



SPECIAL CITY COUNCIL  
AGENDA  
Wednesday, May 18, 2016

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a meeting in the Herriman City Council Chambers, located at 13011 South Pioneer Street (6000 West), Herriman, Utah.

**7:00 PM - SPECIAL MEETING:**

1. CALL TO ORDER
2. PUBLIC COMMENT: *Audience members may bring any item to the Mayor and Council's attention. Comments will be limited to two or three minutes. State Law prohibits the Council from acting on items that do not appear on the agenda.*
3. MAYOR AND COUNCIL COMMENTS
  - A. City Council Board and Committee Reports
4. DISCUSSION AND ACTION ITEMS
  - A. Discussion and consideration of a resolution approving a development agreement between Herriman City and Chris Losee – Justun Edwards, Water Director
  - B. Discussion and consideration of a resolution approving a development agreement between Herriman City and Marty T. Griffis and Tina A. Griffis – Justun Edwards, Water Director
5. CALENDAR
  - A. Meetings
    - May 19 – Planning Commission meeting 7:00 p.m.
    - ~~May 25 – City Council work meeting 5:00 p.m.; City Council meeting 7:00 p.m. Canceled~~
  - B. Events
    - May 21 – Pedal Palooza
    - May 30 – Memorial Day; City Offices Closed
6. CLOSED SESSION (IF NEEDED)
  - A. *The Herriman City Council may temporarily recess the City Council meeting to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, pending or reasonable imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*
7. ADJOURNMENT

**7:30 PM - WORK MEETING:** *(Front Conference Room)*

**COUNCIL BUSINESS**

- A. Administrative Reports
  1. Follow-up to the Human Resources Budget Discussion – Travis Dunn, Human Resources Manager
  2. Herriman City 2016-2017 Budget Discussion – Alan Rae, Finance Director

THIS AGENDA IS SUBJECT TO CHANGE WITH MINIMUM 24-HOURS NOTICE

3. Visioning discussion relating to Transportation – Gordon Haight, Assistant City Manager
  4. Discussion regarding Salt Lake Valley Law Enforcement Service Area (SLVLESA) – Dwayne Anjewierden, Chief of Police
  5. Additional Items
- B. Adjournment

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. To request assistance, contact Herriman City at (801) 446-5323. Please Provide at least 48 hours advance notice of the meeting

ELECTRONIC PARTICIPATION

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

CITIZEN COMMENT POLICY AND PROCEDURE

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

Certificate of Posting

I, Jackie Nostrom, the duly appointed, qualified, and acting City Recorder of Herriman City, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of the agenda; it was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body. The agenda was also posted at the principal office of the public body. Also posted on the Utah State Public Notice Website <http://www.utah.gov/pmn/index.html> and on Herriman City's website at [www.herriman.org](http://www.herriman.org)

Posted and Dated this 16<sup>th</sup> day of May 2016

Jackie Nostrom, CMC  
City Recorder



## STAFF REPORT

**DATE:** 05/16/2016  
**TO:** The Honorable Mayor and City Council  
**FROM:** Justun Edwards Water Department Director  
**SUBJECT:** Losee Development Agreement

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**RECOMMENDATION:**

Staff recommends approval

**BACKGROUND:**

Chris Losee is the owner of approximately 2.56 acres of real property which owner anticipates developing as part of a retail or commercial project. This agreement is intended to establish the rights and obligations of the project.

**DISCUSSION:**

The property is currently zoned A-1, to develop the property as retail or commercial, the property owner desires to rezone property to C-2, which City staff supports. The property owner agrees to deed to City, the property needed for a public road, if commercial zoning is approved. If approved, the agreement would grant to city, a 33' road right of way. Additionally, the agreement grants temporary access through property to adjacent properties, to allow City and its agents to begin construction of the water pump station and related improvements.

**ALTERNATIVES:**

Unknown

**FISCAL IMPACT:**

N/A

## **AGREEMENT**

THIS AGREEMENT (“Agreement”) is made and entered as of the 18<sup>th</sup> day of May, 2016 (the “Effective Date”), by and between HERRIMAN CITY, a Utah municipal corporation (the “City”), and CHRIS LOSEE (the “Owner”). City and Owner are hereinafter collectively referred to individually, as a “Party” and collectively, as “Parties.”

### **RECITALS**

A. Owner owns approximately 2.56 acres of undeveloped real property located within the city limits of Herriman City at approximately 15102 South 3200 West, which is Assessor’s Parcel Number 33-17-200-013-0000 (the “Property”).

B. The Property is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

C. Owner anticipates the Property will be developed as a part of a retail or commercial project.

D. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the City Council in deciding whether to approve or deny the application for the rezoning of the Property.

E. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered pursuant to, Utah Code Ann. § 10-9a-102.

F. The City and Owner intend to enter into this Agreement for the purpose of establishing certain rights and obligations with regard to the Property.

## **AGREEMENT**

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Approval for Commercial Zoning. The Property presently is zoned A-1. Owner desires to rezone the Property as C-2 (“Rezone”). City staff agrees to support the change in zoning from A-1 to C-2.

3. Property of Property for Road. Upon the City's approval of the Rezone the Owner shall promptly convey to the City by special warranty deed, for no monetary consideration and free of all financial liens and financial encumbrances, a portion of the Property (the "Road Property") for a section of a public road to be known as 15000 South (the "Road"). The portion of the Property to be conveyed by the Owner for the Road Property is a 33' wide strip of land. The Owner's conveyance of the Road Property may be subject to easements for sewer lines and other utilities. The location of the proposed Road Property and the preliminary design of the Road are set forth in the diagram attached hereto as Exhibit B and incorporated herein by reference (the "Road Diagram").

4. Rezone. If the City Council approves the Rezone of the Property, then Owner shall convey to the City the Road Property.

5. Easement. In order to permit the City to timely proceed with the construction of, a pump house on adjacent property, and related improvements the Owner hereby grants to the City a temporary easement to begin certain infrastructure improvements on a portion of the Road Property and access to construct a pump house on adjacent property in the forms attached hereto as Exhibit C and D and incorporated herein by reference.

6. No Special Assessments. The City shall not impose any special assessment or other special taxes against the Owner or against the Property to pay for the water lines, storm drain lines or related improvements contemplated by this Agreement. However, the City reserves the right to collect its customary impact fees in connection with the development of the Property.

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder where those obligations are due and the defaulting party has not performed the delinquent obligations within thirty (30) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 30-day period, a party shall not be in default so long as that party commences to cure the default within that 30-day period and diligently continues such cure in good faith until complete. Notwithstanding the foregoing, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; war; civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage. Upon the occurrence of an Event of Default, no Party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto. The sole remedy available to the Owner shall be that of specific performance.

8. Notices. Any notices, request and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such Party at its address shown below:

To the Owner: Chris Losee  
3159 South 1000 East  
Roosevelt, Utah 84066

To the City: Herriman City  
Attention: City Manager  
13011 South Pioneer Street  
Herriman, Utah 84096

With a copy to: John Brems  
2798 West Matterhorn Drive  
Taylorsville, Utah 84129

Either Party may change its address for notice by giving written notice to the other Party in accordance with the provisions of this Section.

9. General Term and Conditions.

a. Attorneys' Fees. In the event of any lawsuit between the Parties hereto arising out of or related to this Agreement, the prevailing Party or Parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover its or their costs and reasonable attorneys' fees.

b. Integration. This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the Parties hereto.

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

d. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

e. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to Owner, or any successor in interest or assignee of Owner, for any default or breach by the City, or for any amount which may become due to Owner, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

f. No Third Party Rights. The obligations of Owner set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, and any Permitted Transferees (as defined below).

g. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate in good faith with respect to all such future agreements.

h. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the City and Owner.

i. Performance. Each Party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other Party, person and/or entity governed by this Agreement or the development of any portion of the Property.

j. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

k. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

l. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any Party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed.

m. Approval and Authority to Execute. Each of the Parties represents and warrants as of the date this Agreement is executed that it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

10. Owner's Assignment of the Ownership of Any Portion of the Property.

a. Sale or Assignment Permitted. Owner may assign, transfer and convey its rights and obligations under this Agreement in whole or in part upon written notice to the City (each, a "Permitted Transferee"). In the event of a transfer or sale by Owner of less than all of the Property, Owner shall, nevertheless, retain exclusive control over the portions of the Property not sold or transferred, and the Permitted Transferee(s) shall have no right to control or object to any subsequent amendment of this Agreement, and Owner may make any modifications thereto without notice to, or the consent of, any such transferee(s).

b. No Transfer of City Obligations. The City shall not have the right to convey, assign or be released from its obligations under this Agreement.

c. Transfer of Assets; Continuing Obligation. If Owner sells or transfers all or any portion of the Property, then (i) the City shall require the Permitted Transferee to assume Owner's obligations under this Agreement; and (ii) the City shall be named as third party beneficiary of (and shall be permitted to enforce directly against the purchaser) such assumed obligations.

11. No Waiver. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

12. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

13. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain materials, equipment or reasonable substitutes therefore; acts of nature; or casualties or other causes beyond the reasonable anticipation and control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

14. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

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

**CITY:**

HERRIMAN CITY

\_\_\_\_\_  
Gordon M. Haight II, Assistant City Manager

**ATTEST:**

\_\_\_\_\_  
Jackie Nostrom, City Recorder

**OWNER:**

\_\_\_\_\_  
Chris Losee

**CITY ACKNOWLEDGMENT**

On the \_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared before by \_\_\_\_\_, who being duly sworn, did say that he is the \_\_\_\_\_ of Herriman City, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said \_\_\_\_\_ acknowledged to me that the City extended the same.

Notary Public

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

**OWNER ACKNOWLEDGMENT**

STATE OF UTAH            )  
  :SS  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared before me Chris Losee who executed the same.

Notary Public

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

**EXHIBIT A**

Legal Description of the Property

[Note: Our surveyor will provide.]

**EXHIBIT B**

Road Diagram

[Need to Insert Legal Description]

[Attached]

**EXHIBIT C**

Infrastructure Easement

[Attached]

When recorded, mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GRANT OF EASEMENT FOR  
PUBLIC WATER LINE & STORM WATER FACILITIES**

CHRIS LOSEE (“Grantor”), whose address is 3159 South 0 East, Roosevelt, Utah 84066, hereby grants and conveys to **Herriman City**, a Utah municipality, whose address is 13011 South Pioneer Street, Herriman, Utah 84096 (“Grantee”), for good and valuable consideration, a receipt and adequacy of which is hereby acknowledged, a permanent and perpetual nonexclusive permanent easement and right-of-way for use by Grantee’s employees, and any and all agents, contractors or other third-parties acting on behalf of the Grantee for purpose of constructing, operating, maintaining, modifying, removing, augmenting, and/or replacing water line facilities, storm drain facilities and related improvements or appurtenances upon, over, under, and across Grantor’s real property, more particularly described as follows (the “Property”):

See attached exhibit “A.”

Such storm drain facilities will not include any retention or detention basins on the Property. This easement shall not restrict Grantor’s use of the Property so long as Grantor’s use of the Property does not have a material adverse effect on Grantee’s rights hereunder. Grantee shall indemnify, defend and hold Grantor harmless from any losses, costs or damage arising from Grantee’s rights hereunder, or for any damage Grantee causes to the Property.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement for Public Water Line and Storm Water Facilities this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR:**

\_\_\_\_\_  
Chris Losee

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE    )

On the \_\_\_ day of \_\_\_\_\_, 2016, personally appeared before me Chris Losee who executed the same.

Notary Public

My Commission Expires:

Exhibit A

(Legal to be inserted)

[The easement area is the area of the Road]

**EXHIBIT D**

Access Easement

When recorded, mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TEMPORARY ACCESS EASEMENT**

CHRIS LOSEE (“Grantor”), whose address is 3159 South 0 East, Roosevelt, Utah 84066, hereby grants and conveys to Herriman City, a Utah municipality, whose address is 13011 South Pioneer Street, Herriman, Utah 84096 (“Grantee”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, a temporary nonexclusive access easement and right-of-way for use by Grantee’s employees, and any and all agents, contractors or other third-parties acting on behalf of the Grantee for purpose of accessing and servicing, constructing, operating, maintaining, modifying, removing, augmenting, and/or replacing a pump station on adjacent property upon, over, and across Grantor’s real property, more particularly described as follows (the “Property”):

See attached exhibit “A.”

Grantee shall indemnify, defend and hold Grantor harmless from any losses, costs or damage arising from Grantee’s rights hereunder, or for any damage Grantee causes to the Property. This Temporary Easement shall automatically terminate and expire and be of no further force and effect on January 1, 2018; provided, however, that Grantee’s indemnification obligations shall survive the expiration and termination of this easement.

IN WITNESS WHEREOF, Grantor has executed this Temporary Access Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR:**

\_\_\_\_\_  
Chris Losee

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On the \_\_\_ day of \_\_\_\_\_, 2016, personally appeared before Chris Losee who executed the same.

Notary Public

My Commission Expires:

Exhibit A

(Legal to be inserted)



## STAFF REPORT

**DATE:** 05/16/2016  
**TO:** The Honorable Mayor and City Council  
**FROM:** Justun Edwards Water Department Director  
**SUBJECT:** Griffis Development Agreement

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**RECOMMENDATION:**

Staff recommends approval

**BACKGROUND:**

Marty T. and Tina A. Griffis are the owners of approximately 2.56 acres of real property which they anticipate developing as part of a retail or commercial project. This agreement is intended to establish the rights and obligations of the project.

**DISCUSSION:**

The property is currently zoned A-1, to develop the property as retail or commercial, the property owner desires to rezone property to C-2, which City staff supports. The property owner agrees to deed to City, the property needed for the public road, if commercial zoning is approved. If approved, the agreement would grant to city, a 33' road right of way. Additionally, the agreement grants temporary access through property to adjacent properties, to allow City and its agents to begin construction of the water pump station and related improvements.

**ALTERNATIVES:**

Unknown

**FISCAL IMPACT:**

N/A

## **AGREEMENT**

THIS AGREEMENT (“Agreement”) is made and entered as of the 18<sup>th</sup> day of May, 2016 (the “Effective Date”), by and between HERRIMAN CITY, a Utah municipal corporation (the “City”), and MARTY T. GRIFFIS AND TINA A. GRIFFIS (collectively, the “Owner”). City and Owner are hereinafter collectively referred to individually, as a “Party” and collectively, as “Parties.”

## **RECITALS**

A. Owner owns approximately 2.56 acres of undeveloped real property located within the city limits of Herriman City at approximately 15102 South 3200 West, which is Assessor’s Parcel Number 33-17-200-012-0000 (the “Property”).

B. The Property is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

C. Owner anticipates the Property will be developed as a part of a retail or commercial project.

D. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the City Council in deciding whether to approve or deny the application for the rezoning of the Property.

E. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered pursuant to, Utah Code Ann. § 10-9a-102.

F. The City and Owner intend to enter into this Agreement for the purpose of establishing certain rights and obligations with regard to the Property.

## **AGREEMENT**

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Approval for Commercial Zoning. The Property presently is zoned A-1. Owner desires to rezone the Property as C-2 (“Rezone”). City staff agrees to support the change in zoning from A-1 to C-2.

3. Conveyance of Property for Road. Upon the City’s approval of the Rezone the Owner shall promptly convey to the City by special warranty deed, for no monetary consideration and free of all financial liens and financial encumbrances, a portion of the Property (the “Road Property”) for a section of a public road to be known as 15000 South (the “Road”). The portion of the Property to be conveyed by the Owner for the Road Property is a

33' wide strip of land. The Owner's conveyance of the Road Property may be subject to easements for sewer lines and other utilities. The location of the proposed Road Property and the preliminary design of the Road are set forth in the diagram attached hereto as Exhibit B and incorporated herein by reference (the "Road Diagram").

4. Rezone. If the City Council approves the Rezone of the Property, then Owner shall convey to the City the Road Property.

5. Easement. In order to permit the City to timely proceed with the construction of a pump house on adjacent property, and related improvements the Owner hereby grants to the City a temporary easement to begin certain infrastructure improvements on a portion of the Road Property and access to construct a pump house on adjacent property in the forms attached hereto as Exhibit C and D and incorporated herein by reference.

6. No Special Assessments. The City shall not impose any special assessments or other special taxes against the Owner or against the Property to pay for the water lines, storm drain lines or related improvements contemplated by this Agreement. However, the City reserves the right to collect its customary impact fees in connection with the development of the Property.

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder where those obligations are due and the defaulting party has not performed the delinquent obligations within thirty (30) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 30-day period, a party shall not be in default so long as that party commences to cure the default within that 30-day period and diligently continues such cure in good faith until complete. Notwithstanding the foregoing, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; war; civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage. Upon the occurrence of an Event of Default, no Party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto. The sole remedy available to the Owner shall be that of specific performance.

8. Notices. Any notices, request and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such Party at its address shown below:

To the Owner: Marty T. Griffis and Tina A. Griffis  
2296 Saddleback View Circle  
Riverton, Utah 84065

To the City:                   Herriman City  
  Attention: City Manager  
  13011 South Pioneer Street  
  Herriman, Utah 84096

With a copy to:               John Brems  
  2798 West Matterhorn Drive  
  Taylorsville, Utah 84129

Either Party may change its address for notice by giving written notice to the other Party in accordance with the provisions of this Section.

9.     General Term and Conditions.

a.     Attorneys' Fees. In the event of any lawsuit between the Parties hereto arising out of or related to this Agreement, the prevailing Party or Parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover its or their costs and reasonable attorneys' fees.

b.     Integration. This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the Parties hereto.

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

d.     Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

e.     Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to Owner, or any successor in interest or assignee of Owner, for any default or breach by the City, or for any amount which may become due to Owner, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

f.     No Third Party Rights. The obligations of Owner set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, and any Permitted Transferees (as defined below).

g.     Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate in good faith with respect to all such future agreements.

h. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the City and Owner.

i. Performance. Each Party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other Party, person and/or entity governed by this Agreement or the development of any portion of the Property.

j. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

k. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

l. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any Party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed.

m. Approval and Authority to Execute. Each of the Parties represents and warrants as of the date this Agreement is executed that it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

10. Owner's Assignment of the Ownership of Any Portion of the Property.

a. Sale or Assignment Permitted. Owner may assign, transfer and convey its rights and obligations under this Agreement in whole or in part upon written notice to the City (each, a "Permitted Transferee"). In the event of a transfer or sale by Owner of less than all of the Property, Owner shall, nevertheless, retain exclusive control over the portions of the Property not sold or transferred, and the Permitted Transferee(s) shall have no right to control or object to any subsequent amendment of this Agreement, and Owner may make any modifications thereto without notice to, or the consent of, any such transferee(s).

b. No Transfer of City Obligations. The City shall not have the right to convey, assign or be released from its obligations under this Agreement.

c. Transfer of Assets; Continuing Obligation. If Owner sells or transfers all or any portion of the Property, then (i) the City shall require the Permitted Transferee to assume Owner's obligations under this Agreement; and (ii) the City shall be named as third party beneficiary of (and shall be permitted to enforce directly against the purchaser) such assumed obligations.

11. No Waiver. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefited by the provisions, and a waiver by a party of

a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

12. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

13. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain materials, equipment or reasonable substitutes therefore; acts of nature; or casualties or other causes beyond the reasonable anticipation and control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

14. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

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

**CITY:**

HERRIMAN CITY

\_\_\_\_\_  
Gordon M. Haight II, Assistant City Manager

**ATTEST:**

\_\_\_\_\_  
Jackie Nostrom, City Recorder

**OWNER:**

\_\_\_\_\_  
Marty T. Griffis

\_\_\_\_\_  
Tina A Griffis



**EXHIBIT A**

Legal Description of the Property

[Note: Our surveyor will provide.]

**EXHIBIT B**

Legal Description of the Road and Road Diagram

[Need to Insert Legal Description]

Road Diagram

[Attached]

**EXHIBIT C**

Infrastructure Easement

[Attached]



Exhibit A

(Legal to be inserted)

[The easement area is the area of the Road]

**EXHIBIT D**

Access Easement

When recorded, mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TEMPORARY ACCESS EASEMENT**

MARTY T. GRIFFIS AND TINA A. GRIFFIS (collectively, “Grantor”), whose address is 2296 Saddleback View Circle, Riverton, Utah 84065, hereby grants and conveys to Herriman City, a Utah municipality, whose address is 13011 South Pioneer Street, Herriman, Utah 84096 (“Grantee”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, a temporary nonexclusive access easement and right-of-way for use by Grantee’s employees, and any and all agents, contractors or other third-parties acting on behalf of the Grantee for purpose of accessing and servicing, constructing, operating, maintaining, modifying, removing, augmenting, and/or replacing a pump station on adjacent property upon, over, and across Grantor’s real property, more particularly described as follows (the “Property”):

See attached exhibit “A.”

Grantee shall indemnify, defend and hold Grantor harmless from any losses, costs or damage arising from Grantee’s rights hereunder, or for any damage Grantee causes to the Property. This Temporary Easement shall automatically terminate and expire and be of no further force and effect on January 1, 2018; provided, however, that Grantee’s indemnification obligations shall survive the expiration and termination of this easement.

IN WITNESS WHEREOF, Grantor has executed this Temporary Access Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR:**

\_\_\_\_\_  
Marty T. Griffis

\_\_\_\_\_  
Tina A. Griffis

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On the \_\_\_ day of \_\_\_\_\_, 2016, personally appeared before Marty T. Griffis and Tina A. Griffis who executed the same.

Notary Public

My Commission Expires:

Exhibit A

(Legal to be inserted)