The Council will take appropriate action.

8. ACTION: HIGHLAND CITY TRAIL MAINTENANCE 2023 *General City Management – Andy Spencer, City Engineer/Public Work Director* **(8:35 pm – 15 min)**

The City Council will consider approving a contract with Kilgore Contracting for the asphalt Trail Maintenance 2023 project. The Council will take appropriate action.

9. ACTION: AWARDING OF ARCHITECTURAL CONTRACT FOR THE NEW PARKS BUILDING *General City Management – Andy Spencer, City Engineer/Public Works Director* **(8:50 pm – 10 min)**

The City Council will consider awarding a bid for the Architectural design of the new Parks Maintenance Building to Pontis Architectural Group. The Council will take appropriate action.

10. EXPEDITED

a. ACTION: Approval of Special Recognition and Naming Rights Agreement *General City Management – Erin Wells, City Administrator* **(9:00 pm – 5 min)**

The City Council will hold a public meeting to consider approving the Special Recognition and Naming Rights Agreement with Kurt and VaLayne Ostler for the large pavilion at Mountain Ridge Park. The Council will take appropriate action.

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. Fees: Pleasant Grove Court Decision – *Erin Wells, City Administrator* **(9:05 pm – 15 min)**

b. Open Space Update – *Kellie Smith, Planner & GIS Analyst* **(9:20 pm – 15 min)**

c. Alpine Food Storage Update – *Kurt Ostler, Mayor* **(9:35 pm – 5 min)**

d. Financial Report – *Tyler Bahr, Finance Director* **(9:40 pm – 10 min)**

e. Future Meetings

- March 14, City Council Work Session, 7:00 pm, City Hall
- March 15, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- March 21, City Council Meeting, 7:00 pm, City Hall
- March 28, Planning Commission Meeting, 7:00 pm, City Hall
- March 30, City Council Work Session, 6:00 pm, City Hall

12. 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

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, 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 March, 2023 **Stephannie Cottle, City Recorder**

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

HIGHLAND CITY

HIGHLAND CITY COUNCIL MINUTES

Tuesday, January 17, 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

6:00 PM WORK SESSION – STRATA

Call to Order – Mayor Kurt Ostler

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:10 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: 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, Planner and GIS Analyst Kellie Smith, City Engineer/Public Works Director Andy Spencer

OTHERS PRESENT: Jon Hart, Tyler Rasmussen, Dave Tyler

Mayor Ostler reported STRATA is currently negotiating contracts with Lehi and American Fork for municipal fiber networks; they have asked for the opportunity to provide a presentation to the Council regarding their service and potentially contracting with Highland for a network in the City. He introduced Tyler Rasmussen and Dave Ryan representing STRATA and invited them to make their presentation to the Council.

Mr. Rasmussen used the aid of a PowerPoint presentation to discuss STRATA's fiber experience, dating back to the organization of the business in 1951 as a telephone cooperative serving smaller communities that were not serviced by Bell; STRATA currently has partnerships with Providence, Lehi, American Fork, and Heber in the State of Utah and he encouraged City officials to reach out to their counterparts in those cities to learn of their experience with STRATA.

Mayor Ostler discussed the different agreements with the partner cities mentioned by Mr. Rasmussen; he noted that Lehi City has a built a network operations center (NOC) fiber system, but they own their own power company so they have some infrastructure in place and access to other rights-of-way. American Fork City also has existing conduit throughout many of their roads. He likened these improvements to a 'head-start' for those cities and

wondered how a partnership with Highland would be different. The City currently owns no fiber infrastructure. Mr. Rasmussen agreed and stated that every city will be different in terms of existing infrastructure; however, other cities can duplicate those efforts to create their own advantages. Mr. Ryan added that the majority of the American Fork assets were sold to a private entity, but they do have existing infrastructure that can be used for a municipal fiber network. Mr. Rasmussen added that Providence and Heber City are both starting very fresh, and their arrangement would be similar to what would occur in Highland. He then noted STRATA's approach to providing a municipal fiber network includes network construction, engineering, construction, administration, ISP management, network operations, network monitoring, and outside plant maintenance.

Council Member Smith stated that he has observed fiber being installed around Pleasant Grove recently and most of it is buried and the work has been non-intrusive. He asked how STRATA's infrastructure is installed. Mr. Rasmussen stated that the City will dictate the type of network they want, whether that is underground or on existing above-ground infrastructure; STRATA prefers buried fiber but will accommodate certain aerial attachment when doing so makes sense. Mayor Ostler asked if STRATA uses traditional trenching or micro-trenching. Mr. Ryan stated that the common install method is a combination of micro-trenching and directional drilling. There was a brief discussion of the costs associated with different drilling methods.

Council Member Smith asked for a prediction on the life cycle of fiber optics and whether this a technology of the future or will be outdated in 10 years. Mr. Rasmussen stated it is difficult to predict, but it is his opinion that this is a technology that will support other wireless improvements in the future. He noted that 5g requires very dense fiber distribution within a network so the City would be in a position to provide transport for 5g wireless carriers in the future. Council Member Smith inquired as to the life span of the fiber. Mr. Rasmussen stated that some fiber routes are still in use today that are over 40 years old; the conduit itself likely has a longer life span and new fiber can be pulled through existing conduit that typically don't need to be replaced for upwards of 40 to 50 years. Most conduit that has been replaced is due to capacity issues rather than useful life.

Mayor Ostler stated that a large number of City residents are Comcast customers and he wondered as to service differences between Comcast and a municipal fiber network; he is curious as to how many Comcast customers will be lured away to join a fiber network. Mr. Rasmussen stated that many of the cities STRATA has worked with have conducted a citizen survey regarding the experience they are having, speeds they are experiencing, and the price they are paying and whether they would consider different options. The results of such a survey can help a governing body to decide whether to pursue a municipal fiber network. He added that STRATA would help the City conduct such a survey free of cost.

Mr. Rasmussen then discussed the scope of work that STRATA would perform includes providing infrastructure to every Highland City home, business, public facility, and private institutions. Additionally, they provide interconnection between City facilities. They use a model that provides for shared financial and operational risks to provide cost-effective services. He discussed STRATA's subscription model; the network is built ubiquitously throughout the entire City of Highland. Individual customer service drops are only placed to those locations that choose to take service. Residents and Businesses are given the opportunity to subscribe to the network at their discretion. Only those who choose to subscribe to the network are required to pay service fees. A portion of the revenue that subscribers pay to utilize the network is used to make the bond payment. He discussed the topology of the network; the network is proposed to be built with an all-fiber hybrid Active Ethernet/Passive Optical Network (PON) architecture. The network design utilizes the placement of strategically located equipment shelters and multiple Fiber Distribution Hubs (FDHs), essentially dividing the City into multiple service zones. Users subscribed to the network are not impacted during peak usage periods. The proposed hybrid model allows the network to be customized to meet the needs of all customers. He then discussed the differences between active ethernet and PON networks, after which he summarized partnership benefits, including building a City asset, a customized network, shared risk, project visibility, and ensured network longevity. This led to high level discussion of the financial model for a STRATA network and any financial risk the City would incur by partnering

with STRATA; there was a brief focus on the differences between the STRATA and UTOPIA models. Council Member Rodela asked the STRATA representatives to summarize why their organization is the best organization and Highland should choose them over other organizations that provide the same service. Mr. Ryan stated that he feels that STRATA is a good partner for municipalities in that they provide flexibility in designing a system and model that meets their needs, whether that includes ownership, bonding, or some combination of the two. One thing that differentiates STRATA from other companies is that they have invested in themselves over the decades they have been in business and they have in-house expertise in all fields of service they provide. He stated that STRATA has fiber infrastructure extending into Utah Valley, Salt Lake Valley, and all the way to Wyoming and Colorado; they have many customers who have been receiving quality service for many years. Mr. Rasmussen added that STRATA will be a true partner that can provide a solution that is mutually beneficial for both Highland City and STRATA.

Mayor Ostler stated that the City has many decisions to make regarding the type of model they wish to employe in Highland. This includes letting the free market dictate the improvements, issue a bond for the improvements, or enter into a partnership with a company like STRATA or UTOPIA; one question he has relates to letting the free-market dictate and he inquired as to STRATA's experience in that scenario. Mr. Ryan stated that fiber technology has been around for more than 20 years and if the free market has not introduced it by now, he is not sure it will happen in the future. Mr. Rasmussen agreed and stated that it is important to understand the economics from the provider's perspective. Once an investment is made in existing infrastructure, most providers will ride that investment for as long as they can.

Council Member Smith stated he likes the idea of STRATA conducting a citizen survey to gauge community interest. Mayor Ostler polled other Council Members to determine if they would like to pursue a citizen survey with STRATA. The Council indicated they would like to move forward with such a survey specific to a fiber network rather than being combined with other citizen survey questions. They indicated a willingness to conduct the STRATA survey now and delay the general resident survey until next fall in an effort to obtain information in the fall that will inform the following fiscal year budget process.

The work session adjourned at 6:59 p.m.

7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler
Invocation – Council Member Scott L. Smith
Pledge of Allegiance – Council Member Sarah D. Petersen

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:07 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 Scott L. Smith and those in attendance were led in the Pledge of Allegiance by Council Member Sarah D. Petersen.

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, Police Chief Brian Gwilliam, Communications Coordinator Lina Costa Olsen

OTHERS PRESENT: Jon Hart, Roger Timmerman, Logan Fawcett, Joseph Lee Hunsaker, Mike Hawkins, Wesley Warren, Joseph Silverzweig,

1. UNSCHEDULED PUBLIC APPEARANCES

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

This item was moved after the presentations.

2. PRESENTATIONS

a. Comcast – *Joseph Silverzweig*

Joseph Silverzweig will present updates regarding Comcast fiber.

Mr. Silverzweig, Comcast Manager of Government Affairs, used the aid of a PowerPoint presentation to provide the Mayor and Council with information regarding the community partner model available through Comcast. He provided a very high-level overview of the Comcast company and the services they provide. In June of 2022 he visited with the Governing Body and made several commitments or promises during that meeting, including working to complete a full serviceability analysis which shows exceptional connectivity; of the 5,600 households that were surveyed, 5,210 (or 93 percent) have connectivity. Every customer has access to Comcast's best speeds with no new contract requirements, no device fees, and no data caps nationwide. Customers can choose to pay for 6g symmetrical speeds as well and Comcast does not 'throttle' speeds. He presented a map to illustrate improvements completed in the community by Comcast at zero cost to taxpayers; these improvements will help achieve an estimated 97.5 percent buildout by end of year 2023. He emphasized that Comcast has made a major investment in Highland at no cost to taxpayers. He then discussed symmetrical speeds; Utah is an early market for 10g development and 10g will be available nationwide by 2025 to all Comcast households using current architecture. Changes need to accomplish this include empowering Comcast's 5,000 miles of fiber in Utah with distributed access architecture digital transmitters, completing an upgrade to accommodate faster speeds and installing full duplex amplifiers to faster deployment farther from the node. He then discussed Comcast's commitment to the community; the company's goal is keeping people connected with internet essentials and serving as Utah's leading affordable broadband provider. Comcast has donated $197,000 to Utah County in the last three years and has created a Digital Equity Partnership with United Way of Utah County. Other grantees include Aline School District, Thanksgiving Point, and Mountainland Foundation. He also discussed Comcast's efforts to provide support to refugee families who are currently living in the Alpine School District boundaries. He concluded his presentation by discussing the "Project UP" initiative; $1 billion has been committed over 10 years to focus on connectivity, skills and creativity, and entrepreneurialism.

Council Member Smith stated that during the June 2022 meeting with Mr. Silverzweig, he raised his concerns about some negative experiences he has had with Comcast's customer service; he is a still a Comcast customer, but has recently been restoring his grandparents' home in Pleasant Grove and when it came time to pursue internet service he found that UTOPIA had laid the fiber in front of the home, but still had not provided connectivity for individual households. He stated that he signed up with Comcast and the customer service he received was wonderful. He was impressed. Mr. Silverzweig thanked Council Member Smith for that feedback; he cited a statistic that it takes 12 good experiences to overcome a bad experience and Comcast has worked to correct a reputation of having bad customer service.

Mayor Ostler asked if Comcast has any fiber infrastructure in residential areas of Highland City. Mr. Silverzweig answered yes; any customer can sign up for a fiber connection by paying for a gigabit pro 6g symmetrical connection, which has a $500 one-time construction fee and a $300 per month fee. Mayor Ostler stated he is interested to see if that service is available to any residential property in the City. Mr. Silverzweig indicated there may be some areas where the connection is not an option, but the majority of households could request that service and pay the costs mentioned above to obtain it. Mayor Ostler inquired as to the percentage of Comcast internet customers that also have a cable service through Comcast. Mr. Silverzweig stated he believes the percentage is around 20, but he would need to check and report back.

Council Member Ball asked if the symmetrical service would be available over current co-ax connections. Mr. Silverzweig answered yes; a current customer can obtain a DOCSIS 4.0 modem and plug it into the wall and connect to symmetrical service within the next couple of years without paying for additional construction fees. He reiterated customers will have access to better speeds without asking the City to bond or to promise certain take rates.

Mayor Ostler thanked Mr. Silverzweig for the information provided and stated he will pay the $500 construction fee to have fiber brought to his home, as well as the $300 fee, and will report back to the Council.

b. Annual Open & Public Meeting Training – *Rob Patterson, City Attorney*
Rob Patterson will present a training on the Open and Public Meeting Act.

City Attorney Patterson used the aid of a PowerPoint presentation to provide the Governing Body with the annually required training on the State of Utah Open and Public Meetings Act (OPMA); his presentation provided information on matters such as the definition of a meeting – both public and closed; records that are considered public and accessible pursuant to the Government Records Access and Management Act (GRAMA); accepting public comment; conducting public hearings; preparation of agendas and minutes for open and public meetings; and discussing items that are not included on a meeting agenda. He concluded the basic intent of the OPMA is to ensure that actions of a public body are taken in open and public meetings in a transparent manner.

1. UNSCHEDULED PUBLIC APPEARANCES

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

Joseph Hunsaker stated he recently served as a County Delegate for the local election caucus and that increased his interest in public service and public issues; he chose to attend the City Council meeting tonight to observe how the meeting is conducted and actions are taken. He stated he is a computer programmer and transhumanist and stated he would be interested to learn if the City has discussed utilizing distributed ledger technology or blockchain technology for the purpose of municipal governance.

Mayor Ostler discussed his understanding of blockchain technology, and he believes that some cities are starting to use the technology for record keeping. He thanked Mr. Hunsaker for his input.

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 *General City Management – Stephannie Cottle, City Recorder*
Regular City Council Meeting – December 6, 2022

b. Action: Final Plat - Ridgeview Plat H *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*
The City Council will hold a public meeting to consider a request by Boyer Ridgeview Commercial, LC for final plat approval for a 125-lot subdivision of townhome units located at approximately N County Blvd and Gallatin Way. The Council will take appropriate action.

Council Member Scott L. Smith MOVED that the City Council approve consent items 3a Meeting Minutes from December 6, 2022, and 3b. Final Plat – Ridgeview Plat H.

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	*Yes*

The motion passed 5:0.

4. ACTION: PRELIMINARY PLAT - HAWKS LANDING *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The City Council will consider a request by Mike Hawkins for preliminary plat approval of a 7-lot subdivision located at approximately 11200 N and Alpine Highway. The City Council will take appropriate action.

Planner & GIS Analyst Smith explained staff recommends the City Council accept the findings, and approve the proposed preliminary plat with the following stipulations:

1. The final plat shall be in substantial conformance with the preliminary plat received November 23, 2022.
2. The Lehi Irrigation Company shall review and approve the construction plans involving relocating and piping the existing irrigation ditches.
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. The drainage for the west cul-de-sac on 11225 N be resolved by sloping toward 5240 W or the drainage be directed out to Alpine Hwy through the north side of Lot 4 by a dedicated drainage corridor (12' inverted concrete swale) that doubles as a pedestrian access. This drainage plan shall meet all requirements as determined by the City Engineer.
6. The standard 29' parkway detail be provided along Alpine Hwy as required by the General Plan. The landscaping plan for the parkway detail be reviewed and approved by the Parks Superintendent.

Ms. Smith explained the applicant is requesting preliminary plat approval of seven (7) single-family residential lots located at approximately 11200 N and Alpine Highway. Road and utility access to the site will be from 11200 N. The applicant is providing half street improvements plus ten (10) feet of asphalt on the north side of the subdivision to provide road and utility access to the undeveloped property to the north. All proposed lots are

greater than 30,000 square feet. She discussed staff's review of the zoning, density, and access/utilities for the site and feels comfortable recommending preliminary approval based upon 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 applicable requirements in the Highland City Design Criteria for Public Improvements.

The Planning Commission held a public hearing on December 13, 2022. Three residents participated in the public hearing. Questions were asked and answered regarding the several Lehi Irrigation ditches that run through the property. Two of the residents expressed the desire to have the developer put a fence in along the property lines. The applicant was present and shared that the plan was to install a fence along those boundaries. The Planning Commission voted 5:0 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 23, 2022.
2. The Lehi Irrigation Company shall review and approve the construction plans involving relocating and piping the existing irrigation ditches.
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.

Council Member Smith asked Public Works Director/City Engineer Spender to educate him on what a 12-foot inverted concrete swale is. Mr. Spencer stated it will be a pedestrian trail that drains to the center to function as an overflow channel. The City's Public Works Standards required cul-de-sacs to drain outwards to avoid flooding of homes at the end of a cul-de-sac and in this case, an alternative solution is to build a drainage corridor that will allow overflow drainage to flow to SR-74 to Alpine Highway. Council Member Smith asked if that means there will be a public trail that will have water running on it at time. Mr. Spencer stated that would only occur in rare instances if a drain were clogged or overtaxed and the trail is needed to function as an overflow corridor. Council Member Smith stated this is a unique concept and he inquired as to any liability associated with the proposal. City Attorney Patterson stated that the liability is fairly low; the channel will likely only have water on it during a terrible rainstorm and people typically do not use trails in those conditions. He does not anticipate a great deal of people on the trail when it has water on it.

Mayor Ostler asked if the swale is a common solution used in other communities. Mr. Spencer answered no, but it is responsive to the requirement to design for drainage out of a cul-de-sac. It is important to avoid low points in cul-de-sacs that can easily lead to flooding. Ms. Smith noted the swale is located along the northern portion of lot four and will look similar to a sidewalk.

Mayor Ostler invited input from the applicant. The applicant did not address the Council.

Council Member Kim Rodela MOVED that the City Council accept the findings and APPROVE the preliminary plat for the Hawks Landing subdivision subject to the six (6) following stipulations recommended by Staff.

1. *The final plat shall be in substantial conformance with the preliminary plat received November 23, 2022.*
2. *The Lehi Irrigation Company shall review and approve the construction plans involving relocating and piping the existing irrigation ditches.*
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. *The drainage for the west cul-de-sac on 11225 N be resolved by sloping toward 5240 W or the drainage be directed out to Alpine Hwy through the north side of Lot 4 by a dedicated drainage corridor (12' inverted concrete swale) that doubles as a pedestrian access. This drainage plan shall meet all requirements as determined by the City Engineer.*
6. *The standard 29' parkway detail be provided along Alpine Hwy as required by the General Plan. The landscaping plan for the parkway detail be reviewed and approved by the Parks Superintendent.*

DRAFT

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/RESOLUTION: INTERLOCAL COOPERATION AGREEMENT WITH UTOPIA *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will consider an Interlocal Cooperation Agreement with UTOPIA for the installation of fiber optic cable and other associated facilities within Highland City streets and other rights-of-way. The Council will take appropriate action.

City Attorney Patterson explained Utah Telecommunication Open Infrastructure Agency (UTOPIA) has approached the City regarding the installation of fiber utilities to serve the Ridgeview development. Ridgeview has installed conduits in anticipation of UTOPIA installing facilities to serve the Highland City residents in Ridgeview. The City typically signs utility franchise agreements with similar communication providers to allow them to place their facilities within the rights-of-way and provide services to Highland residents and businesses. As UTOPIA is a government agency, the agreement is in the form of an Interlocal Cooperation Agreement. The approval of the agreement is necessary for UTOPIA to place the utility within public right-of-way. Without this agreement in place, UTOPIA will not be able to serve Ridgeview. Prior meetings have been held with City Council to discuss a potential agreement with UTOPIA to serve the entirety of Highland City. Should the Council so desire, this agreement certainly will help to further those discussions; however, this agreement is not intended for that process or purpose. However, provisions have been made in the updated agreement to facilitate a future agreement. The current agreement does not bind Highland City to any type of financial guarantee, nor does it bind UTOPIA to any type of guaranteed service. This agreement is intended solely to facilitate the placement of the facilities within the City rights-of-way. While the need for the agreement is being prompted by the Ridgeview development, the agreement does apply to all streets and rights-of-way within the City. The Council's most recent discussion of this matter was during their December 6 meeting and they chose to table action on the agreement due to concerns about a few provisions; responsive to those concerns, UTOPIA has now included paragraphs 18 and 19. Paragraph 18 provides consideration for a potential future agreement with UTOPIA for the entire city and ensures that services provided to Ridgeview development will be included in the required "take rate" calculation. Paragraph 19 addresses a condition in which the City opts to install a separate City fiber optic system. The City is provided one (1) year to make a decision regarding the purchase. A mutually agreeable value of the facilities in place at the time of the City decision would be determined. Mr. Patterson concluded that no fiscal impact will be created by the agreement.

Council Member Ball asked if all fiber optic networks are compatible with the UTOPIA infrastructure. Mayor Ostler invited Roger Timmerman, UTOPIA representative, to address the Council and answer Council Member Ball's question.

DRAFT

Mr. Timmerman, Executive Director of UTOPIA Fiber, stated that UTOPIA builds active networks that provide a fiber strand for every household; this is the most compatible version of fiber. UTOPIA pursues the most flexible options because most of the users of the networks are third-party.

Council Member Ball asked if the City has the option of acquiring the network if it chooses to partner with another service provider. Mr. Timmerman stated that if the City decides to move forward with a City fiber project to provide fiber to all homes and they do not want to compete with UTOPIA, UTOPIA will negotiate a sales contract and a fair price based upon fair compensation for assets and the number of current subscribers.

Discussion then shifted to UTOPIA's failure to secure an interlocal agreement or franchise agreement before proceeding with some of their infrastructure improvements; Council Members Smith and Peterson expressed concern that UTOPIA would install infrastructure without first asking for permission from the City, but then offer to sell the infrastructure to the City to use for a fiber project. Mr. Timmerman stated that the City is not required to purchase the infrastructure and any other service provider can access it to provide service to customers. Mayor Ostler added there are many people in the Ridgeview area that have internet service from different providers, and he is unsure whether those providers have secured a franchise agreement with the City. He added that through franchise agreements, the franchisee is required to pay a franchise tax to the local entity. He asked if the same is true for an interlocal agreement with UTOPIA. Mr. Timmerman stated that the State of Utah sets tax rates for utility service providers, but that does not include internet due to the Federal Internet Tax Freedom Act that prohibits taxation of internet service providers.

Mayor Ostler then asked Mr. Timmerman about UTOPIAs plans for expansion in Highland. Mr. Timmerman stated that UTOPIA is the preferred choice for the State of Utah and Utah County, as well as local schools, and they are interested in expanding anywhere that the infrastructure will be beneficial. There are some cities that have chosen a government-only model where fiber is not available to households immediately, but infrastructure could be expanded upon in the future. At this point, he is asking for Highland to consider UTOPIA as they would any other fiber provider in the community, except for UTOPIA is offering more favorable terms than other providers.

Council Member Bills inquired as to the downside of waiting to execute the agreement until the City makes a decision on a municipal fiber project. Mr. Timmerman stated that the most immediate need for execution of the agreement is due to the imminent announcement of selected service providers for local schools; UTOPIA submitted a bid to be a provider for schools in the community and if they are selected as the provider, they will likely need to cancel the arrangement as they had to in the past because the infrastructure is not available. This means schools are paying more than they should be because UTOPIA was not able to provide a connection to the schools. He will not make an agreement with the schools if he does not have an interlocal agreement with the City.

Council Member Smith stated that he is concerned by the lack of a citizen survey to understand the desire for a City fiber system; he would like to understand the demand or desire for fiber before entering into this agreement, which would allow UTOPIA to install fiber throughout the City and then charge the City for that infrastructure if they choose to partner with a different service provider in the future. Mr. Timmerman reiterated that the most immediate demand is for infrastructure to serve the schools; if the City chooses to partner with another provider in the future, they can buy those routes from UTOPIA and will not spend future dollars on those improvements. He added that UTOPIA is one of the few entities that is eligible to win school contracts.

Council Member Peterson indicated a willingness to wait to take action on the interlocal agreement until the City or other service providers can conduct a citizen's survey regarding the demand for fiber. Council Members Smith and Rodela agreed. Council Member Smith stated the believes the City can have survey results and make a decision in just a few months.

Mr. Timmerman asked if the City is withholding franchise agreements from any other provider. Council Member Smith stated that this is not a franchise agreement, it is an interlocal agreement and he believes UTOPIA got in trouble for using that terminology in another community. Mr. Timmerman stated that UTOPIA actually sued the other community. Council Member Smith stated the other community won the lawsuit. Mr. Timmerman stated that is not correct.

Mayor Ostler asked for legal counsel on the matter City Attorney Patterson stated there are laws and requirements pertaining to permitting for access to City rights-of-way, but in reference to franchise agreements there is no hard and fast rule that indicates a city must require franchise agreements. However, the City has required franchise agreements in the past for other service providers and there is a fair amount of case law indicating franchise agreements should be fairly granted to all providers that can use infrastructure in public rights-of-way. If this City finds this proposed agreement is different than a franchise agreement, they can continue action on the matter, but he does not see any problems with approving the agreement at this time.

Council Member Smith stated he only wants to continue the matter in order to collect additional information about the community's desire for fiber; if the Council approves the agreement now but does not make a decision on a community partner until next year, the City would be required to buy UTOPIAs infrastructure if they are not the chosen provider. Mr. Timmerman stated that would not be an actual requirement, but it would be an option.

Council Member Rodela asked if there is a difference between a franchise and a government entity. Mr. Patterson stated that he has the hard time seeing the differences between a franchise and interlocal agreement; often an interlocal agreement is used as a contract mechanism between government entities. There are rules in State Law governing interlocal agreements and in this case he believes the term 'interlocal agreement' is being used because UTOPIA is a government entity. Due to some unique conditions, the proposed agreement looks and reads similar to franchise agreements used in other cities. He stated the Council should consider what additional information they need in order to grant a franchise agreement to this entity. He stated the distinct question is what the City wants to do with fiber in the future, which is a very important question. If the Council wants to continue the matter in order to determine what to do with fiber in the City in general, that is a satisfactory position; however, if the Council is delaying action on the agreement because of something they feel is lacking, they should ask for that information in order to get comfortable approving the agreement.

Council Member Smith disagreed with Mr. Patterson; he stated there are financial implications of approving the agreement especially without a clear understanding of the community's desire for fiber. He is concerned about obligating future elected officials to fulfill those financial obligations. He stated this agreement does not just pertain to the Ridgeview area; rather, UTOPIA could install fiber throughout the City if they choose to and the City would then be left to buy the infrastructure if they choose another partner. He stated he does not want to continue the agreement indefinitely and he reiterated he feels the Council will have enough information to make a decision in a month or two.

Council Member Peterson stated her understanding is somewhat different than Council Member Smith's understanding; she does not believe the City will be under any obligation to purchase any infrastructure or provide fiber connectivity to any property in the City. Mr. Patterson stated that is correct; the agreement has no impact on the City regarding future fiber connections. There is no revenue sharing or take rates, though there are options to negotiate those issues in the future.

Council Member Peterson inquired as to the other customers that UTOPIA would serve in the community besides local schools. Mr. Timmerman stated that UTOPIA has 30 providers that use their network, including First Digital, Xmission, Sumo Fiber, and others and they use UTOPIAs infrastructure to provide service to their customers. This provides residents and businesses with more choices than they have today and encourages

competition among those providers. He stated he would love to explore a fiber-to-home project with the City in the future, but the request at this time is to simply be treated like other providers in the City, but with the caveat that UTOPIA is willing to provide more favorable terms than any other provider has every offered.

The Mayor and Council engaged in general discussion and debate regarding whether approval of the interlocal agreement creates an advantage for UTOPIA as the City proceeds with consideration of a municipal fiber project; different optional fiber models through UTOPIA and other providers; and the long term implications of the interlocal agreement. Mr. Patterson stated that he would like to amend a previous statement he made; the City does require franchise agreements, but only for telecommunications providers. His recommendation stays the same, but he wanted to clarify that there is only a legal requirement for franchise agreements for telecommunications entities.

Council Member Ball asked if the agreement would permit multiple organizations to begin trenching for fiber infrastructure at the same time. Mr. Patterson stated this interlocal agreement is only specific to UTOPIA. City Administrator Wells added that UTOPIA will also be required to obtain permits for the construction they are performing in the City. Council Member Ball stated that 5g internet is less than 200 megabytes and he inquired as to the advantage of true fiber as opposed to Comcast fiber lines and co-ax cable to a home. Mr. Timmerman stated that co-ax cable has reached its limitations and existing co-ax cannot deliver desired speeds or meet demands. One neighborhood can be sharing the same connection due to splitters on co-ax cables and their limits are reached when all users are home at the same time and using the service. Council Member Ball asked if an end-to-end system is superior, to which Mr. Timmerman answered yes; each home will have its own fiber strand and can handle the demand up to 100g. He stated that Comcast will need to transition to updated fiber or they will be out of business eventually.

Council Member Rodela stated she would still like to continue discussion of this issue until a community survey regarding the demand for fiber in Highland can be completed and the results delivered to the Council.

Council Member Sarah D. Petersen MOVED that City Council CONTINUE this discussion until the first City Council meeting in March, 2023.

The Council and discuss briefly discussed the timeline for conducting the survey; Ms. Wells stated she believes the survey can be conducted by the end of February or early in March and the results can be delivered to the Council in March.

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.

6. ACTION: REVIEW OF PARKS DIVISION OPERATION BUILDING BID RESULTS *General City Management – Andy Spencer, City Engineer/Public Works Director*

DRAFT

The City Council will review the bids for the proposed City Parks Division operations building bid (parks building) and discuss alternative locations. The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained on January 3, 2023 the Council discussed the bids for the parks building. Staff were directed to evaluate alternative locations. There was a general consensus of the Council that the existing Community Center building should not be impacted by the Parks Division operations. Staff has obtained bids for the project to be located at the Community Center but has identified additional options for the Council to consider; he used the aid of a PowerPoint presentation to identify seven other optional locations for the facility and discussed the projected costs of each.

- Option 1: City well #1 site on 5600 West – approximately $1.4 million.
- Option 2: Near the mouth of the canyon in front of gravel pit – approximately $2.04 million.
- Option 3: Expanding existing public works facility and site work to replace lost parking area and piping of irrigation ditches – approximately $2.2 million.
- Option 4: redesign of Community Center option, including additional ingress/egress point on the north end of the site – approximately $1.6 million.
- Option 5: redesign of the Community Center option, but the building is oriented in a different manner to face south; two parking lots are connected and there is a bit more impact on the Community Center than option 4 – approximately $1.5 million.
- Option 6: this is the option that was sent out for bid, but with a larger building to ensure that it will not be necessary to use the basement of the Community Center – approximately $1.6 million.
- Options 7a and 7b: Unfinished portion of cemetery; building configurations are odd and fronts SR-92. Two different options with price of approximately $1.6 million and $2 million respectively.

Mr. Spencer noted staff only identified locations that the City currently owns, and he discussed pros and cons/restraints of each site.

Council Member Smith asked if option four includes additional parking for the Community Center. Mr. Spencer answered no but indicated that it will have its own parking area so it will not be necessary to share the parking for the Community Center. It is the least impactful to the Community Center in terms of options because it will essentially split the site into two different properties in order to keep the uses separate. He noted that each of the options that are at the Community Center site would keep both buildings completely independent of each other so that the Parks Building will be self-sufficient.

Council Member Peterson asked if the Parks Division will still use the facilities they currently occupy. Mr. Spencer stated the buildings will be used by Parks as well as other divisions of the Public Works Department; at present, the Department has exceeded its capacity and Divisions are fighting over space.

Council Member Smith asked if operations at the Parks Building will decrease noticeably during the winter months. Mr. Spencer answered yes but indicated that employees will still be in and out of that facility frequently because they will store snow removal equipment there that they will need to use during storm events.

Mr. Spencer then discussed the cost associated with travel to the site at the mouth of the Canyon; from that are to most locations maintained by the Parks Division averages 10 minutes, which means that each employee will experience 30 additional minutes per day to travel to sites throughout the day. This time was used to calculate employee costs, which is somewhere in the vicinity of $45,000 per year, but this does not take into account fuel costs or wear and tear on vehicles/equipment.

The Mayor polled the Council to determine if there is a single option they prefer over the others that have been presented tonight.

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Council Member Ball asked if a limited use traffic signal could be used at some of the options for which a concern related to cross-traffic has been raised. Mr. Spencer stated that a signal could be used during heavy traffic times similar to the pedestrian crossing signal at Lone Peak.

Council Member Bills stated she feels the Community Center location is the best, but she would like to eliminate any impact to the Community Center. She is willing to spend a bit more on the project to mitigate those impacts. She feels the option near the mouth of the Canyon is not as feasible and she is concerned about increased costs associated with travel. She also believes something will eventually happen with the gravel pit and she would want to complete a City project there until the City has an understanding of what that may entail. Council Member Smith agreed and stated he personally believes option six is the best; he likes that it is closest to the center of the City and the impact on the Community Center is decreased. Council Member Peterson agreed and stated she believes that increased and improved parking will benefit the Community Center. Council Members Ball and Rodela agreed.

Mayor Ostler stated that the increased cost will be approximately $700,000 and the Council will need to identify funding sources. Mr. Spencer stated that City staff has examined all funding options and he feels that the budget is too tight this year to find the additional funding. Ms. Wells added that Administration will continue to explore options as they work to develop the budget for the next Fiscal Year (FY); one option is to use a portion of the City's fund balance, but she is concerned about using too much. Council Member Smith added that sales tax revenue continues to exceed projections and it may be that the City will have excess revenue that can be allocated to the project at the end of the current FY.

Mr. Spencer concluded that it would be appropriate for the Council to take action on the bids that have been provided for the project that was sent out for public bid. If the Council favors one of the options presented tonight, it would be good to reject the bid that was presented in December of 2022.

Council Member Scott L. Smith MOVED that the city council REJECT the bids for the Parks Division operations building and direct staff to further investigate options that consider the Community Center location without involvement of the Arts Council for the placement of the parks building.

Council Member Sarah D. Petersen 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. EXPEDITED ITEMS

a. Action: Agreement for Grant Funding from the Governor's Office of Economic Opportunity *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will consider approving grant funding from the State of Utah, Governor's Office of Economic Opportunity. The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained on September 20, 2022, the Council voted to approve hiring a consultant, Dave Stewart, to assist with pursuing grant funding from the State. This grant was the primary objective identified at that time. Mr. Stewart has been successful in securing funding from the State of Utah Governor's Office of Economic Opportunity and staff recommends approving the agreement and accepting the grant funding of the Utah Local Matching Grant contract #230630580 in the amount of $1,000,000 for improvements to the City culinary water system.

Council Member Kim Rodela MOVED that City Council APPROVE the Local Matching Grant Agreement for $1,000,000 in grant funding from the Governor's Office of Economic Opportunity and AUTHORIZE the Mayor to sign the agreement.

Council Member Sarah D. Petersen 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.

8. DISCUSSION

a. Council Procedures, Personnel Policy, and City Officers Update *General City Management / Municipal Code Update (Legislative) Rob Patterson, City Attorney*

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 discuss and give direction to staff on any changes.

City Attorney Patterson explained 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. Staff has prepared changes and draft documents on these matters for the Council to review and provide feedback on. He reviewed the proposed changes to the policies as follows:

1. Create the office of "financial director" as an at-will, city officer with budgetary, auditing, and other duties as assigned.
2. Establish which city employees are "city officers" who are at-will employees that are appointed by the mayor with the advice and consent of the Council. City officers are the city engineer, city recorder, city treasurer, city attorney(s), city finance director, city administrator, and justice court judge. Police and fire chiefs would be city officers, but those offices are filled through the Lone Peak Public Safety District.
3. Make the removal of city officers consistent. The proposed approach is that city officers can be removed in one of the three following ways:
    a. By city administrator with consent of majority of council and mayor.
    b. By city administrator with consent of all members of council but without mayoral consent.

c. By mayor with consent of all members of council but without city administrator consent.

Mayor Ostler stated that he is concerned about the removal options; he stated he would prefer that consent of the Mayor and the majority of the Council is required for removal of a City Officer. City Administrator Wells stated that Administration was trying to strike a balance between the three different bodies and provide fairness to City Officers. Mayor Ostler stated the City Administrator is not an elected position and the Mayor has the authority to appoint and remove Officers and it is important to be careful not to impede that authority. He stated that he does not think there should be an option for removal that does not involve the Mayor. Ms. Wells stated that she is not trying to take away the Mayor's power to appoint, but she is thinking about City Officers in the future and wants to provide some level of continuity and fair expectations for them. She stated she does believe there must be some consideration for the fact that the City Administrator works most closely with City Officers and should be involved in some way in their removal if that is the direction the Mayor or a majority of the Council would like to go. The Council discussed the concept and acknowledged that the City Administrator should be involved at some level in the appointment and removal of City Officers, with Mr. Patterson noting that this clause does not apply to the City Administrator as there is a separate code section for that position. He indicated he will use the feedback provided by the Mayor and Council to adjust the language in Section 3 and bring the document back to the Council for additional review and discussion. He then continued his review of the proposed changes:

4. Clarify that the termination/removal of department heads is the same as regular city staff, meaning that department heads are terminated by the city administrator alone, without review or consent of city council/mayor. Department heads include the city librarian, public works director (currently city engineer), community development director (currently vacant), assistant [to the] city administrator (currently vacant).
5. Clarify severance rules for officers and department heads. Policies already provided 12-week salary payout as severance for not-for-cause dismissal but were somewhat inconsistent in how it was described. Clarified those policies and that any officer who has an employment contract (e.g., city administrator) does not receive the severance.
6. Establish council rules of procedure that govern the calling, conducting, and parliamentary procedure for council meetings, the interaction between council, mayor, city administrator, city officers, and city staff. The following are some highlights of the proposed rules (other than those discussed above):
    a. Special meetings of the city council can be called by the mayor or at the request of 2 council members by giving written notice (email) to the administrator and recorder.
    b. The city administrator, mayor, and city council each have authority to set items for consideration on a council agenda.
        i. Agendas are typically set by the city administrator based on prior council/mayor direction, pending requests from residents and developers, and staff requests.
        ii. Mayor can add or remove any item to or from an agenda, provided that if an agenda action item was added at the request of council, the mayor cannot remove it without at least one of the requesting council member's approval.
        iii. Two council members can add any action item to an agenda by written request (email) to the mayor or city administrator, subject to removal only if one or both request removal
        iv. Discussion items can be added by any one council member, mayor, or administrator
    c. Staff prepares a staff report and presentation for all action items with legal and factual information and staff's recommendation based on the same. Items added by the mayor or council members entitle the requestor to provide additional reports, materials, and information that will be included and publicized with the agenda/staff report if possible, and the requestor shall be entitled to time to present such information.
    d. Rules for meeting management are provided, though they are deliberately left general, so as to allow the mayor and council flexibility in how they approach any matter. In general, the mayor (or mayor pro tem) conducts the meeting and has authority to dictate order of agenda items, timing

for comments and discussion, and other procedural issues, subject to override by majority vote of the council to extend, end, or otherwise alter the discussion and agenda process.

e. Rules for special motions—closed session, expel council member, reconsider—are provided. 2/3 (supermajority) vote is required for closed session or to expel. Reconsideration requires a motion/second by at least one of the council members who supported the original motion being reconsidered, and reconsideration must be approved by majority vote.
f. General guidance for council, mayor, administrator, and staff interaction are provided.
    i. In general, day-to-day priorities, work, actions, and discipline are handled by the City Administrator, and city council/mayor does not get involved.
    ii. Council and mayor can and should work directly with city officers on projects the officers oversee, e.g., budget, road project, etc.
    iii. Council and mayor can 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.
    iv. Council and mayor should direct requests for information that is not readily available, or that requires significant staff time, to the City Administrator to manage workflow.
    v. Council and mayor should use the meeting and agenda process to establish new policies or overall staff project priority, so as to allow the entire council to weigh in on the policy/priority.

The Council debated the provisions listed until item 6, setting an agenda, including adding and removing items from the agenda. The Council concluded that once an item has been added to the agenda, it should not be removed unless the two Council Members who placed the item on the agenda decide to remove it. The Mayor cannot remove an item that is added by two Council Members.

The Mayor and Council thanked Mr. Patterson and Ms. Wells for their work on this item; they feel the draft changes they have presented are appropriate and once the changes discussed in this meeting are handled, they are comfortable taking action on the matter.

Council Member Bills inquired as to the City's policy or a process available to City employees if they have a specific problem with the City Administrator. Mr. Patterson stated that the City's policy manual provides a grievance process for employees who have any complaint about their workplace situation. They are directed to take that complaint to their supervisor, but they can report to the City Administrator or Mayor in the absence of their supervisor or if they are uncomfortable talking to any of the individuals named in the policy. He stated they can also talk to him if they are not comfortable talking to their supervisor, the City Administrator, or the Mayor. Council Member Bills asked if that policy has been made clear to employees. Ms. Wells stated that the City can do a better job of communicating policies and procedures to all City employees; this is something that has been lacking due to the City's current human resources structure.

Council Member Kim Rodela MOVED to extend the meeting past 10:00 pm by 16 minutes.

Council Member Sarah D. Petersen SECONDED the motion.

All voted in favor and the motion passed unanimously.

9. 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. **Mountain Ridge Park Update** – *Erin Wells, City Administrator & Kim Rodela, City Council Member*

City Administrator Wells stated that she has been working with a member of the Parks and Trails Committee to design signage for the Park; they received a bid for a large corner sign and it was more expensive than anticipated. She is looking into alternatives and other vendors. The Council indicated it is important that the sign is large and easily readable since the intent is for the sign to encourage residents to donate to the project.

Council Member Rodela added that she has spoken with the individual who would like to build a baseball field at the park and informed him that the Council is amenable to securing the field to prevent public use without a reservation. He has indicated he will get in touch with her soon to work out the details of the agreement.

Ms. Wells added she is working on finalizing sponsorship packages for the park and will present that information to the Council next month.

b. Model Homes Code Update - *Kellie Smith, Planner & GIS Analyst* **(9:35 pm - 5 min)**

Planner & GIS Analyst Smith stated that this issue has arisen since the discovery of a conditional use permit (CUP) for model homes; the City has not adhered to this requirement for the past several years and she reviewed the current code language. She stated it is her recommendation that the use be changed to a permitted use rather than a conditional use. The operator of a model home must obtain a business license so staff does review the use of the structure to determine it is appropriate. She asked the Council if they are willing to consider a code amendment to shift the use from conditional to permitted. The Mayor and Council discussed the length of time they are comfortable with a home being used as a model home, with Ms. Smith noting that staff could add language indicating that the structure can only be used as a model home for an extended period of time if it is actually being used to market and sell homes in a subdivision. They also indicated they are comfortable with approval of a model home license being handled administratively.

Council Member Ball asked if it is possible to include language in the code amendment requiring truth in advertising; he provided an example of calling a builder who is developing homes in Highland who advertises homes for sale starting at $600,000; a customer may say they want to purchase the $600,000 home, but the builder then communicates that due to increased costs associated with homes in Highland, the actual cost is $750,000. This is a classic 'bait and switch', and he has caught three builders doing it in Highland. City Attorney Patterson stated it is important to avoid a first amendment violation contained in City Code. Council Member Ball stated that a lie is not covered by the first amendment. Mr. Patterson agreed and stated he can research the issue further and determine if language requiring honest disclosures can be included in the City Code.

Council Member Smith then cited a recent article in the Deseret News regarding the Obtainable Housing Bill being considered by the Utah Legislature; the article indicates the Governor, House Speaker, and Chairman of the Utah League of Cities and Towns (ULCT) are all in support of the bill. He read a few statements from the article regarding penalties included in the bill for cities that do not comply by providing affordable housing. He stated he is concerned about the definition of affordable/obtainable housing and he is very upset about the legislation. He encouraged the Council and Mayor to read the article as well as the actual bill and reach out to local representatives to oppose the legislation. Mayor Ostler stated that the Local Officials Day with the Legislature is tomorrow and there will be City representatives in attendance; additionally, the ULCT is holding weekly meetings every Monday at noon to provide reports and take votes of the Legislative Policy Committee (LPC) regarding support or opposition for certain pieces of legislation.

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Mayor Ostler then stated that Utah Broadband wants to make a presentation to the Council regarding their internet and fiber options; he asked the Council if they are willing to hold a work session on February 7 at 6:00 p.m. to hear the presentation. The Council answered yes.

c. Future Meetings

- January 24, Planning Commission Meeting, 7:00 pm, City Hall
- February 7, City Council Meeting, 7:00 pm, City Hall
- February 8, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- February 21, City Council Meeting, 7:00 pm, City Hall
- February 28, Planning Commission Meeting, 7:00 pm, City Hall

10. 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

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

The meeting adjourned at 10:15 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 17, 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 AGENDA REPORT
ITEM #4

DATE: March 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment – Signs
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:
The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Article 7 Signs in the Development Code to update several regulations regarding temporary signage in residential and commercial zones. The City Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends the City Council hold a public hearing, accept the findings, make any amendments the Council feels necessary, and **APPROVE** the proposed amendment to Article 7 Signs in the Development Code.

PRIOR COUNCIL DIRECTION:
On January 3, 2023, staff communicated the need to update temporary sign regulations in the Development Code. Setbacks in the Ridgeview project have made it impossible to have development promotional signage that meets the Development Code requirements. The Council provided feedback about the need to consider regulations that are appropriate, but still provide business support. The Council further directed staff to look into options to require businesses to be truthful in their advertisements.

BACKGROUND:
Complaints were submitted to the City's Code Compliance Officer regarding the excessive development promotional signage throughout the Ridgeview development. To address the complaint, staff worked with each of the builders in Ridgeview to bring their temporary signage into compliance. While working with them, staff came to the conclusion that with the setbacks and fence locations throughout the development, it would not be possible to fully comply. Staff determined it was necessary to amend the code to update the sign regulations.

In researching temporary sign regulations, staff found that the U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015 established that municipal sign regulations cannot be "content based".

The City's temporary sign code is content based. The code requires different sizes and setbacks for promotional signs, grand opening signs, agricultural signs, model home signs,

and garage/yard sale signs. Based on the Supreme Court decision, staff has drafted a proposed amendment that shifts the sign regulations from being content based to being based on what type of property the sign is located on.

SUMMARY OF THE REQUEST:

1. *Home Occupations*
    a. The proposed amendment clarifies that signs for home occupation businesses are prohibited.

2. *Truth in Advertising*
    a. All signs must be directly related to a product, promotion, property, merchandise, sale, transaction, or use located on or available at the property associated with the sign, and any sign that promotes, advertises, or displays a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available on the property associated with the sign shall be considered an off-premise sign.
    b. All signs shall comply with all applicable truth in advertising laws and regulations, including but not limited to the Utah Truth in Advertising Act, Title 13, Chapter 11a, Utah Code.

3. *Signs in Residential, Agricultural, and Planned Development Zones*
    a. Permanent Signs

Property Type	Allowed Sign Types	Maximum Size	Location	# of signs
Single Family Lot	Name plate, address marker	2 sq ft	Private property/on the dwelling	2 per lot
Subdivision	Monument sign, sign integrated into a permitted fence structure	To be determined during the development review process	To be determined during the development review process.	To be determined during the development review process

    b. Temporary Signs – Requires a temporary sign permit.

Property Type	Allowed Sign Types	Maximum Size	Location	Sign Removal	# of signs at one time
Vacant/Under construction (<1 acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage

Vacant/Under construction (1-5 acres)	Freestanding, a-frame	24 sq ft (max height 8')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Vacant/Under construction (>5 acres)	Freestanding, a-frame, banner	32 sq ft (max height 12')	-Shall not be located any closer to any ROW than its height from grade (1:1) with a minimum of 10' setback from ROW, unless integrated into a permitted fence structure; -Must be out of site triangle; -No more than 3 signs may be located along each road frontage	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding, a-frame, & banner) per road frontage
Single Family Lot	Freestanding, a-frame	12 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage

Multi-family Unit (>6 units/acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Public Property	Freestanding, a-frame, banner, blade sign	As approved by Zoning Administrator	As approved by Zoning Administrator	72 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	As approved by Zoning Administrator
Off-site directional signage	Freestanding or a-frame; a banner sign may only be permitted if integrated into a permitted fence structure	6 sq ft (max height 6')	-May only be located on private property; -Shall not be located in any ROW; -Must receive written permission from the private property owner	24 hours after the use/promotion/ sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	

i. Temporary on-premise signage that is less than six (6) square feet total on a single family or multi-family lot is exempt from the requirement to get a sign permit and pay the fee, but is still required to meet all regulations of this chapter.

j. The current code allows temporary agricultural signs to be exempt from the requirement to get a sign permit and pay the fee, but still requires that the signage meet all regulations of the chapter. This exemption was included in the proposed amendment.

4. *Signs in Commercial Zones and Commercial Uses in Planned Development Zones*
   a. Permanent Signs – No significant changes were made in this section.
   b. Temporary Signs – Requires a temporary sign permit.

Sign Type	Maximum Size	Location	Sign Removal	# of signs at

				one time
A-frame	12 sq ft (max height 4')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business
Banner	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business
Freestanding	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business

5. *Section 3-712 Temporary Signs* is removed.

6. *Political Signage* – No significant changes were made to regulating political signage. A clarification is added in Section 3-714 Exceptions that political signs are not permitted on public property or in a park strip fronting on public property.

7. *Definitions*
    a. Sign, Address Marker. A sign that identifies the address of the property on which the sign is located. Address markers shall not contain or display information other than the address of the property.
    b. Sign, Blade. A temporary sign constructed of cloth, canvas, plastic, fabric, or similar light-weight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure. Also known as feather signs.
    c. Sign, Off-premise or Billboard signs. Signs advertising, displaying, or promoting a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available at the property associated with the sign which may or may not expose the sign's supporting structure. If the property is leased, then an off-site sign would be a sign which is located upon the immediate frontage or store front area which is different than the advertiser.

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 February 16, 2023.

Notice of the public hearing to be held at City Council was posted on the state and city websites and three public places on February 23, 2023. At the time of this report writing, staff has received no public comment.

PLANNING COMMISSION ACTION:

The Planning Commission held a public hearing on February 28, 2023. One resident participated in the public hearing. The resident asked questions and raised concerns regarding signage for temporary uses in residential zones, as well as political signage. Commissioners also discussed political signage, community event signage, as well as temporary signage for private celebrations (birthdays, homecomings, etc.). Staff explained that any signage smaller than six (6) square feet would not require a temporary sign permit nor fee, but would still be expected to meet the signage regulations. Staff also clarified that political signage is regulated separately from other temporary signage.

The Planning Commission voted 4:0 to recommend APPROVAL of the amendment as proposed by staff.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It addresses permanent and temporary signage in all residential zones, including Planned Developments.
2. It is consistent with the intent of the existing regulations for signs.
3. It addresses the issue of content based regulations identified in the Supreme Court decision in Reed v. Town of Gilbert.

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 Article 7 Signs in the Development Code updating several regulations relating to temporary signage in residential and commercial zones.

ALTERNATIVE MOTION:

I move that the City Council **APPROVE** the proposed amendment to Article 7 Signs in the Development Code updating several regulations relating to temporary signage in residential and commercial zones with the following changes: (the City Council will need to draft appropriate changes).

ATTACHMENTS:

1. Ordinance
2. Practice Temporary Signs – American Planning Association

ATTACHMENT #1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING ARTICLE 7 SIGNS OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO TEMPORARY SIGNAGE IN RESIDENTIAL AND COMMERCIAL ZONES AS SHOWN IN FILENAME TA-23-03.

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 February 28, 2023 and

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

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

SECTION 1: **ADOPTION** Article 7 Signs of the Highland City Development Code is 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 March 7, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, March 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

3-704 General Regulations

No sign, unless specifically allowed by this code shall be erected in the City of Highland. The following articles shall serve as guidelines for any sign erected in Highland City:

1. All signs shall be constructed, mounted or attached in a safe and secure manner.
2. No sign shall be designed to emit sound, smoke or steam.
3. Signs within Commercial Zones shall be specifically regulated by that zone as required by this Section (3-707).
4. In all Zones, a church or quasi public organization may erect one sign on the premises occupied by such organization to identify the name of the organization and announce activities thereof. Signs allowed by this paragraph shall not exceed 16 square feet in area.
5. Reserved.
6. Signs may be erected in any zone advertising property for sale or lease which is located on that property. Size and location is defined by zone within this code.
7. All signs shall include wording and/or pictures that conform to high community standards. Lettering shall be sufficiently large to be read at posted maximum speeds so as not to cause a traffic hazard.
8. No commercial sign shall be allowed on any property without a current Highland City Business License.
9. Commercial signs in residential zones are prohibited except as outlined in this code.
   ~~9.~~a. Signs for home occupations in residential zones are prohibited.
10. Signs shall not project above the roof line of any building.
11. Relationship to Buildings: Signs shall be compatible with the predominant visual elements of the building, including but not limited to construction materials, color or other design features. Signs in commercial centers, offices and other similar facilities shall be part of a sign program and shall provide a compatible visual design common in theme to all applicable buildings and uses.
12. In commercial zones where there is more than one (1) sign, all signs shall be complementary to each other in the following ways:
    a. Type of construction materials.
    b. Letter size, color and style of copy.
    c. Method used for supporting sign (wall or ground base).
    d. Shape of signs and related components.
    e. Method of illumination.
13. The following signs shall not be permitted within Highland City unless otherwise specifically identified in this Code:
    a. Animated signs of any kind
    b. Balloons or other inflatable signs
    c. Beacons
    d. Billboards
    e. Chalkboards/Blackboards
    f. Changeable copy signs of any kind
    g. Flashing signs
    h. Marquees (excluding government or quasi-government)
    i. Mobile signs
    j. Off-premise signs (~~including~~ excluding directional signages~~s~~ as outlined in Section 3-706)
    k. Projecting signs
    l. Roof signs
    m. Rotating or revolving signs
    n. Signs in traffic safety sight areas

o. Signs which simulate in color or design a traffic sign or signal, or which use words, symbols or characters in such a manner to interfere with, mislead or confuse pedestrian or vehicular traffic.
p. Snipe signs
q. Temporary signs installed without a permit
r. Windblown signs
s. Vehicle signs

14. All signs must be directly related to a product, promotion, property, merchandise, sale, transaction, or use located on or available at the property associated with the sign, and any sign that promotes, advertises, or displays a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available on the property associated with the sign shall be considered an off-premise sign.
15. All signs shall comply with all applicable truth in advertising laws and regulations, including but not limited to the Utah Truth in Advertising Act, Title 13, Chapter 11a, Utah Code.

3-705 Safety And Location Standards For Signs

1. No sign shall be erected in such a manner that any portion of the sign or its support will interfere with the use of any fire escape, exit, or standpipe, or obstruct any required stairway, door, ventilator, or window.
2. No sign shall be erected at any intersection improved for vehicular traffic, within a triangular area on each corner of the intersection formed by the property lines at points on each property line 40 feet from the intersection of the property lines (within the traffic safety sight area).
3. No sign shall be erected or maintained which has less horizontal or vertical clearance from any communication or electric power line than that prescribed by the laws of the state of Utah or any other applicable law, regulation or ordinance.
4. No sign shall be erected in such a manner that any portion of the sign or its support will extend over a public driveway or right-of-way. In no case shall a sign be erected in such a manner that any portion of the sign or its support will extend within or over a public or private walkway or public driveway that endangers the health, safety, or welfare of the public or exceeds the maximum height of the zone it is located in.
5. Signs and sign structures shall be designed and constructed to resist wind forces as specified in the Building Code or as otherwise determined to be safe by the Building Inspector.
6. Wall signs for shopping centers or office buildings may only be placed within a designated sign area usually designed as a band or area above the entrance or entrances for each business.
7. Signs shall be designed to provide an un-obstructed clear view of the public right-of-way to any pedestrians, bicyclists, or motor vehicles.
8. No signs shall be permitted to be erected or maintained on public property except for the following signs:
    a. Political signs in a park strip fronting on private property, subject to the private property owner's permission;
    b. Government and traffic safety ~~S~~signs exempt from the requirements of this chapter under Section 3-714(1).

3-706 Signs In Residential, ~~And~~ Agricultural, and Planned Development Zones

Commercial signs in residential zones are prohibited except as outlined in this Section. ~~In addition to any other permitted sign or signs, signs for special purposes set forth in this Section shall be permitted as provided herein:~~

~~1. A sign may be erected to advertise the individual sale, rent, or lease of property on which the sign is located and shall not exceed an area of six square feet or six feet in height. One additional sign~~

~~may be allowed on property with multiple frontages on a public street and shall not exceed six square feet or six feet in height.~~

~~2. One name plate or marker, not to exceed two square feet in area, shall be allowed for each dwelling to indicate only the occupant's name and the property address. Said name plate shall not contain an occupational designation, except that the nameplate or marker may include an occupational designation if the home occupation permit has been issued for the premises pursuant to Section 3-620.~~

~~3. One "No Solicitation" sign, not to exceed two square feet in area, shall be allowed in accordance with Municipal Code Section 5.16.170.~~

~~4. One development promotional sign may be placed on the premises of each subdivision having five or more lots or dwelling units to advertise the sale of new lots within a new subdivision. A real estate development promotional sign shall require a sign permit. Said sign may have an area of up to a maximum of thirty-two (32) square feet in size, a maximum of eight (8) feet in height (12 feet maximum height including four (4) additional feet for the support structure), and a minimum setback of thirty (30) feet from an existing right-of-way. An approved development sign may continue in service, if properly maintained, from the date of the sign permit approval to the shorter of:~~

~~a. Two years, or~~
~~b. Until eighty percent (80%) of the lots offered for sale are sold one time.~~
~~c. Said sign shall be removed immediately following its expiration period. Signs that are not removed per these requirements shall be in violation of this chapter and shall be subject to Section 3-713 and 3-714 of this Code.~~

~~5. If the original development sign becomes dilapidated or not maintained at a high standard it shall be required to be removed prior to the allotted time period. A new sign may be installed after obtaining an additional sign permit for the new sign which may continue for the time period which existed with the original development sign.~~

~~6. Each model home sign shall be allowed within the immediate front yard with a maximum size of sixteen (16) square feet with a height from ground level not to exceed 10' and shall not be located any closer to any right-of-way than it'height from grade. No model home shall display banners, vendors, flags, or balloons.~~

1. Permanent Signs.

Property Type	Allowed Sign Types	Maximum Size	Location	# of signs
Single Family Lot	Name plate, address marker	2 sq ft	Private property/on the dwelling	2 per lot
Subdivision	Monument sign, sign integrated into a permitted fence structure	To be determined during the development review process	To be determined during the development review process.	To be determined during the development review process

2. Temporary Signs. All signage listed in the table below shall require a temporary sign permit application. Temporary signs that are not permitted as defined below are specifically not permitted within Highland City.

Property Type	Allowed Sign Types	Maximum Size	Location	Sign Removal	# of signs at one time

Vacant/Under construction (<1 acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Vacant/Under construction (1-5 acres)	Freestanding, a-frame	24 sq ft (max height 8')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Vacant/Under construction (>5 acres)	Freestanding, a-frame, banner	32 sq ft (max height 12')	-Shall not be located any closer to any ROW than its height from grade (1:1) with a minimum of 10' setback from ROW, unless integrated into a permitted fence structure; -Must be out of site triangle; -No more than 3 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding, a-frame, & banner) per road frontage
Single Family Lot	Freestanding, a-frame	12 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage

Multi-family Unit (>6 units/acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Public Property	Freestanding, a-frame, banner, blade sign	As approved by Zoning Administrator	As approved by Zoning Administrator	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	As approved by Zoning Administrator
Off-site directional signage	Freestanding or a-frame; a banner sign may only be permitted if integrated into a permitted fence structure	6 sq ft (max height 6')	-May only be located on private property; -Shall not be located in any ROW; -Must receive written permission from the private property owner	24 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	

a. Violation. Signs that are not removed prior to the ~~expiration~~ sign removal date ~~of the model home~~ shall be in violation of this chapter and shall be subject to Section 3-71~~6~~3 and 3-71~~7~~4 of this Code.

3. Temporary on-premise signage that is less than six (6) square feet total on a single family or multi-family lot is exempt from the requirement of a sign permit and fee; however, failure to comply with above regulations shall be in violation of this chapter and shall be subject to Section 3-716 and 3-717 of this Code.
4. Temporary agricultural signs shall be exempt from the requirement of a sign permit and fee; however, failure to comply with above regulations shall be in violation of this chapter and shall be subject to Section 3-716 and 3-717 of this Code.

~~1.~~

~~2. Funeral Homes. Funeral Homes adjacent to an arterial street are permitted one unlit monument sign not to exceed four feet in height and twenty square feet in size per sign. Said sign shall include a one foot base of rock or brick consistent in design and material to the building and shall be landscaped in accordance with Section 3-709.5.~~

3-707 Signs In Commercial Zones and Commercial Uses in Planned Development Zones

1. Permanent Signs. All signs within commercial zones and commercial uses in Planned Development zones shall require a sign permit with exception of those stated as such below. All permanent signs within commercial zones shall be installed by a licensed sign contractor according to State Law. All permanent signs shall require the approval of the Zoning Administrator. All permanent signs within commercial zones of a sign type that has not been previously approved shall require specific approval by the Highland City Planning Commission. In addition to any other permitted sign or signs, signs for special purposes set forth in this Section shall be permitted as provided herein:

~~1. Signs may be erected to advertise the individual sale, rent, or lease of property on which the sign is located. Said signs shall be limited to one sign per street face and shall not exceed an area of 12 square feet, 4 feet in height, and 5 feet from right-of-way. A freestanding sign shall not exceed 5 feet in total height including supports.~~

~~2.~~a. If group occupancies in office buildings, commercial buildings, or industrial buildings are permitted, directory signs may be erected displaying the names of the occupants of a building who are engaged in a particular profession, business, or industry. There may be one directory sign per office building either upon the exterior wall near the primary entrance or upon a monument sign. A maximum of 1% of leased/owned space or owned front wall area or 20 square feet (whichever is smaller) may be used. If there is more than one business in a building than the building front wall area must be divided for all sides of the building. Said signs are part of the conditional use permit and must be approved by Highland City prior to installation.

~~3. Signs may be erected in connection with commercial construction projects and used for the purpose of publicizing the future occupants of the building, the architects, the engineers, and contractors participating in the project and other similar information. Said signs shall not exceed thirty-two (32) square feet, 8 feet in height (12 feet maximum with support structure), and 30 feet from the right-of-way). No such free-standing sign shall exceed twelve feet in height. A sign may continue in service, if properly maintained, from the date of the sign permit approval to the shorter of :~~

~~a. Two years, or~~

~~b. Until eighty percent (80%) of the lots or spaces offered for sale are sold or leased one time.~~

~~c. The Building Inspector approves a final inspection of the construction project. Said sign shall be removed immediately following its expiration period. Signs that are not removed per these requirements shall be in violation of this chapter and shall be subject to Section 3-713 and 3-714 of this Code.~~

~~4.~~b. Directional signs may be erected for the purpose of facilitating or controlling the efficient or safe movement of pedestrians or vehicles on or into private property, provided they are located on the property to which they pertain. No such sign shall exceed four (4) square feet in area and shall not require a permit. A maximum of two directional signs may be erected upon any commercial property. Additional directional signs shall require a permit and shall not exceed six in number. Directional signs located on an individual parcel for an individual business may include a business or identifying insignia but shall not include any promotional advertising.

~~5.~~c. Gas Station Canopies. Gas stations may install signage on canopies over pump islands. Signs placed on a gas station canopy shall be limited to 3% of each side. Any signage shall be installed within the “band” around the canopy and shall not extend above or below the canopy in any manner. The number of signs that may be placed on gas station canopies shall be limited to three sides. Signs placed on a gas station canopy shall not project more than four inches.

~~6.~~d. One address ~~plate or~~ marker, not to exceed two square feet in area, shall be allowed for each unit to indicate only the occupant's address and shall be included with every business. Address ~~plates or~~ markers shall not require a sign permit.

~~7.~~e. Kiosk. A kiosk must be of a high quality architectural style with several prominent architectural features form adjacent buildings incorporated into its design. There shall be a maximum of four (4) kiosks incorporated into the Town Center. A kiosk may be a maximum of eight (8) feet in height and four (4) feet in width per side.

~~8.~~f. Vehicle Fueling Signs

~~a.~~i. Vehicle Fueling Signs is to mean a sign containing prices and grades of fuel for sale at a service station.

~~b.~~ii. A vehicle fueling station may ~~may~~ have one fuel price monument sign per street frontage. The maximum sign area shall be 58 square feet on one street and 30 square feet on the other. The maximum height of the signs shall be eight feet excluding a required two-foot stone or brick base.

~~c.~~iii. Vehicle fueling stations may use up to one-half (1/2) of the allowed monument sign area for a reader panel only to identify the current price of fuel being sold.

~~d.~~iv. Vehicle Fueling Signs may not be located closer than 100 feet from a street intersection and shall be located outside of the clear vision triangle.

~~e.~~v. Sign lighting shall be shielded in a manner that the illumination source is not visible from any contiguous lot or real property.

The following table will define differences for permanent and permitted signs within each separate commercial zone in Highland City. (Amended: 8/15/06, 4/3/07, 7/15/08)

Table 3-707A

ZONE	PO ZONE	TOWN CENTER	C-1 ZONE	CR ZONE	RP ZONE	PU ZONE	PI ZONE
Monument Sign	Height 6 ft. max. Size: 24 (business)/60 (identification) sq ft max. Frontage: 130 ft. min. Number: one sign to be a building directory for each building and one to advertise the office park in general. Material: stone, wood (accent), masonry (brick,	Height: 6 ft. max. Size: max. 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet or SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of highways and 60' from another monument sign. Material: stone, wood (accent), architectural concrete), architecturally suited metals.	Height: 6 ft. max. Size: max 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet of SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of	Height: 6 ft. max. Size: max 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet or SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of highways and	Height: 6 ft. max. Size: max. 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet of SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Material: stone, wood (accent),	Not Permitted	Height: 10 ft. max. Size: Up to 250 sq. ft. 33% may be digital or electronic Frontage: 130 ft. min. Location: Min 300' from an adjacent monument sign.

	architectural concrete), architecturally suited metals		highways and 60' from another monument sign Material: stone, wood (accent), architectural concrete), architecturally suited metals.	60' from another monument sign Material: stone, wood (accent), architectural concrete), architecturally suited metals.	architectural concrete), architecturally suited metals.		
Wall Sign	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708
Window Sign*	Not Permitted	Area: 50% of window max.	Area: 50% of window max.	Area: 50% of window max.	Not Permitted	Not Permitted	Area: 50% of window max.
Awning	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711 (3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Not Permitted	Not Permitted
Arcade Sign	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved wood, architecturally suited metals.	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 dq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Not Permitted	Not Permitted

	wood, architecturally suited metals.		wood, architecturally suited metals.	wood, architecturally suited metals.	wood, architecturally suited metals.		
Marquee Sign	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Height: 20 ft max. Size: Up to 160 ft. (per side) 33% may be digital or electronic. Frontage: Min 300' from an adjacent marquee sign. Sign may be located adjacent to a right-of-way but may not extend over it.
Commercial Center Freestanding Sign	Not Permitted	Height: 15 ft. max., 3 ft. min. stone base Size: 243 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building advertised shall be min. 100' > 1 lot deep from SR-92 or SR-74. Location: One (1) on SR-92; one (1) on SR-74. Minimum 400 feet from intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architecturally suited metals, Plastic (if	Height: 15 ft. max., 3 ft. min. stone base Size: 243 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building advertised shall be min. 100' > 1 lot deep from SR-92 or SR-74. Location: One (1) on SR-92; one (1) on	Height: 25 ft. max., 3 ft. min. stone base Size: 400 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building or development advertised shall be min 100' > 1 lot deep from SR-92 or SR-74. Location: One (1) on SR-92; one (1) on SR-74. Minimum 300 feet from	Not Permitted	Not Permitted	Not Permitted

		inside pan-channel type lettering) same per zone	SR-74. Minimum 400 feet from intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architecturally suited metals, Plastic (if inside pan-channel type lettering) same per zone	intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architec~~h~~turally suited metals, Plastic same per zone			
* In the case of multiple windows on one side of a building, a business can utilize 100% of one window and leave 100% of the other window open, making it sufficient to meet the 50% requirement. - (Ord: #2010-17, 10/05/2010)							

2. Temporary Signs. All signage listed in the table below shall require a temporary sign permit application and, if applicable, must receive written permission from the property owner of the property on which the sign is placed. Temporary signs that are not permitted as defined below are specifically not permitted within Highland City.

Sign Type	Maximum Size	Location	Sign Removal	# of signs at one time
A-frame	12 sq ft (max height 4')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business
Banner	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business

Freestanding	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business

3-712 (Reserved) ~~Temporary Signs~~

~~This Section shall require a temporary sign permit application and provides for commercial and retail establishments an opportunity to temporarily advertise on special occasions only. A temporary sign shall not be permitted to advertise specific items (ex: roses, beer, gas, soda, etc.). A person or business applying for a temporary sign, other than a temporary garage sale or yard sale sign for the property within a residential or agricultural zone, must possess a current business license within Highland City. Temporary signs that are not permitted as defined in this Section are specifically not permitted within Highland City. Temporary signs that may be applied for are used exclusively for:~~

~~1. Temporary Grand Opening Signs. A person may obtain a permit for a Temporary grand opening sign upon approval of the Zoning Administrator for a specific period of time not to exceed 60 days. It shall be the responsibility of the applicant to first obtain a permit for such a sign and to remove the same sign after expiration of the term of the permit. Temporary Grand Opening signs shall only be available one time per business or change in ownership.~~

~~2. Temporary Promotional Signs. Temporary promotional signs may be permitted upon approval of the Zoning Administrator for a specific period of time not to exceed six (6) days (Monday B Saturday). Temporary promotional signs shall only be placed in a location specified by the City Council (ex: part of the allotted window front, directly in front of leased space and within 10 feet of the entrance, etc.). It shall be the responsibility of the applicant to first obtain a permit for such a sign and to remove the same sign after expiration of the term of the permit. Temporary signs shall only be available B five (5) times per year per business. Unless otherwise specified within this code only the following list of temporary signs shall be permitted and all others shall be specifically not permitted:~~

~~a. Banner Signs. Banner signs not to exceed twenty-four (24) square feet in size. Banner signs shall only be permitted to be placed within the approved banner supports or on the building within the leased space of the business of which the sign is associated as designated by the City Council. A banner sign may not be attached in any way to a significant supporting structure (columns), significant architectural feature, or above an eave, parapet or roof line of a building.~~

~~b. A-frame Signs. A-frame signs must be placed within fifteen (15) feet from the primary entrance for the business advertising on it. A-frame signs may not exceed 48" in height and 36" in width. A-frame signs may not be placed in a manner that would impede pedestrian or vehicular access.~~

~~3. Temporary Agricultural Signs: designated to be displayed no longer than forty-five days.~~

~~a. A temporary agricultural sign shall be no larger in area than sixteen square feet and stand no higher than ten feet from the ground.~~

~~b. These signs shall not be placed within any road right-of-way, shall not obstruct the view of vehicular traffic or pedestrians, shall not be placed on any traffic regulatory sign, and shall not be lighted.~~

~~c. These signs shall advertise only produce, fruit, livestock or other crops produced in Highland City.~~

~~d. Temporary agricultural signs shall be exempt from requirement of sign permit and fee; however, failure to comply with above regulations shall constitute littering, punishable as a misdemeanor. All nonconforming signs shall be removed at the expense of the person or persons responsible for their~~

~~erection. If no person can be found it shall be assumed the person at the location advertised shall be responsible.~~

~~4. One temporary "A-frame" sign not to exceed 32" x 48" may be permitted for a model home. The sign shall be placed behind the sidewalk on model home private property and only displayed while the realtor of the model home is present to let passers-by know they are open.~~

~~5. Temporary Garage Sale or Yard Sale Signs. (Amended 11/15/05)~~

~~a. Garage sale or yard sale signs shall not exceed six (6) square feet in area and shall stand no higher than six (6) feet from the ground, shall not be lighted, shall not be placed in any road right-of-way, shall not obstruct view of vehicular traffic or pedestrians, or shall not be placed on any traffic sign or utility pole.~~

~~b. Garage sale or yard sale signs shall only be displayed for a period not to exceed 48 hours.~~

~~c. Garage sale signs shall require a temporary sign permit. (Amended 11/15/05)~~

~~d. Temporary garage sale or yard sale sign permits shall be available five (5) times per year.~~

~~e. Garage or yard sale signs shall only be placed on property where the garage sale is occurring.~~

~~f. Off-site directional signs for garage or yard sales are specifically prohibited with exception to specific "community announcement" locations as approved by the Highland City Council. (Amended 11/15/05, 4/3/07)~~

~~HISTORY~~

~~*Amended by Ord. O-2013-15 on 11/19/2013*~~
~~*Amended by Ord. O-2017-09 on 5/2/2017*~~
~~*Amended by Ord. O-2020-30 on 9/15/2020*~~

3-714 Exceptions

1. This Chapter shall have no application to signs used exclusively for:
    a. The display of official notices used by any court or public body or official, or the posting of notices by any public officer in the performance of a duty, or by any person giving legal notice.
    b. Directional, warning, or information signs of a public nature, directed and maintained by a public authority or public utility.
    c. Any sign of a non-commercial nature when used to protect the health, safety or welfare of the public.
    d. Any flag, pennant, or insignia of any nation, state, city, or other political subdivision.
    e. Any sign legally mandated by state, federal, or municipal law.
    f. Any temporary sign of a non-commercial nature which is displayed for addressing community events or community groups for the purpose of announcing special events which may benefit the community as a whole. Temporary community event signs shall only be placed in areas designated by the city for such purposes and be approved by the City Zoning Administrator. These signs will be identified by an attached label indicating when the sign shall be removed.
    g. Monument signs may be installed within public property identifying public points of interest (parks, library, City Hall, etc.) by Highland City.
2. Political Signs shall be permitted as follows:
    a. Political signs are allowed in all zoning districts.
    b. The maximum sign area for any political sign shall be thirty-two (32) square feet and the maximum height shall be eight (8) feet.
    c. Political signs are not permitted on private property or in a park strip fronting on private property without the private property owner's permission. Signs may be taken down by the private property owner.
    ~~c.~~d. Political signs are not permitted on public property or in a park strip fronting on public property.

~~d.~~e. Political signs shall not be permitted in the clear vision triangle.

3-718 Sign Definitions

The following list of definitions shall define sign types and sign locations. The following definitions shall only apply to items pertaining to signs and specifically to this Section.

1. Sign. Means any device, notice or medium, including its structure and other components, which is visible from any street or from any site other than the one on which it is located and which is used or is capable of being used to attract attention for advertising, identification, or information purposes.

~~1.~~2. Sign, Address Marker. A sign that identifies the address of the property on which the sign is located. Address markers shall not contain or display information other than the address of the property.

~~2.~~3. Sign, Agricultural. Means a sign placed to advertise produce, fruit, livestock or other crops grown in Highland City, Utah. (Ord. 1981-8 § Ord. 1980-9 §1).

~~3.~~4. Sign, A-frame signs. means a sign which is self-supporting, easily moved, and not permanently attached to the ground. It is shaped similar to the graphic shown to the right with a maximum dimension of 4'x3' when folded (see Fig. 3-718.1).

Figure 3-718.1

~~4.~~5. Sign, Animated signs of any kind. An animated sign is a sign that is usually in the shape of a known object and designed to move in some fashion, to wave, to rotate, and depicts action through a change of lighting or other effect.

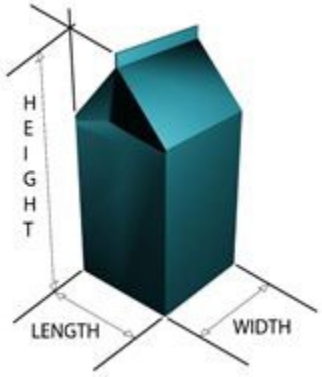
~~5.~~6. Sign, Arcade. An arcade sign is a sign that hangs underneath an arcade at a pedestrian scale. An arcade sign is positioned perpendicular to the right-of-way becoming visible to pedestrians walking along a sidewalk or designated walkway (see Fig. 3-718.2).

Figure 3-718.2

~~6.~~7. Sign, Area. The area of a sign that is used for display purposes, excluding the minimum frame and supports. The sign area includes the entire area within any type of perimeter or border which

may enclose the outer limits of any writing, representation, emblem, logo, figure or character. The area of the sign having no perimeter or border shall be computed by enclosing the entire area within a parallelogram, triangle or circle. (Where the sign has two or more faces, the area of the third face and all additional faces shall be included in determining the area of the sign). In computing sign area only one side of back to back or double-face sign covering the same subject shall be computed when the two faces diverge by an angle of not more than 30 degrees. For signs that do not have a frame or a separate background, sign area shall be computed on the basis of the least rectangle, triangle or circle large enough to frame the display (see Fig. 3-718.3).

Figure 3-718.3



~~7.~~8. Sign, Awning. An awning sign is a non-illuminated sign which is usually painted or screen printed onto the surface of an awning made of flexible material and which does not extend vertically or horizontally beyond the limits of the awning. A sign which is painted on, attached to, or constructed in or on the surface of an awning. (see Fig. 3-718.4)

~~8.~~9. Sign, Backlit Awning. Technically, a backlit awning is a piece of reinforced polyvinyl chloride fabric stretched over a canopy-type frame and backlit from the interior by fluorescent or high-output lighting (see Fig. 3-715.4).

Figure 3-718.4

~~9.~~10. Sign, Balloons or other inflatable signs. An inflatable sign is a balloon or any object of any size required to be blown up or have air pass through it to advertise or attract attention to a specific place.

~~10.~~11. Sign, Banner. A banner sign is made of lightweight material such as cloth, paper or flexible plastic and is usually not enclosed in a rigid frame. A sign which is composed of lightweight material, including nylon, vinyl, cloth, canvas or similar fabric, and which is attached to a rod at the top and secured at the bottom (see Fig. 3-718.5).

Figure 3-718.5

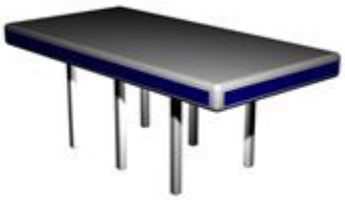
~~11.~~12. Sign, Beacons. A beacon is a light or light device which revolves, rotates, or stands still and illuminates the night sky or flashes at ground level to direct traffic to its location.

~~12.~~13. Sign, Billboards. Billboard signs can be supported by tall poles which enable the sign to be seen from a distance. These are known as "high-rise" signs. Any sign that is standing on or erected into the ground. Such signs are usually, but not necessarily, supported from the ground by one or more exposed poles or similar uprights, with or without braces. Billboards are typically but not necessarily self supporting. Billboards are not permitted within Highland City.

14. Sign, Blade. A temporary sign constructed of cloth, canvas, plastic, fabric, or similar light-weight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure. Also known as feather signs.

~~13.~~15. Sign, Canopy. A canopy is a rigid, roof-like structure which is entirely supported from a building, which may be below the level of the main building roof line or which may provide an enclosed bulkhead thereto, and projects beyond the building face to provide weather protection. A canopy sign is a sign which is painted on, attached to, or constructed in or on the face or structural element of a canopy (see Fig. 3-718.6).

Figure 3-718.6



~~14.~~16. Sign, Chalkboards/Blackboards. Chalkboards and blackboards are typically used by food services to advertise daily specials. They are either mounted on a wall or supported as an A-frame type structure.

~~15.~~17. Sign, Changeable copy. A sign that contains lettering which can be changed manually through the use of detachable letters, characters, numbers, or graphics but does not include a billboard. Also, a sign that contains lettering which can be changed automatically by electronic switching of lamps or illuminated tubes. Said sign is a freestanding or wall sign, or whether said sign projects from and is supported by a building (see Fig. 3-718.7).

Figure 3-718.7

~~16.~~18. Sign, Copy. Means the letters, characters, numbers or graphics which make up the message on a sign, but does not include background color.

~~17.~~19. Sign, Dilapidated. Any sign that has been weathered, is illegible, not maintained, the structural integrity is lost, is unattractive due to lack of maintenance, has been abandoned, or has fallen down.

~~18.~~20. Sign, Electric. A sign which has any portion thereof lighted by artificial light in any manner or which rotates or otherwise moves. An electronic message center is a sign on which differing copy is shown on the same lamp bank, i.e., an electronic or electrically controlled device which displays the time and temperature or other messages.

~~19.~~21. Sign, Entrance or Exit. Means one entrance or exit sign placed at each driveway entering or leaving the premises.

~~20.~~22. Sign, Freestanding. See Billboards. Any sign that is standing on or erected into the ground and exposes its supporting structure(s). Such signs are usually, but not necessarily, supported from the ground by one or more poles, braces, cables or similar uprights which are typically exposed. Any sign which is entirely self-supporting and is temporarily attached to the ground (see Fig. 3-718.8).

Figure 3-718.8

~~21.~~23. Sign, Flashing. Means any sign which is intermittently on and off or which revolves in a manner to create the illusion of being off and on; excepting, however, time and temperature signs, school flashing signs, revolving freestanding signs and electronic signs.

~~22.~~24. Sign, Guide. Means signs and sign structures which serve as directional guides to recognize areas of regional importance and patronage. To clarify and define such areas of regional importance and patronage four types of areas are intended to be included:

1. Recreational and entertainment centers of recognized regional significance;
2. Any historical landmark;
3. Parks, schools, or churches;
4. Public safety facilities.

~~23.~~25. Sign, Height. As applied to a sign, means the vertical distance from grade which exists or existed immediately prior to the installation of a sign to the furthest point, object, or structure at the top of a sign. See fig. 3.711.3 Sign Area.

~~24.~~26. Sign, Identification. A sign giving the name, address number and location of the occupants of a building or buildings, and may also include a map or plan to locate such buildings, if it is a general directory sign.

~~25.~~27. Sign, Illuminated. A sign which has any portion thereof lighted by artificial light, including floodlighting or reflecting lighting of any kind.

~~26.~~28. Sign, Indirectly illuminated. Any sign which is partially or completely illuminated at any time by a light source which is so shielded as to not be visible at eye level.

~~27.~~29. Sign, Kiosk. Means a freestanding structure with one or more sides to be used for advertising or as a directory. A kiosk may be approved by the Planning Commission only within the Town Center. (see Fig. 3-718.9).

Figure 3-718.9

~~28.~~30. Sign, Logo. Means a symbolic representation not including any words, names, or numbers unless part of a registered trademark which is used exclusively to simplify advertising of a product, business, service, or activity, and which contains no additional identification, information or message.

~~29.~~31. Sign, Marquee. Marquee signs are signs which form a part of a marquee or canopy and includes any flat roofed structure attached to and supported by a building and projecting over public property. A light detachable structure similar to an awning, which projects over an entrance, and is supported entirely or partially from the ground.

~~30.~~32. Sign, Mobile. A sign that can be moved easily from one place to another and any sign mounted on a trailer or moveable wheels. Mobile signs include A-frame signs, automobiles, trailers, boats, small freestanding signs and any other object that contains advertising upon it which can be easily moved.

~~31.~~33. Sign, Monument. Signs that are permanently mounted onto the ground and do not show the supporting structure(s). Monument signs must contain a minimum of one (1) foot of masonry above grade and attached to the bottom of the sign to screen any supporting structure (see Fig. 3-718.10).

Figure 3-718.10

~~32.~~34. Sign, Name Plates. Means signs identifying the name, occupation and/or professions of the occupant of the premises.

~~33.~~35. Sign, Non-accessory. A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises, and only incidentally on the premises, if at all.

~~34.~~36. Sign, Obsolete. Means a commercial sign for a business or activity which is no longer operated on the premises. All obsolete signs shall be removed immediately upon the business owner vacating the premises. The property owner may be responsible for immediate removal of any obsolete signs if the business owner did not remove them after vacating the space.

~~35.~~37. Sign, Off-premise or Billboard signs. Signs advertising, displaying, or promoting a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available at the property associated with the sign ~~merchandise or services other than those available for sale on the premises with which the sign is located~~ which may or may not expose the sign's supporting structure. If the property is leased, then an off-site sign would be a sign which is located upon the immediate frontage or store front area which is different than the advertiser.

~~36.~~38. Sign, Pedestrian Entrance. Means a door or entry located on the first story of a building used by the public to enter the premises, but does not include a door used only by staff, a door used only as an exit from the premises, or a door to a vehicular parking garage or loading bay.

~~37.~~39. Sign, Permanent. Means any wall sign or monument sign within Highland City.

~~38.~~40. Sign, Permit. A filed application with the City including authorization in writing issued by the Director pursuant to this by-law.

~~39.~~41. Sign, Political, A sign to the expression or communication of constitutionally protected speech, other than commercial speech, and excluding any permitted billboard.

~~40.~~42. Sign, Premises or Business. Means a sign which directs attention to a business commodity, service or other activity which is sold, offered or conducted on the premises upon which the sign is located or to which it is affixed.

~~41.~~43. Sign, Projecting. Any sign attached to a building or other structure and extending in whole or in part perpendicular beyond any wall of the building or structure. A projecting sign is a sign which is attached to, and projects from, a structure or building face (see Fig. 3-718.11).

Figure 3-718.11

~~42.~~44. Sign, Public Interest. A sign on private property that displays information pertinent to the safety or legal responsibilities of the general public such as "Warning" and "No Trespassing" signs.

~~43.~~45. Sign, Readerboard. A sign on which copy can be changed manually. It usually consists of a panel on which individual letters or pictorials are mounted. See "Changeable Copy."

~~44.~~46. Sign, Real Estate. A sign that is used to offer for sale, lease, or rent the premises upon which such sign is placed.

~~45.~~47. Sign, Roof. Any sign which is erected, constructed, and maintained upon or over the roof or over a parapet of any building or structure. Any sign that is mounted onto the ground but has the supports passing through any portion of the roof of a building or structure shall be considered a roof sign. Any sign which extends above any portion of the eave or parapet of a building.

~~46.~~48. Sign, Rotating or revolving signs. A sign all or a portion of which, that rotates or revolves around an axis in whole or in part or includes visible moving physical elements to direct attention to its location excepting, however, time and temperature signs.

~~47.~~49. Sign, Signs in traffic safety sight areas. Signs are not permitted within a traffic safety sight area as shown to the right. A traffic safety sight area is an area at a corner of a street. The area is within a triangle measured from a point where the property line would meet (see figure to the right) and then measured 40 feet back (see Fig. 3-718.12).

Figure 3-718.12

~~48.~~50. Sign, Snipe. Means any sign of a material such as cardboard, paper, pressed wood, plastic or metal which is attached to a fence, window, tree, utility pole, portable stand or temporary structure, or any sign which is not securely fastened to a building or firmly anchored to the ground, excluding permitted political signs or real estate signs.

~~49.~~51. Sign, Temporary. A sign which is not permanently mounted to a building, foundation, or ground support which has not received approval by the Planning Commission or City Zoning Administrator as a permanent sign. A temporary sign is any sign which is not a monument or wall sign.

~~50.~~52. Sign, Temporary Garage or Yard Sale. Means a sign placed to advertise a garage or yard sale of items owned and being sold by the family or neighborhood at the place shown on said sign. Does not include any sign that indicates the presence or operation a home occupation or other commercial activity

Sign, Wall. Any sign posted or painted upon, suspended from or otherwise affixed to an exterior wall, fascia, canopy, or marquee with the face of the sign approximately parallel with the wall or fascia to which it is attached (see Fig. 3-718.13).

Figure 3-718.13

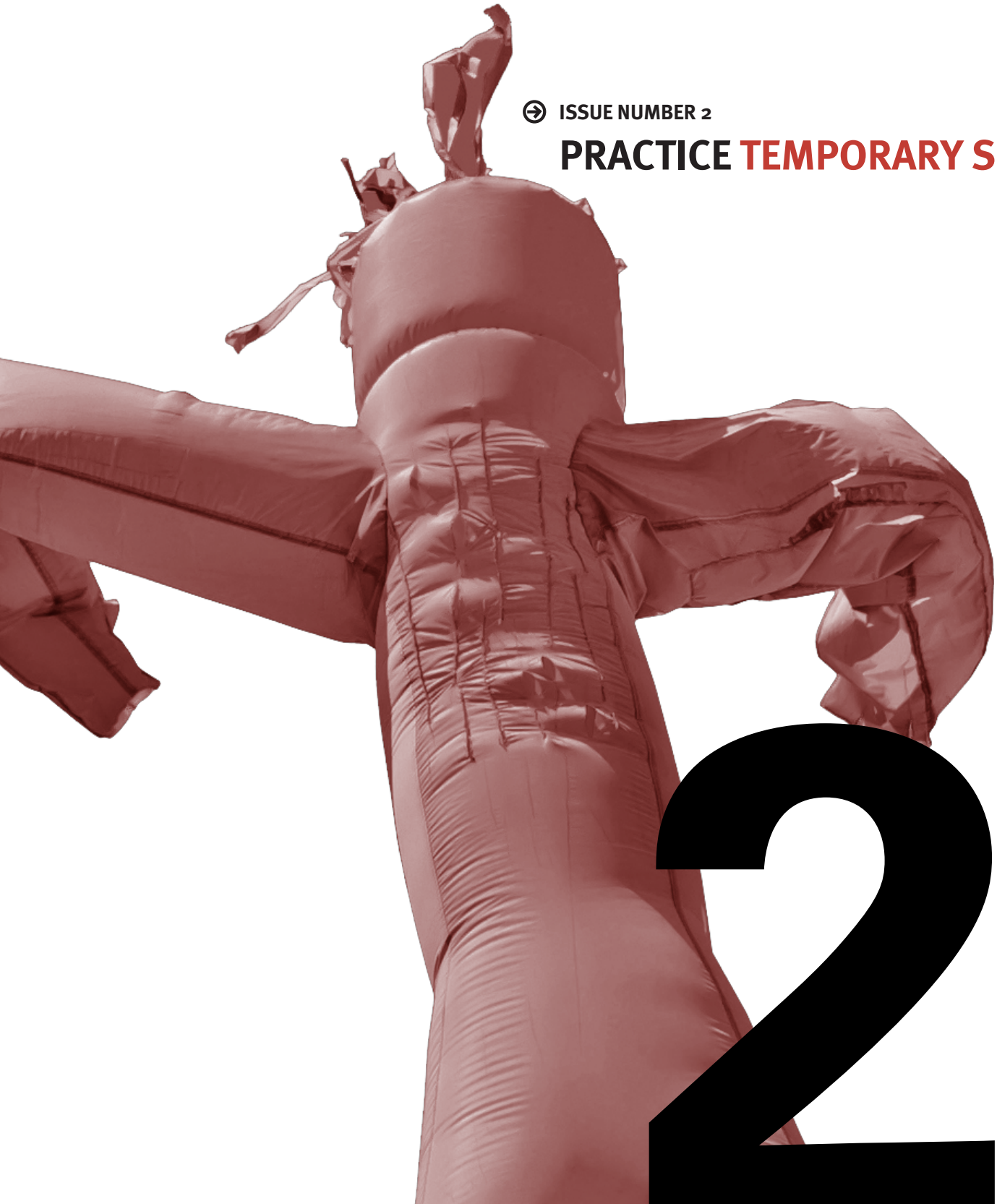
~~51.~~53. Sign, Windblown signs. A sign which is animated by the wind and is not considered to be a flag which represents a nation, state, community or religion or other personal belief.

~~52.~~54. Sign, Window. Means a sign placed in or upon any window of any structure utilized for commercial purposes to advertise business or products which blocks view through transparent area of window (see Fig. 3-718.14).

Figure 3-718.14

ZONING PRACTICE FEBRUARY 2016

AMERICAN PLANNING ASSOCIATION



ISSUE NUMBER 2

PRACTICE TEMPORARY SIGNS

2

Temporary Sign Regulations in a Post-*Reed* America

By Wendy E. Moeller, AICP, and Alan Weinstein

Any community planner who has had the responsibility of administering and enforcing a zoning code has likely had to deal with the often complex issue of temporary signs—those signs that seemingly pop up overnight and proliferate if unchecked.

These same planners may understand the need for the signage to advertise local events, business activities, elections, and the like, but they are also charged with regulating the temporary signs to prevent their excessive use, often to preserve community character.

According to a recent survey of local governments, more than 80 percent of respondents stated that staff enforcement of their temporary sign regulations was one of their community's biggest issues, and almost a third responded that content neutrality—the regulation of signs without consideration of the content of the sign message—was an ongoing issue (Moeller 2015). A more in-depth review of the responses showed that even those communities that did not feel content neutrality was an issue had some level of content regulation in their existing sign regulations, most often the regulation of real estate or election signs. This is particularly noteworthy, given that the regulation of a sign's content was the subject of the U.S. Supreme Court's June 2015 ruling in *Reed v. Town of Gilbert, Arizona*, a case with a number of ramifications for sign regulations across the country.

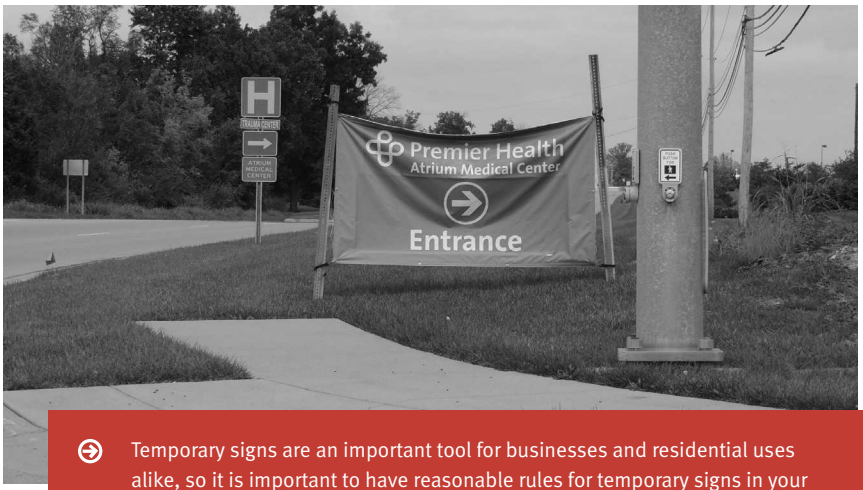
This article summarizes the ruling in *Reed* and introduces how it impacts a core aspect of temporary sign regulations, which is how we define signs. This is followed by the best practices communities can utilize to help regulate temporary signs in a post-*Reed* America.

REED V. TOWN OF GILBERT, ARIZONA

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015, is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding the day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary noncommercial signs, the Court's 6–3 majority decision, written by Justice Clarence Thomas, likely applies to the regulation of permanent signs as well as temporary signs, business signs as well as residential signs, and possibly, on-site versus off-site signs.

The rules that Justice Thomas announced in *Reed* could not be more straightforward. A sign regulation that "on its face" considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content based "on its face" it does not matter that the government did not intend to restrict speech or to favor some category of speech for benign reasons. He wrote: "In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral." Further, a sign regulation that is facially content neutral is also a content-based regulation if it is justified by—or that has a purpose related to—the message on a sign. For example, a code provision that allows more lawn signs between mid-August and mid-November would be facially content neutral but might be challenged as being justified by or have a purpose related to allowing "election campaign" messages.

Whether content-based "on its face" or content neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless the government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the "strict scrutiny" test and few, if any, regulations survive strict scrutiny. This may be particularly true in regard to sign regulations, given that a number of federal courts have previously ruled that aesthetics and traffic safety, the "normal" governmental



Wendy E. Moeller

Temporary signs are an important tool for businesses and residential uses alike, so it is important to have reasonable rules for temporary signs in your land-use regulations.

Wendy E. Moeller

Temporary signs with noncommercial speech tend to be more of a presence during election times. Rules for these signs can vary greatly by individual state rules and case law.

Wendy E. Moeller

Prior to *Reed*, it was common to see standards for development or construction signs, but this can be an example of a content-based regulation if the sign is defined as relating to a development or construction project.

interests supporting sign regulations, are not "compelling interests."

Justice Thomas's opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements for house nameplates, real estate signs, political or election signs, garage sale signs, "holiday displays," etc. Almost all codes also categorize temporary signs by content, and then regulate them differently. For example, a real estate sign can be bigger and remain longer than a garage sale sign. Or the code allows the display of more election signs than "ideological" or "personal" signs, but the election signs must be removed by a certain number of days after the election, while the personal or ideological signs can remain indefinitely.

Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider "speaker-based" provisions to be content based, differing treatment of signs for "educational uses" versus "institutional uses" versus "religious institutions" could be subject to strict scrutiny. The strict scrutiny test could also apply for differing treatment of signs for "gas stations" versus "banks" versus "movie theaters."

Reed does not, however, cast doubt on the content-neutral "time, place, or manner" regulations that are the mainstay of almost all sign codes, provided they are not justified by—and do not have a purpose related to—the message on the sign. Justice Thomas acknowledged that point, noting that the code at issue in *Reed* "regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts and portability." Justice Alito's concurring opinion, joined by Justices Kennedy and Sotomayor, went further.

Justice Thomas's opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*.

While disclaiming he was providing "anything like a comprehensive list," Justice Alito noted "some rules that would not be content based." These included rules regulating the size and location of signs, including distinguishing between building and freestanding signs; "distinguishing between lighted and unlighted signs"; "distinguishing between signs with fixed messages and electronic signs with messages that change"; distinguishing "between the placement of signs on private and public property" and "between the placement of signs on commercial and residential property"; and rules "restricting the total number of signs allowed per mile of roadway."

But Justice Alito also approved of two rules that seem at odds with Justice Thomas's "on its face" language. Alito claimed that rules "distinguishing between on-premises and off-premises signs" and rules "imposing time restrictions on signs advertising a one-time event" would be content neutral. But rules regarding "signs advertising a one-time event" clearly are facially content based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the on-site/off-site distinction. Further, neither Justice Thomas nor Justice Alito discussed how courts should treat codes that distinguish between commercial and noncommercial signs, a point raised by Justice Breyer in his concurring opinion.

In fact, the lower federal courts are already dealing with claims that codes that differentiate between commercial and noncommercial signs or that regulate on-site and off-site signs differently are content based and

subject to strict scrutiny. To date, only one federal district court has accepted the claim that the on-site/off-site distinction is content based under *Reed*, with several other courts rejecting that claim. No decision to date has extended the *Reed* decision to include the regulatory distinction between signs bearing commercial versus noncommercial messages.

Keep in mind, however, that even content-neutral "time, place, or manner" sign regulations are subject to intermediate judicial scrutiny rather than the deferential "rational basis" scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that a government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leaves "ample alternative avenues of communication." Because intermediate scrutiny requires only a "substantial," rather than a "compelling," government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not "narrowly tailored" to achieve their claimed aesthetic or safety goals.

REGULATORY BEST PRACTICES

There are a number of comprehensive sign regulations that have been crafted over the years that can serve as a good starting point when considering an update to your own sign regulations. In this post-*Reed* time, many communities are rethinking their approach to signs, and over the course of the next year, we are likely to see new models that better respond to the direction of the Supreme Court. The problem with temporary signs is they are a small, but integral, part of overall sign regulations. This, along with the fact that there are variable state rules related to certain temporary signs (e.g., election signs), makes it difficult to create a model temporary sign code that can stand on its own and be seamlessly added to a community's sign regulation. However, there are a number of general best practices for the regulation of temporary signs in light of *Reed*.

Distinguish Between Temporary Sign and Temporary Message

Few sign regulations make a clear distinction between a temporary message and a temporary sign. A temporary sign is where the entire sign structure is either fully portable or is not intended to be permanently installed. A temporary message is where the sign structure itself is permanent but the message may be temporary. The most common types of temporary messages we see in communities are electronic message centers and manual reader boards. In such cases, the sign should be regulated as a permanent structure but the community might control how often the message may change. While these examples seem straightforward, the line between the two can be a bit blurred. An example of this situation is when business owners or communities hang banners or other signs on light poles or similar structures. To address this issue, the community should consider the supporting structure and whether it is designed in a manner to accommodate the message, even though it may be changed out through the year. A community's banner signs attached to light poles are an excellent example where the light poles are designed with permanent fixtures on which the banners are hung. In these instances, the community should regulate the light pole, and any related fixtures that support the message, as a permanent structure with allowable temporary messages, rather than regulating it as temporary sign.

Wendy E. Moeller

Communities can still regulate the types of signs allowed (e.g., A-frame signs or blade signs), setbacks, size, and other structure type requirements.

In this post-*Reed* time, many communities are rethinking their approach to signs, and over the course of the next year, we are likely to see new models that better respond to the direction of the Supreme Court.

Think of the Bigger Picture

Reed may have related to an issue with a temporary sign, but the ruling has implications for all sign regulations. Generally speaking, it is impractical to completely separate out all the rules that apply to temporary signs as a distinct set of regulations. Consequently, when you consider overhauling how you regulate temporary signs, it is important to step back and take a comprehensive look at the overall sign code. First, given the implications of *Reed*, communities should take a look at all of their sign regulations to see where they may be regulating content, and consider if they are making a large number of exemptions to accommodate various types of signs. Second, one of the major driving forces of your sign regulations should be the purpose statement that sets clear direction for how and why a community regulates signs. This purpose statement needs to apply to all the different sign types, not just to temporary signs. Furthermore, your community might consider that if one of the purposes of the sign regulations is to promote businesses but limit temporary signs, then perhaps a better approach is to consider allowing more temporary messages on a permanent sign. Finally, evaluating your sign regulations as a whole will help you identify where you might have conflicts, such as allowing for larger temporary signs over permanent signs or making various exceptions based on content or permanency.

Consider the Sign's Location

There is a long list of temporary sign types,

GLOSSARY

The following is a sampling of some of the most common content-neutral temporary sign types.

A-Frame Signs (aka Sandwich Board Signs or Sidewalk Signs)
A freestanding sign ordinarily in the shape of an "A" or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition of *T-frame signs*.

Air-Activated Graphics
A sign, all or any part of, which is designed to be moved by action of forced air so as to make the sign appear to be animated or otherwise have motion.

Balloon Signs (aka Inflatable Devices)
A sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached, or held in place by a cord, rope, cable, or similar method. See also the definition for air-activated graphics.

Banner Signs
A temporary sign composed of cloth, canvas, plastic, fabric, or similar lightweight, nonrigid material that can be mounted to a structure with cord, rope, cable, or a similar method or that may be supported by stakes in the ground.

Blade Sign (aka Feather Signs, Teardrop Signs, and Flag Signs)
A temporary sign constructed of cloth, canvas, plastic fabric, or similar lightweight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure.

Freestanding/Yard Signs
Any permanent or temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

Pennants
A triangular or irregular piece of fabric or other material, whether or not containing a message of any kind, commonly attached by strings or strands, or supported on small poles, intended to flap in the wind.

People Signs (aka Human Mascots, Sign Spinners, and Human Signs)
A person, live or simulated, in the public right-of-way who is attired or decorated with insignia, images, costumes, masks, or other symbols that display commercial messages with the purpose of drawing attention to or advertising for an on-premise activity. Such person may or may not be holding a sign. [Note: There is significant debate about whether a people sign is really a sign or whether they can be regulated by zoning, especially in light of *Reed*. Many communities still regulate these signs, but this requires special consideration.]

Portable Message Center Signs
A sign not permanently affixed to the ground, building, or other structure, which may be moved from place to place, including, but not limited to, signs designed to be transported by means of wheels. Such signs may include changeable copy.

Snipe Signs (aka Bandit Signs)
A temporary sign illegally tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

T-Frame Signs
A freestanding sign ordinarily in the shape of an upside down "T" or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition for A-frame signs.

Vehicle Signs
Any sign permanently or temporarily attached to or placed on a vehicle or trailer in any manner so that the sign is used primarily as a stationary sign.

and each community has its own preferences for what types of signs it wants to allow. When determining what sign types to allow in your community, be sure to consider the character of the area or zoning district where you are allowing the signs. In downtown and pedestrian-focused areas, banners and sidewalk signs are far more prevalent; larger temporary signs, such as yard signs, blade signs, and banners, are more common along high-traffic areas and in more suburban or rural areas. When it comes to historic districts or other unique areas, it is not that uncommon to see a complete prohibition of temporary signs other than those that might be posted in a window or a banner attached to a building. With an increasing focus on regulating the character of land use, such as in form-based codes, there is more opportunity to write sign regulations specific to the form of development.

Specify Temporary Sign Allowances

It is not realistic or advisable to recommend that a community simply allow "X" amount of sign area and let a property owner determine how much of that area should be utilized for permanent or temporary signs. It may look like the easiest of solutions, but it ends up being an administrative nightmare for staff. Every time the owner increases or decreases the amount of temporary signs, there is a possibility of creating nonconforming sign issues or, more likely, eliminates all possibility of temporary signs if the owner spends the allowance completely on permanent signs. The latter issue becomes a problem when there is a legitimate need for a temporary sign in a situation where, for example, the property is for sale. Most communities do not want to take an ex-

treme approach of even appearing to prohibit all temporary signs, which they would have to do in the case of a business owner using their full sign allocation for permanent signs. A more reasonable solution is to establish a certain sign area allowance for permanent signs and a separate allowance for temporary signs. The community can then specify what types and numbers of signs are allowed, based on structure type and not content, along with any specific regulations for the individual sign types.

As far as an allowance for temporary signs goes, this is going to vary based on the individual vision and goals of the community. Some communities may want to be very permissive in the amount of signs but hold strict to the types of signs allowed, while others might restrict the amount of sign area permitted but allow for the signs to be posted for longer periods of time. One approach to consider is allowing a limited amount of temporary commercial signage that could be allowed year round but strictly control the permissible types of signs (e.g., banners and yard signs). This allowance will accommodate signs used for real estate, garage sales, and other commercial activities that may be necessary for longer stretches of time or that are often exempted because of their prevalence. Keep in mind, the allowances and types of signs may vary based on the zoning district or neighborhood. This provision could then be supplemented by allowing for some additional temporary signage for a specified number of days and a set number of occurrences per year. This supplemental signage might provide for other types of temporary signage (e.g., balloon signs, portable signs, additional yard signs, etc.), but the time limits will keep them from becoming permanent signs. In all instances, the community should provide basic requirements for each type of sign, including setbacks, maximum heights, maximum numbers, and separation distances.

Consider Allowing Off-Premise Temporary Signs

Many localities prohibit all off-premise signs. These prohibitions are typically related to a desire to prohibit or at least limit billboard signs. The problem with such prohibitions is that temporary signs often contain off-premise content, such as the advertisement of community events or even certain directional signs. It should be clear at this point that regulating a sign by its content (e.g., real estate signs, directional signs, etc.) is problematic because of *Reed*, but, as noted in the discussion above, there is still a question of whether the ruling also prevents communities from making the distinction between on-premise and off-premise signs.

Consequently, communities are starting to consider whether it is worth the risk to make such a distinction. In order to be as content neutral as possible, some localities are focusing more on the type and size of sign to control where and how a billboard-style sign might be allowed. Ultimately, a community should consider how people are using temporary signs and determine whether it is appropriate or not to make an on- versus off-premise distinction, especially related to temporary signs. As with any regulation, there is a balancing act of the risk of being challenged versus the benefit of the requirement.

Wendy E. Moeller

While it is necessary to avoid regulating the content of a sign, it is still possible to control temporary signs by the type of structure, such as this portable message center.

Leave Room for Interpretation

If someone proposes a new type of sign that your regulations may not clearly address, incorporate some language that allows staff to determine if the new sign type is similar in nature to a sign you do regulate, and treat the new sign in the same manner. An example of this is treating a temporary adhesive wall sign in the same manner as a banner that can be attached to a facade. If that doesn't address the sign, the community might have to consider a text amendment to incorporate the new sign type specifically.

ADMINISTRATIVE BEST PRACTICES

The administration of sign regulations is quite often the bane of a planner's existence. A lot of the frustration is often focused on temporary signs and whether to require a permit, establish deadlines, and then enforce those deadlines and any sign-specific regulations. As mentioned earlier, administration and enforcement continues to be a major issue for the vast majority of communities surveyed as part of the research into these best practices. To combat these issues, communities are beginning to take a multipronged approach that focuses on the use of technology, ease of enforcement, and public outreach.

Take Advantage of Technology

Communities can use readily available software to help aid permitting and enforcement of temporary sign regulations, especially deadlines for sign removal. For smaller communities, this might mean using online or free calendar applications that will alert staff to when they need to inspect to determine if a sign has been removed. For larger communities, there are numerous permitting software packages that accommodate online permitting applications that require little to no administrative time. These same packages can also alert staff to specific issues, such as deadlines or application requests that exceed signage allowances for a particular site.

Wendy E. Moeller

Seasonal businesses rely heavily on temporary signage that may be in place for extended periods of time.

Enforce Fairly and Consistently

Given that few localities have staff focused exclusively on proactively identifying code violations, most zoning enforcement is complaint driven. To counter this issue, communities should always consider what their enforcement capabilities are when writing any zoning requirement, especially as it relates to signs. Consider whether there are other staff members, outside the planning and zoning department, who could be trained and authorized to assist in enforcement, if necessary. Finally, make sure that your regulations can be fairly and consistently enforced. This can reduce the potential for conflict associated with selective enforcement, and it also tends to lead to better compliance because temporary sign users become increasingly aware of the implications of overstepping the requirements.

Educate Residents and Business Owners

Communities are finding success with administration and enforcement by proactively reaching out to businesses and residents with educational brochures or workshops related to sign regulations to ensure a clear understanding of expectations and requirements. Not all business owners are aware that communities have temporary sign regulations and can risk losing money by investing in the wrong type of sign. Proactive outreach activities allow the communities to educate those owners and possibly save them time.

CONCLUSIONS

Temporary signs have long been a difficult aspect of zoning regulations. Communities want to reasonably control them, but the administrative and enforcement aspects of these ever-changing structures can pose problems, especially when the content comes into play. The *Reed* case provided a response to one element of sign regulations but still leaves some questions. At the same time, the case has also provided communities a very good reason for reevaluating how and why they regulate signs and what changes need to be made to focus on the structure rather than the content.

This article is based in part on the Signage Foundation, Inc. report Best Practices in Regulating Temporary Signs.

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ABOUT THE AUTHORS

Wendy E. Moeller, AICP, is a principal and owner of Compass Point Planning, a planning and development firm based in Cincinnati, Ohio. She is the primary author of *Best Practices in Regulating Temporary Signs*. She was recently elected to serve as the APA Region IV Director and currently serves as a board member of the Signage Foundation, Inc.

Alan Weinstein has a joint appointment at Cleveland State University as professor of law at the Cleveland-Marshall College of Law and professor of urban studies at the Maxine Goodman Levin College of Urban Affairs. He is past chair of the Planning & Law Division of APA and has published and practiced extensively in the area of sign regulation.

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Vol. 33, No. 2

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for $95 (U.S.) and $120 (foreign). James M. Drinan, JD, Executive Director; David Rouse, AICP, Managing Director of Research and Advisory Services. Zoning Practice (ISSN 1548–0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Senior Editor.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or customerservice@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

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AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT ITEM #5

DATE: March 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Rob Patterson, City Attorney

SUBJECT: **PUBLIC HEARING/ORDINANCE:** Performance Assurance Code Updates

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Chapter 6 Guarantee of Performance to establish a minimum term length for performance guarantees, require warranty assurances to be cash deposits, and clarify and update related regulations. The City Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends City Council hold a public hearing, accept the findings, and **APPROVE** the ordinance amending Chapter 6 Highland City Development Code Guarantee of Performance.

PRIOR COUNCIL DIRECTION:

On February 7, 2023, City Council discussed staff's proposal to update the Highland Development Code regarding development assurances to ensure that the development assurance that covers the cost of completing public improvements remains in place for a minimum term of two years while the development is ongoing. The Council supported amendments to this effect.

BACKGROUND:

When a new development is approved, lots cannot be sold and buildings cannot be built until the public improvements (sidewalks, street improvements, utility improvements, landscaping etc.) are either completed or the developer provides a financial assurance to cover the cost of the improvements to ensure that the city can complete the improvements in the event the developer fails to do so. If the developer provides a financial assurance to cover completion of improvements, the developer is also required to provide a 10% warranty assurance that lasts for at least 1 year after completion of the improvements to ensure that installed improvements remain in good condition for that time period.

There have been some questions by developers as to the required term or length of an improvement completion assurance (called a performance guarantee in the code). The city's practice has been to require all performance guarantees to be in place for at least two years, but that practice is not spelled out clearly in the city's code. The proposed amendments impose a clear, two-year minimum term.

In reviewing the code, additional clarifications have been recommended in order to update antiquated language and use consistent language throughout the code, bring the code in line with state law, clarify that the city can require an additional guarantee if the original one expires while the project is ongoing, and to clarify the duration, type, and purpose of the improvement warranty assurance, requiring it to be a cash deposit in an escrow account rather than allowing it to be provided as a letter of credit.

SUMMARY OF THE REQUEST:

The proposed amendments do the following:

1. Clarify language by removing varying usage of "bond," "guarantee," "retainage," etc., and use consistent language: "Performance Guarantee" = the completion assurance; "Warranty Assurance" = the warranty assurance; "Assurances" = collectively referring to both assurances

2. Minimum two-year term for performance guarantees.

3. Replacement performance guarantee required if the original one expires and project remains incomplete.

4. Clarifies that the warranty assurance is not subject to partial release and begins after the improvements are completed by the developer and approved by the city and the developer provides all "as-built" record drawings regarding such improvements.

5. Require the warranty assurance—the 10% amount held for at least 1 year—to be a cash deposit.

CITIZEN PARTICIPATION:

Notice of the public hearing held at the Planning Commission meeting was posted on the state and city website and three public places on February 16, 2023. No comments were received.

Notice of the public hearing to be held at the City Council meeting was posted on the state and city website and three public places on February 23, 2023. As of the time of this report writing, no comments have been received.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It is consistent with the desires of the Engineering Department and city practices
2. It clarifies requirements for the benefit of developers and City Staff
3. It conforms to the requirements of the Municipal Land Use, Development, and Management Act.

PLANNING COMMISSION ACTION:

The Planning Commission held a public hearing on February 28, 2023. No resident comment was made or submitted. The Planning Commission discussed the various changes in the proposed ordinance and wanted to ensure that developers provide

assurances that limit the burden on residents to cover the costs of improvements that serve new development to the fullest extent possible. The Planning Commission voted 4:0 to recommend **APPROVAL** of the proposed amendment as presented.

FISCAL IMPACT:

There is no fiscal impact.

MOTION TO APPROVE:

I move that City Council **APPROVE** the ordinance amending the Chapter 6 of the Highland City Development Code Regulating Development Assurances.

ATTACHMENTS:

1. Ordinance

AN ORDINANCE OF HIGHLAND CITY AMENDING CHAPTER 6 OF THE HIGHLAND CITY DEVELOPMENT CODE REGULATING DEVELOPMENT ASSURANCES

WHEREAS, Highland City is authorized by the Municipal Land Use, Development, and Management Act (the "Act") to adopt regulations regarding the provision of improvement completion and improvement warranty assurances to guarantee and warranty the construction of public improvements associated with private developments; and

WHEREAS, pursuant to section 10-9a-604.5 of the Act, Highland City is authorized to adopt local ordinances to regulate how an applicant may post an improvement completion assurance; and

WHEREAS, Highland City Council desires to update the City's ordinances regarding improvement completion assurances to provide minimum term length and other regulations in order to ensure that developers provide adequate assurances that will last the length of a proposed development and protect the City and its residents from the burden of completing public improvements that are to be constructed by a developer; and

WHEREAS, pursuant to section 10-9a-604.5 of the Act, Highland City is authorized to require developers provide a warranty assurance with the completion assurance and to regulate the type of warranty assurance that will be accepted, in accordance with the types allowed under the Act; and

WHEREAS, the Highland City Council desires to clarify existing regulations regarding completion and warranty assurances and to update other terms, policies, and regulations regarding the same in order to conform to current and best practices and state law; and

WHEREAS, the proposed amendments were reviewed and received a favorable recommendation by the Planning Commission pursuant to all notice and hearing requirements; and

WHEREAS, the Highland City Council finds that updating and clarifying such ordinances, terms, policies, and regulations will be in the interest of the City, its residents, and developers;

NOW, THEREFORE, BE IT ORDAINED BY the City Council of Highland City, Utah:

SECTION 1, The Highland City Council hereby amends Chapter 6 of the Highland City Development Code as shown in Exhibit A, attached and incorporated herein.

SECTION 3. All previous Highland City ordinances or provisions thereof in conflict with the amendments adopted pursuant to Section 1 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, March 7, 2023.

HIGHLAND CITY, UTAH

_____

Kurt Ostler, Mayor

ATTEST:

_____

Stephannie Cottle, City Recorder

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

EXHIBIT A

6-101 Applicability Of Chapter

This Chapter shall govern the provisions, nature, use, and disposition of improvement completion assurances, referred to herein as "performance guarantees" and improvement warranty assurances, referred to herein as "warranty assurances," which may collectively be referred to herein as "assurances," that ~~guarantees of performance which~~ are required to be posted with or deposited for the benefit of the City by Chapter 5, Chapter 3, Article 4 (all commercial development), or any other provision of this Code.

6-102 Type And Amount Of ~~Guarantee~~Assurances

1. The performance guarantee ~~or bond~~ shall be one of the following:

    a. A deposit of cash in a separate escrow account in an amount not less than 110% (both performance guarantee and warranty assurance) of the estimated cost of constructing the required ~~improvement or~~ improvements, as determined by the City. Said account shall be made with a financial institution acceptable to the City Administrator and shall be established in such a manner that any release therefrom shall require the advance written consent of the City, as set forth in this Chapter.

    b. An irrevocable letter of credit in an amount not less than ~~110~~100% of the estimated cost of constructing the required improvement or improvements, as determined by the City. Said letter shall be issued by a financial institution acceptable to the City Administrator and shall contain the terms and conditions required by this Chapter. ~~Two letters of credit may be issued, provided that one is in an amount not less than 100% of the estimated cost of construction to guarantee completion of all required improvements, and the other is not less than 10% of the estimated cost of construction to guarantee the durability of all required improvements.~~

2. The improvement warranty assurance shall be a cash deposit in an escrow account in an amount not less than 10% of the estimated cost of constructing the required improvements. The warranty assurance may be combined with a cash deposit escrow account provided as or for the performance guarantee. The warranty assurance shall be provided at the same time as the performance guarantee and shall not expire, lapse, or be released until after the improvement warranty period. The warranty assurance shall secure the developer's unconditional warranty as to the workmanship, design, materials, construction, and durability of the improvements.

6-103 Security: Site Improvements/~~p~~Project Completion

The following articles shall apply to all commercial and residential developments within Highland.

1. Site Improvements.

a. Guarantee. To guarantee the construction, installation, repair, and/or replacement of required public improvements, the permittee shall post both a performance guarantee and warranty assurance as set forth herein in the total amount of 110% for the public improvements and landscaping of which 10% is held after the public improvements and landscaping have been accepted by the city to guarantee those public improvements and landscaping improvements. ~~bond in the form of a cash deposit. The amount of the bond shall be the greater of One-thousand Dollars ($1000.00) or 110% of the reasonable construction or installation costs of each of the following that is applicable to the project~~. The improvements covered by such assurances shall include the following:

   i. Public Improvements as listed, but not limited to:

      (1) Curb, gutter and sidewalk

      (2) Storm sumps

      (3) Asphalt paving

      (4) Fire hydrants

      (5) Fencing

      (6) Landscaping sprinkling systems

      (7) Water and sewer lines

      (8) Driveway approaches

      (9) Any other required improvements

   ii. Landscaping (if commercial or public/institutional building or if landscaping or open space is required)

b. Calculation. In calculating the amount of the ~~bond~~performance guarantee and warranty assurance, the City Engineer may accept the amount specified in a construction bid as the reasonable cost of the improvements.

c. Damage. The~~is~~ performance guarantee and warranty assurance ~~site improvement bond~~ shall also guarantee the repair or replacement of any public improvements damaged by the contractor or owner or their agents during construction.

d. The City shall notify the owner and/or contractor of any such damage and shall require repair or replacement of the damaged public improvements within a reasonable time. Upon the failure of the owner or contractor to make the specified repairs, the City may take whatever legal action it deems appropriate, including foreclosure on the ~~bond~~performance guarantee and warranty assurance, to secure the repairs.

e. ~~Bond~~ Release. All performance guarantees shall be valid and shall not expire for a term of at least two (2) years from issuance, and ~~N~~no ~~bond~~ performance guarantee shall be released until all improvements are completed and accepted by the City. The warranty assurance shall be valid and shall not expire or be released until after the improvement warranty period.

2. Project Completion.

a. Security Required. In order to protect the City from incomplete or inadequate installation of the public improvements and Landscaping, the City requires the developer post a performance guarantee and warranty assurance as set forth herein ~~bond~~ in the total amount of 110% for the public improvements and landscaping of which 10% is ~~will be~~ held after the public improvements and landscaping have been accepted by the city to guarantee those public improvements and landscaping improvements. Also, all landscaping requirements associated with each commercial or public/institutional building shall be installed and assurances provided therefor ~~and bonded for~~ prior to the final building inspection associated with a building permit and issuance of a Certificate of Occupancy.

b. Construction According to Approved Plans. All construction shall be completed according to the approved plans on which the building permit(s) was issued. The approved plans shall also include the site improvements shown on the approved site plan. Deviations from the approved plans must be approved in advance by staff, provided that requested deviations to the site plan do not increase or decrease the approved building square footage by five percent (5%) and that the project as a whole does not exceed the total approved square footage (zero sum). If changes are requested that exceed a five percent (5%) increase or decrease, the plans must be submitted by the applicant to be reviewed and approved in the same manner as the original plan approval.~~recommended by the Planning Commission and approved by the City Council prior to approval of a building permit.~~

c. Security for Completion. No certificate of occupancy will be issued unless the building and the site improvements associated with that building are completed, or the developer has provided adequate ~~security~~ assurances to guarantee completion and durability of the associated site improvements. When the site improvements and the building cannot be completed simultaneously due to weather conditions or other factors beyond the control of the developer (excluding financial inability to complete the project) the City may issue a certificate of occupancy or use inauguration for the project, provided the following conditions are met:

i. The building, buildings, or portions thereof, to be occupied have been constructed in accordance with the approved plans for those buildings and are in full compliance with applicable building and fire codes, and are completed to the extent that only exterior site improvement work remains unfinished; and,

ii. The Building Inspector determines that occupancy of the buildings, or portions thereof, prior to completion of required site improvements, is safe and that access for emergency vehicles is adequate with the site improvements unfinished; and,

iii. The developer posts adequate ~~security~~ assurances for the benefit of the City to insure completion and durability of the site improvements in full compliance with the approved plans before occupancy or inauguration of use.

d. Amount of Security. The total amount of ~~security~~ assurances to be posted under this Chapter by the developer shall be determined by the City Engineer, and shall be equal to 110% of the amount reasonably estimated by the developer and City Engineer as being necessary to complete remaining site improvements as shown on the approved plans. In the event that the developer disputes the cost estimate of the Engineer, the developer may prove a lower construction cost by providing binding contracts between the developer and contractor or subcontractor appropriate to perform the required work at a stated, fixed price. Bid proposals are not satisfactory for this purpose. If the contracts submitted are acceptable in form, the amount of ~~security~~ assurances required shall be 110% of the total contract price of all such contracts submitted, plus 110% of the estimated reasonable cost of performing any work not covered by the contracts. Specifications in such contracts shall be sufficiently clear to identify the work called for under the contract.

e. Terms of Security. The terms of any ~~bond~~ assurance offered to the City shall state a date certain by which the developer agrees to have site improvement work completed in accordance with the plans. After completion of th~~os~~e improvements covered by the assurances and the developer's obtaining from the City a final inspection approval, ~~which are bonded for and acceptance by the city,~~ the ~~c~~City shall ~~reimburse~~ release the ~~bond~~ performance guarantee, up to ~~in~~ the amount of 100% of the contract price and retain the remaining 10%, consisting of the warranty assurance, to guarantee those improvements ~~per Section 6-108 (below)~~. In the event that the developer has not completed required ~~site~~ improvements ~~work~~ by that date, the City may, at its option and on its schedule, draw on the ~~bond~~assurances, by its own act, and shall not be required to obtain consent of developer to withdraw funds for completion of the work shown on approved plans. The City shall in no way be a guarantor of the developer to any person, nor shall the City be responsible or liable for the completion of the improvements. The City's actual costs in administering the completion of work in the event of a default by the developer shall be reimbursed from the ~~bond~~ assurances or the developer.

f. Form of Security. Assurances and other ~~S~~security arrangements offered in lieu of simultaneous completion of buildings and site improvements shall be in a form and contain such terms and conditions as required by this Chapter.

g. Payment of Interest. Any interest accruing on an assurance ~~bond~~ shall, inure to the benefit of the developer upon release and not to the City, provided all improvements have been installed as required; otherwise interest will inure to the C~~c~~ity.

6-104 Performance ~~Bond~~ Guarantee - Subdivider

1. Prior to recordation of a final plat, after it has received City Council approval, the subdivider shall either complete all of the public improvements required in the subdivision or ~~. Prior to recordation, the subdivider shall~~ enter into an ~~bond~~ agreement with the City to provide assurances that insure completion and durability of all public improvements required to be installed in the subdivision. The ~~bond~~ agreement shall be in a form and contain such provisions as approved by the City Attorney's Office. The agreement shall include but not be limited to:

    a. Incorporation by reference of the final plat and all data required which is used to compute the cost of the improvements by the City Engineer.

    b. Completion of the improvements within a period of time not to exceed one year from the date the agreement is executed.

    c. The improvements shall be completed to the satisfaction of the City Engineer and according to City standards, as established by the City and accepted.

    d. The ~~bond~~ amount of all assurances shall be 110% of the City Engineer's estimated cost of the public improvements to be installed.

    e. The City shall have exclusive control over the ~~bond~~ assurance proceeds such that ~~and~~ they may be released only upon written approval of the City Engineer and they shall be released upon written demand of the City Engineer. No other person, including the developer or the issuer of the assurance, may have any right to limit when or how the City can demand release of the assurance proceeds.

    f. If the ~~bond~~ assurance proceeds are inadequate to pay the cost of the completion of the improvements, which costs include administrative and legal costs, according to City standards for whatever reason, including previous reductions, then the ~~subdivider~~ developer shall be responsible for the deficiency. Building permits shall not be issued in the subdivision until the improvements are completed, in accordance with state law.

    g. If upon written demand of the City after expiration of the time period, the ~~bond~~ assurance proceeds are not transferred to the City within 30 days of the demand, then the City's costs of obtaining the proceeds, including the City Attorney's Office costs or outside attorney's fees and court costs, shall be deducted from the ~~bond~~ assurance proceeds.

    h. Upon receipt of the ~~bond~~ assurance proceeds, after the expiration of the time period, the costs of completion shall include reimbursement to the City Engineer

and all other City departments for the costs of administration of the completion of the improvements.

i. The ~~subdivider~~ developer agrees to hold the City harmless from any and all liability which may arise as a result of the improvements which are installed until such time as the City accepts the improvements and the improvement warranty period has expired.

~~i.~~j. The performance guarantee shall be valid and shall not expire for a term of at least two (2) years from issuance. The warranty assurance shall be valid and shall not expire or be released until after the improvement warranty period.

6-105 Performance ~~Bond~~ Guarantee - Contractor

1. All public improvements required under this Title shall be installed by a contractor or subcontractors licensed by the State of Utah.

2. Prior to the installation of such improvements, the contractor or subcontractor shall obtain the necessary permits from the City and file a performance guarantee and warranty assurance ~~bond~~ in a~~n~~ total amount equal to 110% of the cost of installation of the improvements, as set forth in this Chapter.

6-106 Final Disposition And Release of Performance Guarantee

1. The ~~subdivider~~developer, or other person giving the ~~performance guarantee~~ assurances required ~~provided for~~ by this Chapter, shall be responsible for all materials and workmanship of the improvement. At the completion of the work, the person giving the assurances ~~guarantee~~ shall submit to the City Engineer record drawings as required by section 5-9-111 ~~one Mylar copy of the drawings of record, a digital copy of as-builts in accordance with the city electronic format of the improvement~~ and a certificate of completion. The applicant shall request in writing the condition of the improvements covered by the assurances ~~bonded for~~ and the ~~c~~City's acceptance thereof. The City shall have fifteen working days, in writing, to respond. The City Engineer shall then make a preliminary inspection of the improvements. If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, or if any outstanding liens are not paid, the City Engineer may declare the person giving the guarantee in default.

~~1.~~2. Upon the City's receipt of record drawings and certificate of completion, and the City's successful inspection and acceptance of the improvements at the request of the developer, the performance guarantee shall be released and the improvement warranty period shall begin. For the duration of said warranty period, the developer shall provide an unconditional warranty that the installed and accepted improvements comply with the City's written standards for design, materials, and workmanship and shall not fail in any material respect, as a result of poor workmanship or materials.

6-107 Partial Release Permitted

The City Engineer may, upon application of the person giving the guarantee, authorize from time to time a partial release of the performance guarantee in accordance with the following schedule, provided that at no time shall the 10% amount provided as a warranty assurance be released prior to expiration of the improvement warranty period:

Percent of Work Completed	Maximum Percentage of Performance Guarantee ~~of Performance~~ Eligible for Release
25%	Up to 20% of ~~Original Bond~~Performance Guarantee
50%	Additional 20% of Performance Guarantee~~Original Bond~~
75%	Additional 20% of Performance Guarantee~~Original Bond~~
100% and a satisfactory final inspection	All Remaining Amount of Performance Guarantee, Less Amounts Retained as Warranty Assurance~~Additional 20% of Original Bond~~

6-108 Duration Of Assurances~~Guarantee - Durability Retainage~~

1. The duration of the performance guarantee covering the construction and installation of the required improvements shall be for a period of at least two (2) years from the date of issuance. In the event that the performance guarantee expires or is otherwise released without the written approval of the City Engineer, and there remain incomplete or defective improvements or landscaping, the City Engineer may require the responsible party to provide another performance guarantee insuring the completion of all remaining improvements in accordance with this Chapter. The City may withhold building permits, certificates of occupancy, or other approvals, to the extent permitted by state law, related to subdivisions, developments, and other projects for which a performance guarantee has not been properly provided or is otherwise not in place.

~~1.~~2. The duration of the improvement warranty period insuring the durability, condition, material, and workmanship of completed improvements and landscaping, shall be one (1) year, beginning on the date following the completion of all improvements and final acceptance of the same in writing by the City Engineer, provided that ~~unless one of the following apply, then~~ the City Engineer shall require the improvement warranty period to be extended, and the warranty assurance~~bond~~ to be held, for a period of two (2) years if the city has substantial evidence on record of:

   a. Prior poor performance by the applicant: OR

b. That the area upon which the infrastructure will be constructed contains suspect soil and the city has not otherwise required the applicant to mitigate the suspect soil.

~~The warranty time period shall begin on the date following the completion of all improvements and final acceptance by the City Engineer.~~

~~2.~~3. The warranty assurance, consisting of a cash deposit in the amount ~~A retainage~~ of not less than 10% of the total estimated cost of constructing and installing the required improvements ~~amount of the original 110% guarantee~~ shall be provided with the performance guarantee and retained by the City until the completion of the improvement warranty period as security for the developer's warranty of the completed improvements. Such ~~retainage~~ warranty assurance shall be a guarantee of the durability of all improvements. If, at the end of ~~during~~ the improvement warranty period, the durability, condition, material, and workmanship of said improvements are found to be satisfactory, the City Engineer shall authorize release of ~~said retainage~~the warranty assurance. If, however, during said period the condition, or material, or workmanship of the improvement or improvements fails or shows unusual depreciation, or if it becomes evident that certain work was not completed or was not completed according to all City, State, and other applicable standards, or that said improvements do not otherwise comply with accepted standards of durability, said condition shall be corrected by the person giving the warranty assurance~~performance guarantee~~. If the corrections are not made within a reasonable time, the City Engineer may, in accordance with this Chapter ~~Section 6-106~~, declare such person in default and use the ~~retainage~~ warranty assurance proceeds to defray the cost of any required work.

6-109 Default

1. When the City Engineer shall determine that the person posting the performance guarantee or warranty assurance has failed or neglected to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, the City Engineer may~~,~~ declare the performance guarantee or warranty assurance, or any unreleased portion thereof, forfeited and thereafter may install or cause the required improvement to be installed or repaired using the proceeds of the ~~guarantee~~ assurances to defray the expense thereof. The City Engineer will give ~~30 days~~ written notice to the person giving the ~~performance guarantee~~ assurances prior to declaring the assurance ~~bond~~ in default.

2. In the event that the unreleased portion of the ~~guarantee~~ assurances is not sufficient to pay additional costs and expenses of such installation or repair, the City may commence to declare legal action against the person giving the guarantee for any additional costs and expenses of such installation or repair, including all costs of administration, attorney fees, and enforcement.

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT ITEM #6

DATE: March 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Stephannie Cottle, City Recorder

SUBJECT: **ORDINANCE:** Cemetery Code Update

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will consider an amendment to the Highland City Municipal Code Chapter 13.48 City Cemetery Policies and Regulations. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends City Council approve the ordinance amending the Highland City Municipal Code Chapter 13.48 City Cemetery Policies and Regulations.

PRIOR COUNCIL DIRECTION:

On December 6, 2022, City Council met in a work session to discuss proposed code updates to the Municipal Code as it relates to the Highland City cemetery. On February 21, 2023 Council provided staff with additional direction concerning their preferences regarding headstone height as well as regulations as they relate to transfer of graves. The items discussed in the work session and council meeting are incorporated into the proposed ordinance.

BACKGROUND:

Municipal Code 13.48 City Cemetery Policies and Regulations was originally adopted in 1998 and has seen only minor revisions since its initial adoption. The proposed update is to ensure that policy and practice are consistent with code and to preserve the long-term quality of the cemetery.

The following items represent the significant changes in the proposed code update:

- Headstone height: 36” from ground. This recommended change will help alleviate some concerns with safety and allow easier access for cemetery staff to maintain the grounds and perform burials. The 36” height will also reduce the number of headstones which block sprinklers causing dry spots in the grass.

- Headstone setting fee: $50.00. This proposed fee will be charged to the monument company at the time they submit a headstone placement request. A fee will be charged for each stone and each request. If a monument company fails to keep their

setting appointment, they will be required to submit a new request and pay another fee. Revenue collected from this fee will be used to help repair any damage to the grounds due to trucks and equipment used to set headstones.

- Headstone setting time: April 1st – October 31st. The Sexton has discretion to allow, or not allow, headstone sets after April 1st, depending on ground conditions. This proposed change will set a policy that will help cemetery staff work with monument companies to ensure that stones are set during times that will cause the least amount of damage to the grounds.

- Holidays the cemetery is closed for burials: New Year's Day, Independence Day, Pioneer Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day, and the day Highland City observes these holidays. Memorial Day weekend from Thursday through Monday.

- Grave Transfers: Graves may be transferred to any family member while the owner of the grave is alive, or to any person designated in an appropriate testamentary document (will, trust, etc.). Transfers may be done by the living grave owner, or by an individual showing legal documentation that they are the trustee, legal representative, or heir for or of the deceased grave owner. Owners can always direct that the City allow a person of the owner's choosing to be buried in a grave owned by the owner, with or without an official transfer of ownership. This is not a change to our current practice, just an update to the language of the code to clarify our current policy.

- Removal of Operating Procedures from Code: The current code has an entire section devoted to the Duties of the Sexton and Duties of the City. Many of those duties involve the day to day operations of the cemetery and some were duplicated. These duties are now included in the Cemetery Standard Operating Procedures, which is attached to this report.

- Update to Definitions: Several definitions were added or clarified, including the rules to determine residency for the purpose of receiving the resident rate on their grave purchase.

FISCAL IMPACT:

There is no fiscal impact.

MOTION TO APPROVE:

I move that City Council approve the ordinance amending the Highland City Municipal Code Chapter 13.48 City Cemetery Policies and Regulations.

ATTACHMENTS:

1. Ordinance with Revised Chapter 13.48
2. Red-Line Ordinance Showing Proposed Changes to Current Code
3. Highland City Cemetery Standard Operating Procedures

AN ORDINANCE OF HIGHLAND CITY AMENDING HIGHLAND CITY MUNICIPAL CODE TITLE 13, CHAPTER 48, AND ADOPTING RULES AND REGULATIONS RELATED TO THE CITY CEMETERY

WHEREAS, Highland City has previously adopted ordinances establishing the Highland City Cemetery, which ordinances are codified as Title 13, Chapter 48, of the Highland City Code; and

WHEREAS, the Highland City Council is authorized to adopt rules, regulations, and policies regarding the use and maintenance of the Cemetery; and

WHEREAS, the Highland City Council desires to update City cemetery code to provide for size restrictions regarding monuments and markers; and

WHEREAS, the Highland City Council desires to clarity by ordinance the process and right of owners of burial rights to transfer such rights to other persons; and

WHEREAS, the Highland City Council desires to update other terms, policies, and regulations regarding the City Cemetery to conform to current and best practices

WHEREAS, the Highland City Council finds that updating such terms, policies, and regulations will be in the interest of the City, its residents, and all current and future users of the Cemetery;

NOW, THEREFORE, BE IT ORDAINED BY the City Council of Highland City, Utah:

SECTION 1, The Highland City Council hereby amends Title 13, Chapter 48, by replacing each and every provision of such Chapter with the provisions shown in Exhibit A, attached and incorporated herein.

SECTION 3. All previous Highland City ordinances in conflict with the amendments adopted pursuant to Section 1 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, March 7, 2023.

HIGHLAND CITY, UTAH

_____

Kurt Ostler, Mayor

ATTEST:

_____

Stephannie Cottle, City Recorder

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

EXHIBIT A

Chapter 13.48 CITY CEMETERY POLICIES AND REGULATIONS

13.48.010 Definitions
13.48.020 Name Established
13.48.030 Cemeteries Covered
13.48.040 Penalty
13.48.050 Visitation Hours
13.48.060 Only Humans to Be Buried
13.48.070 Vaults Required
13.48.080 Burial Rights and Ownership
13.48.090 Applicability of Traffic Regulations
13.48.100 Funeral Processions
13.48.110 Right to Maintain
13.48.120 Private Improvements Prohibited; Survey and Marking of Lots
13.48.130 Grave Markers
13.48.140 Duties of The City; Sexton's Duties
13.48.150 Application for Burials and Disinterments
13.48.160 Burials Outside Cemeteries
13.48.170 Burial of Indigents
13.48.180 Operating Hours; Holiday Funerals
13.48.190 Fees
13.48.200 Resale Restricted
13.48.210 Damaged Property
13.48.220 Prohibited Activities in Cemetery
13.48.230 Reversion of Burial Right to City

13.48.010 Definitions

As used in this chapter, the following words and phrases shall be defined as set out in this section unless the context clearly requires otherwise:

“Assignee” or “Assigns” means a person related by blood, marriage, or adoption to the Owner.

“Block” means an area in the cemetery containing up to eight (8) graves.

"Burial" means the opening and closing of a grave for the interment of deceased humans.

"Burial Right" means the right for a person to be buried in the city cemetery, subject to the rules and regulations of the cemetery, present and future.

"Cemetery" means any cemetery owned or maintained by the city used and reserved for interment of deceased humans.

“City" means the City of Highland.

“Disinterment” means the opening or excavation of an existing grave for the removal of a vault, urn, or casket containing human remains.

“Grave” a legal authorized gravesite generally measuring four feet (4’) by ten feet (10’) and intended for interment of deceased humans.

“Heir” means the person designated to receive ownership of a Burial Right by the Owner thereof way of by way of the Owner’s will, trust, order of a probate court, or other testamentary document.

“Infant” means a fetus or child up to one (1) year of age. Not to exceed thirty-six inches (36”).

“Interment” or “Inter” means the burial of a body in a grave.
"Nonresident" means any person(s) not a legal resident of Highland City.

“Owner” means the person indicated on a certificate of Burial Rights as the owner thereof, who is able to claim and exercise the rights and privileges thereof, regardless of whether such owner obtained the Burial Rights by purchase, transfer, or inheritance, so long as the owner obtained such rights in accordance with this Chapter.

"Resident" means any person who was domiciled within Highland City boundaries at the time of death, or moved from the city for the purpose of receiving medical treatment or for the purpose of living in a residential care facility, regardless of the actual place of death. The following rules shall be used to assist in determining the "place of residence" of any person:

a. The residence of a person is the place in which their habitation is fixed and to which, whenever they are absent, they have the intention of returning.

b. A person shall not be held to have gained or lost a residence solely by reason of their presence or absence while employed in the service of the United States or of the State of Utah, or while a student at any institution of learning, or while incarcerated in prison or jail, or while residing upon any Indian or military reservation, or while serving a mission for their church.

c. A person shall not be considered a resident based only on owning property in the City. The property must be the primary residence of the person to be considered a resident.

"Section" means an area in the cemetery containing up to sixteen (16) Blocks.

“Transfer” means to exchange, trade, or convey a plot or grave to an assignee or heir.

13.48.020 Name Established

The Cemetery of the city shall be known and designated as the "Highland City Cemetery."

13.48.030 Cemeteries Covered

All cemeteries owned or maintained by the City, or which may hereafter be acquired by the City, wherever situated, are hereby declared subject to the provisions of this chapter.

13.48.040 Penalty

Any person who violates any part of this chapter is guilty of a class B misdemeanor.

13.48.050 Visitation Hours

Cemetery hours shall be from five (5:00) a.m. to eleven (11:00) p.m.

13.48.060 Only Humans to Be Buried

There shall be no burial of anything other than the remains of human bodies in the cemetery.

13.48.070 Vaults Required

It is unlawful for any person to be buried in the Cemetery unless: (a) the casket is placed in a vault made of concrete, steel or their equivalent and (b) the vault is approved by the City. No wood or fiberglass shall be used in the construction of any part of any vault. Vaults must be set and provided by licensed vault company. Exceptions to the provisions of this section may be granted for infant or cremation burials only.

13.48.080 Burial Rights and Ownership

All property including Sections, Blocks, and Grave sites within the Cemetery are owned by the City. The City reserves the right of easement over and across any burial Section or Grave for grass repairs, installation or maintenance of water lines, and for the opening and closing of adjacent Graves.

A. Purchase of Burial Right. In accordance with Utah Code Annotated § 8-5-7, Highland City shall sell only the right to be buried in the Cemetery and all Cemetery Graves shall be rights to be buried only. All Burial Rights purchased shall be issued by Certificate, naming the owner of the Burial Rights thereof, which rights remain at all times subject to cemetery management ordinances, resolutions, and regulations, as such now exist or as may be adopted or amended in the future.

B. Certificate. A Cemetery Certificate for Burial Right and Burial Permit shall be issued by the City for each Grave purchased and will clearly describe the location of the Grave within the Cemetery. A Certificate of Burial Right does not convey to or entitle the holder to any other privilege other than the right to bury the body of a deceased person, and is not a deed conveying title in fee simple or otherwise to the land or any part thereof. A burial shall not take place unless a Certificate has been issued by the City. The Owner(s) of the Certificate for Burial Right has the exclusive right to exercise the rights associated therewith, whether for themselves or for another.

C. Transfer and Inheritance of Graves. A Burial Right in the Cemetery is conveyed to the Owner named therein and their heirs forever, subject to the City's right of reversion. A Certificate for Burial Rights for Graves may be transferred by the Owner only to the City, to an allowable Assignee, or to the Owner's designated heirs, as set forth herein. All other transfers are prohibited. For every Grave lawfully transferred, a new certificate of burial right shall be issued by the City to the new Owner thereof, the old certificate of burial right shall be null and void, the original Owner shall have no further rights to use, transfer, or control the Burial Rights, and the new Owner shall have exclusive rights to use, transfer, and control the Burial Rights in accordance with this Chapter. Transfers are permitted as set forth herein:

    1. A transfer to an allowable Assignee may be performed by the Owner by 1) completing a transfer application, 2) paying the transfer fee, and 3) either appearing in person and producing photo identification proving the owner's identity, or have the owner's signature on the transfer application notarized by a licensed notary.

    2. An heir may claim ownership of a Burial Right by 1) completing a transfer application, 2) paying the transfer fee, and 3) proving the heir's identity and right of inheritance. All heirs designated as such by testamentary documents that appear valid on their face are presumed to have legal right to claim the Burial Rights, and the City shall not be obligated to give notice regarding any transfer of a Burial Right to an heir.

D. Taxes. A Burial Right conveyed shall be exempt from taxation.

E. Use of Grave. No person, except the owner of the Burial Right of a Grave, shall be buried in that Grave, unless a form provided by the City has been signed and acknowledged by the owner or legal heirs to those rights, giving permission for someone else to be buried in that Grave. All burials require a minimum of forty-eight (48) hours' notice. Weekends and holidays shall not be considered in determining the forty-eight (48) hour period. It is the Owner's obligation to convey accurate information regarding the timing, needs, and location of a burial.

F. Double Depth Burials. Only upon the request of the owner, may a double depth burial be allowed and only in locations of the Cemetery as determined by the City, consistent with the water table, ground and other relevant conditions for double depth burials. Double depth burials require separate vaults, and are subject to additional opening and closing fees.

G. Burials per Grave. Only one (1) burial shall be allowed per Grave space, except for double depth burials. Combined parent-infant burials and cremations may be authorized by the sexton if, in the sexton's judgment, conditions at the Grave allow for such combined burial. No more than three (3) cremations will be allowed per Grave.

H. Non-Refundable One Year Option to Reserve Grave(s). The City may, pursuant to contract, reserve Graves as requested by a purchaser and for which an amount equal to ten percent (10%) of the current approved fee schedule is tendered to and received by the City representative at the time the initial Graves are purchased. Such additional payment and contract shall constitute an option and shall be recorded and noted upon the Cemetery plats of the City. The purchaser shall then have the exclusive right to tender in one lump sum the full purchase price (minus a credit for the ten percent (10%) payment which shall be credited thereto) required on such Graves, at the price in effect on the date such option was created, anytime within the following twelve (12) months. If such option is not exercised, the ten percent (10%) payment shall be retained by the City for the care and maintenance of the Cemetery grounds in its perpetual care fund. If such option is exercised, a certificate of Burial Rights to such Graves shall be issued upon payment of the full purchase price and perpetual care fees. If a purchaser decides to not complete the purchase of the reserved graves and they are within the twelve (12) month time, the City will refund all monies collected for the reserved graves including the ten percent (10%) down payment.

13.48.090 Applicability of Traffic Regulations

The provisions of the City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall apply in the Cemetery. The speed limit in the Cemetery shall be ten (10) miles per hour.

13.48.100 Funeral Processions

Funeral processions shall proceed to the Cemetery under the direction of the funeral director. Within the Cemetery, City employees may direct traffic for the purposes of maintaining traffic flow and for the proper parking of vehicles. All vehicles in the Cemetery shall be driven in a careful, quiet, and orderly manner following the designated speed limit.

13.48.110 Right to Maintain

A. The City reserves the right to enter upon any Grave to perform all work necessary for the maintenance of the Cemetery. The City is responsible for the total maintenance of the Cemetery. The City retains the right to remove any marker which it determines to be unsightly or dangerous.

B. Funeral Decorations. All floral arrangements shall be allowed for five (5) days after the burial. After five (5) days they may be removed by the City. Glass, porcelain or other breakable decorations or containers shall not be allowed. Any objects such as wires, sticks, pegs, shepherd hooks, or irons driven into the ground shall not be permitted.

C. Grave Decorations. Artificial flowers, windmills, toys, rocks, wrought iron, shepherd hooks or other such similar ornamentation are only allowed in the Cemetery on the marker. Any Grave decorations, funeral designs, flowers or other items are subject to removal for the maintenance of the Cemetery when they become unsightly, tattered or torn.

D. Removal of Items. The City shall remove all grave decorations, funeral designs, flowers or other items on a quarterly schedule as follows: the first Monday in March; the second Monday in June; the first Monday in October; and the second Monday in December. The City shall not be responsible or liable for grave decorations, funeral designs, flowers or other items that are removed, discarded, damaged, stolen, or destroyed.

E. Theft Loss of Personal Belongings. The City is not responsible for the theft or loss of personal belongings in the Cemetery.

13.48.120 Private Improvements Prohibited; Survey and Marking of Graves

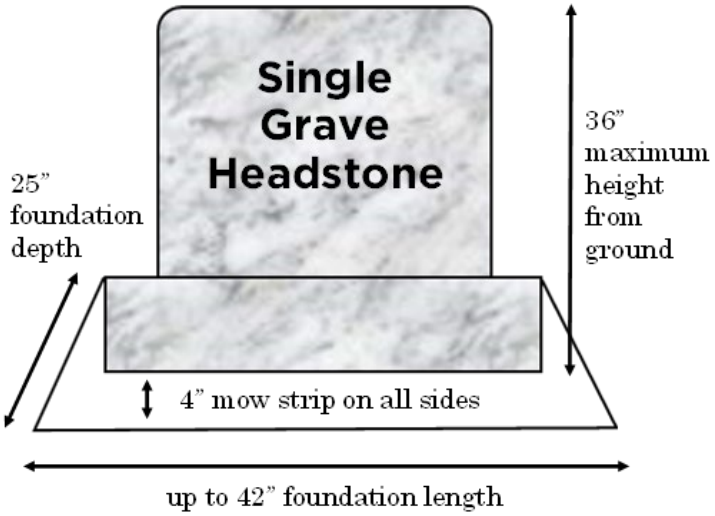
It is unlawful for any person to erect or maintain any structure, fence, corner post, coping, or hedge of any kind upon any Grave, street, or driveway in the Cemetery, or grade the ground or land thereof, including any structure or other improvement that would tend to have the effect of restricting access across and over any Grave. The City shall, upon request, furnish the boundary lines of Graves. The City shall prohibit landmarks and any grading that might destroy or interfere with the general slope of the land or the City's use of the Cemetery. It is unlawful for any person to plant shrubs, trees, lawns, flowers, etc., place decorative stones, place monuments or markers, or other structures in the Cemetery, including within the borders of grave markers, without approval and direction from the City.

13.48.130 Grave Markers

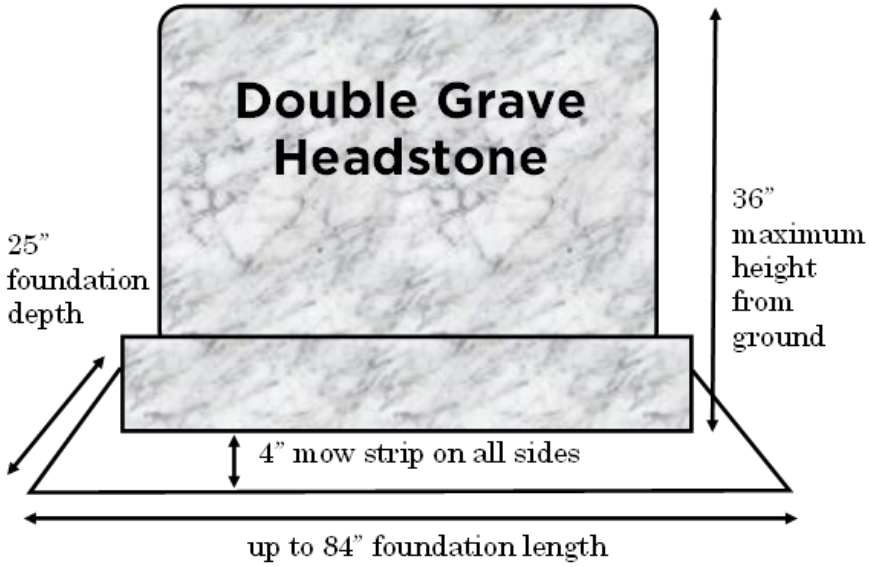
Grave Markers or Memorial Structures are personal property. All memorial structures within the Cemetery are the property of Burial Right owners, their heirs, or the responsible party. All care and upkeep of memorial structures is the responsibility of the owner and heirs. The City shall not be responsible for the repair or replacement of markers, including damage caused by nature or vandalism, unless the City caused the damage or destruction to the marker.

A. Size. A memorial structure and the concrete foundation must fit within the boundary of the Grave or Graves. All headstones, markers or monuments shall have a stone or cement foundation, level with the ground, extending outward from the perimeter of the base of the headstone or marker. The foundation shall be a minimum of four inches (4") on all sides, with a minimum thickness of four inches (4"). With the exception of holes placed for vases, the foundation must be a solid structure of concrete or stone. Memorial structures will be of stone, concrete or a non-corroding durable composition and must be contained within the cement foundation.

1. For a headstone marker or monument that will be placed over a single grave, the foundation shall not exceed forty-two inches (42”) in length by twenty-five inches (25”) in depth including a required four-inch (4”) mow strip on all sides. The headstone, marker or monument shall not exceed a maximum height of thirty-six inches (36”) above the surrounding or finished grade.



2. For a double headstone, marker or monument, which will be placed over two (2) or more graves, the foundation shall not exceed eight-four inches (84”) in length by twenty five-inches (25”) in depth including a required four-inch (4”) mow strip on all sides. The double headstone, marker or monument shall not exceed a maximum height of thirty-six inches (36”) above the surrounding or finished grade.



B. Type and Placement. Upright memorial structures shall be allowed in the Cemetery. All headstones, markers and monuments shall be placed at the head of the Grave, which is located at the west end of the gravesite. Exceptions to this shall apply only where one additional flat headstone, supplied by the Veteran's Administration, may be placed at the foot of the Grave, which is located at the east end of the gravesite. The owners of Burial Rights or relatives of deceased persons interred in the Cemetery are required to erect and maintain, in a manner satisfactory to the City, and at the expense of the owner or relatives of the deceased, all

headstones, markers or other suitable memorial structures. Permanent grave marker must be placed within 12 months of burial.

C. Materials. All headstones, markers and monuments must be made of real bronze, glazed granite or other permanent materials. Headstones, markers and monuments shall not be made of wood, sandstone or any other material which is susceptible to decay.

D. Re-placement of Markers. Any headstone, marker or monument that impedes the opening or closing of any Grave will be removed and replaced at the owner's expense by a licensed monument company.

E. Inscriptions. The name of the deceased person shall be plainly inscribed on all headstones, markers, and monuments.

F. Setting of Markers and Setting Fee. Any headstone, marker or monument shall be placed by a licensed and insured monument company only. The monument company must contact the City by completing a headstone placement request form prior to setting a headstone, marker or monument in the Cemetery. Memorial Structures will not be set from October 31 through April 1, unless approved by City Sexton. A setting fee, as established in the Highland City fee schedule, will be charged to the monument company at the time the request is submitted. If additional setting dates are required, a fee will be charged for each date.

G. Temporary Markers are offered to families at the time of burial and will be assessed a fee according to the Highland City fee schedule.

13.48.140 Duties of The City; Sexton's Duties

A. Duties of City.

1. Maintenance. The City shall have the responsibility to reasonably maintain the Cemetery, other than grave markers and memorial structures, and provide the basic services necessary for the operation of the Cemetery, including water, electricity, equipment and labor.

2. Records. The City shall maintain all records of plot sales, burials, and other records related to the administration of the cemetery, in accordance with all City and State codes.

B. Sexton's Duties.

1. The City sexton shall possess such supervisory and administrative powers, duties, and responsibilities relating to City cemeteries as are not repugnant to law or contrary to any specific direction or limitation set forth by the Highland City Council.

2. Burials. The City Sexton, or their representative, shall prepare a Grave for burial upon request and after a burial permit has been issued by the City. The City staff shall provide supervision for every Interment. If conditions do not allow a traditional burial, a mock set up may be required as directed by the Sexton. No other person other than City-authorized personnel shall excavate a gravesite.

3. Rules and Regulations. The City Sexton shall recommend to the City Council such additional rules and regulations as may be required for the proper and efficient operation, maintenance, use, and protection of the City cemetery.

4. The city sexton and employees or other persons assigned to work at a city cemetery shall not, either directly or indirectly, knowingly act or serve as agents, employees, or salesperson for: (a) any person or company furnishing materials used at city cemetery; (b) any mortuary, funeral home, or similar establishment; or (c) any person or company selling grave markers or monuments. The city sexton and employees or other persons assigned to work at a city cemetery shall not be interested in any manner in any monument, vault, casket manufacturing, or related business, and shall not in any manner receive any profits or rewards growing out of the sale or placement of any monuments, caskets, vaults or markers. Each violation of this section is a class C misdemeanor.

13.48.150 Application for Burials and Disinterments

A. The City Administrator shall designate a registrar of burials for the City. The registrar may, but is not required, to also serve as the Sexton. Before burying any dead in the Cemetery, or before disinterring the body of any person who has been buried therein, the relatives or other persons having charge of the body shall be required to complete an application for burial or application for disinterment. The application shall include the name of the decedent, the place of death, the date of burial and the name and address of the person requesting the Interment, and any other information deemed necessary by the City. These records shall be open to public inspection.

B. The City shall provide Disinterment services only for persons buried in a nonbiodegradable vault and in accordance with applicable statutes, rules, and regulations together with the fee as provided herein. Prior to the Disinterment, the requestor shall provide a copy of the Utah County Vital Records Disinterment/Reinternment Permit and pay the applicable fee. The requestor shall arrange for and pay any associated costs for a licensed vault company and/or funeral director to be present during the Disinterment. The requestor shall arrange for and pay any associated costs for a licensed vault company to remove the vault and its contents from the Grave site. If the Grave site does not contain a vault or the City Sexton and/or funeral director determines the existing vault has deteriorated to the point that it will not retain its structural integrity during the Disinterment, the requesting party shall replace the deteriorated vault with a structurally sound vault at the requestor's expense. The requestor shall arrange to dispose of any old vault in the manner meeting federal, state and local laws. No disinterments shall be permitted without permission of the sexton. All disinterments must comply with applicable state law.

13.48.160 Burials Outside Cemeteries

It is unlawful to bury the body of any person within the City, except at sites designated and approved as cemeteries by the City.

13.48.170 Burial of Indigents

A portion of the Cemetery may be designated for the burial of indigents. Whenever it is determined by the Mayor that any resident of Highland who has died, who does not have funds or an estate sufficient to pay the cost of a Burial Right and Interment in the Cemetery, and whose nearest relative or representative desires to have the body of such deceased interred in the Cemetery, the Mayor may grant a Burial Right and Interment for such deceased person at no cost to such person.

13.48.180 Operating Hours; Holiday Closures

A. Cemetery operating hours for graveside services and/or Interments and disinterments shall be conducted between the hours of nine (9:00) a.m. to four (4:00) p.m. Monday through Saturday.

Additional fees will be charged for other hours such as Saturdays, or holidays where the cemetery is open. The cemetery is closed on Sunday for burials.

B. Interments or Disinterments in the Cemetery shall not be allowed on the following holidays: New Year's Day, Independence Day, Pioneer Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day, and on the day Highland City observes these holidays There will be no interments or disinterments in the Cemetery on Memorial Day weekend beginning Thursday through Memorial Day.

13.48.190 Fees

A. All prices, fees, and charges will be established by resolution of the City Council as indicated in the Highland City Fee Schedule.

B. Payment. No opening, closing or Interment, shall take place until all appropriate fees have been paid to the designated cemetery office staff.

13.48.200 Resale Restricted

No person who owns any Burial Right shall sell such Burial Right to any buyer except the City. The City agrees to repurchase any unused Burial Right for the current value of such Burial Right, unless the Burial Right reverts to the City pursuant as set forth in this Chapter.

13.48.210 Damaged Property

It is unlawful for any person to damage, injure or deface any monument, tree, shrub, lawn, building, structure or facility, on the grounds of the Cemetery. The City shall not be responsible or liable for flowers or other personal property left at the Cemetery.

13.48.220 Prohibited Activities in Cemetery

A. Recreational Activity. No recreational or athletic activities are permitted within the Cemetery.

B. Noise. All visitors to the Cemetery shall maintain a reasonable level of noise to avoid disturbing other visitors to the Cemetery. Loud music, shouting, yelling, and other loud noises are prohibited.

C. Alcoholic Beverages. Alcoholic beverages are not allowed in the Cemetery.

D. Smoking Prohibited. Smoking in the Cemetery is prohibited per chapter 12.24 City Parks and Cemetery Section 12.24.060 Smoking.

E. Animals Prohibited. No animal shall be allowed in the Cemetery except in the confines of a vehicle, with the exception of a horse drawn funeral procession. Animals include, without limitation, horses, dogs, cats.

13.48.230 Reversion of Burial Right to City

A Burial Right that has been unused, or has no written notices of claim or interest on, for more than sixty (60) years will be reclaimed by the City. Every effort, practically and legally, will first be made to find the owner or legal heirs before the Burial Right is reverted, in accordance with Title 8, Chapter 5 of the Utah Code, as amended.

Chapter 13.48 CITY CEMETERY POLICIES AND REGULATIONS

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13.48.010 Definitions

As used in this chapter, the following words and phrases shall be defined as set out in this section unless the context clearly requires otherwise:

"Assignee" or "Assigns" means a person related by blood, marriage, or adoption to the Owner.

"Block" means an area in the cemetery containing up to eight (8) graves.

"Burial" means the opening and closing of a grave for the interment of deceased humans.

"Burial ~~right~~Right" means the right for a person to be buried in the city cemetery, subject to the rules and regulations of the cemetery, present and future.

"Cemetery" means any cemetery owned or maintained by the city used and reserved for interment ~~the purpose of receiving the remains~~ of deceased humans.

"City" means the City of Highland.

~~"Lot" means a grave site in the cemetery owned by the city.~~

~~"Lot owner or purchaser" and "grave owner or purchaser" means the owner or purchaser of a burial right or privileges evidenced by a burial right certificate.~~

~~"Nonresident" means any person(s) not a resident.~~

~~"Resident" means any person who has his principal place of residence within the city and who has a present intention to continue residency within the city permanently or indefinitely. For purposes of this definition under this chapter, any person who previously qualified as a resident of Highland, prior to the establishment and availability of a burial right in Highland, will be eligible to purchase a burial right at resident prices until January 1, 2002.~~

"Disinterment" means the opening or excavation of an existing grave for the removal of a vault, urn, or casket containing human remains.

"Grave" a legal authorized gravesite generally measuring four feet (4') by ten feet (10') and intended for interment of deceased humans.

"Heir" means the person designated to receive ownership of a Burial Right by the Owner thereof way of by way of the Owner's will, trust, order of a probate court, or other testamentary document.

"Infant" means a fetus or child up to one (1) year of age. Not to exceed thirty-six inches (36").

"Interment" or "Inter" means the burial of a body in a grave.
"Nonresident" means any person(s) not a legal resident of Highland City.

"Owner" means the person indicated on a certificate of Burial Rights as the owner thereof, who is able to claim and exercise the rights and privileges thereof, regardless of whether such owner obtained the Burial Rights by purchase, transfer, or inheritance, so long as the owner obtained such rights in accordance with this Chapter.

"Resident" means any person who was domiciled within Highland City boundaries at the time of death, or moved from the city for the purpose of receiving medical treatment or for the purpose of living in a residential care facility, regardless of the actual place of death. The following rules shall be used to assist in determining the "place of residence" of any person:

a. The residence of a person is the place in which ~~his~~their habitation is fixed and to which, whenever ~~he is~~they are absent, ~~he has~~they have the intention of returning.

b. A person shall not be held to have gained or lost a residence solely by reason of ~~his~~their presence or absence while employed in the service of the United States or of the State of Utah, or while a student at any institution of learning, or while incarcerated in prison or jail, or while residing upon any Indian or military reservation, or while serving a mission for ~~his~~their church.

~~a.~~ A person shall not be considered ~~to have lost his~~a resident based only on owning property in the City. The property must be the primary residence of the person to be considered a resident. ~~who leaves his home to go into a foreign country or into another state or precinct within this state for temporary purposes merely with the intention~~ of ~~returning.~~

c. ~~A person shall not be considered to have gained a residence in any other city into which he comes merely for temporary purposes without intention of making such city his home~~.

~~b. If a person removes to another city or location with the intention of making it his principal place of residence, he loses his residence in this city.~~

~~c. If a person removes to another city of location with the intention of remaining there for an indefinite time as a place of permanent residence, he loses his residence in this city notwithstanding he entertains an intention of returning at some future period.~~

~~d. The place where a person's family resides is presumed to be his place of residence, but any person who takes up or continues his abode with the intention of remaining at a place other than where his family resides must be regarded as a resident where he so abides.~~

~~e. A change of residence can only be made by the act of removal joined with the intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained.~~

"Section" means an area in the cemetery containing up to sixteen (16) Blocks.

“Transfer” means to exchange, trade, or convey a plot or grave to an assignee or heir.

13.48.020 Name Established

The ~~cemetery~~Cemetery of the city shall be known and designated as the "Highland City Cemetery."

13.48.030 Cemeteries Covered

All cemeteries owned or maintained by the ~~city~~City, or which may hereafter be acquired by the ~~city~~City, wherever situated, are hereby declared subject to the provisions of this chapter.

13.48.040 Penalty

Any person who violates any part of this chapter is guilty of a class B misdemeanor.

13.48.050 Visitation Hours

~~It is unlawful for any person other than city employees performing their duties to be in the cemetery between the hours of eleven p.m. and six a.m. of the following day.~~

Cemetery hours shall be from five (5:00) a.m. to eleven (11:00) p.m.

13.48.060 Only Humans ~~T~~to Be Buried

There shall be no burial of anything other than the remains of human bodies in the cemetery.

13.48.070 Vaults Required

It is unlawful for any person to be buried in the ~~cemetery~~Cemetery unless: (a) the casket is placed in a vault made of concrete, steel or their equivalent and (b) the vault is approved by the ~~city~~City. No wood or fiberglass shall be used in the construction of any part of any vault. Vaults must be set and provided by licensed vault company. Exceptions to the provisions of this section may be granted for infant or cremation burials only. ~~In such instances of exceptions, the design and construction of the burial vault shall be approved by the city.~~

13.48.080 Burial Rights And Ownership

All property including ~~lots, plots~~Sections, Blocks, and ~~grave~~Grave sites within the ~~cemetery is~~Cemetery are owned by the ~~city~~City. The ~~city~~City reserves the right of easement over and across any burial ~~lot~~Section or ~~plot~~Grave for grass repairs, installation or maintenance of water lines, and for the opening and closing of adjacent ~~graves~~Graves.

~~A. Purchase of Burial Right. Upon purchase of a burial lot the purchaser acquires a burial right.~~

~~B. Permit. Burial shall not take place unless a proper burial permit has been issued by the city. Burial shall not begin any sooner than twenty-four hours after the issuance of a burial permit. Weekends and holidays shall not be considered in determining the twenty-four-hour period. Under no circumstances will the city assume responsibility for errors in opening graves when orders are given by telephone. No exhumations shall be permitted without permission of the sexton. All exhumations must comply with applicable state law.~~

A. Purchase of Burial Right. In accordance with Utah Code Annotated § 8-5-7, Highland City shall sell only the right to be buried in the Cemetery and all Cemetery Graves shall be rights to be buried only. All Burial Rights purchased shall be issued by Certificate, naming the owner of the Burial Rights thereof, which rights remain at all times subject to cemetery management ordinances, resolutions, and regulations, as such now exist or as may be adopted or amended in the future.

B. Certificate. A Cemetery Certificate for Burial Right and Burial Permit shall be issued by the City for each Grave purchased and will clearly describe the location of the Grave within the Cemetery. A Certificate of Burial Right does not convey to or entitle the holder to any other privilege other than the right to bury the body of a deceased person, and is not a deed conveying title in fee simple or otherwise to the land or any part thereof. A burial shall not take place unless a Certificate has been issued by the City. The Owner(s) of the Certificate for Burial Right has the exclusive right to exercise the rights associated therewith, whether for themselves or for another.

C. Transfer and Inheritance of Graves. A Burial Right in the Cemetery is conveyed to the Owner named therein and their heirs forever, subject to the City's right of reversion. A Certificate for Burial Rights for Graves may be transferred by the Owner only to the City, to an allowable Assignee, or to the Owner's designated heirs, as set forth herein. All other transfers are prohibited. For every Grave lawfully transferred, a new certificate of burial right shall be issued by the City to the new Owner thereof, the old certificate of burial right shall be null and void, the original Owner shall have no further rights to use, transfer, or control the Burial Rights, and the new Owner shall have exclusive rights to use, transfer, and control the Burial Rights in accordance with this Chapter. Transfers are permitted as set forth herein:

1. A transfer to an allowable Assignee may be performed by the Owner by 1) completing a transfer application, 2) paying the transfer fee, and 3) either appearing in person and producing photo identification proving the owner's identity, or have the owner's signature on the transfer application notarized by a licensed notary.

2. An heir may claim ownership of a Burial Right by 1) completing a transfer application, 2) paying the transfer fee, and 3) proving the heir's identity and right of inheritance. All heirs designated as such by testamentary documents that appear valid on their face are presumed to have legal right to claim the Burial Rights, and the City shall not be obligated to give notice regarding any transfer of a Burial Right to an heir.

D. Taxes. A ~~burial right~~Burial Right conveyed shall be exempt from taxation.

~~C. Descent and Inheritance of Rights. A burial right in the cemetery is conveyed to the person or persons named therein and their heirs forever. All legal heirs are presumed to have legal right to the rights of burial, unless heirship to the contrary has been determined by a court of probate after named parties in the original burial right certificate are deceased.~~

~~A.~~E. Use of ~~Lot~~Grave. No person, except the owner of the ~~burial right on~~Burial Right of a ~~lot~~Grave, shall be buried ~~on~~in that ~~lot~~Grave, unless a form provided by the ~~city~~City has been signed and acknowledged by the owner or legal heirs to those rights, giving permission for someone else to be buried ~~on that lot~~in that Grave. All burials require a minimum of forty-eight (48) hours' notice. Weekends and holidays shall not be considered in determining the forty-eight (48) hour period. It is the Owner's obligation to convey accurate information regarding the timing, needs, and location of a burial.

~~B.~~F. Double Depth Burials. Only upon the request of the owner, may a double depth burial ~~may~~ be allowed and only in locations ~~in~~of the ~~cemetery~~Cemetery as determined by the ~~city~~City, consistent with the water table, ground and other relevant conditions for double depth burials. Double depth burials require separate vaults, and are subject to additional opening and closing fees.

~~C.~~G. Burials per Grave. Only one (1) burial shall be allowed per ~~grave~~Grave space, except for double depth burials. Combined parent-infant burials and cremations may be authorized by the sexton if, in the sexton's judgment, conditions at the ~~lot~~Grave allow for such combined burial. No more than three (3) cremations will be allowed per Grave.

~~D.~~H. Non-Refundable One Year Option to Reserve ~~Lot~~Grave(s). ~~-~~The ~~Sexton or Registrar~~City may, pursuant to contract, reserve ~~such other lots~~Graves as requested by ~~the family~~a purchaser and for which an amount equal to ten percent (10%) of the current approved fee schedule is tendered to and received by the ~~sexton or registrar~~City representative at the time the initial ~~lots~~Graves are purchased. Such additional payment and ~~contact~~contract shall constitute an option and shall be recorded and noted upon the ~~cemetery~~Cemetery plats of the ~~city~~City. The ~~family~~purchaser shall then have the exclusive right to tender in one lump sum the full purchase price (minus a credit for the ~~option price~~ten percent (10%) payment which shall be credited thereto) required on such ~~other lots~~Graves, at the price in effect on the date such option was created, anytime within the following twelve (12) months. If such option is not exercised, the ~~option~~ten percent (10%) payment shall be retained by the ~~city~~City for the care and maintenance of the ~~cemetery~~Cemetery grounds in its perpetual care fund. If such option is exercised, a certificate of ~~burial rights~~Burial Rights to such ~~lots~~Graves shall be issued ~~and recorded~~ upon payment of the full purchase price and perpetual care fees. If a purchaser decides to not complete the purchase of the reserved graves and they are within the twelve (12) month time, the City will refund all monies collected for the reserved graves including the ten percent (10%) down payment.

13.48.090 Applicability ~~Of~~of Traffic Regulations

The provisions of the ~~city~~City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall apply in the ~~cemetery~~Cemetery. The speed limit in the ~~cemetery~~Cemetery shall be ten (10) miles per hour.

13.48.100 Funeral Processions

~~Funerals~~Funeral processions shall proceed to the ~~cemetery~~Cemetery under the direction of the funeral director. Within the ~~cemetery, city~~Cemetery, City employees may direct traffic for the purposes of maintaining traffic flow and for the proper parking of vehicles. All vehicles in the ~~cemetery~~Cemetery shall be driven in a careful, quiet, and orderly manner following the designated speed limit.

13.48.110 Right ~~To~~to Maintain

A. The ~~city~~City reserves the right to enter upon any ~~lot~~Grave to perform all work necessary for the maintenance of the ~~cemetery~~Cemetery. The ~~city~~City is responsible for the total maintenance of the ~~cemetery~~Cemetery. The ~~city shall not be responsible for the repair or replacement of markers or memorial structures of any nature, unless the city caused the damage or destruction to the marker or memorial structure. The city~~City retains the right to remove any marker which it determines to be unsightly or dangerous ~~markers.~~.

~~A. Plantings. No planting shall be allowed in the cemetery by private individuals, except for those plantings which have prior approval in writing by the city. In determining whether to allow private planting, the city shall consider whether the planting is in harmony with the cemetery landscape and if the planting will interfere with the cemetery maintenance and safety. Any object, flower, shrub or decoration not in compliance with this chapter may be removed immediately by the city.~~

B. ~~Grave~~Funeral Decorations. All floral arrangements shall be allowed for five (5) days~~,~~ after ~~which~~the burial. After five (5) days they may be removed by the ~~city~~City. Glass~~-~~, porcelain or other breakable decorations or containers shall not be allowed. Any objects such as wires, sticks, pegs, shepherd hooks, or irons driven into the ground shall not be permitted.

C. ~~Artificial Flowers.~~Grave Decorations. Artificial flowers, windmills, toys, rocks, wrought iron, shepherd hooks or other such similar ornamentation are ~~allowed~~ only allowed in the ~~cemetery~~Cemetery on ~~or within the borders of the marker, provided~~the marker. Any Grave decorations, funeral designs, flowers or other items are subject to removal for the maintenance of the Cemetery when they ~~do not interfere with the maintenance of the cemetery.~~become unsightly, tattered or torn.

D. Removal of Items. The City shall remove all grave decorations, funeral designs, flowers or other items on a quarterly schedule as follows: the first Monday in March; the second Monday in June; the first Monday in October; and the second Monday in December. The City shall not be responsible or liable for grave decorations, funeral designs, flowers or other items that are removed, discarded, damaged, stolen, or destroyed.

E. Theft Loss of Personal Belongings. The City is not responsible for the theft or loss of personal belongings in the Cemetery.

13.48.120 Private Improvements Prohibited; Survey ~~And~~and Marking ~~Of Lots~~of Graves

It is unlawful for any person to erect or maintain any structure, fence, corner post, coping, or hedge of any kind upon any ~~lot~~Grave, street, or driveway in the ~~cemetery~~Cemetery, or grade the ground or land thereof~~.~~ ~~The city~~, including any structure or other improvement that would tend to have the effect of restricting access across and over any Grave. The City shall, upon request, furnish the boundary lines of ~~lots~~Graves. The ~~city~~City shall prohibit landmarks and any grading that might destroy or interfere with the general slope of the land~~.~~ or the City's use of the Cemetery. It is unlawful for any person to plant shrubs, trees, lawns, flowers, etc., place decorative stones, place monuments or markers, or other structures ~~upon any~~

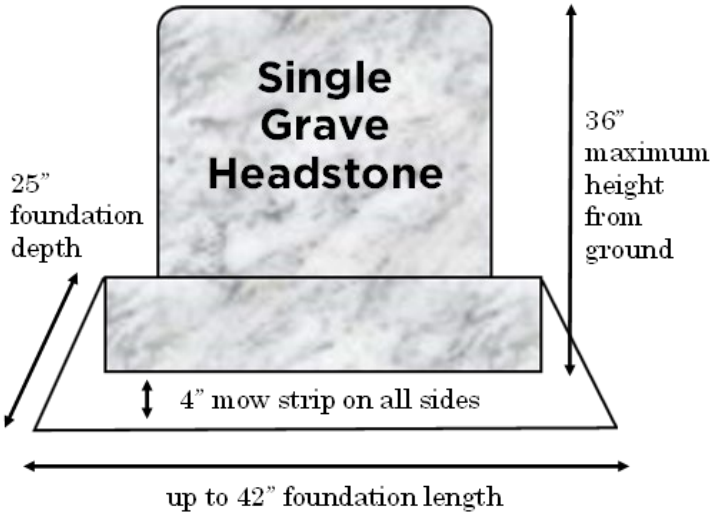
~~lot in the cemetery~~in the Cemetery, including within the borders of grave markers, without approval and direction from the ~~city~~City.

13.48.130 Grave Markers

~~Headstones~~Grave Markers or Memorial Structures are personal property. All ~~monuments~~memorial structures within the ~~cemetery~~Cemetery are the property of ~~burial right~~Burial Right owners, their heirs, or the responsible party. All care and upkeep of ~~the monuments are~~memorial structures is the responsibility of the owner and heirs. The ~~city~~City shall not be responsible for the repair or replacement of markers, including damage caused by nature or vandalism, unless the ~~city~~City caused the damage or destruction to the marker.

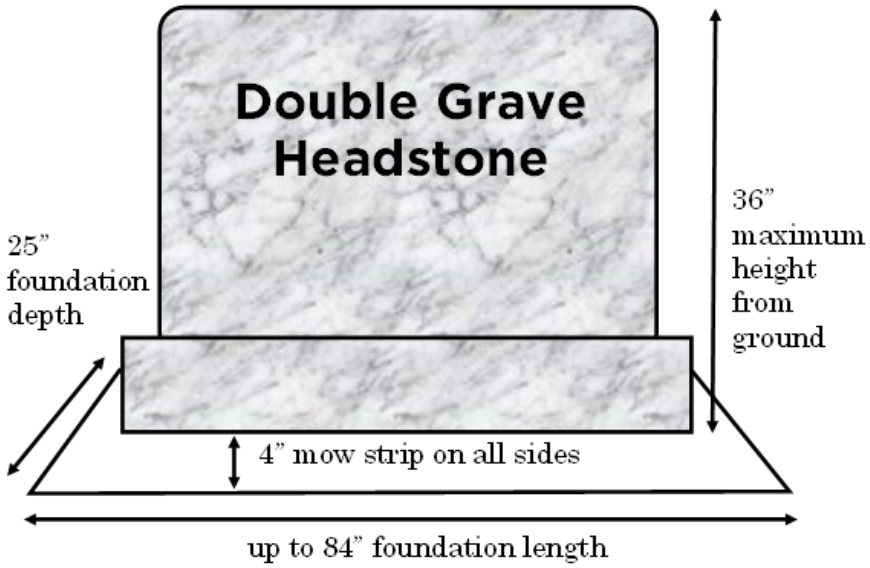
A. Size. A ~~headstone~~memorial structure and the concrete ~~border~~foundation must fit within the boundary of the ~~grave~~Grave or ~~graves~~Graves. All headstones, markers or monuments shall have a stone or cement ~~base~~foundation, level with the ground, extending outward from the perimeter of the base of the headstone or marker ~~and~~ . The foundation shall be a minimum of four inches (4~~")~~") on all sides, with a minimum thickness of four inches (4~~"). Headstones~~ "). With the exception of holes placed for vases, the foundation must be a solid structure of concrete or stone. Memorial structures will be of stone, concrete or a non-corroding durable composition and must be contained within the cement foundation.

1. ~~For~~For a headstone marker or monument that will be placed over a single ~~headstone, marker or monument, the concrete base~~grave, the foundation shall not exceed forty-two inches (42~~")~~") in length ~~(side to side). The concrete base shall not exceed~~ by twenty ~~-~~five ~~-~~inches (25~~")~~") in ~~width (top to bottom).~~depth including a required four-inch (4") mow strip on all sides. The headstone, marker or monument shall not exceed a maximum height of thirty-six inches (36") above the surrounding or finished grade.



2. For a double headstone, marker or monument, ~~the concrete base~~which will be placed over two (2) or more graves, the foundation shall not exceed eight-four inches (84~~")~~") in length ~~(side to side). The concrete base shall not exceed~~ by twenty five-inches (25~~")~~") in ~~width (top to bottom).~~depth including a required four-inch (4") mow strip on all sides.

The double headstone, marker or monument shall not exceed a maximum height of thirty-six inches (36") above the surrounding or finished grade.



B. Type and Placement. Upright ~~headstones~~memorial structures shall be allowed in the ~~cemetery~~Cemetery. All headstones, markers and monuments shall be placed at the head of the ~~grave.~~Grave, which is located at the west end of the gravesite. Exceptions to this shall apply only ~~in the Veteran's section~~ where one additional flat headstone, supplied by the Veteran's Administration, may be placed at the foot of the ~~grave~~Grave, which is located at the east end of the gravesite. The owners of Burial Rights or relatives of deceased persons interred in the Cemetery are required to erect and maintain, in a manner satisfactory to the City, and at the expense of the owner or relatives of the deceased, all headstones, markers or other suitable memorial structures. Permanent grave marker must be placed within 12 months of burial.

~~A. Other Markers. There shall be no markers, monuments or structures placed upon any lot other than those provided for in this chapter.~~

C. Materials. All headstones, markers and monuments must be made of real bronze, glazed granite or other permanent materials. Headstones, markers and monuments shall not be made of wood, sandstone or any other material which is susceptible to decay.

~~C.~~D. Re-placement of Markers. Any headstone, marker or monument that impedes the opening or closing of any ~~burial plot~~Grave will be removed and replaced at the owner's expense by a licensed monument company.

E. Inscriptions. The name of the deceased person shall be plainly inscribed on all headstones, markers, and monuments.

F. Setting of Markers and Setting Fee. Any headstone, marker or monument shall be placed by a licensed and insured monument company only. The monument company must contact the City by completing a headstone placement request form prior to setting a headstone, marker or monument in the Cemetery. Memorial Structures will not be set from October 31 through April 1, unless

approved by City Sexton. A setting fee, as established in the Highland City fee schedule, will be charged to the monument company at the time the request is submitted. If additional setting dates are required, a fee will be charged for each date.

G. Temporary Markers are offered to families at the time of burial and will be assessed a fee according to the Highland City fee schedule.

13.48.140 Duties ~~Of~~of The City; Sexton's Duties

A. Duties of City.

~~A. Burials. The city shall prepare a grave for burial upon request and after a burial permit has been issued by the city. The city shall provide supervision for every interment.~~

1. Maintenance. The ~~city~~City shall have the responsibility to reasonably maintain the ~~cemetery~~Cemetery, other than grave markers and memorial structures, and provide the basic services necessary for the operation of the ~~cemetery~~Cemetery, including water, electricity, equipment and labor.

2. Records. The City shall maintain all records of plot sales, burials, and other records related to the administration of the cemetery, in accordance with all City and State codes.

B. Sexton's Duties.

1. The ~~city~~City sexton shall possess such supervisory and administrative powers, duties, and responsibilities relating to ~~city~~City cemeteries as are not repugnant to law or contrary to any specific direction or limitation set forth by the Highland City Council~~, including, but not limited to, the following:~~.

~~1. Supervising the operations and maintenance of the cemetery grounds and improving such grounds under the direction of the city council;~~

2. ~~Recommending to the city council~~Burials. The City Sexton, or their representative, shall prepare a Grave for burial upon request and after a burial permit has been issued by the City. The City staff shall provide supervision for every Interment. If conditions do not allow a traditional burial, a mock set up may be required as directed by the Sexton. No other person other than City-authorized personnel shall excavate a gravesite.

~~2.~~3. Rules and Regulations. The City Sexton shall recommend to the City Council such additional rules and regulations as may be required for the proper and efficient operation, maintenance, use, and protection of the ~~city cemeteries;~~City cemetery.

~~2. Subdividing all city cemeteries into sections and lots, and maintaining a plat of the cemetery grounds showing the location;~~

~~3. Maintaining an accurate, indexed record of the present ownership or use of all burial lots in all city cemeteries. Such record shall indicate the identity of the purchaser;~~

~~4. Preventing any city cemetery from being used beyond its capacity, as established by the city council;~~

5. Preventing the trespass of animals not confined at all times within a vehicle and of minors not employed by the city and not accompanied by an adult; enforcing traffic regulations within city cemeteries in cooperation with the city police; reporting as well as prevention, to the extent practicable, the vandalism of cemetery property;

6. Opening and closing or causing to be opened or closed all graves required for the burial of the dead in city cemeteries;

7. Interring or permitting the interment of the remains of the dead only if such interment is to be made by a licensed funeral director or by a person in possession of a burial-transit permit as required by Section 26-2-17, Utah Code Annotated, and all other state and local laws and regulations;

8. Complying with the procedures mandated by Sections 26-2-17 and 26-4-12, Utah Code Annotated, and all other state and local laws and regulations;

9. Keeping current a true and complete record of all interments made in city cemeteries, setting forth the name of the decedent, place of death, the date of burial, and the name and address of the funeral director or other person making the interment. Such record shall be prepared and maintained at the expense of the city and shall be open to public inspection;

10. Preparing and sending a list of interments, made in city cemeteries each month, in the manner and to the stated officer designated in Section 26-2-18(3), Utah Code Annotated, and other applicable law;

11. Collecting in advance such charges and fees relating to city cemeteries as the city council may set by resolution;

12. Selling burial rights and collecting all sums arising from such sales, to include the purchase price of the burial rights and the fees established by resolution of the city council;

13. Removing or causing to be removed, without notice, floral arrangements, displays, or other items left on any greave, as deemed necessary to the appearance or maintenance of city cemeteries;

14. Directing parking, standing, or movement of vehicles through city cemeteries;

15. Performing such other duties in relation to the cemetery as may be required;

16. The sexton shall file and cause to be filed in the office of the Utah County Recorder an accurate plat of all city cemeteries, which shall clearly show the section of burial lots for which burial rights have been conveyed, the names of the persons owning such burial rights, and the sections of burial lots for which no burial rights have been conveyed. The city sexton shall periodically update its filings with the county recorder to reflect changes in the foregoing information and shall, prior to offering for sale any burial rights in any additions of land to a city cemetery, record a plat for the addition to the cemetery;

17. The city sexton shall furnish every purchaser of burial rights in a city cemetery with a certificate of burial rights, properly executed, in form sufficient to permit filing and

~~recording by the county recorder upon payment of the purchase price and all fees required by the city. All such certificates shall state that the holder thereof has not acquired any title or interest in real property, but only holds a right to burial. Each certificate shall be signed by the mayor and attested to by the city recorder and shall constitute the sole evidence of the purchaser's interest. A certified copy of such certificate shall remain on file at the office of the city sexton;~~

~~18. On the first days of January and July of each year, the city sexton shall file with the Utah County Recorder a transcript, duly certified by the city sexton, of any and all burial rights, certificates of sale, or evidences of burial rights issued by the city sexton during the preceding six months;~~

~~19. The city sexton shall attend to every interment in the city cemeteries in person or by a competent deputy;~~

~~20. All receipts and cash received by the city sexton in connection with the sexton's duties at city cemeteries shall be deposited with the city treasurer, for which deposits the sexton shall take a receipt and retain the same on file in the sexton's office for a period of two years;~~

~~3.~~4. The city sexton and employees or other persons assigned to work at a city cemetery shall not, either directly or indirectly, knowingly act or serve as agents, employees, or salesperson for: (a) any person or company furnishing materials used at city cemetery; (b) any mortuary, funeral home, or similar establishment; or (c) any person or company selling grave markers or monuments. The city sexton and employees or other persons assigned to work at a city cemetery shall not be interested in any manner in any monument, vault, casket manufacturing, or related business, and shall not in any manner receive any profits or rewards growing out of the sale or placement of any monuments, caskets, vaults or markers. Each violation of this section is a class C misdemeanor~~;~~.

~~21. The city sexton shall receive such compensation as may be fixed by the resolution of the city council.~~

13.48.150 ~~Registration Of~~ Application for Burials ~~And~~and Disinterments

A. The ~~city administrator~~City Administrator shall designate a registrar of burials for the ~~city~~City. The registrar may, but is not required, to also serve as the ~~sexton~~Sexton. Before burying any dead in the ~~cemetery~~Cemetery, or before disinterring ~~for transportation beyond the corporate limits of the city~~ the body of any person who has been buried therein, the relatives or other persons having charge of the body shall be required to ~~furnish in writing to the registrar a statement of death, which shall be recorded in a record kept for that purpose by the registrar. The statement~~complete an application for burial or application for disinterment. The application shall include the name of the decedent, the place of death, the date of burial and the name and address of the ~~funeral director or other~~ person requesting the ~~interment~~Interment, and any other information deemed necessary by the City. These records shall be open to public inspection.

B. The City shall provide Disinterment services only for persons buried in a nonbiodegradable vault and in accordance with applicable statutes, rules, and regulations together with the fee as provided herein. Prior to the Disinterment, the requestor shall provide a copy of the Utah County Vital Records Disinterment/Reinternment Permit and pay the applicable fee. The requestor shall arrange for and pay any associated costs for a licensed vault company and/or funeral director to

be present during the Disinterment. The requestor shall arrange for and pay any associated costs for a licensed vault company to remove the vault and its contents from the Grave site. If the Grave site does not contain a vault or the City Sexton and/or funeral director determines the existing vault has deteriorated to the point that it will not retain its structural integrity during the Disinterment, the requesting party shall replace the deteriorated vault with a structurally sound vault at the requestor's expense. The requestor shall arrange to dispose of any old vault in the manner meeting federal, state and local laws. No disinterments shall be permitted without permission of the sexton. All disinterments must comply with applicable state law.

13.48.160 Burials Outside Cemeteries

It is unlawful to bury the body of any person within the ~~city~~City, except at sites designated and approved as cemeteries by the ~~city~~City.

13.48.170 Burial ~~Of~~of Indigents

A portion of the ~~cemetery~~Cemetery may be designated for the burial of indigents. Whenever it is determined by the ~~city council~~Mayor that any resident of Highland who has died, who does not have funds or an estate sufficient to pay the cost of a ~~burial right~~Burial Right and ~~interment~~Interment in the ~~cemetery~~Cemetery, and whose nearest relative or representative desires to have the body of such deceased interred in the ~~cemetery~~Cemetery, the ~~city council~~Mayor may grant a ~~burial right~~Burial Right and ~~interment~~Interment for such deceased person at no cost to such person.

13.48.180 ~~Infant Burial Plot~~

~~A portion of the cemetery may be reserved for the burial of infants. For purposes of this chapter, infants shall be defined as humans under the age of one year.~~

~~13.48.190 Animals Prohibited~~

~~No animal shall be allowed in the cemetery except in the confines of a vehicle. Animals include, without limitation, horses, dogs, cats.~~

~~13.48.200~~ Operating Hours; Holiday ~~Funerals~~Closures

A. Cemetery operating hours ~~are~~ for graveside services and/or Interments and disinterments shall be conducted between the hours of nine (9:00) a.m. to four (4:00) p.m. Monday through ~~Friday eight a.m. to four p.m. Overtime~~Saturday . Additional fees will be charged for other hours such as Saturdays, ~~Sundays~~ or holidays ~~observed by Highland City.~~where the cemetery is open. The cemetery is closed on Sunday for burials.

B. Interments or ~~disinterments~~Disinterments in the ~~cemetery~~Cemetery shall not be allowed on the following holidays: New Year's Day, Independence Day, Pioneer Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day ~~or~~, ~~or~~ and on the day Highland City observes these holidays There will be no interments or disinterments in the Cemetery on Memorial Day weekend beginning ~~at twelve noon on Saturday~~ Thursday through Memorial Day.

13.48.~~210~~190 Fees

~~A. Residency. The city shall assess nonresidents a higher fee than residents for the purchase of a burial right and the cost of interment. Residency status shall be determined as of the date of purchase of the burial right.~~

A. ~~Payment.~~ All prices, fees, and charges ~~pertaining to the cemetery shall~~will be established by resolution of the ~~city council~~City Council as indicated in the Highland City Fee Schedule.

~~B.~~A. Payment. No ~~burial,~~ opening, closing or ~~interment~~Interment, shall take place until all appropriate fees have been ~~timely~~ paid to the ~~registrar~~designated cemetery office staff.

13.48.~~220~~200 Resale Restricted

No person who owns any ~~burial right or lots~~Burial Right shall sell such ~~burial right or lots~~Burial Right to any buyer except the ~~city~~City. The ~~city~~City agrees to repurchase any unused ~~burial right~~Burial Right for the ~~present~~current value of such ~~burial right~~Burial Right, unless the Burial Right reverts to the City pursuant as set forth in this Chapter.

13.48.~~230~~210 Damaged Property

It is unlawful for any person to damage, injure or deface any monument, tree, shrub, lawn, building, structure or facility, on the grounds of the ~~cemetery~~Cemetery. The ~~city~~City shall not be responsible or liable for flowers or other personal property left at the ~~cemetery~~Cemetery.

13.48.~~240~~220 Prohibited Activities in Cemetery

A. Recreational Activity. No recreational or athletic activities are permitted within the Cemetery.

B. Noise. All visitors to the Cemetery shall maintain a reasonable level of noise to avoid disturbing other visitors to the Cemetery. Loud music, shouting, yelling, and other loud noises are prohibited.

C. Alcoholic Beverages. Alcoholic beverages are not allowed in the Cemetery.

D. Smoking Prohibited. Smoking in the Cemetery is prohibited per chapter 12.24 City Parks and Cemetery Section 12.24.060 Smoking.

E. Animals Prohibited. No animal shall be allowed in the Cemetery except in the confines of a vehicle, with the exception of a horse drawn funeral procession. Animals include, without limitation, horses, dogs, cats.

13.48.230 Reversion ~~Of~~of Burial Right ~~To~~to City

A ~~burial right~~Burial Right that has been unused, or ~~have~~has no written notices of claim or interest on, for more than sixty (60) years will be reclaimed by the ~~cemetery~~City. Every effort, practically and legally, will first be made to find the owner or legal heirs before the ~~burial lot~~Burial Right is reverted, in accordance with Title 8, Chapter 5 of the Utah Code, as amended.

Highland City Cemetery
Standard Operating Procedures

DUTIES OF CEMETERY OFFICE STAFF

Graves – Sales, Reservations, Transfers, Buy Backs

1. Ensure that all forms are accurate, signed, and notarized, if necessary.
2. Receipt payment for plot, transfer fees, and reservation down payments.
3. Scan documents and place in plot folder.
4. Record transaction in Cemetery Plots WORD document, reservation spreadsheet, Spatial Generations, etc.
5. Issue certificates of Burial Rights.
6. For cemetery buy backs, complete the requisition for refund to customer.

Scheduling Burial/Disinterment Services

1. Check to make sure there is availability on the day & time requested. Burials will be scheduled on a first come, first served basis. Families must be out of the cemetery no later than 4:00 pm. All burials subject to the approval of the Sexton.
2. Complete burial application, scan, and place in digital folder of plot. In the case of a disinterment, a disinterment form from Utah County is also required.
3. Receipt payment for opening/closing fees.
4. Record burial in Cemetery Plots WORD document and Spatial Generations.
5. Download copy of obituary and place in digital folder of plot. Link obituary in Spatial Generations.
6. Send work order to cemetery grounds staff with copy of burial application and map of burial location.

Temporary Markers

1. Families request temporary marker.
2. Receipt payment of temporary marker fee.
3. Cemetery office staff creates marker, and prints copy of map which is left in Recorder's office.
4. Cemetery grounds staff places markers every Thursday.

Reporting to Utah County

1. No later than January 1 and July 1 of each year, file with Utah County Recorder a transcript showing all plots sold during the previous 6 months. UCA-8-3(3)

DUTIES OF SEXTON/CEMETERY GROUNDS STAFF

Dry Conditions Opening

1. Locate and mark out plot for opening and assess ground conditions for approach and excavation. (Drive mats will be used at Sextons discretion)
2. Cut the sod and place it behind a nearby head stone or in tree ring.
3. Maneuver the mini excavator to either the head or the foot of the grave. Bring the 550 Dump truck from the North or South between headstone path and line up square to the grave.
4. Excavate the single/double depth grave opening to the appropriate dimensions. (Depending on dump truck bed size, and grave depth the dump truck may have to be dumped once during excavation.)
5. Cover the excavated hole with two 8' by 4' ¾" plywood boards and place traffic cone on the boards. (If there are multiple openings in the cemetery) secure a paper with the deceased last name on it to the traffic cone.

Dry Conditions Closing

1. Conditions of the ground shall be assessed. (Drive mats will be used at Sextons discretion.)
2. Vault is placed in the grave by the vault company. Tear down of vault company's equipment (tents, chairs, scaffolding, etc.) shall take place. Vault truck pulls off the grounds on the same path it entered. (Vault company must follow ALL instructions of the Sexton)
3. The 550 dump truck shall be brought in on the same path used for excavation
4. Dirt is dumped on the vault and compacted in 1-to-2-foot lifts.
5. Once grave is filled and compacted to final level, sod is placed back on the grave. Any dirt spilled during closing shall be cleaned up
6. If flower arrangements are left behind, flower stands shall be removed. The flower arrangements shall be placed on the grave.

Wet Conditions Opening

1. Locate and mark out plot for opening and assess the ground conditions for approach and excavation.
2. Drive mats shall be placed to accommodate any wheeled vehicle (over 4000) to access any location on all grass.
3. The sod shall be cut and placed behind nearby headstone or in tree ring
4. Maneuver the mini excavator to either the head or foot of the grave.
5. The 550 dump truck shall be brought in from the North or South on the drive mats between the headstones square to grave opening
6. Excavate the single/double depth grave opening to the proper dimensions. (Depending on size of dump truck bed and grave depth, the dump truck may have to be dumped once during excavation.)
7. Cover the grave opening with two 4' x 8' 3/4" plywood boards and place a traffic cone on the boards. (If there are multiple openings in the cemetery, the name of the deceased shall be written on a piece of paper and secured to the traffic cone.)

Wet Conditions Closing

1. Drive mats shall be placed to accommodate Vault companies access to grave opening. (Vault company shall follow any instructions indicated by the Sexton)

2. Vault is placed in grave opening by the Vault company. Tear down takes place to remove all equipment (tents, chairs, scaffolding, etc.) Vault truck must exit the grounds on the same path it entered. (on the drive mats)
3. The 550 dump truck is brought in on the drive mats using the same path used for excavation.
4. Dirt is dumped over vault and compacted in 1-to-2-foot lifts
5. Once grave is filled and compacted to final level, sod is placed back on grave. Any dirt spilled during closing shall be cleaned up.
6. If flowers arrangements are left behind, flower stands shall be removed, and arrangements are placed on grave.

Only the sexton shall determine if drive mats will NOT be used in wet conditions. If there are not enough drive mats to accommodate the distance or number of openings they shall be "leap frogged" to accommodate wheeled vehicles over 4000 lbs. If conditions are too wet to allow 550 dump truck to reach grave location during closing, the CAT 420 backhoe can be used for back fill.

Winter Conditions Opening

1. Locate and mark out plot for opening and assess ground for approach and excavation. (snow may need to be removed for the process.)
2. Use of drive mats are at the Sexton's discretion. If conditions require drive mats, they shall be placed to accommodate any wheeled vehicle (Over 4000 lbs.) to access any location on grass.
3. Conditions may not allow sod to be cut. If sod can be cut, it shall be placed behind nearby headstone or in tree ring. If sod cannot be cut it shall be excavated with the rest of the dirt during opening.
4. Maneuver the mini excavator at either the head or the foot of the grave opening.
5. The 550 dump truck is brought in (on drive mats if needed) from either the North or the South between headstones square to grave opening.
6. Excavate the single/double depth grave to the proper dimensions. (Depending on size of the dump bed and depth of grave, the dump truck may have to be dumped once during opening.
7. Cover the grave opening with two 4' x 8' ¾" plywood boards. A traffic cone shall be placed on the boards. (If there are multiple openings in the cemetery, the last name of the deceased shall be written on a paper and secured to the traffic cone.)

Winter Conditions Closing

1. Remove snow to accommodate funeral proceedings and safe access to location. (Honda snow blower can be used if snow conditions allow otherwise snow must be shoveled.)
2. Place drive mats to accommodate vault company access to grave location.
3. The vault shall be placed in the grave by vault company. Tear down will take place to remove equipment (tents, chairs, scaffolding, etc.) Vault truck must exit the grounds on same path it entered, using drive mats.
4. The 550 dump truck is brought in on drive mats on same path used for excavation..
5. Dirt is dumped and compacted in 1-to-2-foot lifts. (Compaction may not be achievable during curtain winter conditions)
6. If sod was cut it shall be placed back on closed grave. If sod could not be cut, the grave shall be filled and dressed to accommodate sod in the future.
7. If flower arrangements were left behind, remove flower stands and place arrangements on top of closed grave.

Only the sexton shall determine if drive mats will NOT be used in winter conditions. If there are not enough drive mats to accommodate the distance or number of openings they shall be "leap frogged" to accommodate wheeled vehicles over 4000lbs. If conditions are too wet to allow 550 dump truck to reach grave location during closing, the CAT 420 backhoe can be used for back fill. Any damage created by cemetery staff during winter conditions including ruts, dead or missing sod, settled graves, etc, shall be repaired by the cemetery staff in a timely manner (conditions permitting.) Sod will be repaired/replaced when it is available and weather conditions allow it to properly grow.

Infant/Cremains Opening

1. Locate and mark out plot and assess the ground conditions for approach and excavation..
2. The CAT 420 backhoe is brought in on path determined by the Sexton. Drive mats shall be placed over backhoe path if conditions are indicated by the Sexton.
3. The sod is cut using shovels to the proper dimensions and placed in the front bucket of the backhoe.
4. The grave is then excavated using shovels and digging bars to the proper dimensions. Dirt is placed in the front bucket of the backhoe.
5. The backhoe, dirt, and sod are stored in the well #1 building until closing
6. The infant/cremains grave opening is then covered by "the green" and marked with a traffic cone. (If it is raining or snowing "the green" shall be replaced with a 4' x 8' ¾ plywood board to prevent green from getting damaged.)

Infant/Cremains Closing

1. After funeral proceedings are finished the Infant/Cremains vault is placed in grave opening by hand.
2. The backhoe, dirt and sod are brought back in on the same path used for opening.
3. Dirt is carefully shoveled over vault and gently compacted using feet/shovel handle.
4. Once proper fill level and compaction is achieved the sod is placed back on grave opening.
5. If any flower arrangements are left behind, flower stands are removed, and arrangements are placed on top of grave.

All Infant/Cremains openings and closings are subject to the conditions listed above. If the ground is too hard or frozen to allow timely opening of infant/cremains grave, the 1811 bucket can be placed on the mini excavator and used to open the grave. All dirt and sod must still be placed in the front bucket of the CAT 420 backhoe for hand closing. If sod cannot be replaced, the grave shall be dressed to accommodate replacement sod in the future. Drive mats shall be used at Sextons discretion. Any damage created by cemetery staff during opening/closing of an infant/cremains grave shall be repaired in a timely matter (conditions permitting).

Headstone Sets

1. All headstones must be set by authorized monument companies.
2. Monument companies must submit a form requesting permission to set a stone in the cemetery. Two business days' notice is required. A setting fee, as set forth in the fee schedule, will be charged at the time of scheduling.
3. Cemetery office staff will ensure the proper size and verify the location of stone placement.

4. A work order will be sent with instructions to mark the grave. The work order will contain a map of the location as well as the monument placement request.
5. Cemetery grounds staff will mark the grave and direct the monument company while they are on the grounds to ensure there is no damage to the grounds or other stones.
6. Monument companies who do not arrive at their scheduled time will be required to submit a new request and pay an additional setting fee.

AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT ITEM #7

DATE: March 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Stephannie Cottle, City Recorder

SUBJECT: **PUBLIC HEARING/RESOLUTION:** Fee Schedule Update - Headstone Setting Fee

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will hold a public hearing to consider an amendment to the Highland City Fee Schedule to include a headstone setting fee in the Highland City cemetery. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends City Council approve and adopt the resolution to amend the Highland City Fee Schedule to include a $50.00 headstone setting fee for the Highland City cemetery.

PRIOR COUNCIL DIRECTION:

On December 6, 2022, City Council met in a work session to discuss proposed code updates to the Municipal Code as it relates to the Highland City cemetery. One of the proposed changes was to charge a headstone setting fee. City Council was agreeable to the proposed fee.

BACKGROUND:

As other cemeteries in the area reach their capacity, or are limiting their plot sales, Highland City cemetery is becoming a popular choice not only for Highland residents, but residents from surrounding cities as well. With increased use of the cemetery comes increased damage to the grounds and increased staff time to perform those repairs and mark graves for headstone sets. Approximately 1 hour and 15 minutes of staff time are spent in preparation for headstone setting including the clerical and scheduling work, finding, and marking the headstone location, and being on site to supervise headstone companies. Staff is proposing a fee that can be used to help offset staff's time as well as some of the costs for repairs to the grounds. These repairs include sod replacement, rut repairs, and sprinkler replacement. This fee will also encourage monument companies to keep their appointment times at the cemetery, which will save staff time re-marking graves prior to the headstone set.

The proposed fee is $50.00 per headstone and will be paid at the time the headstone placement request is received; prior to the cemetery staff marking the grave. Monument

companies will be charged for each request, including missed appointments or if only part of the stone is set.

A headstone setting fee is not uncommon among cemeteries. Pleasant Grove ($100), Orem ($80), and Lehi ($50) also charge a headstone setting fee.

FISCAL IMPACT:

Based on the data below, an average of 63 headstones are set each year. This would provide approximately $3,150/year in revenue that would be part of the Cemetery Perpetual Care Fund.

Year	Number of Headstone Requests
2022	54
2021	65
2020	81
2019	51

MOTION TO APPROVE:

I move that City Council approve the resolution to amend the Highland City Fee Schedule to include a $50.00 headstone setting fee.

ATTACHMENTS:

1. Resolution

A RESOLUTION AMENDING THE HIGHLAND CITY FEE SCHEDULE AND ADOPTING A HEADSTONE SETTING FEE

WHEREAS, Highland City desires to provide a beautiful cemetery for families to remember their loved ones;

WHEREAS, Highland City desires to maintain the cemetery to a level which is consistent with the requests of their residents;

WHEREAS, Highland City experiences damage to the cemetery grounds due to trucks and other equipment used to set headstones;

WHEREAS, Highland City staff spends considerable time marking graves in preparation for headstones to be set;

WHEREAS; the City Council desires to establish a reasonable fee to cover the costs to the City of employee time to mark graves and damage incurred in the setting of headstones.

NOW THEREFORE, BE IT RESOLVED by the Highland City Council to amend the Highland City Fee Schedule and adopt a $50.00 headstone setting fee, to be paid in connection with each headstone placement request.

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 NEXT

CITY COUNCIL AGENDA REPORT ITEM #8

DATE: March 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Andy Spencer, PE
City Engineer/Public Works Director

SUBJECT: **ACTION:** Highland City Trail Maintenance 2023

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will consider approving a contract with Kilgore Contracting for the asphalt Trail Maintenance 2023 project. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends City Council approve the contract with Kilgore Contracting for the Highland City Trail Maintenance 2023 project for FY23 for $181,524.32 allocating a 10% contingency of $18,152.43 to be administered by staff, for a total authorized project amount of $199,676.75.

City Council could also approve the project including the Bid Alternate 1 for the Highland Hills Trail Addition for FY23 for $232,285.58 allocating a 10% contingency of $23,228.56 to be administered by staff, for a total authorized project amount of $255,514.14.

PRIOR COUNCIL DIRECTION:

City Council has shown a strong desire to preserve and maintain our trial system including budgeting a substantial amount of money for trail maintenance.

BACKGROUND:

As part of the City annual trail maintenance program, several trail sections in the City need treatment to maintain the trail system. In deciding which trails are prioritized for treatment, staff accounts for pavement condition, trail usage, and cost. These treatments include crack seal, seal coat, overlay, and reconstruction. The treatments for the different sections are shown in the design packet (Attachment 2). The estimated square feet of trail to be crack sealed is 127,103 SF, estimated seal coat is 84,006 SF, estimated asphalt overlay is 8,097 SF, estimated reconstruction is 20,149 SF, and the estimated new trail addition is 10,170 SF.

The Highland Hills Trail addition is on the City's current Trail Master Plan. Staff does receive complaints about the trail not being fully connected. It is an inconvenience for people using the trail and in addition, some homeowners along the non-constructed section have at times used city property as a rear access to their home. As such, staff feels like it makes

sense to construct the continuation of that trail. However, due to the costs of the maintenance project, a portion of the trail construction would need to come from the Major Road Maintenance Fund. As trails are part of our overall transportation network, it is an appropriate use of the funds, but would mean there would be less money available for various road projects.

Work on this project will occur Spring 2023. Substantial completion is on or before June 1st, 2023 and full completion is on or before June 11th, 2023.

The bidding for this project closed on February 28th, 2023. Staff received 4 bids. Staff recommends the bid from Advanced Paving and Construction be deemed nonresponsive due to the fact that they did not acknowledge the addendum which included a clarification on additional work to be performed. As such, they did not provide a bid for the full project.

FISCAL IMPACT:

The cost of this project without the alternate is $199,676.75. Funding for this expense is included within the FY23 budget as follows:

- $59,705.13 in 10-70-38, Trail Maintenance (Park and Recreation); and
- $65,000.00 in 20-43-22, Trail Maintenance (Open Space); and
- $74,971.62 in 40-40-76, Trails (Park Capital)

Including the alternate, the cost of this project is $255,514.14. Funding for this expense is included within the FY 23 budget as follows:

- $59,705.13 in 10-70-38, Trail Maintenance (Park and Recreation); and
- $65,000.00 in 20-43-22, Trail Maintenance (Open Space); and
- $112,499.13 in 40-40-76, Trails (Park Capital)
- $18,309.88 in 41-40-71 Major Road Maintenance

MOTION TO APPROVE:

I move that City Council approve the contract with Kilgore Contracting and authorize a contract amount up to $199,676.75 for the Highland City Trail Maintenance 2023 project and authorize the City Administrator to sign the necessary contract documents.

ALTERNATE MOTION:

I move that City Council approve the contract with Kilgore Contracting and authorize a contract amount up to $255,514.14 for the Highland City Trail Maintenance 2023 project including the Bid Alternate 1 for the Highland Hills Trail Addition and authorize the City Administrator to sign the necessary contract documents.

MOTION TO DENY:

I move that City Council deny the bid from Kilgore Contracting. (City Council to provide appropriate findings and provide further direction to City Staff.)

ATTACHMENTS:

1. Bid Tabulation
2. Kilgore Contracting Bid
3. Highland City Trail Maintenance 2023 Design Packet

Highland City Trail Maintenance 2023

	2/28/2023 @2:00 pm	
Received From	Bid	Bid Alternate 1
CKC Operations LLC	$ 439,430.02	$ 110,725.00
Advanced Paving and Construction	$ 181,482.49	$ 33,208.00
Kilgore	$ 181,524.32	$ 50,761.26
Sumsion/ Eckles Paving	$ 182,397.49	$ 72,917.50
	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Highland City Administration Office
Attn: JoAnn Scott
5400 West Civic Center Drive, Suite 100
Highland, UT 84003

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted: (1) to enter into an Agreement with Owner in the form included in the Bidding Documents, (2) to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, 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	2/27/23

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).

E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of 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 to be employed by Bidder, and safety precautions and programs incident thereto

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F. 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 prices 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 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 correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

I. 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.

J. 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.

K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement. .

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

A. this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any 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 sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the unit prices shown in the following Unit Price Schedule:

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UNIT PRICE SCHEDULE A – C-101 Lone Peak High Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 402.50	$ 402.50
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Crack Seal 10 ft Wide Trail	LF	4,310	$ .65	$ 2,801.50
	Total	$ 4,009.00			

UNIT PRICE SCHEDULE B – C-102 Highland Glen Park Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 627.26	$ 627.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Sawcut Existing Asphalt	LF	16	$ 25.16	$ 402.56
5	Remove and Dispose of Existing Asphalt	SF	6,949	$ 1.44	$ 10,006.56
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	6,949	$ 2.92	$ 20,291.08
	Total	$ 32,132.46			

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UNIT PRICE SCHEDULE C – C-103 Mitchell Hollow Park Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 627.26	$ 627.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	2" Asphalt Overlay	SF	8,097	$ 4.52	$ 36,598.44
	Total	$ 38,030.70			

UNIT PRICE SCHEDULE D – C-104 Canterbury South Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 1,432.26	$ 1,432.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Sawcut Existing Asphalt	LF	16	$ 25.16	$ 402.56
5	Remove and Dispose of Existing Asphalt	SF	48	$ 15.80	$ 758.40
6	Crack Seal 6ft and 8ft Wide Trail	SF	9,324	$ .11	$ 1,025.64
7	Seal Coat 6ft and 8ft Wide Trail	SF	9,324	$ .21	$ 1,958.04
8	Furnish, Place, Shape and Compact Asphalt 3"	SF	48	$ 33.44	$ 1,605.12
	Total	$ 7,987.02			

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UNIT PRICE SCHEDULE E – C-105 Canterbury North Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$1,432.26	$1,432.26
2	Traffic Control	LS	1	$460.00	$460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$345.00	$345.00
4	Sawcut Existing Asphalt	LF	128	$3.14	$401.92
5	Remove and Dispose of Existing Asphalt	SF	978	$2.14	$2,092.92
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	978	$3.37	$3,295.86
7	Crack Seal 8ft Wide Trail	SF	48,835	$.08	$3,906.80
8	Seal Coat 8ft Wide Trail	SF	48,835	$.16	$7,813.60
9	Connect Trail: Includes Excavation, Furnish, Place, Shape, and Compact 8" Road Base and 3" Asphalt	SF	720	$8.63	$6,213.60
	Total	$ 25,961.96			

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UNIT PRICE SCHEDULE F – C-106 Bull River Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$1,432.26	$ 1,432.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Sawcut Existing Asphalt	LF	32	$ 12.58	$ 402.56
5	Remove and Dispose of Existing Asphalt	SF	5,038	$ 2.00	$ 10,076.00
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	5,038	$ 3.50	$ 17,633.00
7	Crack Seal 8ft Wide Trail	SF	11,462	$ .12	$ 1,375.44
8	Seal Coat 8ft Wide Trail	SF	11,462	$ .18	$ 2,063.16
	Total	$ 33,787.42			

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UNIT PRICE SCHEDULE G – C-107 Highland Hills Trail					
Item #	**Description**	**Unit**	**Quantity**	**Unit Price**	**Amount**
1	Mobilization	LS	1	$ 1,432.26	$ 1,432.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Sawcut Existing Asphalt	LF	16	$ 25.16	$ 402.56
5	Remove and Dispose of Existing Asphalt	SF	6,416	$ 1.57	$ 10,073.12
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	6,416	$ 3.05	$ 19,568.80
7	Crack Seal 8ft Wide Trail	SF	1,732	$ .48	$ 831.36
8	Seal Coat 8ft Wide Trail	SF	1,732	$ .56	$ 969.92
	Total	$ 34,083.02			

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UNIT PRICE SCHEDULE H – C-108 Mercer Hollow Trail					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 805.00	$ 805.00
2	Traffic Control	LS	1	$ 460.00	$460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$345.00
4	Sawcut Existing Asphalt	LF	0	$	$
5	Remove and Dispose of Existing Asphalt	SF	0	$	$
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	0	$	$
7	Crack Seal 10ft Wide Trail	SF	12,654	$ .14	$ 1,771.56
8	Seal Coat 10ft Wide Trail	SF	12,654	$ .17	$2,151.18
	Total	$ 5,532.74			

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AB-1 UNIT PRICE SCHEDULE I – C-109 Highland Hills Trail Addition					
Item #	Description	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	$ 627.26	$ 627.26
2	Traffic Control	LS	1	$ 460.00	$ 460.00
3	Conduct Storm Water Pollution Prevention Activities	LS	1	$ 345.00	$ 345.00
4	Sawcut Existing Asphalt	LF	0	$	$
5	Remove and Dispose of Existing Asphalt	SF	0	$	$
6	Furnish, Place, Shape and Compact Asphalt 3"	SF	9,450	$ 2.63	$ 24,853.50
7	Furnish, Place, Shape and Compact 8" Road Base	SF	9,450	$ 2.59	$ 24,475.50
	Total	$	50,761.26		

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UNIT PRICE SCHEDULE - SUMMARY				
Item #	Description	Unit	Quantity	Amount
1	C-101 Lone Peak High Trail	LS	1	$ 4,009.00
2	C-102 Highland Glen Park Trail	LS	1	$ 32,132.46
3	C-103 Mitchell Hollow Park Trail	LS	1	$ 38,030.70
4	C-104 Canterbury South Trail	LS	1	$ 7,987.02
5	C-105 Canterbury North Trail	LS	1	$ 25,961.96
6	C-106 Bull River Trail	LS	1	$ 33,787.42
7	C-107 Highland Hills Trail	LS	1	$ 34,083.02
8	C-108 Mercer Hollow Trail	LS	1	$ 5,532.74
	Total	$ 181,524.32		

AB – 1	Bid Alternate 1 - C-109 Highland Hills Trail Addition	LS	1	$ 50,761.26

Total Estimated Price for Base Bid One hundred and eighty one thousand five hundred and twenty four Dollars and thirty two cents. Dollars.

Unit Prices have been computed in accordance with Paragraph 11.03.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

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

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KILGORE CONTRACTING

Kilgore Contracting
P.O. Box 869 Magna, Utah 84044
801-250-0132 Office 801-250-0083 Fax

To:	Highland City	**Contact:**	
Address:	5378 West 10400 North Highland, UT UNITED STATES OF AMERICA	**Phone:** **Fax:**	(801) 756-5751
Project Name:	Highland City Trail Maintenance 2023	**Bid Number:**	1407209
Project Location:	Highland City, UT	**Bid Date:**	2/28/2023

1. Schedule A Lone Peak High Trail

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1		Mobilization	1.00	LS	$402.50	$402.50
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Strom Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Crack Seal 10ft Width Trail	4,310.00	LF	$0.65	$2,801.50
		Total Price for above 1. Schedule A Lone Peak High Trail Items:				**$4,009.00**

2. Schedule B Highland Park Trail

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1		Mobilization	1.00	LS	$627.26	$627.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	16.00	LF	$25.16	$402.56
5		Remove And Dispose Of Existing Asphalt	6,949.00	SF	$1.44	$10,006.56
6		Furnish, Place, Shape And Compact Asphalt 3"	6,949.00	SF	$2.92	$20,291.08
		Total Price for above 2. Schedule B Highland Park Trail Items:				**$32,132.46**

3. Schedule C Mitchell Hollow Park Trail

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1		Mobilization	1.00	LS	$627.26	$627.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		2" Asphalt Overlay	8,097.00	SF	$4.52	$36,598.44
		Total Price for above 3. Schedule C Mitchell Hollow Park Trail Items:				**$38,030.70**

4. Schedule D Canterbury South Trail

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1		Mobilization	1.00	LS	$1,432.26	$1,432.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	16.00	LF	$25.16	$402.56
5		Remove And Dispose Of Existing Asphalt	48.00	SF	$15.80	$758.40
6		Crack Seal 6' And 8' Wide Trail	9,324.00	SF	$0.11	$1,025.64
7		Seal Coat 6' And 8' Wide Trail	9,324.00	SF	$0.21	$1,958.04
8		Furnish, Place, Shape And Compact Asphalt 3"	48.00	SF	$33.44	$1,605.12
		Total Price for above 4. Schedule D Canterbury South Trail Items:				**$7,987.02**

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
5. Schedule E Canterbury North Trial						
1		Mobilization	1.00	LS	$1,432.26	$1,432.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Strom Water Pollution Pervention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	128.00	LF	$3.14	$401.92
5		Remove And Dispose Of Existing Asphalt	978.00	SF	$2.14	$2,092.92
6		Furnish Place, Shape And Compact Asphalt 3"	978.00	SF	$3.37	$3,295.86
7		Crack Seal 8ft Wide Trail	48,835.00	SF	$0.08	$3,906.80
8		Seal Coat 8ft Wide Trail	48,835.00	SF	$0.16	$7,813.60
9		Connect Trail: Includes Excavation Furnish Place Shape And Compact 8" Road Base And 3" Asphalt	720.00	SF	$8.63	$6,213.60
		Total Price for above 5. Schedule E Canterbury North Trial Items:				**$25,961.96**
5. Schedule F Bull River Trail						
1		Mobilization	1.00	LS	$1,432.26	$1,432.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	32.00	LF	$12.58	$402.56
5		Remove And Dispose Of Existing Asphalt	5,038.00	SF	$2.00	$10,076.00
6		Furnish, Place, Shape And Compact Asphalt 3"	5,038.00	SF	$3.50	$17,633.00
7		Crack Seal 8' Wide Trail	11,462.00	SF	$0.12	$1,375.44
8		Seal Coat 8' Wide Trail	11,462.00	SF	$0.18	$2,063.16
		Total Price for above 5. Schedule F Bull River Trail Items:				**$33,787.42**
6. Schedule G Highland Hills Trail						
1		Mobilization	1.00	LS	$1,432.26	$1,432.26
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	16.00	LF	$25.16	$402.56
5		Remove And Dispose Of Existing Asphalt	6,416.00	SF	$1.57	$10,073.12
6		Furnish, Place, Shape And Compact Asphalt 3"	6,416.00	SF	$3.05	$19,568.80
7		Crack Seal 8' Wide Trail	1,732.00	SF	$0.48	$831.36
8		Seal Coat 8' Wide Trail	1,732.00	SF	$0.56	$969.92
		Total Price for above 6. Schedule G Highland Hills Trail Items:				**$34,083.02**
7. Schedule H Mercer Hollow Trail						
1		Mobilization	1.00	LS	$805.00	$805.00
2		Traffic Control	1.00	LS	$460.00	$460.00
3		Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
4		Sawcut Existing Asphalt	0.00	LF	$0.00	$0.00
5		Remove And Dispose Of Existing Asphalt	0.00	SF	$0.00	$0.00
6		Furnish, Place, Shape And Compact Asphalt 3"	0.00	SF	$0.00	$0.00
7		Crack Seal 10' Wide Trail	12,654.00	SF	$0.14	$1,771.56
8		Seal Coat 10' Wide Trail	12,654.00	SF	$0.17	$2,151.18
		Total Price for above 7. Schedule H Mercer Hollow Trail Items:				**$5,532.74**
8. Schedule I Highland Hills Trail Addition						
1		Mobilization	1.00	LS	$627.26	$627.26
2		Traffic Control	1.00	LS	$460.00	$460.00

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
	3	Conduct Storm Water Pollution Prevention Activities	1.00	LS	$345.00	$345.00
	4	Sawcut Existing Asphalt	0.00	LF	$0.00	$0.00
	5	Remove And Dispose Of Existing Asphalt	0.00	SF	$0.00	$0.00
	6	Furnish, Place, Shape And Compact Asphalt 3"	9,450.00	SF	$2.63	$24,853.50
	7	Furnish, Place, Shape And Compact 8" Road Base	9,450.00	SF	$2.59	$24,475.50

Total Price for above 8. Schedule I Highland Hills Trail Addition Items: **$50,761.26**

Total Bid Price: **$232,285.58**

Notes:

- All grades are plus or minus 0.10 feet.
- Water required for compaction and dust control will be available on-site at no charge.
- All utility lines are to be 5' outside building. Connections are by others. All existing utilities shall not be in conflict with new construction.
- This bid proposal excludes winter conditions costs and snow / frost removal.
- Kilgore Contracting is not responsible for re-grading / re-compaction of disturbed areas caused by other trades, such as electricians, plumbers, etc.
- This bid proposal is based on the acceptance of all items detailed above. This proposal is strictly limited to the scope of work outlined above, and defined by this proposal. If accepted, this proposal will be included in, and become part of any subcontract.
- This bid is based on the cost of fuel, oil, cement, steel, and PVC on bid day. Any increase in prices will be passed through to the owner.
- This bid must be accepted within 10 days of the Bid Date to be considered valid.
- Contractor License Number is: 7741778-5501
- This ESCALATION CLAUSE will become part of the contract.

  The price stated is based on Kilgore Contracting's ability to purchase required materials, in particular the asphalt manufacturer's liquid asphalt. At the date of this proposal, Kilgore Contracting's purchase price for liquid asphalt oil (PG 64-22 or PG 58-28) is $ 550.00 per ton. Any increase in price, including freight and taxes, which Kilgore Contracting must pay, will be passed on to and paid for by the owner.
- We do not guarantee drainage on grade if less than 1%.
- Bid includes one mobilization. Additional mobilization cost will be negotiated.
- Bid excludes demolition, rock excavation and or blasting, shoring, disposal of un-identified debris, survey, construction staking, bonds, permits, fees, testing, striping, signs, prime coat, seal coat, chip seal, slurry seal, herbicide, sawcutting, traffic control, construction water, light poles, landscaping, blueboard, vapor barrier, and SWPPP/NOI/SWPPP inspections unless otherwise noted on the proposal.
- All existing utilities shall not be in conflict with new construction.
- Due to Current SUPPLY CHAIN DISRUPTIONS, all materials are subject to pricing at the time of shipment. Material availability and timeliness CANNOT BE GUARANTEED. This term supersedes all other contractual obligations.

Payment Terms:

All credit extended shall be on the basis of repayment of all sums due net 30 days from invoice date. All amounts not paid shall be subject to a finance charge of 2% per month on the unpaid balance. Payment by credit card may be accepted.

Oral statements or commitments to extend credit or to alter the terms of this Agreement and any other Agreement between the parties, this Agreement controls. Seller conditions prevail in governing all aspects of this agreement.

Seller may retain an attorney or collection agency to collect amounts that are past due hereunder. Purchaser shall pay all collection costs and reasonable attorney fees incurred by Seller, whether or not suit is brought, to collect any money due hereunder, including post-judgement costs and attorney fees. Any or all aspects of this Agreement shall be governed by the laws of the state in which the credit application is delivered. Seller shall designate the venue of any suit.

ACCEPTED:	**CONFIRMED:**
The above prices, specifications and conditions are satisfactory and hereby accepted.	**Kilgore Contracting**
Buyer: _____	
Signature: _____	**Authorized Signature:** _____
Date of Acceptance: _____	**Estimator:** GJohnson grady.johnson@kilgorecontracting.com

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of this Bid:

A. Required Bid security in the form of a certified or bank check or a Bid Bond.

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

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BID SUBMITTAL

9.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____(SEAL)
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____(SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: Kilgore Contracting (SEAL)

State of Incorporation: Delaware

Type (General Business, Professional, Service, Limited Liability): LLC

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): MATTHEW RENTSCHLER

Title: AREA MANAGER (CORPORATE SEAL)

Attest Ashleigh Griffith

Date of Authorization to do business in the State of Utah is 7 / 1 / 2010.

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A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____(SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____(SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address 7057 West 2100 South
WVC, Utah 84128

Phone No. 801-250-0132 Fax No. 801-250-0083

SUBMITTED on February 28, 2023.

State Contractor License No. 7741785501.

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Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bond Number: 71920-LIB-23-20

Bid Bond

CONTRACTOR:
(Name, legal status and address)
Kilgore Companies, LLC dba Kilgore Contracting

7057 W 2100 S
Salt Lake City, UT 84128

SURETY:
(Name, legal status and principal place of business)
Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116
State of Inc: MA

OWNER:
(Name, legal status and address)
Highland City
5400 West Civic Center Drive Suite 200
Highland City, UT 84003

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: Five Percent of Amount Bid (5%)

PROJECT:
(Name, location or address, and Project number, if any)
Highland City Trail Maintenance City Project # 28107038

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner 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. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 28th day of February , 2023

(Witness)

(Witness) Nicholas Rawden

Kilgore Companies, LLC dba Kilgore Contracting
(Principal) (Seal)

(Title) Area Manager

Liberty Mutual Insurance Company
(Surety) (Seal)

(Title) Janine A. Kappen, Attorney-in-Fact

Liberty Mutual SURETY

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8204866

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Janine A. Kappen

all of the city of Rochester, state of New York each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-infact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 28th day of February, 2023.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

HIGHLAND CITY

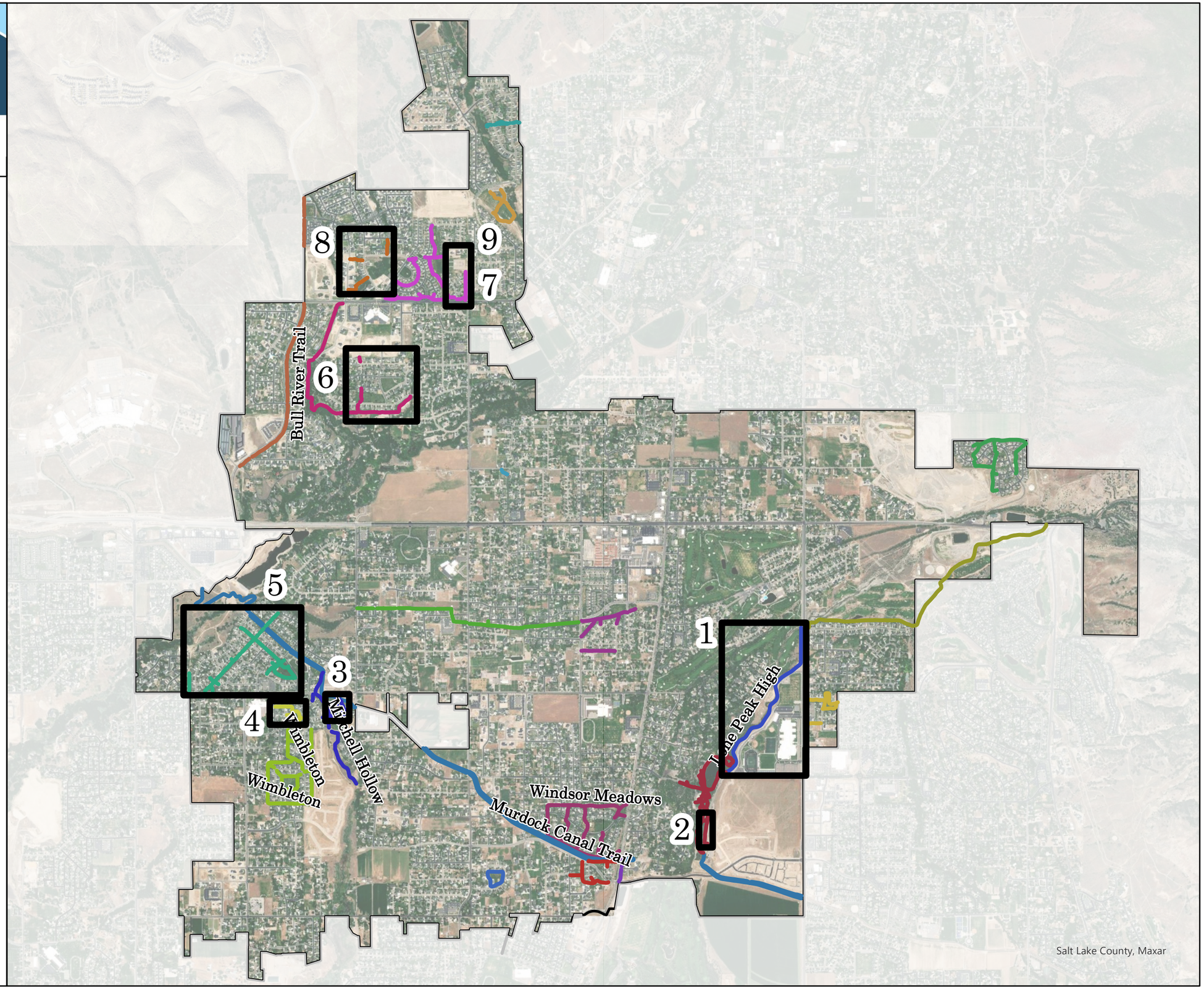
Highland City
Trail Maintenance

Vicinity Map

1. Lone Peak High Trail
2. Highland Glen Park Trail
3. Mitchell Hollow Park Trail
4. Canterbury South Trail
5. Canterbury North Trail
6. Bull River Trail
7. Highland Hills Trail
8. Mercer Hollow Trail
9. Highland Hills Trail

N
W E
S

0 0.13 0.25 0.5 0.75 1
Miles



HIGHLAND CITY

Trail Section Name:

Lone Peak High

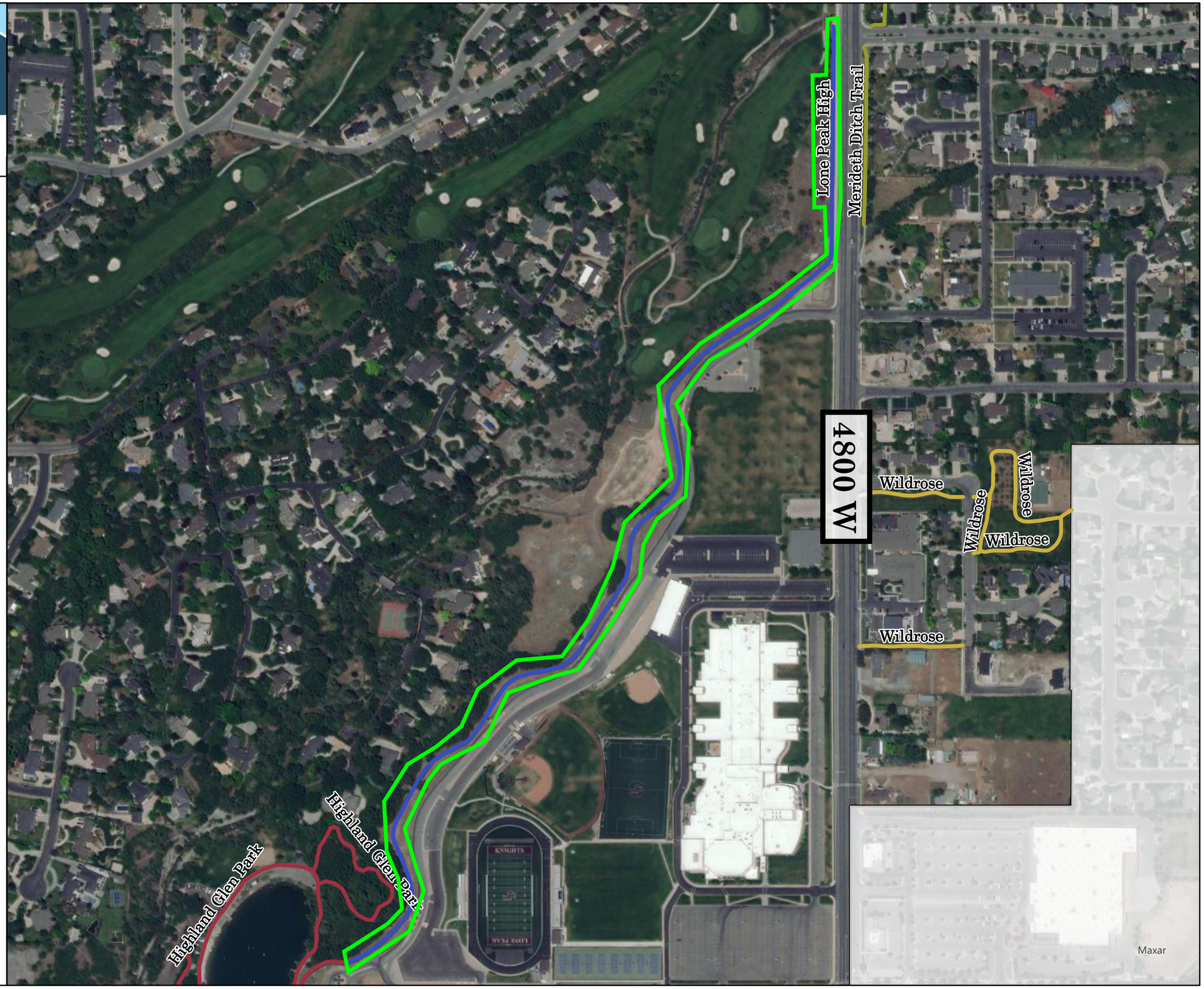
10 ft wide trail

4309.7 linear ft

43,097 SQFT

Crack Seal

C-101



HIGHLAND CITY

Trail Section Name:

Highland Glen Park Trail

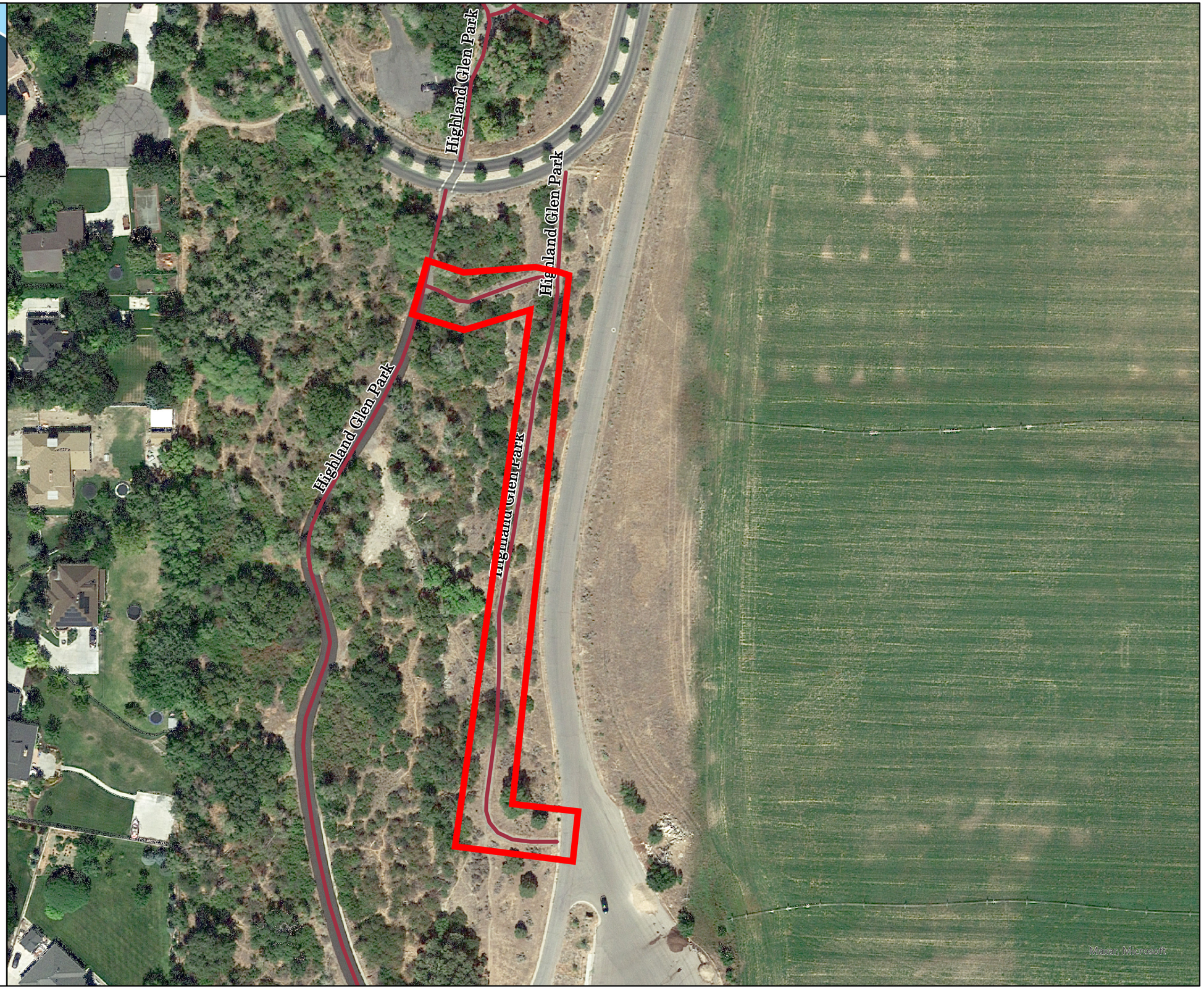
8 ft wide trail

765.3 Linear Feet

6122.4 SQFT

3" Thick Asphalt Trail Reconstruction

C-102



HIGHLAND CITY

Trail Section Name:

Mitchell Hollow
Park Trail Sections

6 ft wide trail

1001.7 Linear Feet

6010.4 SQFT

8 ft wide trail

261 Linear Feet

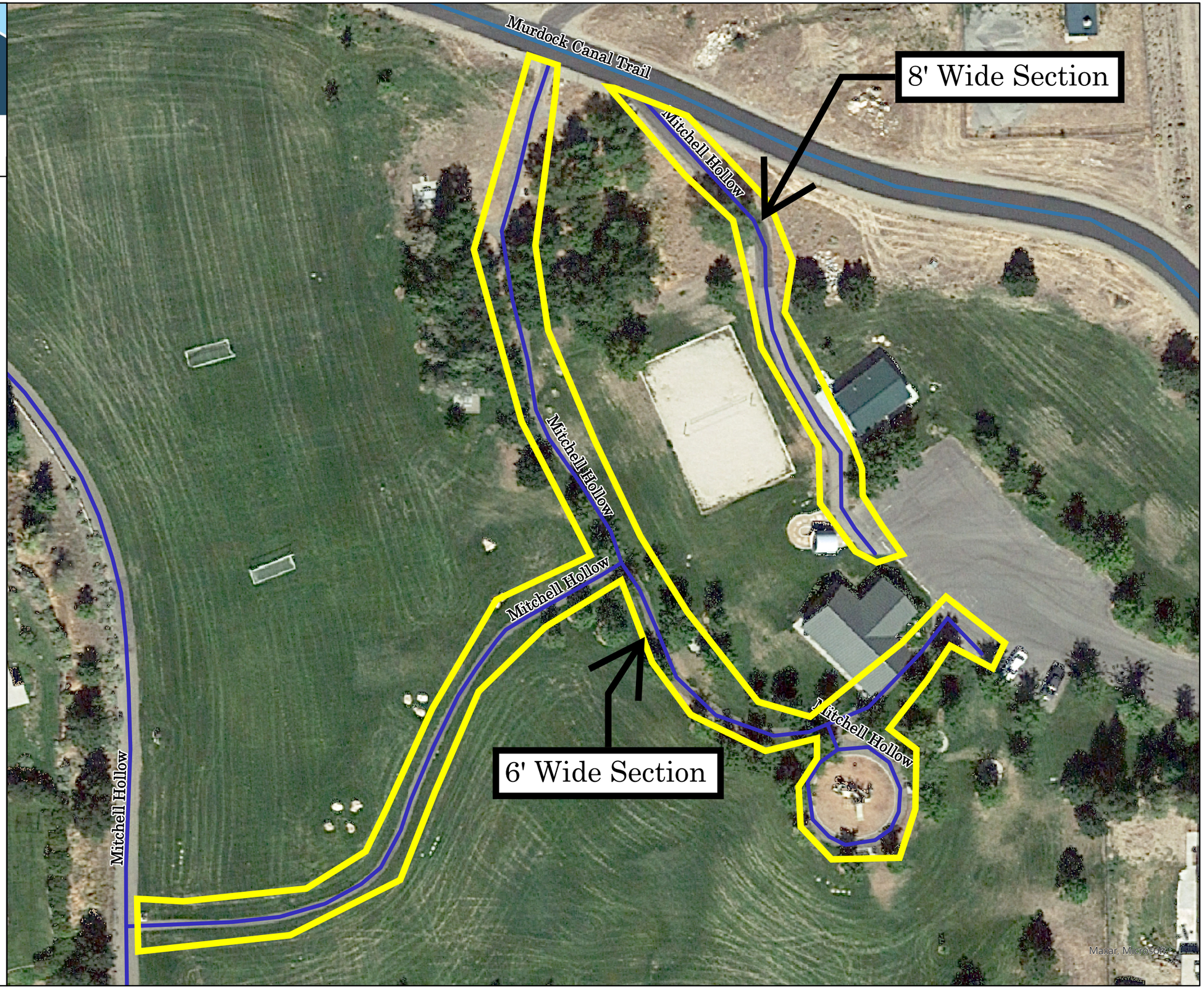
2087 SQFT

Overlay Sections

C-103

N
W E
S

0 0 0.01 0.01 0.01 0.02
Miles



HIGHLAND CITY

Trail Section Name:

Canterbury South

6 ft wide trail

882.3 Linear Feet

5293.7 SQFT

8 ft wide trail

509.7 Linear Feet

4077.8 SQFT Total

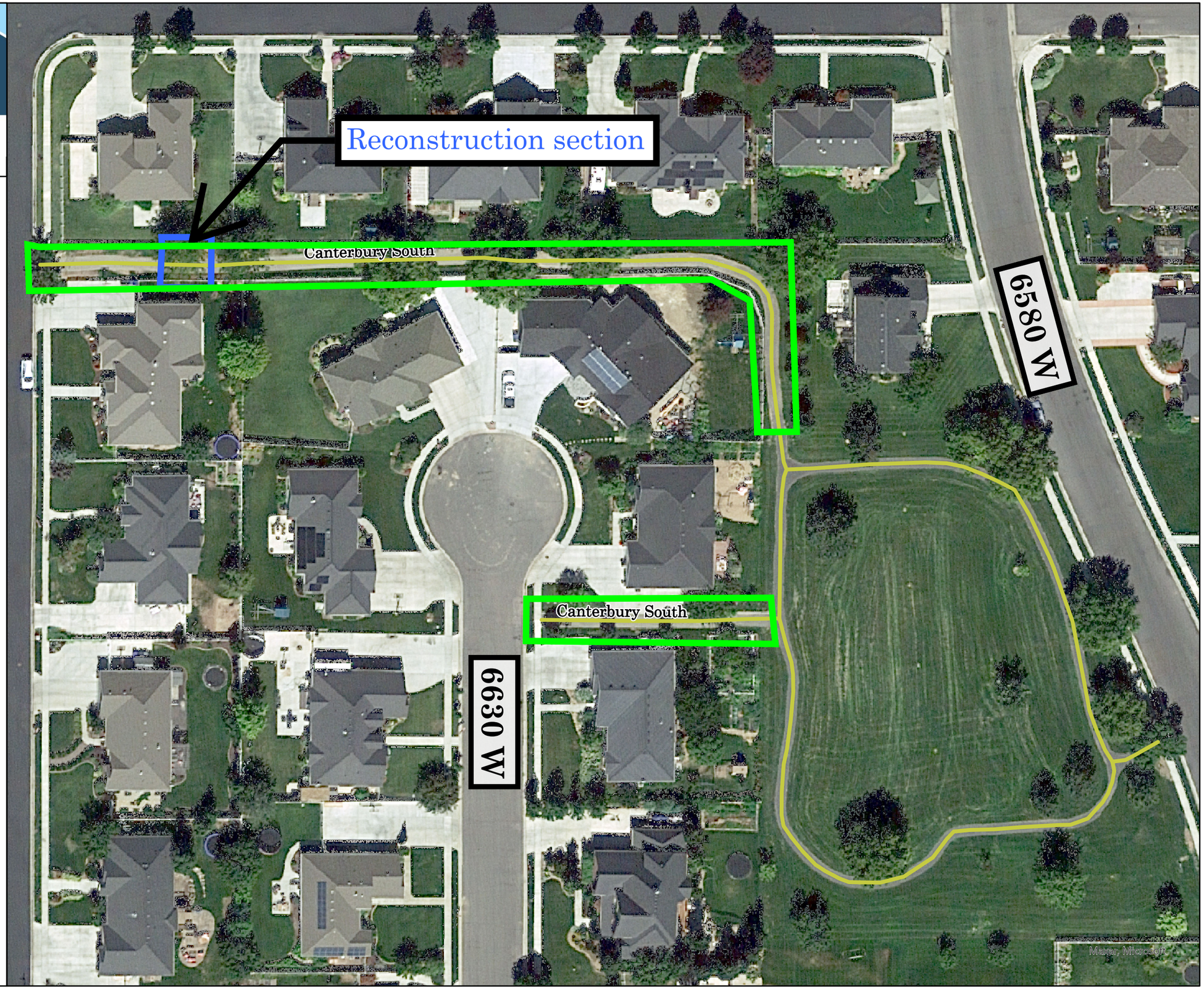
48 SQFT of reconstruction

4029.8 SQFT of crack seal and seal coat

C-104

N
W E
S

0 0 0.01 0.01 0.02 0.02
Miles



HIGHLAND CITY

Trail Section Name:

Canterbury North

8 ft wide trail

212.2 Linear Feet of reconstruction

1697.6 SQFT

6104.4 Linear Feet of crack seal and seal coat

48,835.2 SQFT

Reconstruction Sections

Connect Trail

C-105

N
W E
S

0 0.01 0.03 0.05 0.08 0.1
Miles

HIGHLAND CITY

Trail Section Name:

Bull River Trail

8 ft wide trail

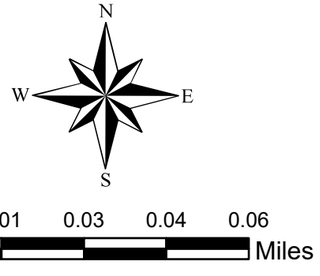
1432.7 Linear Feet crack seal and seal coat

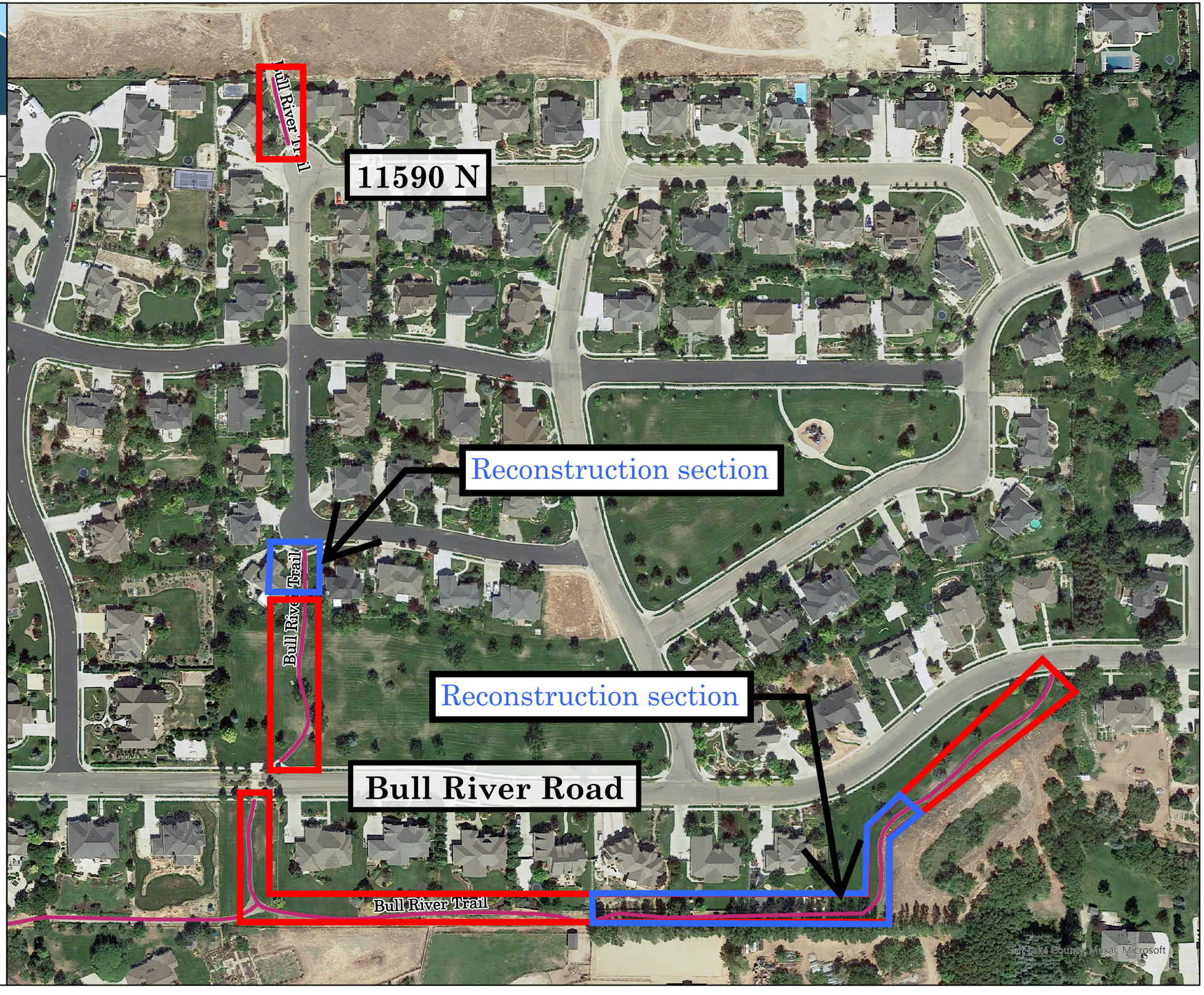
11,461.6 SQFT

629.8 Linear Feet of Reconstruction

5038.4 SQFT of Reconstruction

C-106





HIGHLAND CITY

Trail Section Name:

Highland Hills Trail

8 ft wide trail

Crack seal and Seal coat area

216.5 ft

1,732 SQFT

Reconstruction Area

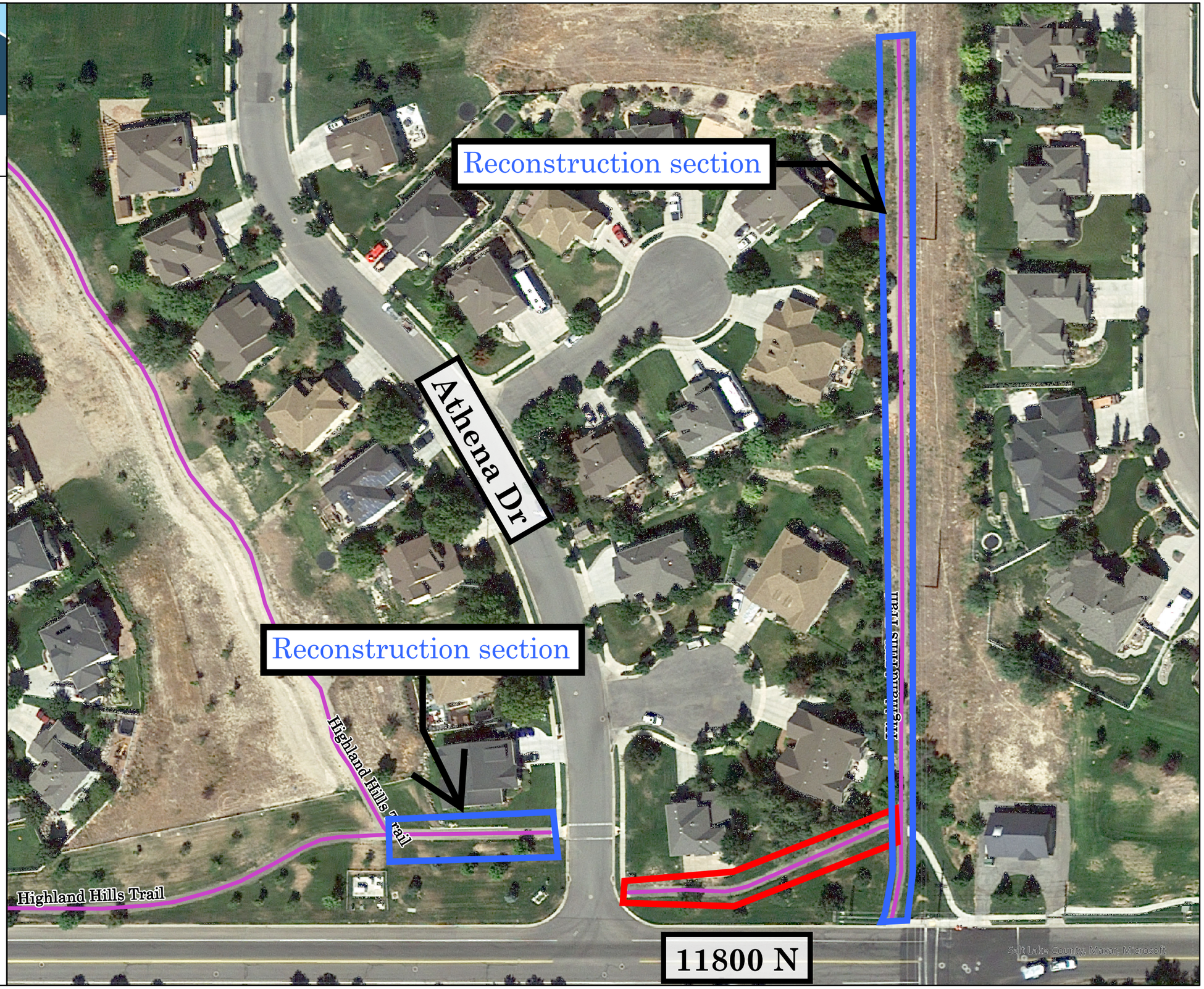
802 ft

6,416 SQFT

C-107

N
W E
S

0 0 0.01 0.02 0.03 0.03 Miles



HIGHLAND CITY

Trail Section Name:

Mercer Hollow Trail

10 ft wide trail

Crack Seal and Seal Coat

618.2 ft

302.5 ft

344.7 ft

6182 SQFT

3025 SQFT

3447 SQFT

Total: 12,654 SQFT

C-108

N
W E
S

0 0.01 0.02 0.04 0.06 0.08
Miles

HIGHLAND CITY

Trail Section Name:

Highland Hills Trail
Proposed Addition

Proposed Trail Alignment

Additional Trail length

945 ft

10 ft wide

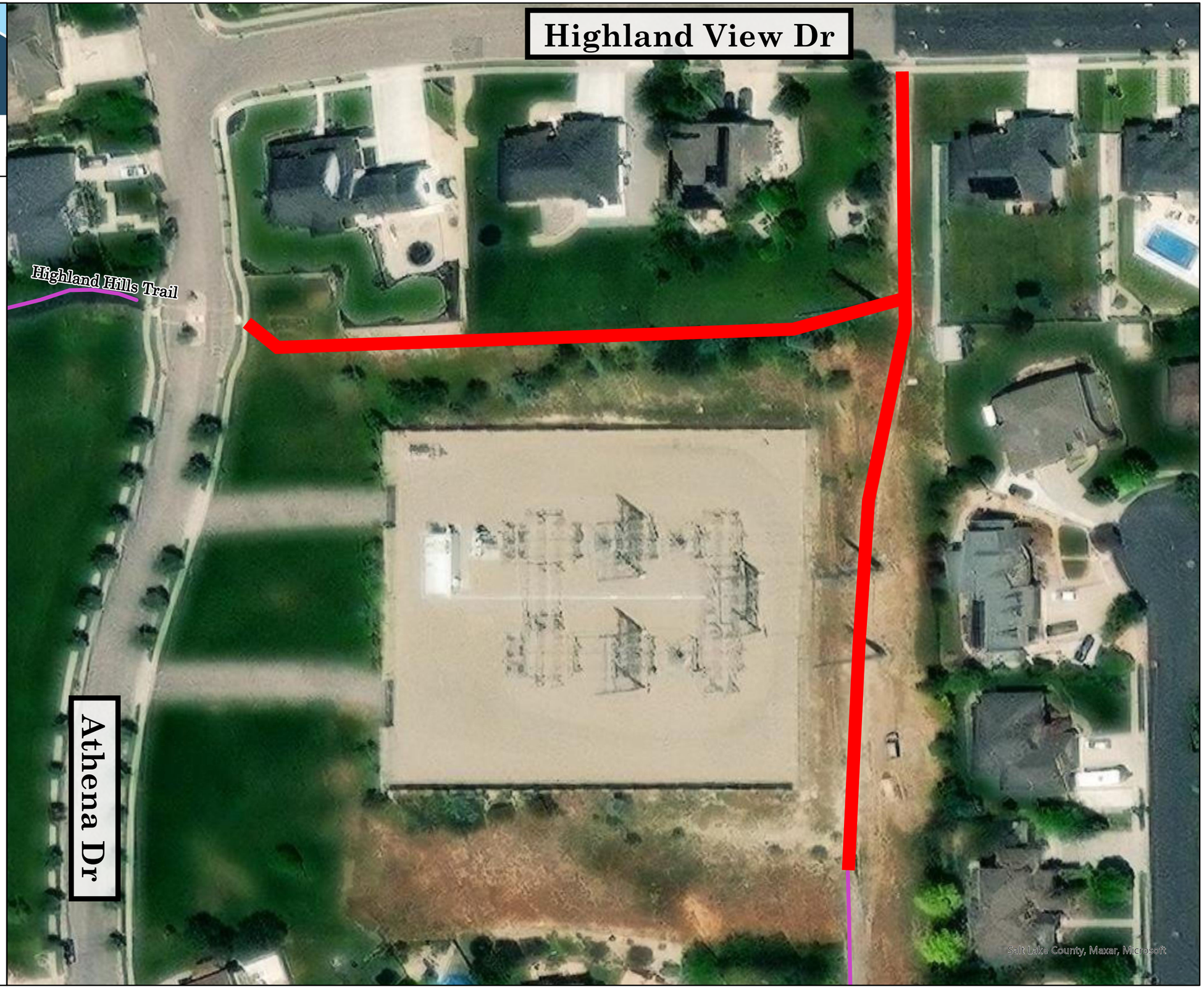
9450 SQFT

Including site prep and 8" road base under trail pavement.

C-109

N
W E
S

0 0 0.01 0.01 0.02 0.03
Miles



AGENDA NEXT

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #9

DATE: March 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Andy Spencer, City Engineer/Public Works Director
SUBJECT: **ACTION:** Awarding of Architectural Contract for the New Parks Building
TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:
The City Council will consider awarding a bid for the Architectural design of the new Parks Maintenance Building to Pontis Architectural Group. The Council will take appropriate action.

STAFF RECOMMENDATION:
Staff recommends accepting the bid from Pontis Architectural Group for the architectural design portion of the new Parks Building.

PRIOR COUNCIL DIRECTION:
On February 7, 2023, Council discussed the different options presented for the orientation of the Parks Maintenance Building and parking scenarios. Direction was given to proceed with Option #9 with the building at the Community Center as presented. Council also discussed the exterior aesthetics of the building. Matching the architecture of the Community Center was the preferred option rather than having a metal siding exterior. Staff was given direction to solicit bids from Engineering Design firms to proceed with the project.

BACKGROUND:
With the direction of City Council, Staff has solicited bids from three separate architectural firms for the architecture/design of the building.

The bids were as follows:
- Archiplex - $32,340
- Jarrett - $55,000
- Pontis - $27,400

The low bid was from Pontis Architectural Group with a bid of $27,400. None of the bids include all the various engineering consultants (mechanical, electrical, structural, civil) that the design firm will work with as a part of the project. Staff estimates a total cost of $60,000 including contingency for the architecture and engineering for the building design.

FISCAL IMPACT:
Funding for this expense is included in GL 42-40-67 New Parks Maintenance Building within the FY23 budget.

MOTION TO APPROVE:
I move that City Council approve the bid from Pontis Architectural Group for the Architectural design and engineering of the new Parks Building and allow the City Administrator to sign the necessary contracts.

MOTION TO DENY:
I move that City Council deny the bid from Pontis Architectural Group. (City Council to provide further direction.)

ATTACHMENTS:

1. Pontis Architectural Group Bid
2. Option #9 Parks Building

PONTIS
ARCHITECTURAL GROUP

BRIDGING DREAMS BY DESIGN

February 22, 2023

Andy Spencer
Public Works Director
Highland City, UT 84003

Parks Building – Highland City, Utah

Andy,

We appreciate the opportunity to provide this design proposal for your project. We have prepared the following information for your review.

Basis of Agreement

This proposal will include the scope of work to complete design and the construction documents for the proposed building in Highland City, Utah. The Construction Administration will be performed with General Contractor through the proposed construction.

Scope of Work

The proposed building would be a single-level building 6,500 square feet. The Proposal will include two building design options. This Proposal will include the design and construction documents to complete the project. The scope of work will include architectural renderings for two optional designs. Architectural site plan and building space plan for City council approval. Architectural Construction drawings are included in this fee proposal. Design fees for coordination with consulting engineers and architectural services for construction administration will be determined in the future.

Schematic Design Phase:

a. **Design Meetings and Coordination** – Includes meetings with the owner and design team. Coordination and follow up with the owner.
b. **Architectural Schematic Design** – Includes the Schematic Design to design floor plans and exterior building facade.

Design Development Phase:

a. **Design Meetings and Coordination** – Includes meetings with the owner and design team. Coordination and follow up with the owner and consulting engineers in preparation for Construction Documents.
b. **Architectural Design Development** – Includes improvement to the Schematic Design. This phase includes the modification of the plans required to accommodate the needs and requirements for each of the consulting engineers and their building systems.
c. **Consulting Engineering** – Includes the final assembly of the consulting engineering team. Detailed review of Schematic Design completed by all consulting engineers to identify deficiencies or discrepancies in the current design. Design Plans are progressed and prepared for the Construction Document phase.

Construction Document Phase:

a. **Design Meetings and Coordination** – Includes meetings with consulting engineering team. Coordination and follow up with the owner, and consulting engineers in preparation for building permit.
b. **Architectural Construction Documents** – Includes the Design Development currently completed and the development and improvement of the current design. Construction Documents are completed detailing architectural elements for building permit and contractor bidding. This phase includes the coordination for each of the consulting engineers and their building systems
c. **Consulting Engineering** – Includes the coordination of all building systems. This work includes Structural Design. Construction Documents are completed and prepared for building permit and contractor Bidding Phase.

Permit and Bidding Phase:

a. **Permit coordination with city** – Includes communication, and coordination with city to negotiate and resolve document modifications required for the Construction Documents to obtain building permit. All third-party City review comments will be billed at an hourly rate.
b. **Bidding administration with General Contractor** – Includes coordination with the General Contractor to resolve discrepancies with Construction Documents. This includes the work required to provide clarifications to General Contractor for Construction Documents.

Construction Administration Phase:

a. **Design Meetings and Coordination** – Includes site visits to the project site during duration of construction, if necessary. This includes the work required to resolve discrepancies in construction drawings discovered during construction.

b. **General Contractor** – Includes the communication to resolve discrepancies and provide clarification for Construction Documents.

Excluded Items:

a. Structural Engineering
b. Mechanical Engineering
c. Electrical Engineering
d. Civil Engineering
e. Landscape Architecture
f. Printing of all drawings and plans
g. Specification / Project manual
h. Interior Design
i. Value engineering.
j. Services of engineers or design consultants other than those listed above.
k. Detailed cost estimating.
l. Project modifications following owner approval of schematic design.
m. Payments due to architect's consultants if project modifications occur following owner approval of schematic design.
n. As-built drawings

Project fees:

Schematic Design Phase:

a. **Architectural Schematic Design** – $4,500

Design Development Phase:

a. **Architectural Design Development** – $3,400

Construction Document Phase:

a. **Design Meetings and Coordination** – $1,500
b. **Architectural Construction Documents** – $18,000
c. **Consulting Engineering** –
    1. Civil Engineering – Not included
    2. Structural Engineering – Not included
    3. Mechanical Engineering – Not included
    4. Electrical Engineering – Not Included

Permit and Bidding Phase: Not included

Construction Administration: Not included

Project Total Fee: $27,400

A retainer of $10,000 is required to begin the project.

Reimbursable Expenses and Additional Services:

All reimbursable expenses incurred by Architect or Consulting Engineers, not related to the performance of the scope of services, are due upon completion of services. Out of scope services will require written authorization to be completed.

Project Schedule:

Upon execution of the design agreement and receipt of the retainer, it is proposed that the project be completed under the following schedule:

Schematic Design Phase:	3 weeks
Design Development Phase:	2 weeks
Construction Documentation:	4 Weeks
City Building Permit Review:	4 Weeks Estimated (City Dependent)

We appreciate the opportunity to submit this proposal and look forward to a successful project. If you have any questions or concerns about the services proposed please contact me.

Sincerely,

Alan Shurtliff
Principal Architect

Acceptance of this Agreement, includes acceptance of, and agreement to, the Pontis Architectural Group Terms and Conditions that follow. Please indicate your acceptance by signing and returning one copy of this Agreement as authorization to proceed.

_____ _____ _____

Approval Signature Title Date

Pontis Architectural Group

Terms and Conditions

A. Responsibility of Client:
   a. Provide Pontis Architectural Group with all project criteria and requirements for the project.
   b. Furnish Pontis Architectural Group with any available information pertinent to the Project including but not limiting: property descriptions, deed and land use restrictions, title commitments, exploration and tests of subsurface conditions, Environmental Assessments, and topographic mapping (except where included in "Scope of Services")
   c. Provide prompt notice to Pontis Architectural Group of any change that affects the scope or time of performance of the Scope of Services.
   d. If Pontis Architectural Group is not providing services during the construction process, the client hereby agrees to contact Pontis Architectural Group immediately if construction documents are unclear or errors or emissions are discovered.

B. Period of Service: Pontis Architectural Group shall complete its obligations within original agreed schedule. If Client authorizes changes in the scope, extent, or character of the Project, the time for completion shall adjust equitably. Client shall make decisions and carry out its other responsibilities in a timely manner so as not to delay Pontis Architectural Group's performance of services.

C. Construction Quality and Jobsite Safety: Pontis Architectural Group shall not at any time supervise, direct, or have control over Contractor's work, nor shall Pontis Architectural Group have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

D. Termination: This Agreement may be terminated at any time with or without cause by Pontis Architectural Group or the Client upon giving the other party fourteen (14) calendar days prior written notice. In the event of any termination, Pontis Architectural Group will be entitled to invoice the Client and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Client shall have the limited right to the use of Documents, at Client's sole risk, subject to the provisions of paragraph Q.

E. Project Delay: If the Project is postponed, delayed, suspended, or abandoned for any reason out of the control of Pontis Architectural Group, Pontis Architectural Group will be paid for all work performed, based on the Payment Schedule. In addition, client is responsible for cost incurred by Pontis Architectural Group due to said postponement, delay, suspension or abandonment.

F. Probable Costs: Pontis Architectural Group's opinions of probable Construction Cost are to be made on the basis of Pontis Architectural Group's experience and qualifications and represent Pontis Architectural Group's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Pontis Architectural Group has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Pontis Architectural Group cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Pontis Architectural Group.

G. Standard Care: The standard of care for all professional engineering and related services performed or furnished by Pontis Architectural Group under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Pontis Architectural Group makes no warranties, express or implied, under this Agreement or otherwise, in connection with Pontis Architectural Group's services.

H. Environmental Conditions of Site: Client represents to Pontis Architectural Group that to the best of its knowledge no Constituents of Concern (any substance, product, waste, or other material of any nature whatsoever including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs), other than those disclosed in writing to Pontis Architectural Group, exist at the Site. It is acknowledged by both parties that Pontis

Architectural Group's scope of services does not include any services related to Constituents of Concern. If Pontis Architectural Group or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Pontis Architectural Group may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Client: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. Liability: The Client agrees to limit Pontis Architectural Group's liability to the Client and to all construction contractors and subcontractors on the Project arising from Pontis Architectural Group's negligent acts, errors or omissions, such that Pontis Architectural Group's liability to all those named shall not exceed the total amount of $100,000 or Pontis Architectural Group's total compensation for services provided on this Project, whichever is less.

J. Assignment: Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

K. Governing Law: All questions as to the interpretation or enforceability of this agreement shall be governed in accordance with the laws of the State of Utah. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in the State of Utah.

L. Mediation: In an effort to resolve any conflicts that arise between them, the Client and Consultant agree that all disputes arising out of or relating to this Agreement shall be submitted to non-binding mediation before a mutually agreed mediator.

M. Corporate Protection: It is intended by the parties to this Agreement that Pontis Architectural Group's services in connection with the Project shall not subject Pontis Architectural Group's individual employees, officers or directors to any personal legal exposure for the risks associated with the Project. The Client agrees that as the Client's claim, demand or suit shall be directed only against the Consultant, a Utah corporation, and not against any of Pontis Architectural Group's employees, officers or directors.

N. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Pontis Architectural Group, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

O. Earthwork Unbalance: If included within the Scope of Services, Pontis Architectural Group shall evaluate the earthwork quantities for estimating earthwork movement and quantities of import and export. Pontis Architectural Group will make efforts to achieve a balanced site; however, Pontis Architectural Group shall not be responsible for deviations between earthwork estimates and actual quantities.

P. Consequential Damages: Notwithstanding any other provision of the Agreement, and to the fullest extent permitted by law, nether the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of our connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

Q. Ownership of Documents: All Documents are instruments of service in respect to this Project, and Pontis Architectural Group shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of Pontis Architectural Group) whether or not the Project is completed. Client shall not

rely in any way on any Document unless it is in printed form, signed or sealed by Pontis Architectural Group or one of its Consultants.

A party shall rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Client may make and retain copies of Documents for information and reference in connection with use on the Project by Client. Pontis Architectural Group grants Client a license to use the Documents on the Project, extensions of the Project, and other projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Pontis Architectural Group, or for use or reuse by Client or others on extensions of the Project or on any other project without written verification or adaptation by Pontis Architectural Group; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Pontis Architectural Group, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Pontis Architectural Group or to Pontis Architectural Group's Consultants; (3) Client shall indemnify and hold harmless Pontis Architectural Group and Pontis Architectural Group's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Pontis Architectural Group; (4) such limited license to Client shall not create any rights in third parties.

If Pontis Architectural Group at Client's request verifies or adapts the Documents for extensions of the Project or for any other Project, then Client shall compensate Pontis Architectural Group at rates or in amount to be agreed upon by Client and Pontis Architectural Group.

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):

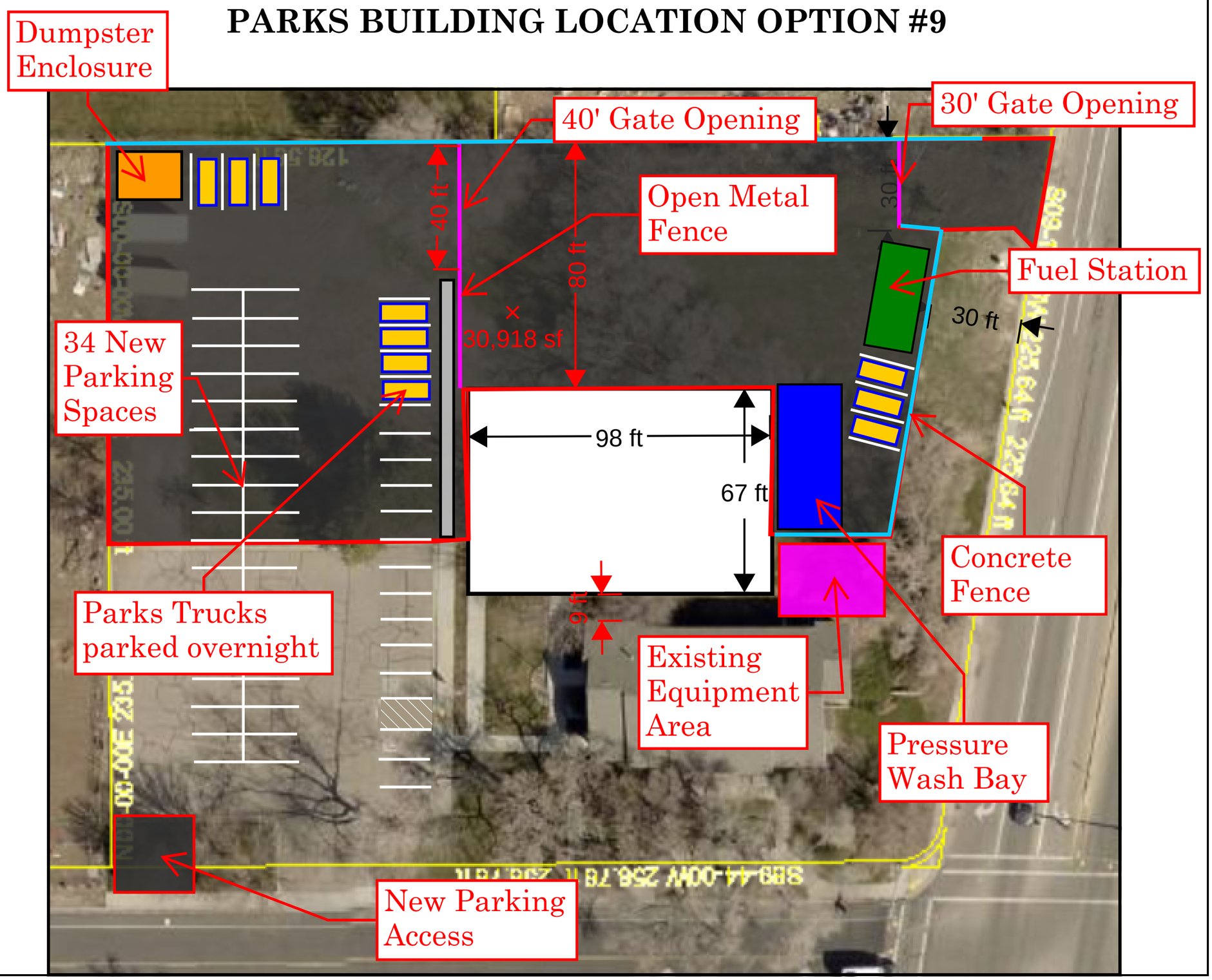
$ 1,672,073

Total (Wood Framed Building):

$ 1,852,638

Overnight Parking

PARKS BUILDING LOCATION OPTION #9



AGENDA

HIGHLAND CITY

CITY COUNCIL AGENDA REPORT
ITEM #10a

DATE: March 7, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Erin Wells, City Administrator

SUBJECT: **ACTION:** Approval of Special Recognition & Naming Rights Agreement

TYPE: **GENERAL CITY MANAGEMENT**

PURPOSE:

The City Council will hold a public meeting to consider approving the Special Recognition and Naming Rights Agreement with Kurt and VaLayne Ostler for the large pavilion at Mountain Ridge Park. The Council will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends Council approve the Special Recognition and Naming Rights Agreement with Kurt and VaLayne Ostler as attached.

PRIOR COUNCIL DIRECTION:

On January 3, 2022, Council approved the Special Recognition and Naming Agreement document subject to Council approving the dollar amount threshold for use of naming rights. The Council previously approved an agreement with another family for a donation towards the playground.

BACKGROUND:

Kurt Ostler, a resident of Highland, has donated $100,000 for the large pavilion at Mountain Ridge Park. The agreement outlines that the recognition name of "Veteran's Pavilion" Kurt and VaLayne Oster Family to be placed on pavilion to honor their contribution.

FISCAL IMPACT:

The donation, which has already been received by the City through the Highland Foundation, will go towards the construction of Mountain Ridge Park. The cost to install an honorary plague or monument has been budgeted for.

MOTION TO APPROVE:

I move that the City Council approve the Special Recognition and Naming Rights Agreement with Kurt and VaLayne Ostler for a donation of $100,000 for the large pavilion at Mountain Ridge Park and authorize the Mayor Pro Tem to sign the agreement.

ATTACHMENTS:

1. Special Recognition and Naming Rights Agreement – Kurt and VaLayne Ostler

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

SPECIAL RECOGNITION AND NAMING AGREEMENT – MOUNTAIN RIDGE PARK

This Agreement is made by and between KURT AND VALAYNE OSTLER ("**Donor**"), and Highland City ("**City**"), regarding a gift and donation made by Donor to City.

1. Donor hereby irrevocably gifts to City $ $100,000.00 ("**Donation**"), either by way of the Highland City Foundation or by direct donation to the City, for the improvement of Mountain Ridge Park ("**Park**"). The Donation is by way of gift, and City has not and shall not provide any good, property, service, or other benefit to Donor in exchange for the Donation.

2. The Donation is intended to provide for the following facilities ("**Facilities**"): LARGE PAVILLION BY FRONT ENTERANCE OF PARK

3. City shall, without further approval or consent of Donor, use the Donation to develop and improve the Park and provide the Facilities. The specific use of the Donation and details the Park's improvement shall be determined solely by City, provided the Donation shall be used for public purposes per 26 U.S.C. § 170(c)(1) and consistent with this agreement.

4. City shall recognize and honor the Donation by allowing Donor to provide a name or statement that will be displayed and honored ("**Naming**"), as follows:

   a. Name/Statement to be Recognized: "VETERANS PAVILLON" KURT AND VALAYNE OSTLER FAMILY

   b. Naming may be limited, removed, or restricted to avoid protect the integrity or reputation of City, as City may reasonably and in good faith determine, in which case Donor shall have an opportunity to provide a different name/statement.

   c. The Naming shall be placed on or near the Facilities by way of plaque, sign, monument, or other appropriate, visible acknowledgment; on the general donor monument, if applicable; and shall be used to denote, describe, and reference the Facilities for all City purposes, including for signage, reservations, and websites.

   d. Donor may change the name/statement during the duration of Donor's

Naming rights by paying City's actual costs to rename the acknowledging materials.

5. Donor's Naming rights shall continue for the useful life of the Facilities. In the event the Facilities are involuntarily damaged or destroyed, and City determines, in its discretion, to rebuild, repair, or reconstruct the Facilities, City shall reestablish and continue the Naming with the rebuilt, repaired, or reconstructed Facilities for their useful life. If the City does not rebuild, repair, or reconstruct the Facilities, the Naming rights shall cease, subject to Donor's right of first refusal set forth in section 7.

6. In the event City voluntarily demolishes the Facilities, or, after the end of the useful life of the Facilities, significantly reconstructs, rebuilds, renovates, upgrades, or modifies the Facilities, the Naming shall cease, and Donor shall have no further rights thereto, subject to Donor's right of first refusal set forth in section 7.

7. Donor shall be given the first right of refusal to make a new donation or other contribution, according to City's then-existing donation policy, for naming rights related to any new facility or improvement constructed in the place of the Facilities or related to any renovated, upgraded, or modified Facilities.

8. This agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.

9. This agreement constitutes the entire agreement and understanding of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreements or representations. This agreement may not be modified or amended except by written agreement executed by both parties hereto.

10. Donor represents that Donor is legally authorized to execute this agreement, and that all steps or actions required for Donor to execute this agreement and provide the Donation to City have been completed.

11. Nothing herein grants Donor any right, title, or interest to any property owned by City, nor any control over or special rights to the Facilities or the Park.

SIGNATURE PAGE TO FOLLOW

For Donor:

Signature

KURT OSTLER

Name

SELF

Title

MARCH 2, 2023

Date

Signature

Name

Title

Date

For Highland City

Signature

Name

Title

Date

Attested:

City Recorder