

# CITY OF ELKO CITY MANAGER 1751 COLLEGE AVENUE ELKO, NEVADA 89801 (775) 777-7110/FAX (775) 777-7119

The Elko City Council will meet in regular session on Tuesday, April 24, 2018 Elko City Hall, 1751 College Avenue, Elko, NV 89801, at 4:00 P.M., P.D.T.

Attached with this notice is the agenda for said meeting of the Council.

In accordance with NRS 241.020, the public notice and agenda was posted on the City of Elko Website, <a href="http://www.elkocitynv.gov/">http://www.elkocitynv.gov/</a>, the State of Nevada's Public Notice Website,

https://notice.nv.gov, and in the following locations:

ELKO COUNTY COURTHOUSE 571 Idaho Street, Elko, NV 89801 Date/Time Posted: April 19 2018 at 8:50 a.m.

ELKO COUNTY LIBRARY
720 Court Street, Elko, NV 89801
Date/Time Posted: April 19, 2018 at 9:00 a.m.

ELKO POLICE DEPARTMENT 1448 Silver, Elko NV 89801 Date/Time Posted: April 19, 2018 at 8:40 a.m.

**ELKO CITY HALL** 

1751 College Avenue, Elko, NV 89801 Date: Time Posted: April 19, 2018 at 8:30 a.m.

Posted by: Kim Wilkinson Administrative Assistant Yim Hilbinson
Name Title Signature

The public may contact Kim Wilkinson by phone at (775)777-7110 or email at <a href="mailto:kwilkinson@elkocitynv.gov">kwilkinson@elkocitynv.gov</a> to request supporting material for the meeting described herein. The agenda and supporting material is available at Elko City Hall, 1751 College Avenue, Elko, NV or on the City website at <a href="http://www.elkocitynv.gov/">http://www.elkocitynv.gov/</a>

Dated this 19th date of April, 2018

#### NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Elko City Council, 1751 College Agenue, Elko, Nevada 89801, or by calling (775) 777-7110.

Curtis Calder, City Manager

### CITY OF ELKO CITY COUNCIL AGENDA

### **REGULAR MEETING**

### 4:00 P.M., P.D.T., TUESDAY, APRIL 24, 2018 ELKO CITY HALL, 1751 COLLEGE AVENUE, ELKO, NEVADA

#### **CALL TO ORDER**

The Agenda for this meeting of the City of Elko City Council has been properly posted for this date and time in accordance with NRS requirements.

#### ROLL CALL

#### PLEDGE OF ALLEGIANCE

#### COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. ACTION WILL NOT BE TAKEN

**APPROVAL OF MINUTES:** 

April 10, 2018

**Regular Session** 

#### I. **PRESENTATIONS**

- A reading of a proclamation in recognition of Arbor Day, and matters related Α. thereto. INFORMATION ONLY - NON-ACTION ITEM
- В. A reading of a proclamation in recognition of Parkinson's Awareness Month, and matters related thereto. INFORMATION ONLY - NON-ACTION ITEM

#### II. CONSENT AGENDA

A. Review and possible approval of an agreement between the City of Elko and Erika Johnson, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. FOR POSSIBLE **ACTION** 

The City of Elko and Dr. Erika Johnson desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC

В. Review and possible approval of an agreement between the City of Elko and William Wright, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. FOR POSSIBLE ACTION

The City of Elko and Dr. William Wright desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC

#### III. PERSONNEL

A. Review, consideration, and possible approval of the revised Personal Appearance Policy, Chapter 2.23 of the City of Elko Personnel Policy Manual, and matters related thereto. **FOR POSSIBLE ACTION** 

The Personal Appearance Policy has been revised to better align with our organization's workforce and acceptable personal appearance standards. AB

#### IV. APPROPRIATIONS

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- B. Review, consideration, and possible approval to award a bid for the Reuse Pipeline and Sanitary Sewer to the Elko Sports Complex-Railroad and River Crossing project, and matters related thereto. **FOR POSSIBLE ACTION**

Bids were opened on April 13, 2018. A Bid Tally Sheet is included as supplemental agenda information. SAW

C. Review, consideration, and possible authorization for the creation of a force account for the construction of the Sports Complex, and matters related thereto.

FOR POSSIBLE ACTION

At the April 10, 2018 Council meeting, Granite Construction was awarded a contract for the construction of the Sports Complex. Due to the size and complexity of the project, Staff would like to establish a Force Account of \$100,000 to allow for the approval of Change Orders beyond our standard policy. Prior to approval, the Project Management Team will review all change orders for the City. BT

D. Review, consideration, and possible authorization for Arts and Culture Advisory Board to contribute \$500 toward the completion of landscaping improvements around the Sesquicentennial Sagebrush, and matters related thereto. FOR POSSIBLE ACTION

At their April 4, 2018 meeting, the Arts and Culture Advisory Board took action to forward a recommendation to the Council to allocate \$500 from their budget to go towards the completion of improvements around the Sesquicentennial Sagebrush to be completed during Clean Up Green Up. JD

E. Review, consideration, and possible authorization for Staff to solicit bids for the Public Works Department Preventive Maintenance Project 2018, to apply Micro

Slurry Seal to select City streets, and matters related thereto. **FOR POSSIBLE ACTION** 

Micro Slurry Seal is a preventive maintenance treatment, which will be applied to approximately 40,466 l.f. of selected city streets, plus the parking corridor between 6<sup>th</sup> Street and 7<sup>th</sup> Street, which were identified and adopted as part of the City of Elko street inventory. This work will be completed after July 1, 2018. DS

#### V. SUBDIVISIONS

A. Review, consideration, and possible action to conditionally approve Final Plat No. 4-18, filed by Jordanelle Third Mortgage, LLC., for the development of a subdivision entitled Tower Hill Unit 1, involving the proposed division of approximately 33.804 acres of property into 23 lots and 2 remainder parcels for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION** 

Subject property is located southeast of the terminus of Stitzel Road (APN 001-920-079). Preliminary Plat was recommended to City Council to conditionally approve by Planning Commission September 7, 2017 and conditionally approved by City Council October 24, 2017. The Planning Commission considered this item on March 6, 2018 and took action to forward a recommendation to City Council to conditionally approve Final Plat 4-18. CL

#### VI. NEW BUSINESS

A. Review, consideration, and possible acceptance of a Deed of Dedication for a portion of Statice Street from Treadway Investment Co., LLC along the frontage of APN 001-860-110, and matters related thereto. **FOR POSSIBLE ACTION** 

Treadway Investment Co., LLC is completing the required public improvements on Statice Street, as a part of the construction of a new facility for Kenworth Sales Company, Inc. Statice Street is identified as an industrial collector in the City of Elko Master Plan; the City has requested the dedication of the right of way. JD

B. Review, consideration, and possible approval of a Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Drive to C-A-L Stores Companies, Inc., and matters related thereto. FOR POSSIBLE ACTION

This item is to be considered following the related public hearing item.

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

C. Review, consideration, and possible authorization to enter into an Agreement to Install Improvements and Performance/Maintenance Guarantees for subdivision improvements associated with the Tower Hill Subdivision Unit 1, and matters related thereto. FOR POSSIBLE ACTION

Elko City Code 3-3-44 requires the subdivider to have executed and filed an agreement between the subdivider and the City for the required subdivision improvements, included stipulations on the timeframe for when those improvements are to be completed, and to post a performance guarantee in accordance with Elko City Code 3-3-45. As a condition of the Planning Commission's approval of Tower Hill Unit 1, the Performance Agreement is to be submitted to the City Council in conjunction with the final plat. The subdivider has indicated that he would provide a cash security to satisfy 3-3-45 of Elko City Code. The agreement has been drafted based on that assumption.

A second requirement forwarded by the Planning Commission is for the developer to enter into the Agreement to Install Improvements and Performance/Maintenance Guarantees within 30 days of approval of the final plat by the City Council. JD

D. Review, discussion, and possible appointment of one (1) candidate to serve on the Airport Advisory Board, and matters related thereto. **FOR POSSIBLE ACTION** 

The Airport Advisory Board has one (1) vacant position. Mr. James P. Carragher, Mr. Matthew Griego, and Mr. Jairus Duncan have all expressed an interest in serving on the board. Letters of Interest from the candidates have been included in the packet. CC

E. Review, consideration, and possible approval of a Non-Exclusive Franchise Agreement between the City of Elko and Level 3 Communications, LLC for Data Communications Over, Under, In, Along and Across Public Roads in the City of Elko, and matters related thereto. **FOR POSSIBLE ACTION** 

The proposed term of the agreement is ten (10) years and provides for a five (5) year renewal provided the terms and conditions remain the same. The proposed franchise fee is five (5) percent of the gross revenues actually collected from customers located within the corporate limits of the City. SAW

#### VII. RESOLUTIONS AND ORDINANCES

A. First reading of Ordinance No. 828, an ordinance amending Title 4, Chapter 6, entitled "Room Tax", and matters related thereto. FOR POSSIBLE ACTION

At its January 9, 2018 meeting, the Elko City Council initiated changes to the Room Tax Code. SO

B. First Reading of Ordinance No. 830, an ordinance increasing the corporate limits of the City of Elko, Nevada, pursuant to the provisions of N.R.S. 268.670 annexing thereto a certain tract of land partially contiguous to and not embraced within the present limits of the City of Elko described as follows: a parcel of land located southwest of the intersection of P and H Drive and West Idaho Street in Section 30, T. 34 N., R. 55 E., MDM, Elko County, Nevada, consisting of 32.74 acres, filed by Legend Engineering on behalf of Ed and Sharon Netherton and JoyGlobal Surface Mining Inc. and processed as Annexation No. 1-18, and to direct Staff to set the matter for public hearing, second reading and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION** 

City Council accepted the petition for the subject annexation on March 27, 2018, and directed Staff to continue with the annexation process by referring the matter to the Planning Commission. The Planning Commission considered the annexation on April 3, 2018, and took action to forward a recommendation of approval with findings back to the City Council. CL

#### VIII. 5:30 P.M. PUBLIC HEARINGS

A. Review, consideration, and public hearing for Notice of a Proposed Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Dr. to C-A-L Stores Companies, Inc., and matters related thereto. **FOR POSSIBLE ACTION** 

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

B. Review, consideration, and possible action to adopt Resolution No. 12-18, a resolution of the Elko City Council adopting a change in zoning district boundaries from R (Single Family and Multiple Family Residential) to PQP (Public, Quasi-Public) approximately 1.314 acres of property located northwest of the intersection of College Avenue and Golf Course Road, filed by The City of Elko, and processed as Rezone No. 1-18, and matters related thereto. **FOR POSSIBLE ACTION** 

The Planning Commission considered the Subject Zone Change Request on April 3, 2018, and took action to forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 1-18. CL

#### IX. REPORTS

- A. Mayor and City Council
- B. City Manager
- C. Assistant City Manager
- D. Utilities Director
- E. Public Works
- F. Airport Manager
- G. City Attorney
- H. Fire Chief
- I. Police Chief
- J. City Clerk
- K. City Planner
- L. Development Manager
- M. Administrative Services Director
- N. Parks and Recreation Director
- O. Civil Engineer
- P. Building Official

#### COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN** 

NOTE:

The Mayor, Mayor Pro Tempore, or other Presiding Officer of the City Council reserves the right to change the order of the agenda, and if the agenda has not been completed, to recess the meeting and continue on another specified date and time. Additionally, the City Council reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

#### **ADJOURNMENT**

Respectfully Submitted,

Curtis Calder City Manager City of Elko )
County of Elko )
State of Nevada ) SS April 10, 2018

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, April 10, 2018.

This meeting was called to order by Mayor Chris Johnson.

#### **CALL TO ORDER**

#### **ROLL CALL**

**Mayor Present:** Chris J. Johnson

Council Present: Councilman John Rice

Councilwoman Simons

Councilman Robert Schmidtlein Councilman Reece Keener

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City Staff Present: Curtis Calder, City Manager

Scott Wilkinson, Assistant City Manager

Ryan Limberg, Utilities Director

Shanell Owen, City Clerk

Dennis Strickland, Public Works Director Jonnye Jund, Administrative Services Director

Bob Thibault, Civil Engineer

Aubree Barnum, Human Resources Manager

Mike Hess, Landfill Superintendent Cathy Laughlin, City Planner

Ben Reed Jr., Police Chief

Jeremy Draper, Development Manager

Jeff Ford, Building Official Matt Griego, Fire Chief

Jack Snyder, Deputy Fire Chief

James Wiley, Parks and Recreation Director

Dave Stanton, City Attorney

Candi Quilici, Accounting Supervisor Troy Poncin, Information Systems Manager Pete Dondero, Golf Course Superintendent

Jim Foster, Airport Manager

Karen Walther, Animal Shelter Manager Diann Byington, Recording Secretary

#### PLEDGE OF ALLEGIANCE

#### COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN** 

There were no public comments.

### APPROVAL OF MINUTES: March 27, 2018 Regular Session

Councilman Schmidtlein asked for a correction. When they were appointing for Planning Commissioner, on page 7 in the minutes, he wanted to clarify that he was okay with hiring GBC Faculty but he also wanted more diversification.

\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidtlein, to approve the minutes with the requested correction.

The motion passed unanimously. (5-0)

#### II. PERSONNEL

- A. Employee Introductions:
  - 1.) Jeff Russell, Laborer, Golf Course

Present and introduced.

#### I. PRESENTATIONS

A. Review and possible approval of the Fiscal Year 2017/2018 Tentative Budget, inclusive of all funds, and matters related thereto. **FOR POSSIBLE ACTION** 

Jonnye Jund, Administrative Services Director, passed out a new presentation. There were some minor changes to it. (Exhibit "A") She went over the presentation.

\*\* A motion was made by Councilman Rice, seconded by Councilman Keener, to approve the Tentative Budget as presented this evening, inclusive of all funds, and prepare for the update later this month, and the adoption in May.

The motion passed unanimously. (5-0)

#### II. PERSONNEL (Cont.)

B. Review, consideration, and possible approval of the Systems Administrator position within the Information Systems Department, and proposed corresponding position description, including recruiting and hiring of this position, and matters related thereto. FOR POSSIBLE ACTION

The Systems Administrator is a newly proposed position within the Information Systems Department, which will help meet the needs of managing the increasing

demands of technology and ensuring compliance of information systems and IT infrastructure within the City of Elko. Staff is proposing this position to be placed at a Grade 23 in the Management Wage Scale. AB

Aubree Barnum, Human Resources Manager, explained this is the position that was tentatively approved at the last budget presentation. She is asking for a final approval on this position, and also the approval of the proposed job description, so she can proceed with recruitment and hiring.

\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the recruitment and hiring of this position, in addition the corresponding position description as presented.

The motion passed unanimously. (5-0)

C. Review, consideration, and possible approval of the revised position description for Information Systems Manager, and matters related thereto. **FOR POSSIBLE ACTION** 

The Information Systems Manager position description has been revised and updated to more accurately reflect the actual requirements and qualifications of the position, in addition to the actual duties performed, and to comply with updated position description standards as recommended by POOL/PACT. AB

Ms. Barnum explained they noticed the current IS Manager job description had not been revised since 2006. It was outdated and needed to be update to reflect the new format and the actual duties performed by the IS Manager.

\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to approve the revised Information Systems Manager position description as presented, effective April 10, 2018.

The motion passed unanimously. (5-0)

#### III. APPROPRIATIONS

D. Review of the bids received and possible award of the Plantmix Bituminous Pavement Materials to be used for the Year 2018 Construction Season, and matters related thereto. FOR POSSIBLE ACTION

Bids were received until 3:00 p.m. local time on Thursday, March 29, 2018. DS

Dennis Strickland, Public Works Director, explained there is a bid tabulation in the packet. Prices went up and that equates to less pavement on the ground at the end of the year.

\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidtlein, to award the bid for Plantmix Bituminous Pavement Materials for the 2018 construction season to Staker Parson Company.

The motion passed unanimously. (5-0)

E. Review, consideration, and possible award of a bid for the Sports Complex Project, and matters related thereto. **FOR POSSIBLE ACTION** 

Bids were received until 3:00 p.m. on April 4, 2018. Four bids were received. Staff recommends consideration of an award including the Base Bid and additive alternates 1 through 4. A complete bid tabulation is provided in your packet.

If this project is awarded, there are additional expenses, outside of this contract, in the amount of \$337,871.00 to cover the costs for NV Energy, QA/QC testing, 404 permit management, and historical preservation management. This cost does not include either purchase or lease of field lights. SAW

Scott Wilkinson, Assistant City Manager, explained he included a brief memo with a recommendation in the packet. He recommended award to Granite Construction Company. Total amount \$6,781,516.66. He broke that down to include a base bid amount of \$5,011,011, alternate one \$202,500, alternate two \$27,500, alternate three \$1,124,459.77, and alternate four \$416,045.89. There were four bids submitted. Granite Construction was the lowest, responsive bidder. He recommended that they award all the alternates, to construct the fields and install the lights. We would still need to decide if we want to purchase or lease the lights.

Councilman Keener said staff did a lot of work to value engineer that. Staff did a great job. He was excited that the bids came in so that the project can actually be done.

\*\* A motion was made by Councilwoman Simons, seconded by Councilman Keener, to award the bid for the Sports Complex to Granite Construction Company, in the amount of \$6,781,516.66, which includes the base bid, as well as, alternates number one, two, three and four.

The motion passed unanimously. (5-0)

#### IV. NEW BUSINESS

A. Review, consideration, and possible acceptance of a Deed of Dedication for portions of Delaware Street, and Ruby Vista Drive as a condition of Annexation 2-17 filed by Surebrec Holdings, LLC, and matters related thereto. FOR POSSIBLE ACTION

Surebrec Holdings, LLC filed Annexation Application 2-17 with the City of Elko for APN 006-10C-006. As a condition of the approval of this annexation Surebrec Holdings, LLC was to offer the following for dedication as Right-of-Way:

- Delaware Street, 30' wide from Statice Street to Aster
- Statice Street, 20' wide from Delaware Street to the property line with the City Well property
- Ruby Vista Drive, 70' wide along the southeast property line. JD

Jeremy Draper, Development Manager, explained we have three frontages for this property. This will complete their conditions for annexation. He indicated on the overhead screen where the frontages were.

\*\* A motion was made by Councilman Schmidtlein, seconded by Councilman Keener, to accept the Deed of Dedication for Delaware Street, Statice Street and Ruby Vista Drive.

#### The motion passed unanimously. (5-0)

B. Consideration and possible authorization for Staff to solicit bids for Airport Improvement Project No 3-32-0005-049(AIP 49), Security Fence and Reconstruct Electrical Vault, and matters related thereto. **FOR POSSIBLE ACTION** 

Council previously ratified Staff applying for FAA Grant Application #49 on February 13, 2018. AIP 49 includes upgrading the airport perimeter fence and electrical vault. The security fence upgrade will bring the entire perimeter fence into conformance with advisory circulars and TSA guidelines. The current electrical vault is housed in a wood structure. The upgrade would build a flame retardant structure and replace all constant current regulators and associated connections. As a reminder, the FAA awards grants based on bids. JF

Jim Foster, Airport Manager, explained this is their next Airport Improvement Project, AIP 49. He was looking for authorization to go to bid.

\*\* A motion was made by Councilman Rice, seconded by Councilman Schmidtlein, to authorize staff to solicit bids for Airport Improvement Project No. 3-32-0005-049 (AIP 49).

#### The motion passed unanimously. (5-0)

#### V. RESOLUTIONS AND ORDINANCES

A. Review, consideration, and possible adoption of Resolution No. 11-18, a resolution of the City Council approving the lease of real property less than 25,000 square feet, and matters related thereto. **FOR POSSIBLE ACTION** 

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their lease for the building and would like this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined in NRS 268.059, 061, 062, and 064. Resolution No. 11-18 begins the process for the continued lease.

If adopted, the next steps will involve a public notice, a public hearing, and possible approval of a lease. RL

Ryan Limberg, Utilities Director, explained the correct resolution number was on the document this time. Things have been working well with C-A-L leasing the property from the City. He recommended approval.

\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidtlein, to adopt Resolution No. 11-18.

The motion passed unanimously. (5-0)

B. First reading of Ordinance No. 828, an ordinance amending Title 4, Chapter 6, entitled "Room Tax", and matters related thereto. FOR POSSIBLE ACTION

At its January 9, 2018, the Elko City Council initiated changes to the Room Tax Code. SO

Mayor Johnson explained that Shanell Owen, City Clerk, is recommending that this item be tabled due to a conflict with the City Attorney representation.

\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to table this item.

The motion passed unanimously. (5-0)

#### VI. REPORTS

A. Mayor and City Council

Councilman Keener said he had a chance to visit some of the renovation projects downtown. He encouraged everyone to check out Jeff Dalling's and Franzoia's properties and see the improvements going on. Councilman Rice thought something was going on at one of the old bars on Railroad. Cathy Laughlin said that was Cabo Bar doing a storefront improvement.

Councilman Rice said he went to visit the Fire Department last week when the crew was training for salvage. We are in good hands with our fire crews.

Mayor Johnson attended a Boy Scout Overland District Volunteer Recognition Dinner at the college solarium. It brought back his memories as a Boy Scout and all the activities they did.

Councilman Schmidtlein wants a recap presentation of the tree mitigation program at the Golf Course. He has heard complaints about what is going on there. He wants to know the plan going forward. Curtis Calder said they will get something set up for him.

B. City Manager

Curtis Calder reported the Annual Nevada Public Agency Insurance Pool Meeting will be held next week. He and Jonnye will be attending that on Thursday and Friday. He thanked Jonnye and the Department Heads for putting together a solid budget for the year.

C. Assistant City Manager

Scott Wilkinson reported the Annual Clean-up Day is April 28th. If available, please volunteer.

D. Utilities Director

#### E. Public Works

Dennis Strickland said there was some excitement Saturday morning on the South Side. They are doing work on 6<sup>th</sup> Street where it abuts Front Street. The best management practice deployed that drop inlet. That got full of Elm seed debris and the water came up over the street. It didn't cause any damage. With the steady rain, the culvert at 6<sup>th</sup> and Douglas, we now have an even bigger hole on the street. It is slowly pulling that material down. They will do their best to limp that along until August/September timeframe. Councilman Keener asked if there were any safeguards to make sure tractor trailers don't roll over that. Dennis answered yes, they have a cone and it is plated. It will be monitored and if it gets any worse they will close that section off if need be. The concrete work on 6<sup>th</sup> Street is coming along. Some of it was so bad that they had to repair it. Come May 15, they will have several projects to start paving on.

### E. Airport Manager

Jim Foster said he was allowed to go to the Nevada Airports Association Annual Conference. It was a very good conference. There were some good meetings with the Phoenix ADO. Staff is now reviewing the final draft for the Airport Master Plan. He hopes to have a final document in the next couple of weeks.

- G. City Attorney
- H. Fire Chief Quarterly Report

Chief Griego said it has been a very busy year so far. He handed out a First Quarter report (Exhibit "B") and went over the information in it.

I. Police Chief

Chief Reed said things are moving forward on the E911 program. The Sheriff's Office is working on a grant application to help fund the kickoff of the 911 expenses for the upgrades for Next Generation. Councilman Schmidtlein asked what the total number is that they are trying to reach. Chief Reed wasn't sure of the exact number because he did not have the report in front of him. It will just be for the initial purchase of the equipment and will not include the maintenance going forward. The surcharge fund is growing but they are not sure if the \$0.25 surcharge will be enough. Right now there are 38 different contributors to the surcharge.

- J. City Clerk
- K. City Planner
- L. Development Manager
- M. Administrative Services Director
- N. Parks and Recreation Director
- O. Civil Engineer
- P. Building Official

### III. APPROPRIATIONS (Cont.)

A. Review and possible approval of Warrants, and matters related thereto. FOR POSSIBLE ACTION

\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the general warrants.

The motion passed unanimously. (5-0)

- B. Review and possible approval of Print 'N Copy Warrants, and matters related thereto. FOR POSSIBLE ACTION
- \*\* A motion was made by Councilman Schmidtlein, seconded by Councilwoman Simons, to approve the Print 'N Copy warrants.

The motion passed. (4-0 Councilman Keener abstained.)

- C. Review and possible approval of Great Basin Engineering Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- \*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to approve the Great Basin Engineering warrants.

The motion passed. (4-0 Councilman Schmidtlein abstained.)

#### COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. ACTION WILL NOT BE TAKEN

There were no public comments.

There being no further business, Mayor Chris	Johnson adjourned the meeting.	
Mayor Chris Johnson	Shanell Owen, City Clerk	

### Elko City Council Agenda Action Sheet

- 1. Title: Review and possible approval of an agreement between the City of Elko and Erika Johnson, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: CONSENT
- 4. Time Required: 1 Minute
- 5. Background Information: The City of Elko and Dr. Erika Johnson desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC
- 6. Budget Information: N/A

Appropriation Required: Budget amount available: Fund name:

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Copy of Veterinarian Contract
- 9. Recommended Motion: Approve agreement between the City of Elko and Erika Johnson, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter.
- 10. Prepared By: Curtis Calder, City Manager
- 11. Committee/Other Agency Review: N/A
- 12. Council Action:
- 13. Council Agenda Distribution: johnson.equinedvm@gmail.com

# VETERINARIAN CONTRACT (INDEPENDENT CONTRACTOR)

THIS AGREEMENT, made and entered into as of the day of, 2018, by
and between the CITY OF ELKO, a Nevada Municipal Corporation, hereinafter referred to
as "ELKO," and Erika Johnson, D.V.M., hereinafter referred to as "VETERINARIAN
CONTRACTOR," it being specifically understood that any and all references to the words
"ELKO" and "VETERINARIAN CONTRACTOR" shall include the masculine, feminine and
neuter genders, and singular and plural as indicated by the context and number of the
parties hereto.

#### **RECITALS:**

The parties recite and declare:

- 1. VETERINARIAN CONTRACTOR is duly licensed to practice veterinarian medicine.
- 2. VETERINARIAN CONTRACTOR is willing to enter into this contract as an independent contractor with ELKO, and ELKO is willing to engage VETERINARIAN CONTRACTOR on the terms, covenants and conditions set forth in this agreement.

For the reasons set forth above, and in consideration of the mutual promises and agreements set forth in this agreement, ELKO and VETERINARIAN CONTRACTOR agree as follows:

# SECTION 1 INDEPENDENT CONTRACTOR

1.01 ELKO hereby engages (as an independent contractor) VETERINARIAN CONTRACTOR as a Veterinarian, and VETERINARIAN CONTRACTOR hereby accepts and agrees to such engagement.

# SECTION 2 TERM OF AGREEMENT

2.01	The te	erm o	t this agreem	ent shall be a	period	ot one (3	l) year, con	nme	encing
	2018,	and	terminating		2019,	subject,	however,	to	prior
ermination	as prov	rided i	in this agreen	nent.					

GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD.
ATTORNEYS AT LAW
530 IDAHO STREET - P.O. BOX 1358
ELKO, NEVADA 89801

# SECTION 3 <u>DUTIES OF VETERINARIAN CONTRACTOR</u>

- 3.01 VETERINARIAN CONTRACTOR shall practice the specialty of veterinarian medicine solely as an independent contractor of ELKO. It is understood that VETERINARIAN CONTRACTOR may practice outside of the conditions set forth in this agreement.
- 3.02 VETERINARIAN CONTRACTOR agrees that she will at all times faithfully, industriously and to the best of her ability, experience and talents, perform all of the duties that may be required of and from her pursuant to the express and implicit terms of this agreement, to the reasonable satisfaction of ELKO. Such duties shall be rendered at the Elko Animal Shelter, and at such other place or places as ELKO shall in good faith require or as the interest, needs, business or opportunity of ELKO shall require.
- 3.03 VETERINARIAN CONTRACTOR shall be duly licensed to practice veterinarian medicine in the State of Nevada.

# SECTION 4 COMPENSATION AND HOURS OF SERVICE

- 4.01 Compensation. For services to be rendered by VETERINARIAN CONTRACTOR, ELKO shall pay VETERINARIAN CONTRACTOR the amount of THIRTY-FIVE DOLLARS (\$35.00) per hour, for hours worked. VETERINARIAN CONTRACTOR shall submit a time sheet to the ANIMAL SHELTER MANAGER every two (2) weeks for processing. It is understood that "LASSO" will reimburse the City of Elko for the fees paid by ELKO to the VETERINARIAN CONTRACTOR.
- 4.02 Hours of Service. VETERINARIAN CONTRACTOR shall, subject to the provisions herein, work a maximum of forty (40) hours per month, which may average ten (10) hours per week. VETERINARIAN CONTRACTOR understands that the work schedule is flexible and based upon the demand for services.

# SECTION 5 COSTS PAID BY VETERINARIAN CONTRACTOR

5.01 In addition to professional liability insurance, VETERINARIAN CONTRACTOR

must obtain and pay for her license fees and all other fees. VETERINARIAN CONTRACTOR is not required to but may obtain health insurance, association fees and other benefits at her cost.

5.02 VETERINARIAN CONTRACTOR, as an independent contractor, shall be responsible for her own Federal income tax withholding, FICA, Medicare, Nevada Worker's Compensation Insurance and all other withholdings and costs required to be paid as an independent contractor.

### SECTION 6 INSURANCE

6.01 At all times during the term of this agreement, VETERINARIAN CONTRACTOR shall maintain, paid by Lasso, Worker's Compensation and professional liability ("veterinarian medical malpractice") insurance with an insurance company licensed to do business in the State of Nevada covering VETERINARIAN CONTRACTOR for malpractice claims based upon conduct alleged to have occurred during the term of this agreement, under either (I) "occurrence" type insurance or (ii) "claims made" type insurance with a "tail" of reasonable and customary duration, with limits of ONE MILLION DOLLARS (\$1,000,000.00) for each claim and not less than TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate for the policy year.

### SECTION 7 ITEMS PROVIDED BY THE CITY OF ELKO

- 7.01 The City of Elko will furnish the following veterinarian's space and other items:
- 7.02 Space. The City of Elko will make available to VETERINARIAN CONTRACTOR space for use by VETERINARIAN CONTRACTOR at the Elko Animal Shelter.
- 7.03 Utilities and Ancillary Services. City of Elko will furnish janitorial services, gas, water, heat, air conditioning, electricity and other services and utilities as are reasonably necessary for the proper operation and conduct of the service.
- 7.04 Supplies. The City of Elko will furnish all expendable and non-expendable supplies necessary for the proper operation of VETERINARIAN CONTRACTOR's services, such as drugs, chemicals, film and similar supplies used in the operation of the service.

7.05 Exclusive Use. VETERINARIAN CONTRACTOR understands all items provided by the City of Elko are for the exclusive use and benefit of the Elko Animal Shelter. VETERINARIAN CONTRACTOR shall not use City-owned space, services, and/or supplies for private use.

### SECTION 8 TERMINATION

- 8.01 In the event of any violation by VETERINARIAN CONTRACTOR of any of the terms of this agreement, ELKO may terminate this independent contract without notice and with compensation to VETERINARIAN CONTRACTOR only to the date of such termination.
- 8.02 VETERINARIAN CONTRACTOR and/or ELKO may terminate this independent contract prior to \_\_\_\_\_\_, 2019 by providing two (2) weeks written notice in accordance with Section 9.01.

### SECTION 9 ADDITIONAL PROVISIONS

9.01 Notices. Any and all notices, demands, requests and other communications required or permitted to be served on or given to either party by the other shall be delivered personally or by United States mail, first class postage prepaid, certified or registered mail, return receipt requested to:

ELKO:

City of Elko

1751 College Avenue Elko, Nevada 89801

**VETERINARIAN CONTRACTOR:** 

Erika Johnson, D.V.M.

824 Thorpe Drive

Spring Creek, NV 89815

Such address may be changed by the party entitled to receive notice any time upon notice to the other party of designation of a new address. If delivered personally, such notice shall be effective upon delivery. If mailed, such notice shall be effective upon the date of receipt indicted on the return receipt.

- 9.02 Attorneys' Fees. If any legal action is brought for the enforcement of this agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recovery of reasonable attorneys' fees and other costs incurred in that action or proceeding.
- 9.03 Waiver of Breach. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed or taken to be a waiver of any subsequent breach of the same covenant, condition or provision hereof.
- 9.04 Captions and Construction. The captions used herein as headings of the various paragraphs hereof are for convenience only, and the parties agree that such captions are not to be construed to be part of this agreement or to be used in determining or constructing the intent or content of this agreement.
- 9.05 Severability. If any clause, sentence, provision of other portion of this agreement is or becomes illegal, null, void, or unenforceable for any reason, or is held by any court of competent jurisdiction to be so, the remaining provisions shall remain in force and effect.
- 9.06 Counterparts. This agreement may be executed in a number of counterparts, each of which, when executed, shall be deemed an original, and all such counterparts shall together constitute one and the same agreement.
- 9.07 Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and contains the entire agreement between the parties relating to said subject matter. This agreement may not be modified except by an instrument in writing executed by the parties.
- 9.08 Applicable Law. This agreement shall be governed by the laws of the State of Nevada. Any questions arising thereunder shall be construed or determined according to such law. Venue shall be Elko County, Nevada.

### **SECTION 10 VETERINARIAN CONTRACTOR'S ACCEPTANCE OF ENGAGEMENT**

10.01 VETERINARIAN CONTRACTOR accepts the above-described engagement as an independent contractor of ELKO on the above-mentioned terms and conditions.

# SECTION 11

<u>ASSIGNMENT</u>						
	RINARIAN CONTRACTOR shall assign any rights or nent without the prior written consent of the other.					
IN WITNESS WHEREOF, each part Elko, Nevada, on the date hereabou	arty to this agreement has caused it to be executed ve written.					
CITY OF ELKO:	VETERINARIAN CONTRACTOR:					
Ву:						
CHRIS J. JOHNSON, Mayor	ERIKA JOHNSON, D.V.M.					
ATTEST:						

GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD. ATTORNEYS AT LAW 530 IDAHO STREET - P.O. BOX 1358 ELKO, NEVADA 89801

**SHANELL OWEN** 

### Elko City Council Agenda Action Sheet

- 1. Title: Review and possible approval of an agreement between the City of Elko and William Wright, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: **CONSENT**
- 4. Time Required: 1 Minute
- 5. Background Information: The City of Elko and Dr. William Wright desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC
- 6. Budget Information: N/A

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Copy of Veterinarian Contract.
- 9. Recommended Motion: Approve agreement between the City of Elko and William Wright, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter.
- 10. Prepared By: Curtis Calder, City Manager
- 11. Committee/Other Agency Review: N/A
- 12. Council Action:
- 13. Council Agenda Distribution: docbill3@frontier.com

# VETERINARIAN CONTRACT (INDEPENDENT CONTRACTOR)

THIS AGREEMENT, made and entered into as of the day of, 2018, by
and between the CITY OF ELKO, a Nevada Municipal Corporation, hereinafter referred to
as "ELKO," and William Wright, D.V.M., hereinafter referred to as "VETERINARIAN
CONTRACTOR," it being specifically understood that any and all references to the words
"ELKO" and "VETERINARIAN CONTRACTOR" shall include the masculine, feminine and
neuter genders, and singular and plural as indicated by the context and number of the
parties hereto.

#### **RECITALS:**

The parties recite and declare:

- 1. VETERINARIAN CONTRACTOR is duly licensed to practice veterinarian medicine.
- 2. VETERINARIAN CONTRACTOR is willing to enter into this contract as an independent contractor with ELKO, and ELKO is willing to engage VETERINARIAN CONTRACTOR on the terms, covenants and conditions set forth in this agreement.

For the reasons set forth above, and in consideration of the mutual promises and agreements set forth in this agreement, ELKO and VETERINARIAN CONTRACTOR agree as follows:

# SECTION 1 INDEPENDENT CONTRACTOR

1.01 ELKO hereby engages (as an independent contractor) VETERINARIAN CONTRACTOR as a Veterinarian, and VETERINARIAN CONTRACTOR hereby accepts and agrees to such engagement.

# SECTION 2 TERM OF AGREEMENT

2.01	The te	rm of	this agreeme	ent shall be	a period	d of one (	1) year, cor	nme	encing
	2018,	and	terminating		2019,	subject,	however,	to	prio
termination	as prov	ided i	n this agreem	ent.					

GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD. ATTORNEYS AT LAW 530 IDAHO STREET - P.O. BOX 1358 ELKO, NEVADA 89801

# SECTION 3 DUTIES OF VETERINARIAN CONTRACTOR

- 3.01 VETERINARIAN CONTRACTOR shall practice the specialty of veterinarian medicine solely as an independent contractor of ELKO. It is understood that this agreement is non-exclusive; accordingly, VETERINARIAN CONTRACTOR may practice veterinary medicine for third parties outside of the scope of this agreement.
- 3.02 VETERINARIAN CONTRACTOR agrees that he will at all times faithfully, industriously and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this agreement, to the reasonable satisfaction of ELKO. Such duties shall be rendered at the Elko Animal Shelter, and at such other place or places as ELKO shall in good faith require or as the interest, needs, business or opportunity of ELKO shall require.
- 3.03 VETERINARIAN CONTRACTOR shall be duly licensed to practice veterinarian medicine in the State of Nevada.

# SECTION 4 COMPENSATION AND HOURS OF SERVICE

- 4.01 Compensation. For services to be rendered by VETERINARIAN CONTRACTOR, ELKO shall pay VETERINARIAN CONTRACTOR the amount of THIRTY-FIVE DOLLARS (\$35.00) per hour, for hours worked. VETERINARIAN CONTRACTOR shall submit a time sheet to the ANIMAL SHELTER MANAGER every two (2) weeks for processing. It is understood that "LASSO" will reimburse the City of Elko for the fees paid by ELKO to the VETERINARIAN CONTRACTOR.
- 4.02 Hours of Service. VETERINARIAN CONTRACTOR shall, subject to the provisions herein, work a maximum of forty (40) hours per month, which may average ten (10) hours per week. VETERINARIAN CONTRACTOR understands that the work schedule is flexible and based upon the demand for services.

# SECTION 5 COSTS PAID BY VETERINARIAN CONTRACTOR

5.01 In addition to professional liability insurance, VETERINARIAN CONTRACTOR

must obtain and pay for his license fees and all other fees. VETERINARIAN CONTRACTOR is not required to but may obtain health insurance, association fees and other benefits at his cost.

5.02 VETERINARIAN CONTRACTOR, as an independent contractor, shall be responsible for his own Federal income tax withholding, FICA, Medicare, Nevada Worker's Compensation Insurance and all other withholdings and costs required to be paid as an independent contractor.

# SECTION 6 INSURANCE

6.01 At all times during the term of this agreement, VETERINARIAN CONTRACTOR shall maintain, paid by Lasso, Worker's Compensation and professional liability ("veterinarian medical malpractice") insurance with an insurance company licensed to do business in the State of Nevada covering VETERINARIAN CONTRACTOR for malpractice claims based upon conduct alleged to have occurred during the term of this agreement, under either (I) "occurrence" type insurance or (ii) "claims made" type insurance with a "tail" of reasonable and customary duration, with limits of ONE MILLION DOLLARS (\$1,000,000.00) for each claim and not less than TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate for the policy year.

# SECTION 7 ITEMS PROVIDED BY THE CITY OF ELKO

- 7.01 The City of Elko will furnish the following veterinarian's space and other items:
- 7.02 Space. The City of Elko will make available to VETERINARIAN CONTRACTOR space for use by VETERINARIAN CONTRACTOR at the Elko Animal Shelter.
- 7.03 Utilities and Ancillary Services. City of Elko will furnish janitorial services, gas, water, heat, air conditioning, electricity and other services and utilities as are reasonably necessary for the proper operation and conduct of the service.
- 7.04 Supplies. The City of Elko will furnish all expendable and non-expendable supplies necessary for the proper operation of VETERINARIAN CONTRACTOR's services, such as drugs, chemicals, film and similar supplies used in the operation of the service.

7.05 Exclusive Use. VETERINARIAN CONTRACTOR understands all items provided by the City of Elko relating to VETERINARIAN CONTRACTOR'S performance under this agreement are for the exclusive use and benefit of the Elko Animal Shelter. VETERINARIAN CONTRACTOR shall not use City-owned space, services, and/or supplies for private use or for the benefit of third parties outside of the scope of this agreement.

### SECTION 8 TERMINATION

8.01 In the event of any violation by VETERINARIAN CONTRACTOR of any of the terms of this agreement, ELKO may terminate this independent contract without notice and with compensation to VETERINARIAN CONTRACTOR only to the date of such termination.

8.02	<b>VETERINARIAN C</b>	ONTRACTOR and/or ELKO may te	erminate this independent
contract prior	r to	, 2019 by providing two (2) wee	ks' written notice to ELKO
in accordance	with Section 9.0	1.	

### SECTION 9 ADDITIONAL PROVISIONS

9.01 Notices. Any and all notices, demands, requests and other communications required or permitted to be served on or given to either party by the other shall be delivered personally or by United States mail, first class postage prepaid, certified or registered mail, return receipt requested to:

ELKO: City of Elko

1751 College Avenue Elko, Nevada 89801

VETERINARIAN CONTRACTOR:

William Wright, D.V.M. 508 Ashcroft Drive

Spring Creek, NV 89815

Such address may be changed by the party entitled to receive notice any time upon notice to the other party of designation of a new address. If delivered personally, such notice shall be effective upon delivery. If mailed, such notice shall be effective upon the date of receipt indicted on the return receipt.

- 9.02 Attorneys' Fees. If any legal action is brought for the enforcement of this agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recovery of reasonable attorneys' fees and other costs incurred in that action or proceeding.
- 9.03 Waiver of Breach. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed or taken to be a waiver of any subsequent breach of the same covenant, condition or provision hereof.
- 9.04 Captions and Construction. The captions used herein as headings of the various paragraphs hereof are for convenience only, and the parties agree that such captions are not to be construed to be part of this agreement or to be used in determining or constructing the intent or content of this agreement.
- 9.05 Severability. If any clause, sentence, provision of other portion of this agreement is or becomes illegal, null, void, or unenforceable for any reason, or is held by any court of competent jurisdiction to be so, the remaining provisions shall remain in force and effect.
- 9.06 Counterparts. This agreement may be executed in a number of counterparts, each of which, when executed, shall be deemed an original, and all such counterparts shall together constitute one and the same agreement.
- 9.07 Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and contains the entire agreement between the parties relating to said subject matter. This agreement may not be modified except by an instrument in writing executed by the parties.
- 9.08 Applicable Law. This agreement shall be governed by the laws of the State of Nevada. Any questions arising thereunder shall be construed or determined according to such law. Venue shall be Elko County, Nevada.

### **SECTION 10 VETERINARIAN CONTRACTOR'S ACCEPTANCE OF ENGAGEMENT**

10.01 VETERINARIAN CONTRACTOR accepts the above-described engagement as an independent contractor of ELKO on the above-mentioned terms and conditions.

# **SECTION 11**

<u>A</u>	SSIGNMENT
	NARIAN CONTRACTOR shall assign any rights or nt without the prior written consent of the other.
<b>IN WITNESS WHEREOF</b> , each par at Elko, Nevada, on the date hereabove	ty to this agreement has caused it to be executed written.
CITY OF ELKO:	VETERINARIAN CONTRACTOR:
Ву:	
CHRIS J. JOHNSON, Mayor	William Wright, D.V.M.
ATTEST:	

GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD. ATTORNEYS AT LAW 530 IDAHO STREET - P.O. BOX 1358 ELKO, NEVADA 89801

**SHANELL OWEN** 

### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and possible approval of the revised Personal Appearance Policy, Chapter 2.23 of the City of Elko Personnel Policy Manual and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: **PERSONNEL**
- 4. Time Required: 10 Minutes
- 5. Background Information: The Personal Appearance Policy has been revised to better align with our organization's workforce and acceptable personal appearance standards. AB
- 6. Budget Information:

Appropriation Required: NA Budget amount available: NA

Fund name: NA

- 7. Business Impact Statement: **Not Required**
- 8. Supplemental Agenda Information: Copy of revised Personal Appearance Policy
- 9. Recommended Motion: Approve the revised personnel policy, Chapter 2.23 Personal Appearance Policy as presented effective April 24, 2018
- 10. Prepared By: Aubree Barnum, Human Resources Manager
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution:

#### 2.23 Personal Appearance

#### 2.23.1 Policy

- 1. Each employee is expected to dress and groom appropriately for the job, presenting a clean, safe, and neat appearance. An employee unsure about whether attire or grooming is appropriate should consult with his/her supervisor or manager.
- 2. Employees working in office areas should dress professionally. Appropriate attire includes, but is not limited to, slacks, khakis, capri or crop pants (if they portray a business appearance), knit blouses or tops, dress shirts, polo and cotton shirts, skirts and dresses, turtlenecks, sweaters, loafers, and sandals.
- 3. For those employees who do not have direct contact with the public, dress should still be neat and clean and pose no safety hazard to themselves or others.
- 4. On approved casual days, employees may dress in casual clothing, including jeans and T-shirts, although dress standards still require a neat, clean appearance.
- 5. Field employees are required to wear the assigned work uniform provided by the **employer**. If a work uniform has not been assigned, employees may wear jeans and T-shirts as well as shorts that are no more than 3 inches above the knee (unless it poses a safety hazard). Any employee who performs any work assignments in the field must wear closed-toe shoes. Long hair must be tied back if it poses a safety hazard, to ensure the employee's personal safety. Loose clothing or dangling jewelry that poses a safety hazard to employees also is prohibited.
- 6. Under no circumstances may employees wear halter tops, strapless tops, spaghetti straps, tank tops, cropped tops, clothing with offensive wording (sexually-related references or foul language) or that is gang-related, promotes the use of illegal drugs, clothing that shows undergarments (sheer), torn clothing, clothing with holes in it, or tight-fitting, revealing, or oversized clothing. All clothing must be clean, neat, and fit properly. Safe, neat, and clean shoes should be worn at all times.
- 7. An employee's work environment will be taken into consideration when making the following determinations:

While dress and grooming standards can vary depending on the type of work and level of public/customer contact and/or interaction, For all employees, professional appearance means that the employer expects employees to maintain good hygiene and grooming while working. Facial hair is permitted as long as it is neat and well-trimmed. Minimal jewelry is permitted. Earrings and gauges no larger than 12 mm in size, in the earlobe are acceptable provided they do not pose a safety hazard; however, larger gauges, extenders, and/or o-rings must be removed while

working. Employees should make every responsible effort to minimize the visibility of other types of body piercings to ensure a professional and appropriate appearance for the workplace and the employees' respective job duties. Rings/studs through the nose, evebrow, tongue, or body parts other than the ear lobe that are visible to the public may not be worn while working. Employees should make every effort to minimize the visibility of tattoos when interacting with the public and customers. Employees will be required to cover tattoos that may be deemed offensive or inappropriate for viewing in the workplace All tattoos must be small in size or covered at all times and may not be offensive in nature (sexually-related and/or gang-related references, foul language, and the promotion of illegal drugs is prohibited). Facial tattoos are prohibited. Employees are expected to be conservative in the wearing of makeup, scented products, and hairstyles.

8. If an employee requires a reasonable accommodation regarding his/her dress for bona fide legal reasons, s/he should contact his/her supervisor or manager to discuss an exception to the personal appearance guidelines. Unless it would constitute an undue hardship or safety hazard, **employer** will accommodate such requests.

#### 2.23.2 Enforcement

- All employees should practice common sense rules of neatness, good taste, and comfort. Provocative clothing is prohibited. Employer reserves the right to determine appropriate dress at all times and in all circumstances.
- 2. When the employer believes an employee's dress or grooming does not positively reflect the image of the City, and/or does not comply with the personal appearance guidelines, the immediate supervisor will discuss the issue with the employee. If continued counseling fails to result in the desired response, the supervisor may initiate disciplinary action.
- 3. **Employer** may send employees home to change clothes should it be determined that dress is not appropriate.
- 2. If an employee feels aggrieved by the personal appearance guidelines, s/he may use the dispute resolution process provided in the **employer's** personnel policies.

### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and possible approval to award a bid for the Reuse Pipeline and Sanitary Sewer to the Elko Sports Complex-Railroad and River Crossing project, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **APPROPRIATION**
- 4. Time Required: 3 Minutes
- 5. Background Information: Bids were opened on April 13, 2018. A Bid Tally Sheet is included as supplemental agenda information. SAW
- 6. Budget Information:

Appropriation Required: \$1,117,267.50 Budget amount available: \$1,395,000.00

Fund name: Sewer

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Bid Tally Sheet
- 9. Recommended Motion: Move to award bid to Ruby Dome, Inc. in the amount of \$1,117, 267.50
- 10. Prepared By: Ryan Limberg, Utilities Director
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution:

### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and possible authorization for the creation of a force account for the construction of the Sports Complex, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **APPROPRIATION**
- 4. Time Required: 5 Minutes
- 5. Background Information: At the April 10, 2018 Council meeting, Granite Construction was awarded a contract for the construction of the Sports Complex. Due to the size and complexity of the project, Staff would like to establish a Force Account of \$100,000 to allow for the approval of Change Orders beyond our standard policy. Prior to approval, the Project Management Team will review all change orders for the City. BT
- 6. Budget Information:

Appropriation Required: \$100,000.00 Budget amount available: \$475,000.00

Fund name: Sports Complex

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information:
- 9. Recommended Motion: Authorize the use of a Force Account for the construction of the Sports Complex in the amount of \$100,000.
- 10. Prepared By: **Bob Thiabult, Civil Engineer**
- 11. Committee/Other Agency Review: Curtis Calder, City Manager
- 12. Council Action:
- 13. Council Agenda Distribution: None

### CITY OF ELKO BID TABULATION FOR

# EFFLUENT REUSE AND SANITARY SEWER SPORTS COMPLEX April 13, 2018

Address City State Phone No. Fax No.					Ruby Dome Inc.  6525 E. Idaho St. Elko, NV 89801  775-738-2154		Great Basin Engineering Contractors PO Box 396 Elko, NV 89801 775-340-8365		Remington Construction  445 5th Street Elko, NV 89801  775-738-6601		Pearson Brothers Construction LLC HC 74 Box 260 Pioche, NV 89043 702-239-6047
о.	Bid Item Description	Quantity	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price		Unit Price	
1	MOB & DEMOBILIZATION TO AND FROM THE PROJECT SITE  @PER LUMP SUM AMOUNT.	1	LS	\$ 99,500.00	\$99,500.00	\$221,571.01	\$221,571.01	\$316,315.00	\$316,315.00	\$160,000.00	\$160,000.00
2	CLEAR & STRIP TOPSOIL FROM THE PIPELINE ALIGNMENT ON BOTH SIDES OF THE HUMBOLDT RIVER AND AT THE BEGINNING OF THE PROJECT @: PER ACRE CLEARED AND STRIPPED.	0.75	ACRES	\$ 6,700.00	\$5,025.00	\$2,943.32	\$2,207.49	\$15,000.00	\$11,250.00	\$ 40,000.00	\$30,000.00
3	REMOVE THE EXISTING 12-INCH Ø END CAP AND THRUST BLOCK AT STA. "RW"33+57, BEGINNING OF PROJECT, ADJUST THE REUSE PIPE INVERT ELEVATION TO MATCH PLAN ELEVATION AND INSTALL 12-INCH Ø PIPE, PIPE BENDS, FITTINGS & CONCRETE THRUST BLOCKS AT STA. "RW" 33+58 DETAIL B ON SHEET C-5 @: PER LUMP SUM AMOUNT.	1.00	LS	\$ 6,000.00	\$6,000.00	\$5,836.02	\$5,836.02	\$18,000.00	\$18,000.00	\$ 30,000.00	\$30,000.00
4	PROVIDE AND INSTALL 12-INCH Ø HDPE IPS PE4710 DR11 (200PSI WORKING PRESSURE) REUSE PIPE FROM STA."RW" 33+58 TO "RW" 37+78.68 @: PER LINEAL FOOT INSTALLED, AS SPECIFIED.	36	LF	\$ 160.00	\$5,760.00	\$269.10	\$9,687.60	\$540.00	\$19,440.00	\$ 700.00	\$25,200.00
5	PROVIDE AND INSTALL ALL MATERIALS, EQUIPMENT AND LABOR TO BORE, JACK AND CASE (24-INCH DIAMETER STEEL CASING) FROM STA. "RW" 33+68.71 TO "RW" 35+80 (SEE PLAN SHEET C-3) @ PER LINEAL FOOT OF BORING, JACKING AND INSTALLING STEEL CASINGS.	212	LF	\$ 1,161.00	\$246,132.00	\$802.39	\$170,106.68	\$1,200.00	\$254,400.00	\$ 1,000.00	\$212,000.00
6	PROVIDE AND INSTALL 24-INCH Ø STEEL PIPE CASING WITH WELDEDJOINTS FROM STA. "RW" 35+80 TO "RW" 37+50 BY TRENCHING METHODS (SEE PLAN SHEET C-3) @PER LINEAL FOOT OF CASING INSTALLED.	170	LF	\$ 505.00	\$85,850.00	\$346.60	\$58,922.00	\$490.00	\$83,300.00	\$ 1,000.00	\$170,000.00
7	PROVIDE AND PLACE STEEL REINFORCED CONCRETE ENCASEMENT AROUND THE STEEL CASING FROM STA. "RW" 35+75 TO "RW" 36+98.89 SEE PLAN SHEETS C-3 & C-7 @ PER LINEAL FOOT OF ENCASEMENT.	125	LF	\$ 355.00	\$44,375.00	\$787.66	\$98,457.50	\$850.00	\$106,250.00	\$ 700.00	\$87,500.00

В	PROVIDE AND INSTALL 12-INCH Ø RESTRAINED JOINT DUCTILE IRON PIPE FROM STA. "RW" 33+68 TO "RW" 37+50 AS SPECIFIED (SEE PLAN SHEET C-3 & C-7) @:PER LINEAL FOOT OF PIPE INSTALLED.	385	LF	\$ 150.00	\$57,750.00
9	PROVIDE AND INSTALL 12-INCH Ø GATE VALVE, VALVE BOX & CONCRETE COLLAR AT STA."RW" 37+68.68 (SEE PLAN SHEET C-3) @: PER LUMP SUM INCLUDING LABOR, EQUIPMENT AND MATERIALS.	1.0	LS	\$ 4,800.00	\$4,800.00
0	PROVIDE AND INSTALL 12-INCH Ø FLANGED END CAP AND CONCRETE THRUST BOLCK AT STA "RW" 37+78.68 (SEE PLAN SHEET C-3)@:PER LUMP SUM	1.0	LS	\$ 2,000.00	\$2,000.00
1	AMOUNT  CONSTRUCT 60-INCH Ø SANITARY SEWER MANHOLE AT STA."SS" 0+00 WITH CAST IN PLACE CONCRETE BASE (SEE PLAN SHEETS C-4 AND C-8) @:PER LUMP SUM AMOUNT INCLUDING AL MATERIALS, LABOR & EQUIPMENT.	1.0	LS	\$ 28,000.00	\$28,000.00
2	CONSTRUCT 48-INCH Ø SANITARY SEWER MANHOLE AT STA. "SS" 0+22.13 AS SHOWN ON PLAN SHEET C-4 AND C-8, INCLUDING ALL MATERIALS, LABOR & EQUIPMENT @: PER LUMP SUM AMOUNT COMPLETE	1.0	LS	\$ 12,500.00	\$12,500.00
3	CONSTRUCT 48-INCH Ø SANITARY SEWER MANHOLE AT STA. "SS" 4+16.19 AS SHOWN ON PLAN SHEET C-4 AND C-8, INCLUDING ALL MATERIALS, LABOR & EQUIPMENT @: PER LUMP SUM AMOUNT COMPLETE.	1.0	LS	\$ 12,500.00	\$12,500.00
4	CONSTRUCT 12-INCH Ø SANITARY SEWER BETWEEN MANHOLES NO.1 AND NO. 2 INCLUDING ALL PIPE MATERIALS, LABOR AND EQUIPMENT, AS SPECIFIED AND SHOWN ON PLAN SHEET C-4 (ANSI/AWWA C900 PVC PIPE) @: PER LINEAL FOOF INSTALLED.	20	LF	\$ 650.00	\$13,000.00
15	PROVIDE ALL MATERIALS, LABOR, AND EQUIPMENT TO BORE, JACK AND INSTALL STEEL CASING BENEATH THE UPRR MAINLINE TRACK CORRIDOR FROM STA. "SS" 0+30 TO "SS" 2+44. (SEE PLAN SHEETS C-4 AND C-7 @:PER LINEAL FOOT OF CASING.	214	LF	\$ 1,410.00	\$301,740.00
16	PROVIDE ALL MATERIALS, EQUIPMENT & LABOR TO INSTALL 24 INCH Ø WELDED STEEL CASING, BY TRENCHING METHODS, FROM STA."SS" 2+44.00 TO "SS" 3+97.99 (SEE PLAN SHEETS C-4 AND C-7) @:PER	154	LF	\$ 442.00	\$68,068.00
17	PROVIDE ALL MATERIALS, EQUIPMENT & LABOR TO INSTALL DUCTILE IRON PIPE AS SPECIFIED, FROM SANITARY SEWER MANHOLE NO.2 TO MANHOLE NO.3 AS SPECIFIED AND SHOWN ON PLAN SHEETS C-4 AND C-7 @:PER LINEAL FOOT.	391	LF	\$ 150.00	\$58,650.00
18	PROVIDE AND PLACE REINFORCED CONCRETE ENCASEMENT AROUND THE 24-INCH Ø STEEL CASING FROM STA. "SS" 2+35.00 TO "SS" 3+60.00, AS SHOWN ON PLAN SHEETS C-4 AND C-7, @  PER LINEAL FOOT INSTALLED.	125	LF	\$ 355.00	\$44,375.00
19	PROVIDE AND INSTALL 12-INCH Ø GRAVITY SEWER (SDR 35 PVC) FROM STA."SS"4+38.19 AND INSTALL END CAP, AS SPECIIFED AND SHOWN ON PLAN SHEET C-4) @:  PER LINEAL FOOT OF PIPE	20	LF	\$ 125.00	\$2,500.00
20	PROVIDE AND INSTALL 3-EACH, 1 1/4 INCH Ø SCHEDULED 40 PVC CONDUITS INSIDE THE 24-INCH Ø REUSE PIPE CASINGS FROM STA. "RW" 37+50, AS SHOWN ON PLAN SHEET C-3, @:	1170	LF	\$ 10.25	\$11,992.50

\$173.87	<b>\$</b> 66,939.95		\$175.00	\$67,375.00
\$6,760.01	\$6,760.01	] -	\$5,000.00	\$5,000.00
\$1,670.60	\$1,670.60		\$1,500.00	\$1,500.00
\$36,138.36	\$36,138.36		\$46,000.00	\$46,000.00
\$19,524.85	\$19,524.85		\$38,000.00	\$38,000.00
\$8,237.04	\$8,237.04		\$30,000.00	\$30,000.00
\$441.50	\$8,830.00		\$900.00	\$18,000.00
\$1,143.69	\$244,749.66		\$1,200.00	\$256,800.00
\$376.72	\$58,014.88		\$510.00	\$78,540.00
\$200.43	\$78,368.13		\$175.00	\$68,425.00
\$814.66	\$101,832.50		\$850.00	\$106,250.00
\$515.08	\$10,301.60		\$400.00	\$8,000.00
\$7.18	\$8,400.60		\$13.00	\$15,210.00

\$ 300.00	\$115,500.00
\$ 15,000.00	\$15,000.00
\$ 8,000.00	\$8,000.00
\$150,000.00	\$150,000.00
\$150,000.00	\$150,000.00
\$ 25,000.00	\$25,000.00
\$ 500.00	\$10,000.00
\$ 1,000.00	\$214,000.00
\$ 1,000.00	\$154,000.00
\$ 300.00	\$117,300.00
\$ 600.00	\$75,000.00
\$ 200.00	\$4,000.00
\$ 10.00	\$11,700.00
	<u> </u>

	TOTAL BASE BID				\$1.117.267.50
21	SPREAD STOCKPILE TOPSOIL AND SEED ALL LAND SURFACE AREAS DISTRUBED BY THE PROJECT CONSTRUCTION, AS SPECIFIED IN SECTION 02485-SEEDING AND REVEGETATION OF DISTRUBED AREAS @: PER ACRE OF LAND DISTRUBANCE.	0.75	ACRES	\$ 9,000.00	\$6,750.00

\$5,886.6	\$4,414.99
	\$1.220.971.47

	\$1.555.555.00
¥ 10,000.000	V.,000.00
\$10,000.00	\$7,500.00

	\$1,794,200.00
40,000.00	
\$ 40,000.00	\$30,000.00

- 1. Title: Review, consideration, and possible authorization for Arts and Culture Advisory Board to contribute \$500 toward the completion of landscaping improvements around the Sesquicentennial Sagebrush, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: **APPROPRIATION**
- 4. Time Required: 5 Minutes
- 5. Background Information: At their April 4, 2018 meeting, the Arts and Culture Advisory Board took action to forward a recommendation to the Council to allocate \$500 from their budget to go towards the completion of improvements around the Sesquicentennial Sagebrush to be completed during Clean Up Green Up. JD
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information:
- 9. Recommended Motion: Allocate \$500 to the Sesquicentennial Sagebrush landscaping
- 10. Prepared By: Jeremy Draper, PE, Development Manager
- 11. Committee/Other Agency Review: Scott Wilkinson, Assistant City Manager, Catherine Wines, Arts and Culture Board Chairperson
- 12. Council Action:
- 13. Council Agenda Distribution: Arts and Culture Advisory Board Chairperson, Catherine Wines

- 1. Title: Review, consideration, and possible authorization for Staff to solicit bids for the Public Works Department Preventive Maintenance Project 2018, to apply Micro Slurry Seal to select City streets, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: APPROPRIATION
- 4. Time Required: 5 Minutes
- 5. Background Information: Micro Slurry Seal is a preventive maintenance treatment, which will be applied to approximately 40,466 l.f. of selected city streets, plus the parking corridor between 6<sup>th</sup> Street and 7<sup>th</sup> Street, which were identified and adopted as part of the City of Elko Street Inventory. This work will be completed after July 1, 2018. DS
- 6. Budget Information: Estimated total cost of project \$475,000.00

Appropriation Required: \$475,000.00

Budget amount available: \$550,000.00 in the FY 17/18 Budget

Fund name: General Fund: Public Works Department

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information:
- 9. Recommended Motion: Authorize Staff to solicit bids for the Public Works Department Street Maintenance Project 2018.
- 10. Prepared By: Dennis Strickland, Public Works Director
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Agenda Distribution: Aaron Martinez

aaron@amengineering.pro

1. Title: Review, consideration and possible action to conditionally approve Final Plat No. 4-18, filed by Jordanelle Third Mortgage, LLC., for the development of a subdivision entitled Tower Hill Unit 1, involving the proposed division of approximately 33.804 acres of property into 23 lots and 2 remainder parcels for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION

2. Meeting Date: April 24, 2018

3. Agenda Category: SUBDIVISION

4. Time Required: 15 Minutes

- 5. Background Information: Subject property is located southeast of the terminus of Stitzel Road (APN 001-920-079). Preliminary Plat was recommended to City Council to conditionally approve by Planning Commission September 7, 2017 and conditionally approved by City Council October 24, 2017. The Planning Commission considered this item on March 6, 2018 and took action to forward a recommendation to City Council to conditionally approve Final Plat 4-18. CL
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

7. Business Impact Statement: Not Required

- 8. Supplemental Agenda Information: Maps, P.C. action report, Staff reports and related correspondence.
- 9. Recommended Motion: Conditionally approve Final Plat No. 4-18 for the Tower Hills Unit 1 subdivision subject to the conditions as recommended by the Planning Commission.
- 10. Prepared By: Cathy Laughlin, City Planner
- 11. Committee/Other Agency Review: Planning Commission
- 12. Council Action:
- 13. Agenda Distribution: Jordanelle Third Mortgage, LLC

Scott MacRitchie 312 Four Mile Trail Elko, NV 89801 High Desert Engineering 640 Idaho Street Elko, NV 89801



## **CITY OF ELKO**

## Planning Department

Website: www.elkocity.com Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

# CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of March 6, 2018

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on February 6, 2018 pursuant to City Code Sections 3-3-6 (B)1 and (C) 2:

Final Plat No. 4-18, filed by Jordanelle Third Mortgage, LLC, for the development of a subdivision entitled Tower Hill Unit 1 involving the proposed division of approximately 33.804 acres divided into 23 lots and 2 remainder parcels for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto.

The subject property is located generally southeast of the terminus of Stitzel Road. (001-920-079).

NOW THEREFORE, upon review and consideration of the application, supporting data, public input and testimony, the Planning Commission forwards a recommendation to City Council to conditionally approve Final Plat No. 4-18 subject to the conditions in the City of Elko Staff Report dated February 27, 2018 listed as follows:

#### **Development Department**

(See Memorandum from Development Manager Jeremy Draper dated February 26, 2018)

- 1. The Developer shall execute a Performance Agreement in accordance with Section 3-3-44 of city code. The Performance Agreement shall be secured in accordance with Section 3-3-44 of city code. In conformance with Section 3-3-44 of city code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Plat approval by the City Council unless extended as stipulated in city code. The developer shall enter into the Performance Agreement within 30 days of approval of the final plat by City Council.
- 2. The final plat is approved for 23 single-family residential lots and 2 remainder lots.
- 3. The Utility Department will issue a Will Serve Letter.
- 4. State approval of the subdivision.
- 5. Lot 122 shall have access restricted to Chukar Drive; a note shall be added to the final plat **prior to City Council consideration**.
- 6. Update the dates in the jurats to reflect 2018 prior to City Council consideration.
- 7. Conformance with Preliminary Plat conditions.
- 8. Public improvements are required on the State Route 227 frontage or on the south-southwest side of the State Route in accordance with NDOT approval. The extent, location and type of public improvements will be determined through the review and approval process for the civil improvement plans.
- 9. Civil improvements are to comply with Chapter 3-3 of City code.
- 10. Final approval for civil improvement plans.
- 11. State approvals for the subdivision.

12. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition Standard Specifications for Public Works. All Right –of-Way and utility improvements are to be certified by the Engineer of Record for the project.

#### **Engineering Department**

1. Verify the bearings on Lines L7 and L9. They do not match the bearing of the overall line.

#### **Planning Commission:**

1. The proposed Performance Agreement is to be submitted to the City Council in conjunction with the plat.

The Planning Commission's findings to support its recommendation are the subdivision is in conformance with the Land Use and Transportation Components of the Master Plan. The subdivision is in conformance with 3-2-4 Establishment of Zoning Districts, 3-2-5(B) Single-Family Zoning Districts, 3-2-17 Traffic, Access, Parking and Loading Regulations, 3-3-6 Final Plat (Stage III), and 3-3-8 Information required for Final Plat Submission. The subdivision is in conformance with 3-3-20 General Provisions for Subdivision Design. The subdivision does not appear to be unsuitable for use by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, erosion susceptibility or similar conditions which are likely to prove harmful to the health and safety and general welfare of the community or the future property owners. The subdivision is in conformance with 3-3-21 Street Location and Arrangement, 3-3-22 Street Design, 3-3-23 Block Design, 3-3-24 Lot Planning as modified by the Development Agreement, 3-3-25 Easement Planning, 3-3-26 Street Naming, 3-3-27 Street Lighting Design Standards, 3-3-40 Responsibility for Improvements, 3-3-41 Engineering Plans, 3-3-42 Construction and Inspection, and 3-3-43 Required Improvements. The sub-divider shall enter into a performance agreement to address the conditions found in 3-3-44 Agreement to Install Improvements. The sub-divider shall provide a performance guarantee as stipulated in the performance agreement and 3-3-45 Performance Guarantee. The subdivision is in conformance with 3-8 Floodplain Management. The Final Plat is in conformance with the Preliminary Plat.

Attest:

Shelby Archuleta, Planning Technician

CC:

Applicant
Jeremy Draper, Development Manager (via email)
Shanell Owen, City Clerk
Bob Thibault, Civil Engineer

## TOWER HILL SUBDIVISION - UNIT NUMBER 1 ELKO, ELKO COUNTY, NEVADA

## LAND SURVEYOR'S CERTIFICATE: TOWER HILL I, THOMAS C. BALLEW, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA. SUBDIVISION THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY SUPERVISION AND DIRECTION AT THE INSTANCE JORDANELLE THIRD MORTGAGE, LLC. OWNER'S CERTIFICATE THOMAS C BALLEW BLS No. 5079 CITY ENGINEER'S REPRESENTATIVE CERTIFICATE: VICINITY MAP OFF OF EACH NEVERAL DO FERENTY CORPORATION FOR THE CITY DIGNARIES OF THE CITY OF CHARGE OF THE CITY OF CHARGE OF THE CITY OF CHARGE OF THE TENTATION HAVE AND A APPROVED ON THE TENTATION HAVE AND A APPROVED ON A ALTERNATIONS, THAT ALL PROPOSED OF THE SECTION PROVIDED A TOPAS OF MACHINERY AND ANALOGUE OF THE TENTATION HAVE AND ALL COLL COMMENCES AND PROVIDED AT THE TIME OF APPROVING OF THE TENTATION HAVE AND THAT THE KOMMENTS AND A SOON HAVE OF THE CHARACTER AND COCCUPY THE POSITIONS ROUGHED OF THAT THE MANAMENTS HAVE NOT BEEN SET AND THAT A PROPER PERSONNERS OF THE SET OF THE TENTAMENT OF THE TE APPROVAL - NEVADA DIVISION OF WATER RESOURCES THIS FINAL MAP IS APPROVED BY THE DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY SUBJECT TO REVIEW OF APPROVAL ON FILE AT THIS OFFICE. CITY OF ELKO CITY ENGINEER'S REPRESENTATIVE

#### NEVADA DIVISION OF WATER RESOURCES APPROVAL - CITY OF ELKO PLANNING COMMISSION APPROVAL - NEVADA DIVISION OF ENVIRONMENTAL PROTECTION THE THU, MAP IS APPROVED BY THE REVIALD DIVISION OF DIVISIONALITY, PROTECTION OF THE DOPARTICATE OF CONSERVATION AND INTURAL RESOURCES. THE APPROVIAL CONCERNS SENSICE DEPOSIL, WATER POLLUTION, WATER GUALITY AND WATER SUPPLY FACULTES AND IS PREDICATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMINITY STEEL FOR DISPOSAL OF SERVICE. CHAIRMAN, CITY OF ELKO PLANNING COMMISSION NEVADA DIVISION OF ENVIRONMENTAL PROTECTION BUREAU OF WATER POLLUTION CONTROL APPROVAL - CITY OF ELKO CITY COUNCIL AT A RECULAR MEETING OF THE CITY OF ELKO, NEVADA, CITY COUNCE, HELD ON THE SUBDIVISION PURPOSES PURSUANT TO M.R.S. 278-01 THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO M.R.S. 278-01 PRODUCT 278-08, INCLUSING, AND ALL APPLICABLE LOCAL ORDINANCES. ALL OFFERS OF DEDICATION, AS SHOWN HEREON, MERC ACCEPTED FOR PUBLIC USE. ASSESSOR'S CERTIFICATE: I, KATRINKA RUSSELL, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBER SHOWN ON THIS PLAT IS CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF SAID ASSESSOR'S PARCEL MUMBER 001-920-079. MAYOR, CITY OF ELKO, NEVADA FIND COUNTY ASSESSOR ATTEST: CITY CLERK, CITY OF ELKO, MEVADA TREASURER'S CERTIFICATE: I, REBECCA ENICKSON, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL NUMBER ODT-920-079 HAVE BEEN PAID FOR THIS FISCAL YEAR. LEGAL DESCRIPTION: PARCEL NUMBER 1 AS SHOWN ON THE PARCEL MAP FOR GLEN GREENWOOD, ELON GREENWOOD AND GULLEY FUED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, MEYADA, AT FUE NUMBER 666870. ELKO COUNTY TREASURER

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDE MANAGING DIRECTOR OF JORGANELLE THIND MORTGAG, LL PARCELS AS SHOWN ON THIS MAP, DOES HEREBY CONSEN OF THIS MAP AND OFFERS FOR DEDICATION ALL OF THE R FOR PUBLIC ACCESS, PUBLIC UTILITY AND PUBLIC DRAINAG HERCON. MY MITNESS!, SCOTT MACRITICAL SET MY HAND	C, BEING THE OWNER OF THOSE T TO THE PREPARATION AND FLUI IGHTS-OF-WAY AND EASEMENTS IE PURPOSES AS DESIGNATED
JORDANELLE THIRD MORTGAGE, LLC	
BY: SCOTT MACRITCHIE, MANAGING DIRECTOR	DATE
STATE OF NEVADA )  S.S.  COUNTY OF ELKO )	
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 20, BY SCOTT MACRITCHE, MANAGING DIRECTOR OF .	DAY OF MORTGAGE, LLI
NOTARY PUBLIC IN AND FO	OR FIKO COUNTY NEVADA
	ar agree outling records
MY COMMISSION EXPIRES:	,
WY COMMISSION EMPRES  APPROVAL — PUBLIC UTILITY EAS.	
	EMENTS
APPROVAL — PUBLIC UTILITY EAS,	EMENTS
APPROVAL — PUBLIC UTILITY EASI THE PUBLIC UTILITY EASINETIS, AS DESIGNATED HEREON, RESPECTIVE PUBLIC UTILITIES EXECUTING BELOW.	EMENTS ARE APPROVED BY THE
APPROVAL — PUBLIC UTILITY EAS, THE PUBLIC UTILITY EASHEVITS AS DESCRIPTED HEREON, RESPECTIVE PUBLIC UTILITIES EXECUTIVE BELOW.  FRONTIER COMMUNICATIONS	EMENTS  ARE APPROVED BY THE  DATE

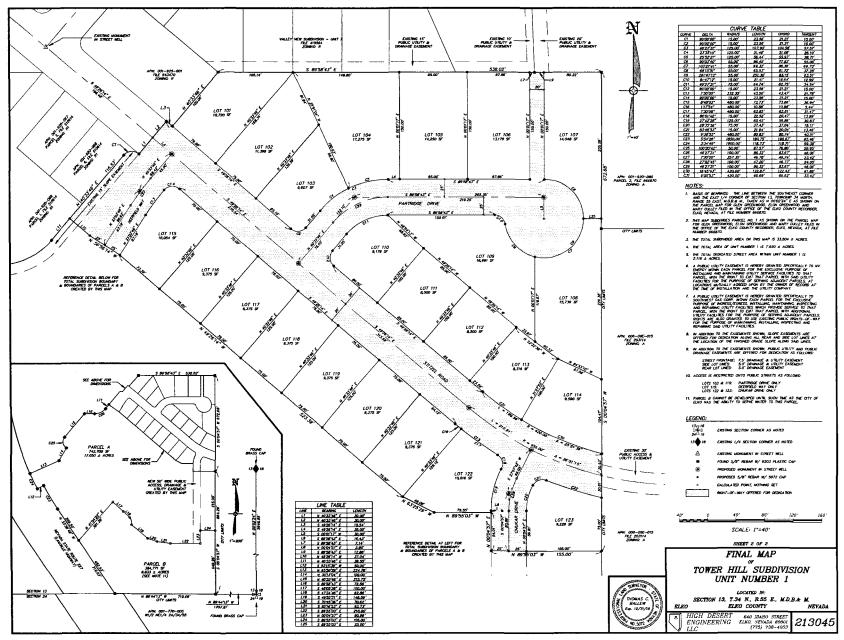
ELKO COUNTY RECORDER:

PLED AT THE REQUEST OF: ...

D. MIKE SWALES, ELKO COUNTY RECOR

SHEET 1 OF 2 FINAL MAP TOWER HILL SUBDIVISION UNIT NUMBER 1 LOCATED IN: SECTION 13, T.34 N., R.55 E., M.D.B.& M. ELKO COUNTY NEVADA HIGH DESERT 640 IDAHO STREET ENGINEERING ELKO. NEVADA 89801 LLC (776) 738-4053

213045



## STAFF COMMENT FLOW SHEET

tle: Final Plat 4-18 Tower Hill Unit 1	
oplicant(s): Jordanelle Third Mortgage, LLC	
te Location: Southeast of the terminus of Stitzer - APN 001-920-0	79
arrent Zoning: R1 Date Received: 2/12 Date Public Notice: N/A	, , ,
DMMENT: This is for 33.804 acres to be divided into	
23 Lots and 2 remainer Parcels for Presidential Development.	
**If additional space is needed please provide a separate memorandum**	
ssistant City Manager: Date: 3/1/18	
Recommend approval as presented	
by staff. The proposed performance	
as reentent is to be submitted to the	
by staff. The proposed performance as reented is to be submitted to the City Council in conjunction with the	
Plat	)
Initial	
ty Manager: Date:	

Initial



City of Elko 1751 College Avenue Elko, NV 89801 (775) 777-7160 FAX (775) 777-7119

### **CITY OF ELKO STAFF REPORT**

DATE: February 27, 2018
PLANNING COMMISSION DATE: March 6, 2018

AGENDA ITEM NUMBER: I.B.1

APPLICATION NUMBER: Final Plat 4-18

APPLICANT: Jordanelle Third Mortgage, LLC

PROJECT DESCRIPTION: Tower Hills Subdivision Unit 1 at the end of

Stitzel Road above Lamoille Highway and

**Powder House Road** 

A Final Map for the division of approximately 7.920 acres into 23 lots for single family residential development within an R1 (Single Family Residential) Zoning District and two remaining lots.



#### STAFF RECOMMENDATION:

RECOMMEND to APPROVE this item subject to findings of fact and conditions.

### **PROJECT INFORMATION**

**PARCEL NUMBERS:** 

001-920-079

**PARCEL SIZE:** 

7.920 acres for this Unit 1 of the subdivision; the entire subdivision is 33.804 acres. In Unit 1, 2.116

acres are offered for dedication for street

development

**EXISTING ZONING:** 

(R1) Single Family Residential

**MASTER PLAN DESIGNATION:** 

(RES-MD) Residential Medium Density

**EXISTING LAND USE:** 

Vacant

#### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

• North: Residential / Developed

• East: Elko County Property / Undeveloped

• South: Agriculture (AG) / Undeveloped

• West: Planned Commercial / Undeveloped

#### **PROPERTY CHARACTERISTICS:**

- The property is an undeveloped residential parcel.
- This is the first phase of the Tower Hills Subdivision.
- The parcel has challenging topography issues with a substantial grade difference towards Lamoille Highway.
- Frontage of the Lamoille Highway would be under NDOT jurisdiction.
- A portion of the property is located in the 5600 water zone and therefore cannot be served at this time by the City of Elko.

#### MASTER PLAN, COORDINATING PLANS, and CITY CODE SECTIONS:

Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan Land Use Component
- City of Elko Master Plan Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning Section 3-2-3 General Provisions
- City of Elko Zoning Section 3-2-4 Zoning Districts
- City of Elko Zoning Section 3-2-5(B) Single-Family Residential District
- City of Elko Zoning Section 3-2-5(G) Residential Zoning Districts Area, Setback And Height Schedule For Principal Buildings

- City of Elko Zoning Section 3-8 Flood Plain Management
- City of Elko Zoning Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning Chapter 3 Subdivisions

#### **BACKGROUND INFORMATION**

- 1. The City Council accepted the Preliminary Plat at its meeting on October 24, 2017.
- 2. The subdivision is located on APN 001-920-079, shown as parcel 1 on map 666870 recorded at the Elko County Recorder's Office.
- 3. The application is for a total of 23 lots. The proposed density is 3.96 units per acre.
- 4. The total subdivided area is approximately 33.804 acres in size with 7.920 of that divided into 23 lots for Unit 1 with 2 remaining lots.
- 5. Approximately 2.116 acres are offered for dedication for street development.
- 6. The property is located off Lamoille Highway, NDOT jurisdiction and at the end of Stitzel Road. A portion of missing Stitzel Road is required as part of the development.
- 7. Approvals prior to the October 24, 2017 approval of the Preliminary Plat for this subdivision have expired.

#### **MASTER PLAN:**

- 1. Conformance with the Land Use component of the Master Plan was evaluated with review and approval of the Preliminary Plat. The Final Plat is in conformance with the Preliminary Plat.
- 2. Conformance with the Transportation component of the Master Plan was evaluated with review and approval of the Preliminary Plat. The Final Plat is in conformance with the Preliminary Plat.

The subdivision is in conformance with the Land Use and Transportation components of the Master Plan.

#### **ELKO REDEVELOPMENT PLAN:**

1. The property is not located within the Redevelopment Area.

#### **ELKO WELLHEAD PROTECTION PLAN:**

1. The property lies outside any capture zone for the City of Elko.

#### **SECTION 3-2-3 GENERAL PROVISIONS**

- Section 3-2-3 (C) 1 of City code specifies use restrictions. The following use restrictions shall apply.
  - 1. Principal Uses: Only those uses and groups of uses specifically designated as "principal uses permitted" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses

- 2. Conditional Uses: Certain specified uses designated as "conditional uses permitted" may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance hereinafter specified in this chapter or imposed by the planning commission or city council.
- 3. Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.

- 1. Section 3-2-3(C) states that certain specified uses designated as "conditional uses permitted" may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance specified in Chapter 3 or imposed by the Planning Commission or City Council.
- 2. Section 3-2-3(D) states that "No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability."

The proposed subdivision is in conformance with Section 3-2-3.

#### **SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS**

- 1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
- 2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

It appears that the proposed development will meet the requirements of 3-2-4.

#### **SECTION 3-2-5(B) Residential Zoning Districts**

1. 3-2-5(B) Single Family Residential District. Lots must comply with principal permitted uses as listed in this section.

Project is in conformance with 3-2-5(B) with the principal permitted uses as single family residential.

#### **SECTION 3-2-5(G) Residential Zoning District**

1. Lot dimensions were approved with the Preliminary Plat. Modifications were made to the lot sizes as conditions of the Preliminary Plat.

Project is in conformance with 3-2-5(G).

#### **SECTION 3-2-17**

1. As the property develops, conformance with 3-2-17 will be required.

It appears the proposed development will meet the requirements of 3-2-17.

#### **SECTION 3-3-5 PRELIMINARY PLAT STAGE (STAGE II)**

F. Significance of Preliminary Approval, subject to the provisions of this section and NRS 278.360, the final plat shall be recorded within 2 years of the date of recording of the previous final plat.

#### **SECTION 3-3-6 FINAL PLAT STAGE (STAGE III)**

<u>Pre-submission Requirements (A)(1)</u> – The Plat is in conformance with the zone requirements.

<u>Pre-submission Requirements (A)(2)</u> – The proposed final plat conforms closely to the preliminary plat.

<u>Pre-submission Requirements (A)(3)</u> – The Title Sheet includes an affidavit for public utilities and no objections were received from public utilities upon notification for the Preliminary Plat.

#### SECTION 3-3-8 INFORMATION REQUIRED FOR FINAL PLAT SUBMITTAL

1. Compliance with this section is required. See Development Department memo dated February 26, 2018.

#### **SECTION 3-8**

1. The property is not located within a designated flood plain.

#### **FINDINGS**

- 1. The subdivision is in conformance with the Land Use and Transportation components of the Master Plan.
- 2. The subdivision is in conformance with 3-2-4-Establishment of Zoning Districts.
- 3. The subdivision is in conformance with 3-2-5-B-Single-Family Zoning Districts.
- 4. The subdivision is in conformance with 3-2-17 Traffic, Access, Parking and Loading Regulations.
- 5. The subdivision is in conformance with 3-3-6-Final Plat (Stage III).

- 6. The subdivision is in conformance with 3-3-8-Information required for Final Plat Submission.
- 7. The subdivision is in conformance with 3-3-20-General Provisions for Subdivision Design.
  - a. The subdivision does not appear to be unsuitable for use by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, erosion susceptibility or similar conditions which are likely to prove harmful to the health and safety and general welfare of the community or the future property owners.
- 8. The subdivision is in conformance with 3-3-21-Street Location and Arrangement.
- 9. The subdivision is in conformance with 3-3-22-Street Design.
- 10. The subdivision is in conformance with 3-3-23-Block Design.
- 11. The subdivision is in conformance with 3-3-24-Lot Planning as modified by the Development Agreement.
- 12. The subdivision is in conformance with 3-3-25-Easement Planning.
- 13. The subdivision is in conformance with 3-3-26-Street Naming.
- 14. The subdivision is in conformance with 3-3-27-Street Lighting Design Standards.
- 15. The subdivision is in conformance with 3-3-40-Responsibility for Improvements.
- 16. The subdivision is in conformance with 3-3-41-Engineering Plans.
- 17. The subdivision is in conformance with 3-3-42-Construction and Inspection.
- 18. The subdivision is in conformance with 3-3-43-Required Improvements.
- 19. The sub-divider shall enter into a performance agreement to address the conditions found in 3-3-44-Agreement to Install Improvements.
- 20. The sub-divider shall provide a performance guarantee as stipulated in the performance agreement and 3-3-45-Performance Guarantee.
- 21. The subdivision is in conformance with 3-8 Floodplain Management.
- 22. The Final Plat is in conformance with the Preliminary Plat.

#### **RECOMMENDATION**

Staff recommends approval of the subdivision based on the following conditions:

#### **Development Department**

(see Memorandum from Development Manager Jeremy Draper dated February 26, 2018)

- 1. The Developer shall execute a Performance Agreement in accordance with Section 3-3-44 of city code. The Performance Agreement shall be secured in accordance with Section 3-3-44 of city code. In conformance with Section 3-3-44 of city code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Plat approval by the City Council unless extended as stipulated in city code. The developer shall enter into the Performance Agreement within 30 days of approval of the final plat by City Council.
- 2. The final plat is approved for 23 single family residential lots and 2 remainder lots.
- 3. The Utility Department will issue a Will Serve Letter.
- 4. State approval of the subdivision.
- 5. Lot 122 shall have access restricted to Chukar Drive, a note shall be added to the final plat prior to City Council consideration.

- 6. Update the dates in the jurats to reflect 2018 prior to City Council consideration.
- 7. Conformance with Preliminary Plat conditions.
- 8. Public improvements are required on the State Route 227 frontage or on the south southwest side of the State Route in accordance with NDOT approval. The extent, location and type of public improvements will be determined through the review and approval process for the civil improvement plans.
- 9. Civil improvements are to comply with Chapter 3-3 of City code.
- 10. Final approval for civil improvement plans.
- 11. State approvals for the subdivision.
- 12. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition Standard Specifications for Public Works. All Right –of-Way and utility improvements are to be certified by the Engineer of Record for the project.

#### **Engineering Department**

1. Verify the bearings on Lines L7 and L9. They do not match the bearing of the overall line.

#### **Planning Department**

1. Comply with all department conditions.



CITY OF ELKO DEVELOPMENT DEPARTMENT 1755 COLLEGE AVENUE ELKO, NEVADA 89801 (775)777-7210 (775)777-7219 FAX

To: Elko Planning Commission

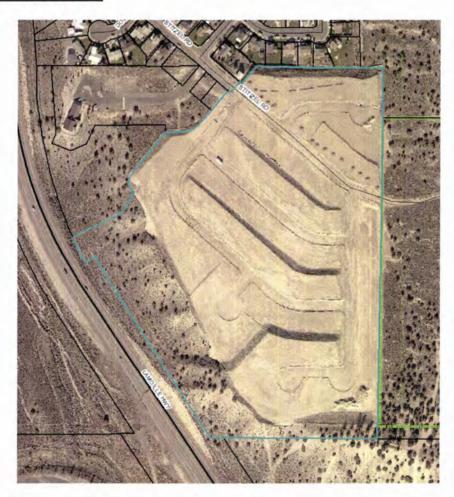
From: Jeremy Draper, PE, Development Manager

RE: Final Subdivision Plat Review for Tower Hill-Unit 1

Date: February 26, 2018

The City Development Department has reviewed the final subdivision plat for conformance with the applicable Master Plan section, Coordinating Plans, and City Code Sections.

#### **Background Information**



1. The preliminary plat for Tower Hill was approved by the Council on October 24, 2017.

- 2. The subdivision is located on APN 001-920-079, shown as parcel 1 on map 666870 recorded at the Elko County Recorder's Office. A portion of missing roadway on Stitzel is required as part of the development of this parcel.
- 3. The final plat is for 23 Single Family Residential Lots, plus 2 remainder lots.
- 4. The subdivision is located along an extension of Stitzel Road.
- 5. The property abuts Lamoille Highway, SR 227, a shared use path shall be constructed on the west side of Lamoille Highway in the following lengths, a separate memo has been provided to the developer outlining the required work.
  - a. Unit 1: 303 LF
  - b. Unit 2: 283 LF
  - c. Unit 3: 442 LF
- 6. The total subdivided area is 33.80 acres.
- 7. The total subdivided area of Unit 1 is 7.92 Acres.
- 8. The total area offered for dedication in Unit 1 is 2.12 Acres.
- 9. The density of Unit 1 is 3.96 lots per acre.
- 10. The property is zone R1-Single Family Residential.
- 11. Approvals prior to the October 24, 2017 approval of the Preliminary Plat for this subdivision have expired.

## Master Plan Land Use Component

- Land Use is shown as Medium Density Residential. Medium Density is identified
  as having a density of 5 8 units per acre or greater. The property is zoned R1
  which is a corresponding zoning district as identified in the Master Plan for a
  Medium Density Land Use. The proposed density of this subdivision does
  conform to the subdivision.
- The listed Goal of the Land Use component states "Promote orderly, sustainable growth and efficient land use to improve quality of life and ensure new development meets the needs of all residents and visitors".
- Corresponding zoning districts are
  - o Residential-Medium Density
    - R-Single-Family and Multiple-Family Residential
    - R1-Single-Family Residential
    - R2-Two-Family Residential
    - PUD-Planned Unit Development
    - RO-Residential Office
    - RB-Residential Business
    - RMH-2-Mobile Home Subdivision
    - RMH-3-Manufactured Home Subdivision
- Applicable objectives of the Land Use Component are
  - Objective 1-Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.

 Objective 8-Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.

#### Transportation Component

- State Route 227 is classified as a NDOT roadway and functions as a major arterial. The State Route 227 borders the property to the west. Direct access to the State Route is not shown.
- Public improvements along State Route 227 shall be required in the form of the
  development of a shared use path on the west side of State Route 227 as
  approved by Elko City Council on September 23, 2014. The frontage
  improvements shall be phased with the completion of the phases for the
  subdivision as noted below. The footage is based on the footage of property
  adjacent to the State Route 227 right-of-way, actual required improvements on
  the path are determined based on the total length of improvements for the entire
  path:

o Unit 1: 303 LF

- o Unit 2: 283 LF
- o Unit 3: 442 LF
- The Master Plan identifies Stitzel Road as a Collector. The roadway will function as a residential collector and will be developed to that standard within a 60 foot right-of-way.
- The remaining proposed streets will function as local streets. The roadways will be developed to that standard within a 50 foot right-of-way.
- Applicable objectives of the Transportation Component are
  - Objective 1-Provide a balanced transportation system that accommodates vehicles, bicycles, and pedestrians, while being sensitive to, and supporting the adjacent land uses.
  - Objective 2-Provide a backbone of arterial roadways to emphasize regional vehicle travel and provide adequate capacity to move large traffic volumes, including truck traffic, safely and efficiently.

The subdivision is in general conformance with the Master Plan.

#### Elko Redevelopment Plan

The property is not located within the Redevelopment Area.

#### **Elko Wellhead Protection Plan**

The proposed subdivision is not located within any capture zone for City Wells.

#### **Section 3-2-3-General Provisions**

- Section 3-2-3(C)(1) of City code specifies use restrictions. The following use restrictions shall apply:
  - Principal Uses: Only those uses and groups of uses specifically designated as "principal uses permitted" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses.
  - Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.
  - o Other uses may apply under certain conditions with application to the City.
- Section 3-2-3(D) states that "No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability."

It appears the section of code will be met with the proposed development.

#### **Section 3-2-4-Establishment of Zoning Districts**

Conformance with this section is required.

#### 3-2-5-Residential Zoning Districts

- B. R1-Single-Family Residential District
  - a. Conformance with this section is required
  - b. The plat complies with the requirements under this section
  - c. Location of single-family residences shall be in conformance with the setbacks found in subsection G.

#### 3-2-17-Traffic, Access, Parking and Loading Regulations

- Conformance with this section is required.
- All lots shall be provided with the required number of off street parking spaces.
- Access to lost shall conform with this section.

#### 3-3-5-Preliminary Plat Stage (Stage II)

F. Significance of Preliminary Approval, subject to the provisions of this section and NRS 278.360, the final plat shall be recorded within 4 years of the date of approval of the Preliminary Plat.

#### Section 3-3-6-Final Plat Stage (Stage III)

- A. Presubmission Requirements
  - 1. Zoning-The area in which the subdivision is located is R1-Single-Family Residential. A zoning amendment is not required.
  - 2. Preparation of Final Plat-The Final Plat conforms closely with the prepared preliminary plat 4-17.
  - 3. Easements-The final plat has the required approval from public utilities for easements.

#### Section 3-3-8-Information Required for Final Plat Submission

- A. Form and Content-The final plat conforms to the required size specifications and provides the appropriate affidavits and certifications.
- B. Identification Data
  - 1. The subdivision map identified the subdivision, and provides its location by section, township, range and county.
  - 2. The subdivision map was prepared by a properly licensed surveyor.
  - 3. The subdivision map provides a scale, north point, and date of preparation.
- C. Survey Data
  - 1. The boundaries of the tract are fully balanced and closed.
  - 2. All exceptions are noted on the plat.
  - 3. The location and description of cardinal points are tied to a section corner.
  - 4. The location and description of any physical encroachments upon the boundary of the tract are noted on the plat.
- D. Descriptive Data
  - 1. The name, right of way lines, courses, lengths and widths of all streets and easements are noted on the plat.
  - 2. All drainageways are noted on the plan.
  - 3. All utility and public service easements are noted on the plat.
  - 4. The location and dimensions of all lots, parcels and exceptions are shown on the plat.
  - 5. All residential lots are numbered consecutively on the plat.
  - 6. There are no sites dedicated to the public shown on the plat.
  - 7. The location of adjoining subdivisions are noted on the plat with required information.
  - 8. There are no deed restrictions proposed. Lots 122 shall have access restricted to Chukar Drive.

#### E. Dedication and Acknowledgment

- 1. The owner's certificate has the required dedication information for all easements and right of ways.
- 2. The execution of dedication is acknowledged and certified by a notary public.

#### F. Additional Information

- 1. All centerline monuments for streets are noted as being set on the plat.
- 2. The centerline and width of each right of way is noted on the plat.
- 3. The plat indicates the location of monuments that will be set to determine the boundaries of the subdivision.
- 4. The length and bearing of each lot line is identified on the plat.
- 5. The city boundary adjoining the subdivision is not identified on the plat, as the plat is not adjoining a boundary.
- 6. The plat identifies the location of the section lines, and 1/16<sup>th</sup> section line adjoining the subdivision boundaries.

#### G. City Engineer to Check

- The Engineer shall check the final map for accuracy of dimensions, placement of monuments, the establishment of survey records, and conformance with the preliminary map.
  - a) Closure calculations have been provided.
  - b) Civil improvement plans have been provided, previous civil improvement plans have been approved for this subdivision.
  - c) Civil improvement plans for drainage have been submitted.
  - d) An engineer's estimate has been provided.
- 2. It appears the lot closures are within the required tolerances.

#### H. Required certifications

- 1. The Owner's Certificate is shown on the final plat.
- 2. The Owner's Certificate offers for dedication all right of ways shown on the plat.
- 3. A Clerk Certificate is shown on the final plat, certifying the signature of the City Council.
- 4. The Owner's Certificate offers for dedication all easements shown on the plat.
- 5. A Surveyor's Certificate is shown on the plat and provides the required language.
- 6. The City Engineer's Certificate is listed on the plat.
- 7. A certificate from the Nevada Division of Environmental Protection is provided with the required language.
- 8. A copy of review by the state engineer is not available at this time.
- 9. A certificate from the Division of Water Resources is provided on the plat with the required language.
- 10. The civil improvement plans identify the required water meters for the subdivision.

#### 3-3-20-General Provisions for Subdivision Design

- A. Conformance with Mater Plan-The proposed subdivision is in conformance with the requirements and objectives of the Mater Plan, Land Use and Transportation Components. The proposed subdivision is in conformance with the City zoning ordinances.
- B. There are no public sites offered for dedication with this subdivision.
- C. The land for the subdivision appears to be suitable for subdividing. The subdivision does not appear to be unsuitable for use by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, erosion susceptibility or similar conditions which are likely to prove harmful to the health and safety and general welfare of the community or the future property owners.

#### 3-3-21-Street Location and Arrangement

• The proposed subdivision is in conformance with this section, all streets are platted in conformance with the City Master Plan. Local Residential Street are arranged to discourage pass through traffic.

#### 3-3-22-Street Design

• The proposed subdivision appears to be in conformance with this section.

#### 3-3-23-Block Design

• The proposed subdivision appears to be in conformance with this section.

#### 3-3-24-Lot Planning

• The proposed subdivision appears to be in conformance with this section.

#### 3-3-25-Easement Planning

• The subdivision has offered for dedication the required utility and drainage easements as required by this section.

#### 3-3-26-Street Naming

• All proposed street names are an extension of existing streets from previous phases and conform to the Preliminary Plat.

#### 3-3-27-Street Lighting Design Standards

• The required street lighting is identified on the civil improvement plans.

#### 3-3-40-Responsibility for Improvements

• The developer shall be responsible for all required improvements.

#### 3-3-41-Engineering Plans

Civil improvement plans have been submitted and previously approved.

#### 3-3-42-Construction and Inspection

• The developer has submitted plans for review to receive all required permits.

#### 3-3-43-Required Improvements

- Civil improvement plans have been submitted and are in conformance with this section of code.
- Civil improvements include curb, gutter and sidewalk, paving and utilities within the Stitzel Road, Chukar Drive, and Partridge Drive right of ways.
- Civil improvements including a shared use pathe are shown within the SR 227 right of way.

#### 3-3-44-Agreement to Install Improvements

• The subdivider will be required to enter into a Performance Agreement to address the conditions of this section.

#### 3-3-45-Performance Guarantee

• The subdivider shall provide a Performance Guarantee as stipulated in the Performance Agreement.

#### 3-3-70-Modification of Standards

- A. Where in the opinion of the planning commission, there exists extraordinary conditions of topography, land ownership, or adjacent development, the city council may modify the provisions of this chapter, or any other provision in this code, in such a manner and to the minimum extent necessary to carry out the intent of this chapter.
  - The subdivision has frontage along Lamoille Highway (SR 227), Council took action on September 23, 2014 to require the construction of a shared

- use path in lieu of standard curb, gutter and sidewalk improvements, a modification of standards is not required.
- C. Additional Necessary Requirements: In modifying the standards or requirements of this chapter, as outlined heretofore, the council may make such additional requirements as are necessary in its judgement to secure substantially the objectives of the standards or requirements so modified.

#### 3-8-Floodplain Management

• The proposed subdivision is not located within a special flood hazard area.

#### 8-18-Public Improvement Standards

Conformance with this section is required.

#### 9-7-Construction Site Runoff Control

• During construction of the subdivision and the erection of the housing, the developer shall be in conformance with this section of code.

#### 9-8-Postconstruction Runoff Control and Water Quality Management

Conformance with this section is required.

#### **Findings**

- The subdivision is in conformance with the Land Use and Transportation components of the Master Plan.
- The subdivision is in conformance with 3-2-4-Establishment of Zoning Districts.
- The subdivision is in conformance with 3-2-5-B-Single-Family Residential Zoning Districts.
- The subdivision is in conformance with 3-2-17 Traffic, Access, Parking and Loading Regulations.
- The subdivision is in conformance with 3-3-6-Final Plat (Stage III).
- The subdivision is in conformance with 3-3-8-Information required for Final Plat Submission.
- The subdivision is in conformance with 3-3-20-General Provisions for Subdivision Design.
  - The subdivision does not appear to be unsuitable for use by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, erosion susceptibility or similar conditions which are likely to prove harmful to the health and safety and general welfare of the community or the future property owners.
- The subdivision is in conformance with 3-3-21-Street Location and Arrangement.
- The subdivision is in conformance with 3-3-22-Street Design.

- The subdivision is in conformance with 3-3-23-Block Design.
- The subdivision is in conformance with 3-3-24-Lot Planning.
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- The subdivision is in conformance with 3-3-40-Responsibility for Improvements.
- The subdivision is in conformance with 3-3-41-Engineering Plans.
- The subdivision is in conformance with 3-3-42-Construction and Inspection.
- The subdivision is in conformance with 3-3-43-Required Improvements.
- The subdivider shall enter into a performance agreement to address the conditions found in 3-3-44-Agreement to Install Improvements.
- The subdivider shall provide a performance guarantee as stipulated in the performance agreement and 3-3-45-Performance Guarantee.

#### Recommendation

The City of Elko Development Department recommends approval of the subdivision based on the following conditions:

- 1. The Applicant shall complete all required subdivision improvements within two (2) years of the date of approval. Approval of the Final plat shall expire if the final plat is not recorded within four (4) years of the date on which the council approved the preliminary plat, October 24, 2017.
- 2. The final plat is approved for 23 single family residential lots and 2 remainder lots.
- 3. The Utility Department will issue a Will Serve Letter.
- 4. State approval of the subdivision.
- 5. A Performance Agreement with regard to the dedication of public improvements shall be presented with the final plat for approval by the City Council. The developer shall enter into the Performance Agreement within 30 days of approval of the final plat by City Council.
- 6. Lot 122 shall have access restricted to Chukar Drive, a note shall be added to the final plat **prior to City Council consideration**.
- 7. Update the dates in the jurats to reflect 2018 prior to City Council consideration.



#### CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801 (775) 777-7160 \* (775) 777-7119 faxECEIVED

## APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s):	Jordanelle Third Mor	tgage, LLC		
MAILING ADDRESS:	312 Four Mile Trail, E	lko, NV 89801		
PHONE NO (Home)	(775) 340-6005	(Business)_		
NAME OF PROPERTY O	OWNER (If different):	same		
(Property owner co	onsent in writing must be	provided)		
MAILING ADDRESS:				
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):				
		<b></b>	-b (/ !!!ao!! !! !!cooooa. y/.	
ASSESSOR'S PARCEL			· · · · · · · · · · · · · · · · · · ·	
	NO.: 001-920-079		· · · · · · · · · · · · · · · · · · ·	
ASSESSOR'S PARCEL	NO.: <u>001-920-079</u> ivision	Address	· · · · · · · · · · · · · · · · · · ·	
ASSESSOR'S PARCEL Lot(s), Block(s), &Subd Or Parcel(s) & File No.	NO.: 001-920-079 ivision Parcel 1, File 6	Address 66870	· · · · · · · · · · · · · · · · · · ·	
ASSESSOR'S PARCEL Lot(s), Block(s), &Subd Or Parcel(s) & File No.	NO.: 001-920-079 ivision Parcel 1, File 6	Address 66870	N/A	
ASSESSOR'S PARCEL Lot(s), Block(s), &Subd Or Parcel(s) & File No.	NO.: <u>001-920-079</u> ivision <u>Parcel 1, File 6</u> N OR PURPOSE: <u>23</u>	Address 66870 Lot Single Fami	N/A	

#### **FILING REQUIREMENTS**:

<u>Complete Application Form</u>: In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month), and must include the following:

- 1. One .pdf of the entire application, and ten (10) 24" x 36" copies of the final plat folded to a size not to exceed 9"x12" provided by a properly licensed surveyor, as well as one (1) set of reproducible plans 8 ½" x 11" in size and any required supporting data, prepared in accordance with Section 3-3-8 of Elko City Code (see attached checklist).
- 2. Pre-Submission Requirements:
  - a. The final plat shall meet all requirements of the zoning district in which located, and any necessary zoning amendment shall have been adopted by the Elko City Council prior to filing of the final plat.
  - b. The final plat shall conform closely to the approved preliminary plat and be prepared in accordance with the provisions of the City Subdivision Ordinance.
  - c. The final plat submittal shall include a letter signifying approval of utility easements by all public utilities involved, and shall be so indicated by an affidavit on the map.
  - d. A complete set of construction plans for all public improvements associated with the final plat shall have been approved or substantially approved by the City Engineer.

Fee: \$750.00 + \$25.00 per lot including remainder parcels; non-refundable.

<u>Other Information</u>: The applicant is encouraged to submit other information and documentation to support the request.

Revised 1/24/18 Page 1

## Final Plat Checklist 3-3-8

Identification [	Data
1	Subdivision Name
~	Location and Section, Township and Range
~	Name, address and phone number of subdivider
~	Name, address and phone number of engineer/surveyor
L	Scale, North Point and Date of Preparation
i.	Location maps
Survey Data (Re	equired)
	Boundaries of the Tract fully balanced and closed
~	Any exception within the plat boundaries
<i>i</i>	The subdivision is to be tied to a section corner
	Location and description of all physical encroachments
Descriptive Dat	
	Street Layout, location, widths, easements
	All drainageways, designated as such
	All utility and public service easements
~	Location and dimensions of all lots, parcels
-	Residential Lots shall be numbered consecutively
	All sites to be dedicated to the public and proposed use
V	Location of all adjoining subdivisions with name date, book and page
	Any private deed restrictions to be imposed upon the plat
Dedication and	Acknowledgment
	Statement of dedication for items to be dedicated
i i	Execution of dedication ackowledged by a notary public
Additional Info	rmation
V	Street CL, and Monuments identified
_ L	Street CL and width shown on map
V	Location of mounuments used to determine boudaries
	Each city boundary line crossing or adjoing the subdivision
~	Section lines crossing the subdivision boundaries
City Engineer to	o Check
<i>U</i>	Closure report for each of the lots
~	Civil Improvement plans
	Estimate of quantities required to complete the improvements
Required Certif	fications
~	All parties having record title in the land to be subdivided
V	Offering for dedication
	Clerk of each approving governing body
	Easements
	Surveyor's Certificate
V	City Engineer
<b>A</b>	State Health division NDGP
	State Engineer
	Division of Water Resources
V	City Council

Revised 1/24/18 Page 2

By My Signature below:				
I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.				
this application. (Your object	City of Elko Staff enter onto my property as a part of their review of ction will not affect the recommendation made by the staff or ade by the City Planning Commission or the City Council.)			
the City Planning Departme	omission of this application does not imply approval of this request by nt, the City Planning Commission and the City Council, nor does it in ance of any other required permits and/or licenses.			
•	application may be tabled until a later meeting if either I or my ragent is not present at the meeting for which this application is			
subdivision layout on NAD 8	approved, I must provide an AutoCAD file containing the final B3 NV East Zone Coordinate System to the City Engineering g final map signatures for recording.			
☑ I have carefully read ar best of my ability.	nd completed all questions contained within this application to the			
Applicant / Agent:	Scott MacRitchie, Managing Director			
• =	(Please print or type)			
Mailing Address:	312 Four Mile Street Address or P.O. Box			
	Elko, NV 89801			
	City, State, Zip Code			
Phone Number:	(775) 340-6005			
Email address:	scott@macritchie.com			
SIGNATURE:	Set Mile			
ile No.: <u> </u>	FOR OFFICE USE ONLY $_{50}$ Cx $^{\#}$ 13968 $_{1,375}$ d: $\frac{2 12 8}{25}$ Fee Paid: $\frac{\$}{325}$ Cx $\frac{\$}{3967}$ $\frac{3}{25}$ Cx $\frac{\$}{25}$ = $\frac{\$}{4756}$			
	1274			

Revised 1/24/18

Page 3

- 1. Title: Review, consideration, and possible acceptance of a Deed of Dedication for a portion of Statice Street from Treadway Investment Co., LLC along the frontage of APN 001-860-110, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **NEW BUSINESS**
- 4. Time Required: 5 Minutes
- 5. Background Information: Treadway Investment Co., LLC is completing the required public improvements on Statice Street, as a part of the construction of a new facility for Kenworth Sales Company, Inc. Statice Street is identified as an industrial collector in the City of Elko Master Plan; the City has requested the dedication of the right of way. JD
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name:

- 7. Business Impact Statement:
- 8. Supplemental Agenda Information: **Deed of Dedication for Statice Street**
- 9. Recommended Motion: Accept the Deed of Dedication for Statice Street
- 10. Prepared By: **Jeremy Draper, Development Manager**
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution: Mike Shanks, <a href="mailto:shankseng@gmail.com">shankseng@gmail.com</a>

APN 001-860-110

When Recorded, Mail To: City of Elko 1751 College Avenue Elko, Nevada 89801

#### **DEED OF DEDICATION**

THIS INDENTURE, made and entered into between TREADWAY INVESTMENT CO., LLC, a Utah limited liability company, Grantor, and the CITY OF ELKO, a municipal corporation and political subdivision of the State of Nevada, Grantee.

#### WITNESSETH:

That the Grantor, for valuable consideration, the receipt of which is hereby acknowledged, does hereby dedicate to the Grantee, for a public right-of-way and all purposes related thereto, a portion of that certain parcel of real property situate within the City of Elko, County of Elko, State of Nevada, more particularly described on **Exhibit A** attached hereto, and delineated and shown on **Exhibit B**, "Kenworth of Elko Statice St. Row Dedication," attached hereto.

this	IN WITNESS WHEREOF, the Grantor has caused this indenture to be exday of, 2018.		
		TREADWAY INVESTMENT CO., LLC	
		By:	
		R. KYLE TREADWAY,	
		PRESIDENT, KENWORTH SALES	
		COMPANY, INC. (AS MANAGER	
		OF TREADWAY INVESTMENT	
		CO., LLC).	

(Notary on next page)

STATE OF	
COUNTY OF	) ss. )
On this day of a Notary Public, R. Kyle Tread instrument.	, 2018, personally appeared before medway, who acknowledged that he executed the above
	NOTARY PUBLIC

### Mail tax statement to:

City of Elko 1751 College Avenue Elko, Nevada 89801

## EXHIBIT "A" DESCRIPTION

A portion of land that is a part of Parcel No. 1 as shown on the Parcel Map for Ablah Elko, LLC on file in the Elko County Recorder's Office as File No. 595974, the basis of bearing; said parcel is located in Section 1, Township 34 North, Range 55 East, M.D.B. & M., and is more particularly described as follows:

Commencing at the northeast section corner of said section 1;

thence along the north section line of said section 1 and on a bearing of south 89°40'59" east for a distance of 30.00 feet to a found aluminum cap marked PLS 5076,

thence along said section line on a bearing south 89°40'59" east, for a distance of 1071.75 feet to corner No. 1 being the northeast corner of said Parcel 1, the true point of beginning;

thence along said section line on a bearing south 89°40'59" east, for a distance of 771.94 feet to corner No. 2;

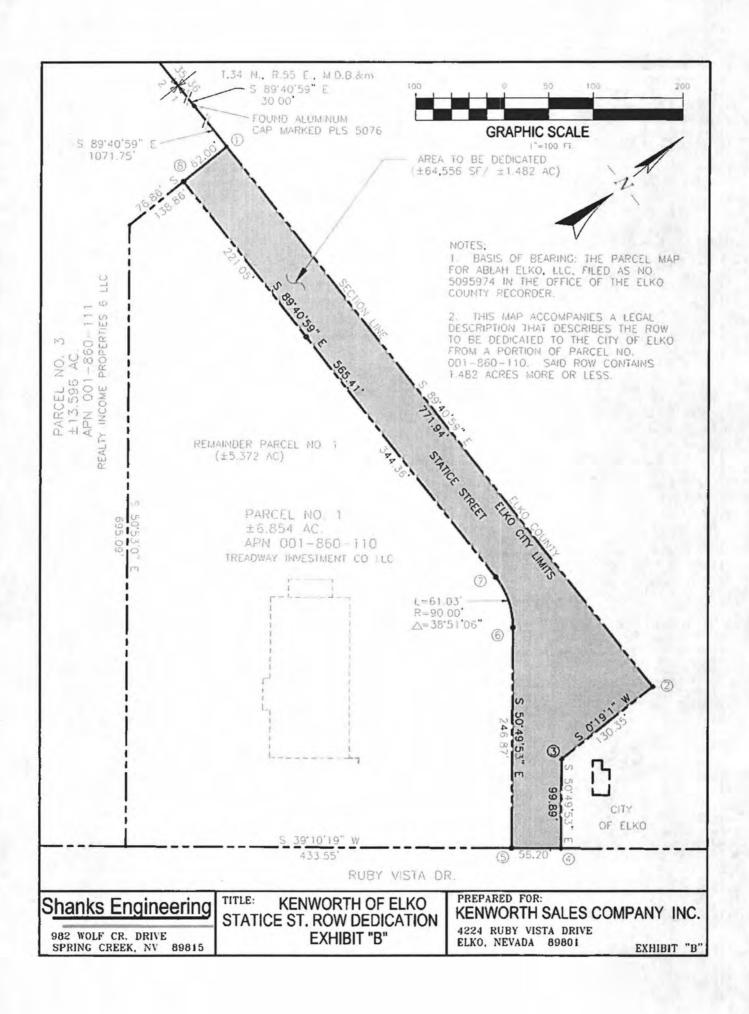
thence on a bearing south 0°19'01" west, for a distance of 130.35 feet to corner No. 3; thence on a bearing south 50°49'53" east, for a distance of 99.89 feet to corner No. 4, said property corner on the right-of-way line of Ruby Vista Drive;

thence along said right-of-way line on a bearing south 39°10'19" west, for a distance of 56.20 feet to corner No. 5;

thence on a bearing north 50°49'53" west, for a distance of 246.87 feet to corner No. 6; thence from a tangent bearing of north 50°49'53" west through a circular curve to the left with a radius of 90.00 feet through an included angle of 38°51'06" for an arc length of 61.03 feet to corner No. 7;

thence on a bearing north 89°40'59" west, for a distance of 565.41 feet to corner No. 8; thence on a bearing north 00°00'0" east, for a distance of 62.00 feet to corner No. 1, the point of beginning;

Said right-of-way dedication area contains 1.482 acres, more or less.



- 1. Title: Review, consideration, and possible approval of a Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Drive to C-A-L Stores Companies, Inc., and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: **NEW BUSINESS**
- 4. Time Required: 5 Minutes
- 5. Background Information: This item is to be considered following the related public hearing item.

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

6. Budget Information:

Appropriation Required: N/A Budget amount available:

Fund name: Water

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Resolution No. 11-18, Prior Lease Agreement, New Lease Agreement
- 9. Recommended Motion: Approve the lease to C-A-L Stores Companies, Inc. according to the terms outlined in the lease agreement for property located at 2953 Manzanita Drive.
- 10. Prepared By: Ryan Limberg, Utilities Director
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution: b.bunker@calranch.com

Upon introduction and motion by Councilman Reece Keener and seconded by Councilman Robert Schmidtlein the following Resolution and Order was passed and adopted:

#### CITY OF ELKO RESOLUTION NO. 11-18

#### A RESOLUTION OF THE ELKO CITY COUNCIL APPROVING THE LEASE OF REAL PROPERTY LESS THAN 25,000 SQUARE FEET

WHEREAS, Nevada Revised Statute 268.064 provides that, subject to meeting publication requirements and conducting a public hearing, the governing body of a city may offer any city-owned building or any portion thereof or any other real property for lease without complying with the provisions of NRS 268.059, 268.061 and 268.062 if: (a) the area of the building space or other real property is less than 25,000 square feet; and (b) the governing body adopts a resolution stating that it is in the best interest of the city to lease the property: (1) without offering the property to the public; and (2) for less than the fair market value of the building space or other real property, if applicable.

WHEREAS, a lease of a city-owned building or any portion thereof or any other real property pursuant to Nevada Revised Statute 268.064 may be made on such terms and conditions as the governing body of the city deems proper; *provided*, the duration of such a lease must not exceed 3 years but may include an extension for not more than an additional 2 years.

**WHEREAS**, the Elko City Council has received a request from C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores to continue leasing the following-described real property:

All that certain lease area being a portion of Parcel 8 as shown on the "Sun Rise Shopping Center-A Subdivision, Final Plat" File No. 160687, located in Section 11, Township 34 North, Range 55 East, M.D.M located in the City of Elko, Elko County, Nevada, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 34 North, Range 55 East, M.D.M as shown on the "Sun Rise Shopping Center- A Subdivision, Final Plat" File No. 160687; thence South 47°59'47" East 202.75 feet; thence South 42°00'13" West 1833.88 feet to the point of beginning, thence from said point of beginning South 42°00'13" West 210.10 feet; thence North 58°28'06" West 88.21 feet; thence North 31°31'54" East 206.60 feet; thence South 58°28'06" East 126.40 feet to the point of the beginning.

The total lease area shall be 22,169 SF or .51 acres.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE ELKO CITY COUNCIL that, in accordance with NRS 268.064(2)(a), the City Clerk is hereby directed to

have published at least once, in a newspaper qualified under chapter 238 of NRS that is published in Elko County, a notice setting forth a description of the Property to be leased; and

IT IS FURTHER RESOLVED that this Resolution shall be effective and shall be in force immediately upon adoption, and that upon adoption of this Resolution by the Elko City Council it shall be signed by the Mayor and attested to by the City Clerk.

PASSED AND ADOPTED this 10<sup>th</sup> day of April, 2018.

ABSTAIN:

None

CTT	$\Gamma \mathbf{V}$	OF	FT	KC	١
			п.		

	By: CHRIS J. JOHNSON, MAYOR			
ATTEST:				
SHANELL O	WEN, CITY CLERK			
VOTE:				
AYES:	Mayor Chris Johnson, Councilwoman Mandy Simons, Councilmen: John Rice, Robert Schmidtlein, Reece Keener			
NAYS:	None			
ABSENT:	None			

# APPROVAL TO EXTEND LEASE between THE CITY OF ELKO AND C-A-L RANCH STORES

This Approval is made and entered into this 22nd day of April, 2014, by and between C-A-L Stores, Inc. dba C-A-L Ranch Stores and the CITY OF ELKO, an incorporated city (hereinafter the "City").

#### RECITALS

WHEREAS, on August 21, 2008, C-A-L Ranch Stores and the City entered into a Lease Agreement for the lease of City owned property (hereinafter the "Agreement"), and;

WHEREAS, the Elko City Council met on April 22, 2014 and discussed a request from C-A-L Ranch Stores to extend the Agreement, and;

WHEREAS, the parties desire to extend the existing Agreement to August 21, 2020, according to the renewal terms of the existing Agreement, and;

NOW, THEREFORE, IN CONSIDERATION of the recitals and the promises and covenants hereafter contained, it is egreed that per Article II the adjustment in rest shall be \$6,283.00 per year beginning September 1, 2014.

Except as otherwise provided herein, the Agreement shall remain unchanged and in full force and effect during the term above stated.

C-A-L STORES, COMPANIES, INC.

Jarry N. Ward, President

THE CITYOF ELKO:

Mayor Chris Johnson

Shanell Owen, City Clerk

#### **LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into by and between THE CITY OF ELKO, a municipal corporation organized and existing under the laws of the State of Nevada, hereinafter referred to as "Lessor," and C-A-L STORES COMPANIES, INC. dba C-A-L RANCH STORES, hereinafter referred to as "Lessee", both hereinafter referred to in the singular, neuter, whether one or more or person or entity.

#### WITNESSETH:

For and in consideration of the mutual covenants contained herein, and subject to approval of the City of Elko through its Mayor and City Council, Lessor does hereby rent, demise, let and lease unto Lessee, the property described in Section 1.01 upon the terms and conditions hereinafter set forth:

#### ARTICLE I.

#### **DESCRIPTION OF REAL PROPERTY AND TERM**

Section 1.01. <u>Description</u>: Lessor leases to Lessee that certain real property in the City of Elko, Elko County, Nevada, consisting of .51 acres more or less, located at 2953 Manzanita Drive, more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (hereinafter referred to as the "Property").

Section 1.02. <u>Term</u>: Term of this Lease shall be for a period of six (6) years commencing on the date hereof.

Section 1.03. Renewal: On the condition that Lessee is then in good standing under this Lease, Lessee shall have the option, but not obligation, to renew this Lease for up to an additional six (6) year term upon the same terms and conditions set forth below in Section 2.02. If Lessee exercises the option to renew, Lessee must do so by serving upon Lessor a written notice thereof specifying the numbers of years that the Lease is renewed up to a maximum of six (6) years.

#### ARTICLE II.

#### RENT/COMPUTATION

Section 2.01. <u>Amount</u>: Subject to adjustment as hereinafter provided, Lessee shall pay rent in the amount of \$6,100.00, commencing upon the date of execution of this Lease, and continuing on or before the same date of each and every year thereafter. Said annual rent shall be payable in advance and shall be paid to the Lessor at 1751 College Avenue, Elko, Nevada 89801, or at such other address or addresses as Lessor may from time to time specify by written notice to Lessee.

Section 2.02. Adjustments in Rent: Rent for the first three years of the optional six-year renewal term provided to Lessee hereunder, if said option is exercised, shall be \$6,283.00 per year, payable as set forth in Section 2.02. Rent for the second three years of the optional six-year renewal term provided to Lessee hereunder, if said option is exercised, shall be \$6,472.00 per year, also payable as set forth in Section 2.02.

Section 2.03. Additional Assessments and Charges: In addition to the rent payable under this section, Lessee shall pay and discharge promptly as the same become due and before delinquency all taxes and assessments, whether general or special, of every kind which may be levied or assessed or become a lien on or against the Property, or any part thereof, or any building or improvements thereon, or on or against the leasehold of Lessee, during the term of this Lease. Any such taxes or assessments which shall relate to the fiscal year during which the terms of this Lease shall commence or terminate shall be prorated between Lessor and Lessee.

#### ARTICLE III.

#### **USE OF PROPERTY**

Section 3.01. <u>Use</u>: The Property may be used by Lessee only as a storage site for their store inventory. However, this location is within the City's wellhead protection area. As such, the storage of treated lumber/posts, chemicals-including fertilizers, pesticides, and herbicides, as well as all oils and fuels, and any other substance the City

determines to be potentially detrimental to the well shall be prohibited. Lessee agrees to restrict the use of the Property to such uses unless obtaining prior written consent of Lessor to use the Property in any other manner.

#### SECTION IV.

#### CONSTRUCTION OF IMPROVEMENTS

Section 4.01. <u>Compliance With Laws</u>: All construction, work, improvements, and alterations thereto, to the Property by Lessee or its agents, shall be done in a good and workmanlike and in full compliance with all applicable local, state and federal laws, regulations and codes applicable to the uses to which the Property will be put by Lessee. Lessor must give its prior written approval to all plans and specifications prior to the start of construction, which consent may not be unreasonably withheld.

#### ARTICLE V.

#### REPAIRS AND DESTRUCTION OF PROPERTY

Section 5.01. Maintenance of Improvements: Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the Property, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and net order, condition and repair, and except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Lessee shall also comply with and abide by all Federal, State, County, municipal and other governmental statutes, ordinances, laws and regulations affecting the Property, the improvements thereon or any activity or condition on or in such Property.

Section 5.02. <u>Damage and Destruction of Improvements</u>: The non-material damage, destruction, or partial destruction of any building or other improvement which is a part of the Property shall not release Lessee from any obligation hereunder, and in case

thereof, Lessee shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. In case of a material damage or destruction of any building or other improvement, Lessee shall have the option to terminate this Lease.

If, in the event of such destruction or damage, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering such damage or destruction shall be made available to Lessee for such repair or replacement, and Lessee shall be obligated to repair or rebuild the building as above provided.

# ARTICLE VI. COMPLIANCE WITH LAWS/WASTE

Section 6.01. <u>Applicable Laws</u>: During the term of this Lease, Lessee shall comply with all City, County, State and Federal and other applicable laws affecting the Property, the breach of which might result in penalty on Lessor or forfeiture of Lessor's title to the Property.

Section 6.02. <u>Waste, Nuisance or Unlawful Activities</u>: Lessee shall not commit, or allow to be committed, any waste on the Property, create or allow a nuisance to exist on the Property, or use or allow the Property to be used for any unlawful purpose.

#### ARTICLE VII.

#### **UTILITIES**

Section 7.01. <u>Payment by Lessee</u>: Lessee shall pay for all utilities in connection with the Property, including, but not limited to, telephone, electricity, water, sewer and/or any other public utility services used or furnished on the Property during the term hereof.

#### ARTICLE VIII.

#### LIENS

Section 8.01. <u>Prohibition against Liens</u>: Lessee shall keep the fee estate of the Property free and clear from all mechanics' and materialmen's and other liens for work or labor done, services performed, materials, appliances, power contributed, used or furnished or to be used in or about the Property for or in connection with any operations of Lessee, or any alteration, improvement, repairs, or additions which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the Property.

#### ARTICLE IX.

#### **INDEMNIFICATION OF LESSOR**

Section 9.01. <u>Indemnification</u>: Lessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessor or by any person whomsoever may at any time be using or occupying or visiting the Property or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall indemnify Lessor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that shall be hereafter placed or built on the Property and to the property of Lessee in, on or about the Property, and for injuries to persons or property in or about the Property, from any cause arising at any time during the term hereof. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or intentional misconduct of Lessor, its agents or employees.

Section 9.02. <u>Insurance/Liability</u>: Lessee shall procure and maintain in force during the term of this Lease and any extension thereof, at Lessee's expense, public liability insurance adequate to protect Lessee and Lessor against liability for damage claims through public use or arising out of accidents occurring in or around the Property in a minimum amount of \$500,000.00 for each person injured, \$1,000,000.00 for any one accident, and \$50,000.00 for property damage. Lessee agrees to obtain a written obligation from insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal or renew any such policies. Lessee agrees that if such insurance policies are not kept in force during the entire term of this Lease or any extension thereof, Lessor may procure the necessary insurance and pay the premium therefore, and that such premium shall be repaid to Lessor as an additional rent installment for the month following the date on which such premiums are paid.

Section 9.03. "Blanket" Insurance Policies: Notwithstanding anything to the contrary contained in this section, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called "blanket" policy or policies of insurance carried and maintained by Lessee; provided, however, that the coverage afforded Lessor will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance.

Section 9.04. <u>Cost of Insurance deemed Additional Rental</u>: The cost of insurance required to be carried by Lessee in this Section shall be deemed to be additional rental hereunder.

#### ARTICLE X.

#### ASSIGNMENT AND SUB-LETTING

Section 10.01. <u>Restrictions</u>: Lessee shall not sub-leases or assign any part of the Property or any of Lessee's rights hereunder without the express written consent of Lessor first had and obtained. In the event any assignment or sub-lease is granted by

Lessor, any such assignment or sub-lease shall incorporate fully all of the terms of this Lease Agreement and Lessee shall remain responsible to Lessor for all of the terms of this Lease.

# ARTICLE XI. <u>DEFAULT</u>

Section 11.01. Lessee's Default: If Lessee shall fail or neglect to observe, keep or perform any of the covenants, terms, or conditions herein contained on Lessee's part to be observed, kept or performed, and such default shall continue for a period of forty-five (45) days after written notice from Lessor setting forth the nature of Lessee's default, then and in any such event, Lessor shall have the following cumulative default remedies on written notice to Lessee: (A) to terminate this Lease and forfeit all rights of Lessee hereunder; (B) to terminate this Lease and sue Lessee for all damages caused by such default or breach; and (C) immediately to enter the Property and take possession thereof with or without process of law and to remove all personal property from the Property and all persons occupying the Property and to use all necessary force therefore and in all respects to take the actual, full and exclusive possession of the Property and every part thereof as of Lessor's original estate, without incurring any liability to Lessee or to any persons occupying or using the Property for any damage caused or sustained by reason of such entry on the Property or such removal of such persons or property therefrom.

#### ARTICLE XII.

#### OWNERSHIP OF IMPROVEMENTS ON TERMINATION OF LEASE

Section 12.01. Ownership: On termination of this Lease for any cause or upon the natural expiration of this Lease, Lessor shall become the owner of any buildings and improvement on the Property not removed by Lessee within four (4) months from the date of termination of this Lease.

#### SECTION XIII.

#### LESSEE'S OPTION TO TERMINATE LEASE

Section 13.01. Option: On the condition that Section 4.01 is fully complied with, Lessee shall have the right, by notice to Lessor given at least 365 days prior to the surrender effective date, to terminate this Lease and surrender its leasehold interest hereunder to Lessor.

#### SECTION XIV.

#### LESSOR'S OPTION TO TERMINATE LEASE

Section 14.01. On the condition that any governmental agency (including Lessor) shall commence an eminent domain proceeding to acquire all or any part of the Property, or Lessee's interest therein, Lessor shall have the right, by notice to Lessee given at least 180 days prior to the termination effective date, to terminate this Lease and cause a vacation of the Property by Lessee.

#### SECTION XV.

#### **CONDITION OF PROPERTY ON TERMINATION**

Section 15.01. On termination of this Lease for any cause, or upon the natural expiration of this Lease, Lessee must, at Lessee's sole expense, forthwith remove any improvements from, or from under, the Property and level it; PROVIDED HOWEVER, that Lessor shall have the option of waiving this requirement as to any and all improvements Lessor desires to remain in place. Lessor hereby waives this requirement as to any paving of the Property and any fencing of the Property, as long as such improvements are the only improvements made by Lessee to the Property during the term of this lease.

#### XVI.

#### MISCELLANEOUS PROVISIONS

Section 16.01. Waiver: The waiver by Lessor of its right to declare a forfeiture or pursue any other remedy pursuant to this Lease upon any default on the part of Lessee shall not violate any provision therefore herein contained, nor constitute a waiver of such right in connection with any future default, or any other obligation of Lessee herein contained to be done and performed.

Section 16.02. <u>Inspection</u>: Lessor, by its officers, employees or other authorized agents, shall have the right to enter upon the Property at any and all reasonable times during the term hereof for the purpose of informing itself as to the compliance or non-compliance by Lessee of the terms, covenants and conditions of this Lease to be kept upon its part.

Section 16.03. <u>Miscellaneous Costs</u>: Lessee agrees to pay for all labor and material in connection with the construction of any buildings or improvements, social security and old age benefits, Nevada State Industrial Insurance System and Occupational Disease Coverage and for any and all such obligations or bills incurred during the term of this Lease. Upon the termination of this Lease, Lessee will discharge, pay and satisfy all bills and debts incurred by Lessee, to the end that there is no responsibility or liability imposed upon Lessor.

Section 16.04. Notices: Whenever in this Lease it shall be required or permitted that notice be given by either party to this Lease or to the other, such notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

LESSOR: THE CITY OF ELKO 1751 College Avenue Elko, Nevada 89801 LESSEE: C-A-L STORES COMPANIES, INC. dba C-A-L RANCH STORES P.O. Box 1866 Idaho Falls, ID 83403

Such addresses may be changed from time to time by notice given hereunder.

Section 16.05. <u>Binding Effect</u>: This Lease shall be binding upon, and inure to the benefit of, and shall apply to the respective heirs, personal representatives, successors and assigns of Lessor and Lessee and all references in this Lease to Lessor and Lessee shall be deemed to refer to and include successors and assigns of successors or assigns.

Section 16.06. <u>Time of Essence</u>: Time is of the essence of this Lease and all of its provisions.

Section 16.07. <u>Attorney's Fees</u>: In the event of litigation, the prevailing party shall recover reasonable attorney's fees and expenses, together with costs of suit.

Section 16.08. <u>Venue</u>: At the option of either party, the venue of any action by the established in the County of Elko, State of Nevada. Personal service either within or without the State of Nevada shall by sufficient to give that Court jurisdiction.

Section 16.09. <u>Captions</u>: The captions contained herein are inserted only for convenience of reference and are in no way to be construed as part of the agreement or as a limitation on the scope of the particular paragraphs to which they refer.

Section 16.10. <u>Title Enjoyment</u>: Lessor covenants that Lessor is the owner of the within described Property in fee simple and has full right to make this Lease.

Section 16.11. <u>Ouiet Enjoyment</u>: Lessee shall have the quiet and peaceable possession of the Property during the term hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand this day of fugust, 2008.

THE CITY OF ELKQ

By: MICHAEL J. FRANZOIA, Mayor

ATTEST:

LAMELL OWEN, City Clerk

LESSEE:

C-A-L STORES COMPANIES, INC.

dba C-A-L RANCH STORES

By: MANGEL OWEN COMPANIES, INC.

#### EXHIBIT A

A portion of APN 001-560-040 (22,169 sq. ft. or .51 acres)

All that certain lease area being a portion of Parcel 8 as shown on the "Sun Rise Shopping Center - A Subdivision, Final Plat" File No. 160687, located in Section 11, Township 34 North, Range 55 East, M.D.M. located in the City of Elko, Elko County, Nevada, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 34 North, Range 55 East, M.D.M. as shown on the "Sun Rise Shopping Center - A Subdivision, Final Plat" File No. 160687; thence South 47°59'47" East 202.75 feet; thence South 42°00'13" West 1833.88 feet to the point of beginning, thence from said point of beginning South 42°00'13" West 210.10 feet; thence North 58°28'06" West 88.21 feet; thence North 31°31'54" East 206.60 feet; thence South 58 °28'06" East 126.40 feet to the point of the beginning.

TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents issues and profits thereof, or of any part thereof.

#### **LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this	day of
, 2018, by and between the CITY OF ELKO, a municipal	corporation
organized and existing under the laws of the State of Nevada, hereinafte	er referred to as
"Lessor," and C-A-L STORES COMPANIES, INC. dba C-A-L RANC	H STORES, an
Idaho corporation, hereinafter referred to as "Lessee."	

#### WITNESSETH

For and in consideration of the mutual covenants contained herein, and subject to ratification and approval by the Elko City Council, Lessor does hereby rent, demise, let and lease unto Lessee the real property described in Section 1.01 upon the terms and conditions hereinafter set forth:

### ARTICLE I. DESCRIPTION OF LEASED PREMISES

Section 1.01. <u>Description:</u> Lessor leases to Lessee that certain real property located in the City of Elko, State of Nevada, more particularly shown or described in the legal description attached hereto as Exhibit "A," consisting of .51 acres (22,215 square feet) more or less, located at 2953 Manzanita Drive, within the City of Elko. The foregoing is herein referred to as the "Leased Premises."

#### Section 1.02. Term:

- (a) The initial term of this Lease shall commence on the date this agreement is executed by the Mayor and shall continue thereafter for a period of three (3)years (the "Initial Term").
- (b) At the expiration of the Initial Term, Lessee shall have the option to extend the Lease for an additional two (2) year period (the "Extension Term"). To exercise said option, Lessee must notify Lessor in writing of its election to extend no more than 120 days and no less than 60 days prior to the expiration of the Initial Term. In the event of such extension, the terms and conditions of this Lease shall continue to apply.

#### Section 1.03: <u>Delivery of Possession</u>.

(a) Lessor shall put Lessee into physical possession of the Leased Premises upon the Mayor's execution of this lease.

- (b) Lessor makes no representations regarding whether Hazardous Substances have been deposited, stored, disposed of or placed upon, about or under the Leased Premises.
- Section 1.04. <u>Improvements</u>: Lessee shall not construct any improvements upon the Leased Premises without the prior written approval of Lessor. In the event any improvements are authorized or Lessee undertakes any maintenance of the Leased Premises, such work shall meet all of Lessor's applicable standards.

### ARTICLE II. RENT

Section 2.01. Amount: Lessee shall pay rent for the Leased Premises as follows:

- (a) Lessee shall pay monthly rent of \$6,710.00 during the Initial Term and \$7,381.00 during the Extension Term (if any), which rent shall be due and payable on the first day of each month in advance. In the event the Lease begins or terminates resulting in less than one month of occupancy, Lessee shall pay a pro rata portion of a month's rent, which sum shall be due and payable at the beginning of such month or within 5 days of the execution of this Lease or any extension thereof.
- (c) Until further notice by Lessor to Lessee, rent checks shall be payable to and mailed to:

City of Elko, c/o City Clerk's Office 1751 College Ave. Elko, NV 89801

Section 2.02. <u>Additional Assessments and Charges:</u> In addition to the rent payable under this section, Lessee shall pay and discharge promptly as the same becomes due and before delinquency all taxes and assessments, whether general or special, of every kind which may be levied or assessed or become a lien on or against the Leased Premises.

### ARTICLE III. USE OF LEASED PREMISES

- Section 3.01. <u>Use:</u> The Leased Premises may be used by Lessee only for inventory storage purposes in connection with its adjacent retail store.
- Section 3.02. <u>Chemical Storage Prohibited:</u> This location is within the City's wellhead protection area. Accordingly, the storage of treated lumber/posts and chemicals (including fertilizers, pesticides, herbicides, oils, fuels, and any other substances determined by Lessor or any other governmental authority to present a risk of

environmental contamination) is prohibited on the Leased Premises. Lessee agrees to restrict the use of the Leased Premises to permitted uses unless it obtains the prior written consent of Lessor to use the Leased Premises in any other manner.

3.03. <u>Nuisances, Waste, Unlawful Uses Prohibited:</u> Lessee shall not commit, or allow to be committed, any waste on the Leased Premises, or create or allow a nuisance to existing on the Leased Premises, or use or allow the Leased Premises to be used for any unlawful purpose.

### ARTICLE IV. CONSTRUCTION IMPROVEMENTS

Section 4.01. All construction, work, improvements, and alterations to the Leased Premises by Lessee or its agents shall be done in a good and workmanlike manner and in full compliance with all applicable local, state and federal laws, regulations and codes applicable to the use to which the Leased Premises will be put by Lessee.

### ARTICLE V. REPAIRS AND DESTRUCTION OF LEASED PREMISES

Section 5.01. Lessee shall, throughout the term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Leased Premises, including all improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and expect as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. In addition, any access points on the Leased Premises shall be maintained by Lessee.

### ARTICLE VI. COMPLIANCE WITH LAWS

Section 6.01. <u>Applicable Laws:</u> During the term of this Lease, Lessee shall comply with all city, county, state and federal and other applicable laws affecting the Leased Premises.

Section 6.02. Environmental Indemnity: If it is determined by a governmental agency with jurisdiction that as a result of Lessee's activities in operating the Leased Premises there is a violation of any Environmental Law and such governmental agency requires a cleanup or remediation program on the Leased Premises, Lessee will indemnify Lessor from expenses resulting from that cleanup or remediation program. As used herein, the term "Environmental Law" means all federal and state statutes and county and city ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the

Federal Clean Water Act, 33 U.S.C. Section 1351 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq.; the Nevada Hazardous Waste Law (NRS Chapter 459), as currently in force or as hereafter amended and all rules and regulations promulgated thereunder.

### ARTICLE VII. UTILITIES

Section 7.01. Lessee shall pay for all utilities associated with its use and occupancy of the Leased Premises.

#### ARTICLE VIII. SIGNS, LESSEE'S FIXTURES

Section 8.01. <u>Signs and Other Advertising Matter Prohibited:</u> Lessee shall not install or operate interior or exterior electric or other signs or advertising matter, or associated machinery and other mechanical equipment on the Leased Premises.

Section 8.02. <u>Removal of Fixtures.</u> Lessee shall at all times have the right to remove all fixtures, machinery, equipment, appurtenances and other property furnished or installed by Lessee at Lessee's expense, provided the Leased Premises is returned to the original state.

### ARTICLE IX IMPROVEMENTS AND ALTERATIONS

Section 9.01. <u>Alterations Prohibited Without Prior Appoval:</u> Lessee covenants and agrees that during the term of this Lease, Lessee shall not, without Lessor's express written consent, construct any buildings, improvements, alterations, additions and/or fixtures on the Leased Premises.

Section 9.02. Ownership of Alterations and Improvements: On termination of this Lease for any cause or upon the natural expiration of this Lease, Lessor shall automatically become the owner of any buildings, improvements, alterations, additions and/or fixtures on the Leased Premises not removed by Lessee within four (4) months from the date of termination of this Lease; provided, in the event Lessor determines to remove and/or otherwise dispose of said buildings, improvements, alterations, additions and/or fixtures, Lessee shall be responsible for the Lessor's reasonable cost of removal and/or disposal. Nothing herein shall be interpreted as giving Lessee an interest in buildings, improvements, alterations, additions and/or fixtures existing on the effective date of this Lease.

### ARTICLE X. LIENS

Section 10.01. Lessee shall keep the Leased Premises free and clear from all mechanics' and materialmen's liens and other liens and encumbrances.

### ARTICLE XI. INDEMNIFICATION OF LESSOR

Section 11.01. <u>Indemnification</u>: Lessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person whomsoever may at any time be using, occupying or visiting the Leased Premises or who may be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor or user of any portion of the Leased Premises, or which may result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall indemnify and defend Lessor from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damages. Lessee hereby waives all claims against Lessor for damages to improvements existing on or that shall be hereafter placed or built on the Leased Premises, and for injuries to persons or property in or about the Leased Premises from any cause arising at any time during the term hereof. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or intentional misconduct of Lessor, its agents or employees.

Section 11.02. <u>Insurance</u>: Lessee shall procure and maintain in force during the term of this Lease and any extension thereof, at Lessee's expense, public liability insurance adequate to protect Lessee and Lessor against liability for damage claims though public use or arising out of accidents occurring in or around the Leased Premises in a minimum amount of \$1,000,000 for each person injured; \$2,000,000 for any one accident; and \$500,000 for property damage. Lessee agrees to obtain a written obligation from insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal to renew any such policies. Lessee agree that if such insurance policies are not kept in force during the entire term of this Lease or any extension thereof, Lessor may procure the necessary insurance and pay the premium thereof, and that such premium shall be repaid to Lessor as an additional rent installment.

### ARTICLE XII. ASSIGNMENT AND SUB-LETTING

Section 12.01. Lessee shall not assign this Lease or sublet all or or any part of the Leased Premises without the prior written approval of Lessor.

### ARTICLE XIII. CASUALTY

Section 13.01. If the Leased Premises shall be damaged or destroyed by fire or other casualty, then Lessee at its option and sole cost and expense may repair and restore the same to such condition as Lessee deems necessary or desirable (with such changes as Lessee deems appropriate), and in the event of such restoration, the fixed rent and all other charges shall abate proportionately according to the extent of such damage or destruction; such abatement shall include a period reasonably necessary for Lessee to perform and complete such restoration. Lessee's repair and restoration (if any) shall be subject to then-applicable legal requirements. If Lessee elects not to repair and restore the Leased Premises as herein provided, Lessee shall remove the damaged portions of the site improvements. If Lessee elects not to rebuild and restore the Leased Premises as herein provided, and such casualty has resulted in damage or destruction to fifty percent (50%) or more of the Leased Premises, then Lessee may cancel this Lease.

### ARTICLE XIV. INGRESS AND EGRESS

Section 14.01. Lessor reserves the right to itself, its contractors and its designees to enter upon the Leased Premises for the purpose of constructing, maintaining, and repairing any right-of-ways and easements which may be placed or constructed or any utilities which exist or may be constructed in the future.

### ARTICLE XV. DEFAULT

Section 15.01. If any fixed rent is due and remains unpaid for ten (10) days after the date it is due, or if Lessee breaches any of the other covenants of this Lease and such other breach continues for fourteen (14) days after receipt of notice from Lessor, Lessor shall then have all legal rights and remedies available at law or equity and such default shall constitute grounds for termination of this Lease, in the sole discretion of Lessor. In the event Lessor terminates this Lease based on a default by Lessee, Lessee shall automatically forfeit all rights hereunder and Lessor may immediately enter the Leased Premises and take possession thereof with or without process of law, and may remove all personal property from the Leased Premises without incurring any liability to Lessee, and may further store such property and dispose of such personal property in any manner it

sees fit, and Lessee shall be responsible for all reasonable costs of storing, transporting, removing, selling and/or otherwise disposing of said personal property.

### ARTICLE XVI. TITLE AND POSSESSION

Section 16.01. Lessor represents that Lessor has fee simple title to the Leased Premises and the right to make this Lease.

### ARTICLE XVII. CONDITION OF THE LEASED PREMISES ON TERMINATION

Section 17.01. On termination or cancellation of this Lease for any cause, or upon the natural expiration of this Lease, Lessee, at its sole expense, must remove any personal property stored on the Leased Premises and restore the Leased Premises to its original state. If all personal property is not removed by said date, Lessee agrees to pay the City of Elko liquidated damages in the amount of \$100 per day for each day any of the personal property is not removed from the Leased Premises; provided, Lessor shall have the option of waiving this requirement, in writing, as to any and all improvements Lessor desires to remain in place. Lessor's rights and remedies pursuant to this Section17.01 are in addition to and not in lieu of any other rights and remedies Lessor may have pursuant to this Lease.

### ARTICLE XVIII. MISCELLANEOUS PROVISIONS

Section 18.01. No Waiver: The waiver by Lessor of its right to declare a default or pursue any other remedy pursuant to this Lease upon any breach on the part of Lessee shall not violate any provision therefore herein contained, nor constitute a waiver of such right in connection with any future default, or any other obligation of Lessee herein contained to be done and performed. No delay on the part of either party in enforcing any of the provisions of this Lease shall be considered as a waiver thereof, nor shall such delay entitle Lessee to assert the equitable defense of laches. Any consent or approval granted by either party under this Lease must be in writing and shall not be deemed to waive or render unnecessary the obtaining of consent or approval with respect to any subsequent act or omission for which consent is required or sought.

Section 18.02. <u>Inspection</u>: Lessor, by its officers, employees or other authorized agents, shall have the right to enter upon the Leased Premises at any and all reasonable time during the term hereof for the purpose of informing itself as to the compliance by Lessee of the terms, covenants and conditions of this Lease to be kept upon its part.

Section 18.03. <u>Notice</u>: Whenever in this Lease it shall be required or permitted that notice be given by either party to this Lease or to the other, such notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

Lessor:

City of Elko

City Manager

1751 College Avenue

Elko, NV 89801

Lessee:

C-A-L Stores Companies, Inc.

dba C-A-L Ranch Stores

P.O. Box 1866

Idaho Falls, ID 83403

Such addresses may be changed from time to time by notice given hereunder.

Section 18.04. <u>Binding Effect</u>: Subject to the restriction on assignments, this Lease shall be binding upon, and inure to the benefit of, and shall apply to the respective heirs, personal representatives, successors and assigns of Lessor and Lessee.

Section 18.05. <u>Time of Essence</u>: Time is of the essence of this Lease and all of its provisions.

Section 18.06. <u>Attorney Fees</u>: In the event of litigation, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses, together with cost of suit.

Section 18.07. <u>Captions</u>: The captions contained herein are inserted only for convenience of reference and are in no way to be construed as part of the agreement or as a limitation on the scope of the particular paragraph to which they refer.

Section 18.08. <u>Quiet Enjoyment</u>: Lessee shall have the quiet and peaceable possession of the Leased Premises during the term hereof.

Section 18.09. Governing Law and Jurisdiction: The validity, construction and enforceability of this Lease shall be governed by and interpreted under the laws of the State of Nevada The Fourth Judicial District Court in and for the County of Elko, State of Nevada, shall have jurisdiction and venue over all disputes arising hereunder.

Section 18.10. Entire Agreement; Modification; Waiver: This Lease constitutes the entire agreement between Lessor and Lessee pertaining to the subject matter hereto and supersedes all prior and contemporaneous agreements, representations and understandings to include, without limitation, the Lease Agreement dated August 21, 2008, as extended on April 22, 2014. No supplement, modification or amendment of this Lease shall be binding unless executed in writing by all the parties. No waiver of any of

the provisions of this Lease shall be deemed or shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the parties making the waiver.

IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written.

LESSOR:	LESSEE:
THE CITY OF ELKO	C-A-L STORES COMPANIES, INC., dba C-A-L RANCH STORES
By: CHRIS J. JOHNSON, Mayor	By:
ATTEST:	
SHANELL OWEN, City Clerk	_

#### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and possible authorization to enter into an Agreement to Install Improvements and Performance/Maintenance Guarantees for subdivision improvements associated with the Tower Hill Subdivision Unit 1. JD
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **NEW BUSINESS**
- 4. Time Required: 10 Minutes
- 5. Background Information: Elko City Code 3-3-44 requires the subdivider to have executed and filed an agreement between the subdivider and the City for the required subdivision improvements, included stipulations on the timeframe for when those improvements are to be completed, and to post a performance guarantee in accordance with Elko City Code 3-3-45. As a condition of the Planning Commission's approval of Tower Hill Unit 1, the Performance Agreement is to be submitted to the City Council in conjunction with the final plat. The subdivider has indicated that he would provide a cash security to satisfy 3-3-45 of Elko City Code. The agreement has been drafted based on that assumption.

A second requirement forwarded by the Planning Commission is for the developer to enter into the Agreement to Install Improvements and Performance/Maintenance Guarantees within 30 days of approval of the final plat by the City Council.

6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Copy of Agreement to Install Improvements and Performance/Maintenance Guarantees, Copy of email from Scott MacRitchie
- 9. Recommended Motion: Approve the Agreement to Install Improvements and Performance/Maintenance Guarantees for Tower Hill Unit 1 as presented by staff. The subdivider shall enter into the agreement within 30 days.
- 10. Prepared By: Jeremy Draper, PE, Development Manager
- 11. Committee/Other Agency Review: Scott Wilkinson, Asst. City Manager,

**David Stanton, City Attorney** 

- 12. Council Action:
- 13. Council Agenda Distribution: Scott MacRitchie, JTM, scott@jtmelko.com

Katie McConnell, khmcconnell@frontiernet.net

# AGREEMENT TO INSTALL IMPROVEMENTS AND PERFORMANCE/MAINTENANCE GUARANTEES

hereina	THIS AGREEMENT made and entered into this day of, 2018, by and between Y OF ELKO, a municipal corporation organized and existing under the laws of the State of Nevada, after referred to as the "City," and Jordanelle Third Mortgage, LLC, an Arizona Limited Liability ny, hereinafter referred to as "Developer."
	RECITALS
A.	WHEREAS, Developer is subdividing certain property within the City, the subdivision being generally known as <a href="Tower Hill Subdivision Unit 1">Tower Hill Subdivision Unit 1</a> , into <a href="towenty-three">twenty-three</a> (23) separate parcels, and two (2) remainder parcels by means of a subdivision map, identified by the City as Subdivision Map No. 4-18;
В.	WHEREAS, Elko City Code, Title 3, Chapter 3, requires that a developer of a subdivision (as that term is used in NRS 278.320, as amended) enter into an Agreement to Install Improvements and file with the City Clerk of the City a financial guaranty of performance for the completion of the required public improvements (hereinafter referred to as the "Performance Guaranty") prior to certification of the final plat;
C.	WHEREAS, the Performance Guaranty is to be in an amount deemed sufficient by the City of Elko to cover the full cost of required site improvements and public improvements, engineering inspections, incidental expenses and replacement or repair of any existing streets and utilities or other improvements required by the Elko City Code, which are to be completed within a period of twenty-four (24) months from the date of the approval of the Final Plat by the City;
D.	WHEREAS, the City has determined from the Engineer's Cost Estimate for the required site and public improvements (set forth in Exhibit A and made a part hereof) that the cost of the required public improvements are expected to be in the amount of One Million, Ninety-five Thousand, Seven Hundred Seventy dollars and No Cents (\$1,095,770.00), which amount provides the basis for calculating the amount of the Performance Guaranty;
E.	WHEREAS, the Performance Guaranty shall be in the form of a deposit of cash in accordance with Elko City Code Subsection 3-3-45 and Elko City Code 3-3-44(A)(2) and shall be used to ensure the completion of all required subdivision improvements, to include public improvements and correction of defects of the required public improvements discovered after certification of the Final Plat.
F.	WHEREAS, the City approved the Final Plat on;

- G. WHEREAS, pursuant to Elko City Code Section 3-3-45(C), in addition to the Performance Guaranty, the **Developer** shall file with the Clerk of the City a financial Guaranty for a one (1) year maintenance bond in the amount of <u>One Hundred Nine Thousand, Five Hundred Seventy-seven Dollars and No Cents (\$109,577.00</u>) (hereinafter referred to as the "Maintenance Guaranty");
- H. WHEREAS, in the event the Developer fails to complete all the required public improvements and site improvements in accordance with the terms of this Agreement, the Developer shall be in default of this Agreement and the City shall be entitled to pursue all available legal remedies, including, without limitation, access to and use of the Performance Guaranty; and
- I. WHEREAS, the Developer has agreed to complete the required public improvements within a period of twenty-four (24) months from the date of the Final Plat being approved and in accordance with the latest edition of the Standard Specifications for Public Works Construction as published by the Regional Transportation Commission of Washoe County, Carson City, Churchill County, City of Reno, City of Sparks, City of Yerington and Washoe County, hereinafter referred to as the "Orange Book."

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions on the part of the respective parties to be performed, the parties hereby agree as follows:

#### 1) REQUIRED IMPROVEMENTS, GUARANTEES AND APPROVALS

- A. COMPLETION OF WORK; PERFORMANCE AND MAINTENANCE GUARANTEES. Developer agrees to complete the improvements described in the Site Improvement and Public Improvement Plans attached as Exhibit B hereto in the manner set forth in this Agreement and in conformity with Elko City Code 3-3-43 (hereinafter the "Work") within twenty-four (24) months of the Effective Date, unless otherwise extended in accordance herewith, and Developer shall pay or cause to be paid all claims for labor and materials used to perform the Work and, further, Developer has provided a Performance Guaranty in the form of a cash deposit in the amount of One Million, Ninety-five Thousand, Seven Hundred seventy Dollars and No Cents (\$1,095,770.00) and shall, prior to acceptance of the Work by the City, further provide a Maintenance Guaranty in the amount of One Hundred Nine Thousand, Five Hundred Seventy-seven Dollars and No Cents (\$109,577.00) for the purpose of guaranteeing compliance with the requirements of this Agreement.
- B. Reduction in Performance Guaranty. Notwithstanding any other provision contained in this Agreement, the Guarantee that the developer is required to post pursuant to ECC 3-3-45 can be reduced pursuant to Elko City Cod 3-3-44(b)(4) by progress payments, as follows:
  - 1) <u>Written Requests for Progress Payments.</u> The Developer must submit a written request to the Elko City Clerk for any progress payment or guaranty reduction.
  - 2) <u>Limitation on Amount of Reduction of Performance Guaranty</u>. The cumulative reduction in the amount of the Performance Guaranty shall not exceed ninety percent (90%) of the value of the improvements completed and approved, as determined by the City.

- 3) <u>Certification of Improvements.</u> Prior to a determination by the **City** of the value of the improvements completed, the <u>Developer's</u> Engineer shall provide the **City** with a Certificate of Improvements attesting to the adequacy of the **Work** and compliance with all requirements set forth in this Agreement, the construction specifications and the Elko City Code (including model codes adopted therein). The **City** shall review the Certification of Improvements prior to approving a request for a progress payment. The **City** shall not make a progress payment to the **Developer** unless a complete Certification of Improvements has been submitted in accordance with this paragraph.
- 4) Amounts of Individual Progress Payments. Except for the final progress payment following completion of the Work, any individual request for a progress payment shall be for at least twenty percent (20%) of the original Performance Guaranty and shall be submitted at least thirty (30) days after submittal of the previous request for a progress payment.
- 5) <u>Form of Requests for Progress Payments</u>. Requests for progress payments shall include a spreadsheet containing a detail of costs for each line item in the engineering cost estimate at **Exhibit A**, together with the original estimate amount, the total progress payments paid to date, the total value of the improvements completed and approved less ten percent (10%), and remaining amount of the Performance Guaranty following payment of the requested progress payment.
- 6) <u>Timing of Progress Payments</u>. The City shall pay approved progress payments to the **Developer** within thirty (30) calendar days of the date the request for progress payment is submitted to the City.
- CERTIFICATION AND SUBMISSION OF WORK. The Work shall be certified by the Developer's Engineer (who shall be a registered engineer, licensed in the State of Nevada) and submitted to the City for possible acceptance before the City conducts the subdivision final inspection and no later than twenty-four (24) months after the Effective Date. Upon certification, Developer's Engineer shall provide the City with a certificate attesting to the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, the construction specifications, codes and standards set forth in the Orange Book.
- D. MAINTENANCE PERIOD. The maintenance period shall commence on the date the City accepts the Work and shall continue thereafter for a period of twelve (12) months. In satisfaction of its requirement to provide a Maintenance Guaranty, Developer shall, prior to approval of the Work, provide the City with a maintenance bond, irrevocable letter of credit or cash deposit in the amount of One Hundred Nine Thousand, Five Hundred Seventy-seven Dollars and No Cents (\$109,577.00) which amount is not less than ten percent (10%) of the total cost of the required public improvements. If maintenance is required during the maintenance period, the City will provide fifteen (15) calendar days written notice of the required maintenance work to the Developer and the Developer must thereafter complete the required maintenance work. If the Developer fails to complete the maintenance work within the fifteen (15) calendar day period, without limiting any other rights or remedies

available, the **City** may complete or have the maintenance work completed and use the Maintenance Guaranty to satisfy the costs thereof.

- E. CERTIFICATION OF FINAL PLAT. The City will not certify the Final Plat until and unless:
  - 1) The Agreement, as approved by the City Council, has been fully executed and filed with the City Clerk's office.
  - 2) The Developer has provided to the Elko City Clerk the Performance Guaranty calculated in the manner set forth herein and otherwise meeting the requirements of this Agreement and the Elko City Code;
  - 3) The Developer has provided the required engineering plans for all Work;
  - 4) The required engineering plans for the Work have been approved by the City;
  - 5) All other Final Plat requirements set forth in the Nevada Revised Statutes and the Elko City Code have been met.
- F. EFFECTIVE DATE. The Effective Date of this Agreement shall be \_\_\_\_\_\_, which is the date the City approved the Final Plat, and this Agreement shall operate retroactively to that date.
- G. TERM. The Term of this Agreement shall be twenty-four (24) months from the Effective Date, unless the Work is completed and accepted by the City prior to the expiration of the twenty-four (24) month period, in which event the Term shall expire on the date the Work is accepted by the City. Notwithstanding the foregoing, the City may, upon a written request and showing by the Developer of good cause, grant an extension of time to complete the Work for an additional twelve (12) months thereafter (with a corresponding extension of the Term); provided, no such extension shall be effective unless and until the Performance Guaranty and Maintenance Guaranty have been provided to the Elko City Clerk in sufficient amounts to satisfy the Developer's obligations pursuant to this Agreement; further provided, if at such time the City has certified that at least eighty percent (80%) of the Work has been completed, the City may, in its sole discretion, reduce the amount of the Performance Guaranty in a manner consistent with Elko City Code Sections 3-3-44 and 3-3-45 during the term of any extension so granted. Notwithstanding the foregoing, in no event shall the amount of the Performance Guaranty be reduced to an amount less than the anticipated full cost of the remaining required improvements, engineering inspections, incidental expenses, and the replacement and repair of any existing streets and utilities and other improvements which may be damaged during construction of requirement improvements.
- <u>H.</u> <u>DESCRIPTION OF WORK AND CONDITIONS.</u> In addition to any other requirements contained herein, the <u>Work</u> shall not be accepted by the <u>City</u> unless the <u>Developer</u> fully satisfies the following requirements:
  - (1) COMPLIANCE WITH CITY CODE. Developer shall perform the Work in a manner that fully complies with the Elko City Code.

- (2) STANDARDS. The Work shall be completed in accordance with the plans, specifications and conditions approved by the City and in accordance with requirements otherwise set forth in this Agreement, to include requirements incorporated by reference.
- (3) PRECONSTRUCTION CONFERENCE. Prior to the initiation of the construction of any roadway, drainage, water or sewer improvements included in the Work, the Developer shall schedule and participate in a preconstruction conference with Developer's contractor(s) and the City Development Manager or his designee(s).
- (4) AS-BUILT PLANS. Developer shall provide complete as-built plans of all street, water, sewer and drainage improvements to the City prior to the subdivision final inspection.
- (5) SUBDIVISION CONDITIONS. Developer shall satisfy all subdivision approval conditions established by or at the direction of the City Council and the City Planning Commission.
- (6) ENGINEER'S CERTIFICATE. Before the subdivision final inspection, Developer's engineer (who shall be a registered engineer, licensed in the State of Nevada) shall provide the City with a certificate certifying the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, City standard construction specifications, codes and standards.
- I. FINAL COMPLETION AND ACCEPTANCE OF WORK. Approval of the final completion and acceptance of the Work shall be at the discretion of the City and shall satisfy the requirements of this Agreement, to include the conditions set forth in Section 1 (REQUIRED IMPROVEMENTS, GUARANTEES AND APPROVALS). Developer shall request that the City inspect the Work no later than thirty (30) days prior to the end of the Term. The City shall have the authority to suspend the Work, in whole or in part, for such period as it may deem necessary due to unsuitable weather or other unfavorable conditions or the failure of Developer to comply with this Agreement, to include the standard construction specifications of the City.
- J. <u>DEFAULT, NOTICE AND OPPORTUNITY TO CURE.</u> In the event Developer fails to complete the Work during the Term of this Agreement or any extension hereof, the Developer shall be considered in Default. The City shall first serve upon the Developer written notice of such Default. Developer shall then have fifteen (15) days from the date of mailing of said notice to cure the Default. In the event of a Default, the City shall have the right to use the Performance Guaranty to complete the Work, to include, without limitation, payment of all third-party claims for labor and material.
- K. MAINTENANCE GUARANTY AS CONDITION OF FINAL PLAT CERTIFICATION. The certification of the Final Plat is, without limitation, conditioned upon Developer providing the Maintenance Guaranty, which may be used by the City, in its discretion, for the maintenance of all completed Work for a period of twelve (12) months after the aforementioned certification by Developer's Engineer

L. DEVELOPER RESPONSIBLE FOR COST OF WORK OVER ESTIMATE. The amount of the Performance Guaranty is based upon the estimated cost of the improvements called for in the Engineer's Estimate. In the event the actual cost of improvements exceeds that amount, in the event of a Default, the Developer shall promptly pay to the City any additional amount over the amount of the Performance Guaranty, provided, the City may not recover from Developer any amount for which the City has been compensated from the Developer, to include amounts drawn by the City from the Performance Guaranty.

#### 2. GENERAL TERMS AND CONDITIONS.

- A. <u>WARRANTY</u>. Developer warrants to the City that the Work, upon completion, will be free of defects and in conformity with all applicable standards, to include requirements of the City Code and any plans approved by the City pertaining to the Work. Developer will, promptly upon completion of the Work, provide the City with "as-built" drawings documenting compliance with the warranty set forth in the preceding sentence and with the approved Public Improvement Plans.
- B. TERMINATION, BINDING EFFECT, DELEGATION AND OTHER MATTERS. This Agreement may not be amended, modified or terminated except by an agreement in writing and approved by the Developer and the Elko City Council. This Agreement and all of the covenants, terms, conditions and/or provisions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding any other provision contained in this Agreement, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party without the prior written consent of the other party. This Agreement is not intended to confer any rights or benefits to any entity other than to the City and to Developer; accordingly, there are no third-party beneficiaries to this Agreement.
- C. <u>CONSTRUCTION OF AGREEMENT</u>. This Agreement constitutes a contract under and shall be construed in accordance with the laws of the State of Nevada. The parties agree that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- D. <u>COUNTERPARTS</u>. This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
- E. <u>NOTICES</u>. All notices required to be given under this Agreement shall be deemed given upon the earlier of the actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows: if to City, to c/o Jeremy Draper, (or the then-current) Development Manager, 1751 College Avenue, Elko, Nevada 89801; if to Developer, to: <u>Jordanelle Third Mortgage</u>, <u>LLC</u>, 312 Four Mile Trail, Elko, NV 89801.
- F. <u>CITY'S AUTHORITY</u>. This Agreement is not intended to supersede the authority granted by law to the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's planning or other regulatory boards or departments (however designated) to approve any plans, permits, maps or other documents pertaining to any aspect of the **Work** or other action described in this Agreement.
- G. TIME OF THE ESSENCE. Time is of the essence and a material provision of this Agreement.

- H. INDEMNIFICATION. Developer hereby agrees to hold harmless, indemnify and defend the City (including, without limitation, the City's officers, agents and employees) against and to all claims, demands, actions, suits, liability, cost and expense, including defense expenses, (to include, without limitation, suits for damages and injuries to persons or property) that are claimed to have resulted from the acts or omissions of Developer (including without limitation its agents, employees and/or contractors) in any manner pertaining to the Work.
- I. <u>JURISDICTION AND VENUE</u>. The District Court for the Fourth Judicial District, in and for the County of Elko, State of Nevada, shall have jurisdiction and venue over all disputes arising from or in relation to this Agreement.
- J. <u>INTEGRATION</u>. This Agreement represents and contains the entire Agreement and understanding among the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior oral and written agreements and understandings with respect to the subject matter of this Agreement, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This Agreement shall be construed as a complete novation of any prior agreements relating to the subject matter of this Agreement.
- K. <u>DOCUMENTS PROVIDED TO CITY ARE PUBLIC</u>. This Agreement, together with any documents associated with the Work, may be recorded in any public system of records, to include the records of the Elko County Recorder. Under no circumstances shall Developer assert a right to confidentiality or an intellectual property interest in documents or other information provided to the City in relation to the Work.
- L. <u>ATTORNEY FEES.</u> In the event either party is required to pursue any action to enforce any term or condition in this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- M. <u>SEVERABILITY</u>. In the event one or more of the provisions, or portions thereof, of this Agreement is determined to be illegal or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- N. <u>HEADINGS</u>. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- O. <u>NO AGENCY, PARTNERSHIP OR JOINT VENTURE.</u> Nothing herein contained shall be construed to create an agency, partnership or joint venture between the parties.
- P. <u>REMEDIES NOT EXCLUSIVE</u>. No remedy provided by this Agreement, to include the right to make a claim against a bond or other guaranty, shall be exclusive. The **City** shall have the right to pursue any remedies provided under this Agreement, or by law or equity, simultaneously or in sequence at its sole discretion.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate the day and year first above written.

CITY - THE CITY OF ELKO,

**DEVELOPER - Jordanelle Third Mortgage, LLC** 

a municipal corporation	a Limited-Liability Company
Ву:	Ву:
CHRIS J. JOHNSON, Mayor	Scott MacRitchie, Managing Director
ATTEST:	

From: Scott [mailto:scott@jtmelko.com]
Sent: Wednesday, January 03, 2018 6:04 PM
To: Scott A. Wilkinson <sawilkinson@elkocitynv.gov>
Cc: Jeremy Draper <jdraper@elkocitynv.gov>
Subject: RE: Tower Hill performance agreement

Tom will not be able to have all of the items and application done and ready for submittal based upon his other work and the holiday. He has promised me that he would have it done for the time period I mentioned.

I would like to review the agreement as it will be different from my last one in 8 Mile and I would like to know what I am being asked to do prior to signing it so that I have time to make comments if necessary and get Dave Stanton's latest interpretation of the code as it relates to this. Seeing that I am the one who has to do what it says in the agreement and that we have to pay for it that's pretty reasonable.

Scott MacRitchie

JTM (Jordanelle Third Mortgage)

Mulberry Development Group

Mulberry Homes

scott@itmelko.com

775-340-6005 Cell

From: Scott A. Wilkinson [mailto:sawilkinson@elkocitynv.gov]

Sent: Wednesday, January 3, 2018 6:22 PM

To: scott <scott@itmelko.com>; Jeremy Draper <jdraper@elkocitynv.gov>

Subject: RE: Tower Hill performance agreement

Scott.

You and Jeremy can decide on how you wish to secure the agreement in accordance with code and the agreement can then be drafted. Jeremy will work with our legal department to draft the agreement. Jeremy will then send the draft for your review. This is in response to you earlier communication and I quote I am however in town on the 24<sup>th</sup> and 25<sup>th</sup> of January as we hope to have our documentation in for Tower Hill Final at that time. I am waiting on the draft of the Performance Agreement from either Dave or Jeremy to review.

Thanks,

Scott A. Wilkinson

City of Elko

Assistant City Manager

1751 College Avenue

Elko, NV 89801

Telephone: 775.777.7211

Fax: 775.777.7219

Email: sawilkinson@ci.elko.nv.us



From: scott [mailto:scott@jtmelko.com]

Sent: Wednesday, January 03, 2018 4:51 PM

To: Scott A. Wilkinson <sawilkinson@elkocitynv.gov>; Jeremy Draper <jdraper@elkocitynv.gov>

Subject: RE: Tower Hill performance agreement

I'm not waiting on a draft. I did however ask to see what you would be putting in it before being asked to agree to it. Our application materials will be ready for the city at the end of january.

Sent from my Samsung Galaxy Tab®|PRO

----- Original message -----

From: "Scott A. Wilkinson" < sawilkinson@elkocitynv.gov>

Date: 1/3/2018 3:47 PM (GMT-07:00)

To: Jeremy Draper < idraper@elkocitynv.gov>

Cc: Scott <scott@jtmelko.com>

Subject: Tower Hill performance agreement

Jeremy,

Please draft a performance agreement with Dave's input for Towerhill based on the existing code and send it over to JTM for inclusion with a final plat application. Apparently Scott is waiting on a draft.

Thank you,

Scott A. Wilkinson

City of Elko

Assistant City Manager

1751 College Avenue

Elko, NV 89801

Telephone: 775.777.7211

Fax: 775.777.7219

Email: sawilkinson@ci.elko.nv.us



#### Attachments

• image004.png (10.22KB)

From: Scott [mailto:scott@macritchie.com]
Sent: Friday, January 19, 2018 9:02 AM
To: Jeremy Draper <jdraper@elkocitynv.gov>

Cc: khmcconnell@frontiernet.net; Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: RE: Performance Agreement

Would it work to provide the full bond amount soon to the City of Elko with a completed Performance Agreement so that we can then certify the work done to date and request a return of that amount and go forward with our contractors whereby we certify their work and pay them from future releases from our bond with the City vs. pay cash up front as we have to our contractors and then pay this again in the form of a cash bond to the city.

We could in this way pay one time going forward. The full amount to the City and pay our contractors with periodic releases from our cash bond. I saw nothing in the code that limits the number of releases from the bond. We however would only have 3 or 4 total; one for the work currently completed and certified, one or two more as progress continues and a final amount when the totality of work is completed and certified.

Scott MacRitchie

Scott@macritchie.com

435-676-3309 Cell

From: Jeremy Draper [mailto:idraper@elkocitynv.gov]

Sent: Friday, January 19, 2018 9:38 AM

To: Scott < scott@macritchie.com>

Cc: khmeconnell@frontiernet.net; Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: RE: Performance Agreement

Scott M...

The provision for making progress payments for a cash bond back to the developer is found in 3-3-44-B-4.

4. Progress payments to the subdivider from any deposit which the subdivider may have made, or reduction in bonds, not exceeding ninety percent (90%) of the value of improvements completed and approve, as determined by the city engineer.

These are standard conditions found in all of our performance agreements. We recently had a developer who had completed the work before signing the performance agreement, then had to put the full cash bond in for the performance agreement before we could accept the project for final completion. Once we accepted all the improvements we released his bond back to him within 4 weeks due to some holidays.

Thanks.

Jeremy Draper, PE

**Development Manager** 

775-777-7217



From: Scott [mailto:scott@macritchie.com]
Sent: Friday, January 19, 2018 7:56 AM
To: Jeremy Draper <idraper@elkocitynv.gov>

Cc: khmcconnell@frontiernet.net; Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: RE: Performance Agreement

Nowhere in the code that I can find does it detail exactly or in any way how and when I get my money back.

I will need those specific details either added to my performance agreement if possible and if not in writing preferably signed by Dave Stanton or Scott Wilkinson so that I can understand and be assured of the return off our capital and at what milestones. Our work will be completed by April or early May if not earlier.

Based upon my conversation with Jeremy if Tom Ballew completes our application for phase 1 final of Tower Hill and turns this in to the City of Elko in late January as we discussed we would be on the March 2018 Planning Commission agenda and if passed on late March or early April City Council meeting agenda. At that time we would need to provide the bond and sign the performance agreement in order to record the plat.

When do you require the performance agreement and bond to be in place exactly?

We would have to leave a 10% of Engineers estimate in place for the 1 year warranty bond.

Scott MacRitchie

Scott@macritchie.com

435-676-3309 Cell

From: Jeremy Draper [mailto:jdraper@elkocitvnv.gov]

Sent: Thursday, January 18, 2018 5:38 PM
To: Scott MacRItchie <scott@macritchie.com>

Ce: khmcconnell@frontiernet.net; Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: RE: Performance Agreement

Scott M.

Our interpretation of this section of code differs from your interpretation. 3-3-45 as you stated indicates that the subdivider shall have provided the city a financial guarantee of performance for the completion of required subdivision improvements. If you continue reading under subsection A-1 of 3-3-45 it states that the

1. Performance Bond: Performance or surety bond in an amount deemed sufficient by the city engineer to cover, but in no case be less that, the full cost of required improvements, engineering inspections, incidental expenses and replacement and repair of any existing streets and utilities or other improvements which may be damaged during construction of required improvements.

We read this as even though a portion of the work has been completed the performance guarantee must be sufficient to cover the expense of replacing those items in the even they become damaged during construction. The performance guarantee must be for the <u>full cost of the improvements</u>, we base those costs off of the approved engineers estimate for the project.

I am continuing to work on your performance agreement and would hope to have a draft to Dave for review next week.

Thanks,

Jeremy Draper, PE

Development Manager

775-777-7217



From: Scott MacRItchie [mailto:scott@macritchie.com]

Sent: Wednesday, January 17, 2018 12:41 PM To: Jeremy Draper < idraper@elkocitynv.gov>

Cc: khmcconnell@frontiernet.net Subject: Performance Agreement

Jeremy.

In reading the portion of city code that relates to the performance agreement it states that we must have this in place before the plat is to be recorded.

It also states

#### 3-3-45: PERFORMANCE GUARANTEE:

A. Forms Of Guarantee: Prior to certification of final plat approval by the mayor, the subdivider shall have provided the city a financial guarantee of performance for the completion of required subdivision improvements, in one or a combination of the following forms as determined by the city:

If we have completed a portion of the required subdivision improvements there should be no need to provide a financial guarantee that we will perform the completion of items that we have already completed.

Scott MacRitchie

Jordanelle Third Mortgage

Mulberry Development Group

Mulberry Homes

775-340-6005

#### Attachments

- image001.png (22.10KB)image002.png (10.22KB)

From: Jeremy Draper
Sent: Thursday, February 08, 2018 1:43 PM
To: Scott MacRitchie <scott@macritchie.com>
Cc: Scott A. Wilkinson <sawilkinson@elkocitynv.gov>; Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: RE: Tower Hill

Thank you,

Jeremy Draper, PE

**Development Manager** 

775-777-7217



From: Scott MacRitchie [mailto:scott@macritchie.com]

Sent: Thursday, February 08, 2018 11:35 AM

To: Jeremy Draper < idraper@elkocitynv.gov>

Subject: RE: Tower Hill

I saw Tom Ballew today and he said that he should have the application in by Monday for phase 1.

Scott MacRitchie

scott@macritchie.com

435-676-3309 Cell

From: Jeremy Draper [mailto:jdraper@elkocitynv.gov]

Sent: Thursday, February 8, 2018 11:21 AM
To: Scott MacRitchie <scott@macritchie.com>

Cc: Scott A. Wilkinson <sawilkinson@elkocityny.gov>

Subject: RE: Tower Hill

I have worked on that with Dave, and we are just waiting for any comments from Scott Wilkinson on the performance agreement that would be used as the basis for your agreement.

Thanks,

Jeremy Draper, PE

Development Manager

775-777-7217



From: Scott MacRitchie [mailto:scott@macritchie.com]

Sent: Thursday, February 08, 2018 7:26 AM
To: Jeremy Draper < idraper@elkocitynv.gov>

Subject: Tower Hill

Jeremy,

I still have not seen a draft of a development agreement for Tower Hill Phase 1.

Scott MacRitchie

#### scott@macritchie.com

435-676-3309 Cell

#### Attachments

- image001.png (22.10KB)image002.png (10.22KB)

# JORDANELLE THIRD MORTGAGE ("JTM") PLAT MAP TOWER HILL PHASE I

#### AGENDA MATERIALS FOR ELKO CITY COUNCIL MEETING APRIL 24, 2018

#### August 27, 2013

- Jordanelle Third Mortgage, LLC and the City of Elko enter into an Agreement to Install Improvements and Performance Guarantee for "Eight Mile Estates Subdivision".
- The total amount of the project "Cost of required public improvements" was \$1.012.864.00.
- JTM had completed all required improvements (as certified by JTM's engineer) by the time the Performance Agreement was executed
- The City of Elko required JTM to post a 10% bond with the Performance Agreement.

#### Fall/Summer, 2015

JTM begins mass grade work for all phases of Tower Hill

#### November 1, 2016

- The City of Elko enters into an Agreement to Install Improvements and Performance/Maintenance Guarantees with Copper Trails, LLC for "Copper Trails" Subdivision (Exhibit 1)
- The Agreement provides that the "cost of required public improvements" is \$505,899.12.
- The required cash deposit submitted with the Performance Agreement was 10% - or \$50,589.00.
- This agreement DOES NOT provide that the entire amount of the cost of required improvements be deposited with the City.
- This is relevant, as was still customary with the City of Elko during the construction period.

#### May - July, 2017

- Tower Hill Phase One construction begins.
- · Storm drains, sewer, power and gas mostly complete by the end of July.

#### June 20, 2017

- Email communication between City of Elko to JTM (Exhibit 2)
- Email indicates "we may need to have a small bond posted prior to the August 26<sup>th</sup> date".
- Email does not indicate position that 100% of cost of public improvements will now be required by City.

August 7, 2017

 Email communication between City of Elko to JTM indicating that it would be possible to "request to the council to include the provision allowing for a reduction in the performance guarantee as allowed in 3-3-44". (Exhibit 3)

January, 2018

- Email communication begins between the City of Elko and JTM regarding a seemingly new requirement that the full amount of the Cost of Required Improvements (without formal notice to developers, City Council action or code change) is required without any offset for the fact that the improvements have already been substantially performed, and claimed to be a change in interpretation of the City Code. (Exhibit 4)
- Draft agreement is not produced by the City.

February, 2018

- All materials are submitted by JTM to the City of Elko for the final plat approval process.
- Legal counsel for JTM confers with City of Elko Legal counsel regarding the issue of a full performance guarantee for work already completed.
- City counsel informs JTM counsel that the issue is an "operational issue" with the City of Elko.

#### March, 2018

- The Plat map is submitted to the City Planning Commission for review on March 6, 2018.
- The draft Performance Agreement is submitted to JTM by the City late on March 5, 2018.
- The draft agreement is not reviewed by JTM prior to the Planning Commission Meeting.
- The Assistant City Manager added an additional condition at the last minute of the Planning Commission Meeting that a draft Performance Agreement be submitted to City Council at the time the final plat is presented.
- JTM researches the options of an Irrevocable Letter of Credit (not available
  after researching with multiple financial institutions) or a performance bond
  for already completed work (similarly not available due to the work already
  being completed).

March-April, 2018

- JTM and City discuss the option of allowing a reduction in the performance guaranty due to the amount of the (certified) improvements done to this point.
- · The City Code has not changed.

- City Staff informs JTM that City Staff is recommending that the FULL
  performance guarantee is now being "uniformly" required of developers. City
  Staff acknowledges that the full performance guarantee was not required in
  the past, but City Staff is recommending that it be uniformly enforced now.
- The City Code did not change during this time, nor did the City of Elko Staff
  or City Council inform the public or developers (formally or informally) of this
  change in position so as to put the developers on notice (until January, 2018,
  after the project was already substantially completed).
- JTM's Engineer of Record, Tom Ballew, PE, indicates that the majority of the project is certified. (Exhibit 5)
- Pavement is scheduled of May 10-15, 2018. By May 20, 2018, the entire development should be completed.

#### April 24, 2018

- Tower Hill Final Plat and Performance Guarantee are placed on the City Council agenda
- City Staff is recommending that Council require the Performance Agreement to include a performance guarantee in the amount of 100% of the full cost of required improvements.

#### JTM POSITION ON PERFORMANCE AGREEMENT

- JTM is requesting that the City Council approve the Performance Agreement which allows for a reduction in the total amount of the performance guarantee to only include those items not certified by the Engineer and the 10% guarantee. JTM's preferred version of the City's Performance Agreement is attached as Exhibit 6.
- The majority of the work is already completed and certified, as verified by Tom Ballew, P.E.
- Requiring the "full cost of required improvements" is essentially making JTM
  pay for the project twice once to the contractors and once to the City to hold
  (just to release back to JTM).
- The City Code does not address the issue of a partially or completely completed project, and in the past City Staff has allowed a reduction of the guarantee amount.
- It does not make legal or logical sense to have post a cash bond of over \$1,000,000 just to request to have the majority of it released the next day.
- There is a direct cost to JTM: The cost of liquidating funds, which could
  potentially include taxes, interest and/or penalties.
- There is no cost to the City: The improvements have already been completed and certified. The performance guaranty is meant to guarantee performance, but in this case, the work has already been performed.

### AGREEMENT TO INSTALL IMPROVEMENTS AND PERFORMANCE/MAINTENANCE GUARANTEES

THIS AGREEMENT made and entered into this 1 day of November, 2016 by and between the CITY OF ELKO, a municipal corporation organized and existing under the laws of the State of Nevada, hereinafter referred to as the "City," and COPPER TRAILS LLC, a Nevada Limited Liability Company, hereinafter referred to as "Developer."

#### RECITALS

- A. WHEREAS, Developer is subdividing certain property within the City of Elko, County of Elko, State of Nevada, known as Copper Trails, into twenty-one (21) separate parcels by means of a subdivision map, identified by the City as Subdivision Map No. 6-16;
- B. WHEREAS, Elko City Code, Title 3, Chapter 3, requires that a developer of a residential subdivision enter into an Agreement to Install Improvements and file with the City Clerk of the City a financial guarantee of performance to complete the required public improvements prior to certification of the Final Plat (hereinafter referred to as the "Performance Guarantee");
- C. WHEREAS, the financial guarantee is to be in an amount deemed sufficient by the City to cover the full cost of required site improvements and public improvements, engineering inspections, incidental expenses and replacement or repair of any existing streets and utilities or other improvements required by the Elko City Code, which are to be completed within a period of twenty-four (24) months from the date of the approval of the Final Plat by the City;
- D. WHEREAS, the City approved the Final Plat on August 9, 2016;
- E. WHEREAS, the City and Developer have agreed that the City will not certify the final map until the required public improvements have been certified by the Developer's Engineer and accepted by the City;
- F. WHEREAS, Developer shall file with the Clerk of the City a financial guarantee for a one (1) year maintenance bond in the amount of FIFTY THOUSAND, FIVE HUNDRED AND EIGHTY-NINE DOLLARS AND NO CENTS (\$50,589.00) (hereinafter referred to as the "Maintenance Guarantee").
- G. WHEREAS, in the event the Developer fails to complete all the required public improvements and site improvements in accordance with the terms of this Agreement, the Developer shall be in default of this Agreement and the City shall be entitled to pursue its legal remedies, including, without limitation, access and use of the Performance Guarantee, and the City shall not certify the Final Plat;

- H. WHEREAS, the Developer has agreed to complete the required public improvements within a period of twenty-four (24) months from the date of the Final Plat being approved and in accordance with the latest edition of the Standard Specifications for Public Works Construction (as adopted by the Regional Transportation Commission of Washoe County, Carson City, Churchill County, City of Reno, City of Sparks, City of Yerington and Washoe County, hereinafter referred to as the "Orange Book");
- I. WHEREAS, the City has determined from the Engineer's Cost Estimate for the required site and public improvements, (set forth in Exhibit A and made a part hereof), that the cost of the required public improvements should be in the amount of FIVE HUNDRED AND FIVE THOUSAND, EIGHT HUNDRED NINETY-NINE DOLLARS AND TWELVE CENTS, (\$505,899.12), which amount will provide the basis for calculating the amount of the Performance Guarantee.
- J. WHEREAS, the Performance Guarantee is to be used to ensure the completion of the site improvements, completion of the public improvements, and correction of defects of the required public improvements discovered after certification of the Final Plat.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions on the part of the respective parties to be performed, the parties hereby agree as follows:

## 1. PERFORMANCE OF WORK AND PERFORMANCE/MAINTENANCE GUARANTEES

- A. COMPLETION OF WORK. Developer agrees to complete the improvements described in the Site Improvement and Public Improvement Plans attached as Exhibit B hereto in the manner set forth in this Agreement and in conformity with Elko City Code 3-3-43 (hereinafter the "Work") within twenty-four (24) months of the Effective Date, unless otherwise extended in accordance herewith, and Developer shall pay or cause to be paid all claims for labor and materials used to perform the Work
- B. CERTIFICATION AND SUBMISSION OF WORK. The Work shall be certified by the Developer's Engineer (who shall be a registered engineer, licensed in the State of Nevada) and submitted to the City for possible acceptance before the City conducts the subdivision final inspection and no later than twenty-four (24) months after the Effective Date. Upon certification, Developer's Engineer shall provide the City Engineer with a certificate attesting to the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, the construction specifications, codes and standards set forth in the Orange Book.
- C. MAINTENANCE PERIOD. The maintenance period shall commence on the date the City accepts the Work and shall continue thereafter for a period of twelve (12) months (the "Maintenance Period"). In satisfaction of its obligation to provide a Maintenance Guarantee, Developer has provided the City with a

maintenance bond in the amount of FIFTY THOUSAND, FIVE HUNDRED AND EIGHTY-NINE DOLLARS AND NO CENTS (\$50,589.00). If maintenance is required during the Maintenance Period, the City will provide fifteen (15) calendar days written notice of the work required to the Developer and the Developer must thereafter complete the required work. If the Developer fails to complete the work within the foregoing fifteen (15) calendar day period, the City may have the work completed and use the Maintenance Guarantee to satisfy the costs thereof.

- D. CERTIFICATION OF FINAL PLAT. The City will not certify the Final Plat until (1) the Work has been (i) completed, (ii) certified by the Developer's engineer in accordance with this Agreement and (iii) accepted by the City; (2) the Developer has filed with the Elko City Clerk the Performance Guarantee, calculated in the manner set forth in the Recitals, above; and (3) all other Final Plat requirements have been met. The Performance Guarantee shall comply with the requirements set forth in Elko City Code 3-3-45(A) (Forms of Guarantee) and be in an amount calculated in a manner consistent with the above recitals.
- E. **EFFECTIVE DATE**. The Effective Date of this Agreement shall be August 9, 2016, which is the date the **City** approved the Final Plat, and this Agreement shall operate retroactively to that date.
- F. TERM. The Term of this Agreement shall be twenty-four (24) months from the Effective Date, unless the Work is completed and accepted by the City prior to the expiration of the twenty-four (24) month period. Notwithstanding the foregoing, the City may, upon a showing by Developer of good cause, grant an extension of time complete the Work for an additional twelve (12) months thereafter, provided, no such extension shall be effective unless and until the financial guarantee of performance has been extended for an equal period of time, and further provided, that if at such time the City has certified that at least eighty percent (80%) of the Work has been completed, the City may, at its sole discretion, reduce the amount of the financial guarantee of performance during the term of any extension so granted.
- G. <u>DESCRIPTION OF WORK AND CONDITIONS</u>. In addition to any other requirements contained herein, the **Work** shall not be accepted by the **City** unless and until the **Developer** fully satisfies the following requirements:
  - (1) COMPLIANCE WITH CITY CODE. Developer shall perform the Work in a manner that fully complies with the Elko City Code.
  - (2) STANDARDS. The Work shall be completed in accordance with the plans, specifications and conditions approved by the City and in accordance with requirements otherwise set forth in this Agreement, to include requirements incorporated by reference.
  - (3) PRECONSTRUCTION CONFERENCE. Prior to the initiation of the construction of any roadway, drainage, water or sewer improvements included in the Work, the Developer shall schedule and participate in a preconstruction conference with Developer's contractor(s) and the City Development Manager or his designee(s).

- (4) AS-BUILT PLANS. Developer shall provide complete as-built plans of all street, water, sewer and drainage improvements to the City prior to the subdivision final inspection.
- (5) SUBDIVISION CONDITIONS. Developer shall satisfy all subdivision approval conditions established by or at the direction of the City Council and the City Planning Commission.
- (6) ENGINEER'S CERTIFICATE. Before the subdivision final inspection, Developer's engineer (who shall be a registered engineer, licensed in the State of Nevada) shall provide the City Engineer with a certificate certifying to the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, City standard construction specifications, codes and standards,
- H. FINAL COMPLETION AND ACCEPTANCE OF WORK. The final completion and acceptance of the Work shall be subject to approval by the City at its discretion and shall satisfy the conditions described in this Agreement, to include the conditions set forth in Section 1 (Performance of Work and Performance/Maintenance Guarantees). Developer shall request, in writing, that the City inspect the Work no later than thirty (30) days prior to the end of the Term. The City shall have the authority to suspend the Work, in whole or in part, for such period as it may deem necessary due to unsuitable weather or other unfavorable conditions or the failure of Developer to comply with this Agreement, to include the standard construction specifications of the City.
- 1. DEFAULT, NOTICE AND OPPORTUNITY TO CURE. In the event Developer fails to complete the Work during the Term of this Agreement or any extension hereof, the Developer shall be considered in Default. The City shall first serve upon the Developer written notice of such Default. Developer shall then have fifteen (15) days from the date of mailing of said notice to cure the Default. In the event of a Default, the City shall have the right to use the Performance Guarantee to complete the Work, to include, without limitation, payment of all third party claims for labor and material.
- J. TERMINATION OF PERFORMANCE GUARANTEE UPON COMPLETION OF WORK. The City shall, upon Developer's satisfactory completion of the Work and all terms and conditions contained in this Agreement, authorize certification of the Final Plat for recordation purposes; provided, the certification of the Final Plat shall be conditional upon Developer providing the Performance Guarantee, which shall be available to the City for correction of any Work determined by the City to be defective and for maintenance, as provided above, of all completed Work for a period of twelve (12) months after the aforementioned certification by Developer's Engineer and acceptance by the City.
- K. <u>DEVELOPER RESPONSIBLE FOR COST OF WORK OVER ESTIMATE.</u> The amount of the Performance Guarantee is based upon the estimated cost of the improvements called for in the Engineer's Estimate. In the event the actual cost of improvements shall exceed such sum, the **Developer** shall promptly pay to the **City** any additional amount over the amount of the Performance Guarantee,

**provided**, the **City** may not recover from **Developer** any amount for which the **City** has been compensated from the **Developer** or the aforementioned Performance Guarantee.

#### **GENERAL TERMS AND CONDITIONS.**

- A. WARRANTY. Developer warrants to the City that the Work, upon completion, will be free of defects and in conformity with all applicable standards, to include requirements of the City Code and any plans approved by the City pertaining to the Work. Developer will, promptly upon completion of the Work, provide the City with "as-built" drawings documenting compliance with the warranty set forth in the preceding sentence and the approved Public Improvement Plans.
- B. TERMINATION, BINDING EFFECT, DELEGATION AND OTHER MATTERS. This Agreement may not be amended, modified or terminated except by an agreement in writing and approved by the Elko City Council. This Agreement and all of the covenants, terms, conditions and/or provisions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding any other provision contained in this Agreement, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party without the prior written consent of the other party. This Agreement is not intended to confer any rights or benefits to any entity other than to the City and to Developer; accordingly, there are no third-party beneficiaries to this Agreement.
- C. <u>CONSTRUCTION OF AGREEMENT</u>. This Agreement constitutes a contract under and shall be construed in accordance with the laws of the State of Nevada. The parties agree that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- D. <u>COUNTERPARTS</u>. This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
- E. **NOTICES.** All notices required to be given under this Agreement shall be deemed given upon the earlier of the actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows: if to **City**, to c/o Jeremy Draper, (or the then-current) Development Manager, 1751 College Avenue, Elko, Nevada 89801; if to **Developer**, to Copper Trails, LLC., Attn: Luke Fitzgerald, PO Box 8070, Reno, NV 89507.
- F. <u>CITY'S AUTHORITY</u>. This Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's planning or other regulatory boards or departments (however designated) to approve any plans, permits, maps or other documents pertaining to any aspect of the Work or other action required under this Agreement.

- G. <u>TIME OF THE ESSENCE</u>. Time is of the essence and a material provision of this Agreement.
- H. INDEMNIFICATION. Developer hereby agrees to hold harmless, indemnify and defend the City (including, without limitation, the City's officers, agents and employees) against and on all claims, demands, actions, suits, liability, cost and expense, including defense expenses, (to include, without limitation, suits for damages and injuries to persons or property) that are claimed to have resulted from the acts or omissions of **Developer** (including without limitation its agents, employees and/or contractors) in any manner pertaining to the **Work**.
- JURISDICTION AND VENUE. The District Court for the Fourth Judicial District, in and for the County of Elko, State of Nevada, shall have jurisdiction and venue over all disputes arising from or in relation to this Agreement.
- J. INTEGRATION. This Agreement represents and contains the entire Agreement and understanding among the parties with respect to the subject matter of this Agreement, and supersedes and replaces any and all prior oral and written agreements and understandings with respect to the subject matter of this Agreement, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This Agreement shall be construed as a complete novation of any prior agreements relating to the subject matter of this Agreement.
- K. DOCUMENTS PROVIDED TO CITY ARE PUBLIC. This Agreement, together with any documents associated with the Work, may be recorded in any public system of records, to include the records of the Elko County Recorder. Under no circumstances shall Developer assert a right to confidentiality or an intellectual property interest in documents or other information provided to the City in relation to the Work.
- L. <u>ATTORNEY FEES.</u> In the event the **City** is required to pursue any action to enforce any term or condition in this Agreement, it shall be entitled to reasonable attorney's fees and court costs.
- M. <u>SEVERABILITY</u>. In the event that one or more of the provisions, or portions thereof, of this Agreement is determined to be illegal or unenforceable, the remainder of the Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- N. **HEADINGS.** The headings of sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- O. <u>NO AGENCY, PARTNERSHIP OR JOINT VENTURE.</u> Nothing herein contained shall be construed so as to create an agency, partnership or joint venture between the parties.
- P. REMEDIES NOT EXCLUSIVE. No remedy provided by this Agreement, to include the right to make a claim against a bond or other guarantee, shall be

exclusive. The **City** shall have the right to pursue any remedies provided under this Agreement, or by law or equity, simultaneously or in sequence at its sole discretion.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate the day and year first above written.

CITY - THE CITY OF ELKO, a municipal corporation

**DEVELOPER - Copper Trails, LLC** 

By: CHRIS J. JOHNSON, Mayor

Luke Fitzgerald,

ATTEST:

SHANELL OWEN, City Clerk

P.O. BOX 8070 RENO, NV 89507 (775) 825-9280

FIRST INDEPENDENT BANK OF NEVADA P.O. BOX 11100 RENO, NV 89510 775-828-2000

91-598/1221

10/26/2016

PAY TO THE ORDER OF... City of Elko

\$ \*\*50,589.00

DOLLARS (1)

1372

City of Elko

MEMO

Copper Trails Performance Agreement

#OO13??# #122105980# BO10436007#

From: Jeremy Draper <a href="mailto:ldraper@elkocitynv.gov">ldraper@elkocitynv.gov</a>

Sent: Tuesday, June 20, 2017 10:45 AM

To: Scott <scott@jtmelko.com>

Subject: RE: Tower Hill

#### Scott.

That sounds good, let's stay in touch as you proceed with construction. We may need to have a small bond posted prior to the Aug 26<sup>th</sup> date, and make sure you have your signatures collected for the map. We also have the outstanding improvements on the shared use path on Lamoille Highway, I think we broke it up over the 4 phases of your project but would need to go back and take a look at that.

Jeremy Draper, PE Development Manager 775-777-7217



From: Scott [mailto:scott@jtmelko.com]
Sent: Tuesday, June 20, 2017 8:33 AM
To: Jeremy Draper < jdraper@elkocityny.gov>

Subject: Tower Hill

Just letting you know that sewer pipe and more castings along with fresh sand and excavators will be showing up on site as we get going.

We should be through Storm, Sanitary, water and dry utilities with road gravel in place before our August 26<sup>th</sup> date. It will take us another month to get curb, gutter, sidewalk and pavement in place.

We hope to record the plat in late September or early October depending on substantial completion and the timing for City Council agenda.

Very happy to get back on this. Ruby Dome should be mobilizing in the next 2 weeks.

Scott MacRitchie JTM Scott<sup>m</sup>)tmclkoson: 775-340-6005 Cell 866-469-3061 Fax From: Jeremy Draper < Idraper@elkocitynv.gov>

Sent: Monday, August 7, 2017 4:56 PM

To: Scott <scott@itmelka.com>

Cc: Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: Tower Hill

#### Scott.

As you are aware the preliminary plat and subsequently the final plat for phase 1 of Tower Hill are set to expire this month. There is a provision in the performance agreement that does allow for a 12 month extension of the time to complete the work provided the developer shows good cause. It would be my opinion that good cause has been shown for the extension and that you are committed to completing the work. A performance guarantee in accordance with 3-3-45 is required and the final plat will be required to be recorded at the time of the posting of a performance guarantee may be in the form of a performance bond, deposit of funds, or irrevocable letter of credit. The performance guarantee must be for the <u>full cost of the required improvements, engineering</u> inspections, incidental expenses etc.

Elko City Code 3-3-44 B does provide for progress payments to the subdivider from any deposit which the subdivider may have made, or reduction in bonds, not exceeding ninety percent of the value of the improvements completed and approved, as determined by the city engineer. The provision is required to be in your agreement if it is to be enacted upon, unfortunately this was not included in the performance agreement for phase 1.

know that when we spoke earlier today that you wanted to request both the extension and the possible a request to the council to include the provision allowing for a reduction in the performance guarantee as allowed in 3-3-44. Please respond in writing to request these items be placed on the next city council agenda, August 22, 2017. Let me know if you have any questions.

Thank you,

Jeremy Draper, PE Development Manager City of Elko 1751 College Ave Elko NV 89801 Phone 775-777-7217 Fax 775-777-7219



From: Jeremy Draper [mailto:jdraper@elkocitynv.gov]

Sent: Thursday, January 18, 2018 5:38 PM
To: Scott MacRitchie < scott@macritchie.com >

Cc: khmcconnell@frontiernet.net; Scott A. Wilkinson <sawilkinson@elkocitynv.gov>

Subject: RE: Performance Agreement

#### Scott M.,

Our interpretation of this section of code differs from your interpretation. 3-3-45 as you stated indicates that the subdivider shall have provided the city a financial guarantee of performance for the completion of required subdivision improvements. If you continue reading under subsection A-1 of 3-3-45 it states that the

Performance Bond: Performance or surety bond in an amount deemed sufficient by the city engineer to
covér, but in no case be less that, the full cost of required improvements, engineering inspections, incidental
expenses and replacement and repair of any existing streets and utilities or other improvements which may
be damaged during construction of required improvements.

We read this as even though a portion of the work has been completed the performance guarantee must be sufficient to cover the expense of replacing those items in the even they become damaged during construction. The performance guarantee must be for the <u>full cost of the improvements</u>, we base those costs off of the approved engineers estimate for the project.

I am continuing to work on your performance agreement and would hope to have a draft to Dave for review next week.

Thanks,

Jeremy Draper, PE Development Manager 775-777-7217



From: Scott MacRItchie [mailto:scott@macritchie.com]

Sent: Wednesday, January 17, 2018 12:41 PM To: Jeremy Draper <jdraper@elkocitynv.gov>

Cc: <a href="mailto:khmcconnell@frontiernet.net">khmcconnell@frontiernet.net</a>
Subject: Performance Agreement

Jeremy,

In reading the portion of city code that relates to the performance agreement it states that we must have this in place before the plat is to be recorded.

It also states

#### 3-3-45: PERFORMANCE GUARANTEE:

A. Forms Of Guarantee: Prior to certification of final plat approval by the mayor, the subdivider shall have provided the city a financial guarantee of performance for the completion of required subdivision improvements, in one or a combination of the following forms as determined by the city:

If we have completed a portion of the required subdivision improvements there should be no need to provide a financial guarantee that we will perform the completion of items that we have already completed.

Scott MacRitchie Jordanelle Third Mortgage Mulberry Development Group Mulberry Homes 775-340-6005



Thomas C. Ballew, P.E., P.L.S. Robert E. Morley, P.L.S. Duane V. Merrill, P.L.S. Floyd M. Fisk, P.E.



(775) 738-4053 Phone (775) 753-7693 Fax 640 Idaho Street Elko, NV 89801

April 17, 2018

Katie McConnell Copenhaver & McConnell Law Office 950 Idaho Street Elko, NV 89801

via email: khmcconnell@frontiernet.net

Re: Tower Hill Subdivision, Unit 1

Dear Katie,

Please be advised that I am the Engineer of Record on the above referenced project and have directed all quality control and quality assurance efforts for the project construction activities.

The following is a summary of the work completed on the above referenced project:

Earthwork: 100% complete. All quality assurance testing complete. Sanitary Sewer: 100% complete. All quality assurance testing complete. Storm Sewer: 100% complete. All quality assurance testing complete. Domestic Water: 100% complete. All quality assurance testing complete.

Electric: Developer responsibility 100% complete.
Telephone: Developer responsibility 100% complete.
Television: Developer responsibility 100% complete.
Natural Gas: Developer responsibility 100% complete.

#### Remaining items of work are as follows:

Flatwork - curb, gutter and sidewalk.

Surfacing - aggregate base, pavement and seal coat.

Installation of street monuments.

Installation of street signs.

Final adjustment of valves and manholes.

Completion of utility installation by NV Energy, Frontier Communications, Satview Broadband and Southwest Gas Corporation.

Let me know if you have any questions regarding this matter.

Sincerely,

High Desert Engineering, LLC

Thomas C. Ballew, PE, PLS

cc: Scott MacRitchie, JTM

## AGREEMENT TO INSTALL IMPROVEMENTS AND PERFORMANCE/MAINTENANCE GUARANTYS

THIS AGREEMENT made and entered into this day of, 2018, by and between the CITY OF ELKO, a municipal corporation organized and existing under the laws of the State of Nevada, hereinafter referred to as the "City," and <u>Jordanelle Third Mortgage, LLC</u> , an <u>Arizona Limited Liability Company</u> , hereinafter referred to as "Developer."	
RECITALS	
A.	WHEREAS, Developer is subdividing certain property within the City, the subdivision being generally known as <a href="Tower Hill Subdivision Unit 1">Tower Hill Subdivision Unit 1</a> , into <a href="towenty-three">twenty-three</a> (23) separate parcels, and two (2) remainder parcels by means of a subdivision map, identified by the City as Subdivision Map No. 4-18;
В.	WHEREAS, Elko City Code, Title 3, Chapter 3, requires that a developer of a subdivision (as that term is used in NRS 278.320, as amended) enter into an Agreement to Install Improvements and file with the City Clerk of the City a financial Guaranty of performance for the completion of the required public improvements (hereinafter referred to as the "Performance Guaranty") prior to certification of the final plat;
c.	WHEREAS, the Performance Guaranty is to be in an amount deemed sufficient by the City of Elko to cover the full cost of required site improvements and public improvements, engineering inspections, incidental expenses and replacement or repair of any existing streets and utilities or other improvements required by the Elko City Code, which are to be completed within a period of twenty-four (24) months from the date of the approval of the Final Plat by the City;
D.	WHEREAS, the City has determined from the Engineer's Cost Estimate for the required site and public improvements (set forth in Exhibit A and made a part hereof) that the cost of the required public improvements are expected to be in the amount of <u>one million ninety-five</u> thousand seven hundred seventy dollars and no cents (\$1,095,770.00), which amount provides the basis for calculating the amount of the Performance Guaranty;
Ε.	WHEREAS, the Performance Guaranty shall be in the form of a deposit of in accordance with Elko City Code Subsection 3-3-45 and Elko City Code 3-3-44(A)(2) and shall be used to ensure the completion of all required subdivision improvements, to include public improvements and correction of defects of the required public improvements discovered after certification of the Final Plat.
F.	WHEREAS, the City approved the Final Plat on;

- G. WHEREAS, pursuant to Elko City Code Section 3-3-45(C), in addition to the Performance Guaranty, the Developer shall file with the Clerk of the City a maintenanceGuaranty for a one (1) year maintenance bond in the amount of <u>one hundred nine thousand, five hundred seventy-seven dollars (\$109,577.00)</u> (hereinafter referred to as the "Maintenance Guaranty");
- H. WHEREAS, in the event the Developer fails to complete all the required public improvements and site improvements in accordance with the terms of this Agreement, the Developer shall be in default of this Agreement and the City shall be entitled to pursue all available legal remedies, including, without limitation, access to and use of the Performance Guaranty; and
- I. WHEREAS, the Developer has agreed to complete the required public improvements within a period of twenty-four (24) months from the date of the Final Plat being approved and in accordance with the latest edition of the Standard Specifications for Public Works Construction as published by the Regional Transportation Commission of Washoe County, Carson City, Churchill County, City of Reno, City of Sparks, City of Yerington and Washoe County, hereinafter referred to as the "Orange Book."

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions on the part of the respective parties to be performed, the parties hereby agree as follows:

#### 1) REQUIRED IMPROVEMENTS, GUARANTYS AND APPROVALS

- A. COMPLETION OF WORK; PERFORMANCE AND MAINTENANCE GUARANTYS. Developer agrees to complete the improvements described in the Site Improvement and Public Improvement Plans attached as Exhibit B hereto in the manner set forth in this Agreement and in conformity with Elko City Code 3-3-43 (hereinafter the "Work") within twenty-four (24) months of the Effective Date, unless otherwise extended in accordance herewith, and Developer shall pay or cause to be paid all claims for labor and materials used to perform the Work and, further, Developer has provided a Performance Guaranty and shall prior to acceptance of the Work by the City, further provide a Maintenance Guaranty in the amount of one hundred nine thousand, five hundred seventy-seven dollars (\$109,577.00) for the purpose of Guarantying compliance with the requirements of this Agreement.
- **B.** Reduction in Performance Guaranty. Notwithstanding any other provision contained in this Agreement, the Guaranty that the developer is required to post pursuant to ECC 3-3-45 can be reduced pursuant to Elko City Code 3-3-44(b)(4) by progress payments, as follows:
  - 1) <u>Written Requests for Progress Payments.</u> The **Developer** must submit a written request to the Elko City Clerk for any progress payment
  - 2) <u>Limitation on Amount of Reduction of Performance Guaranty.</u> The cumulative reduction in the amount of the Performance Guaranty shall not exceed ninety percent (90%) of the value of the improvements completed and approved, as determined by the City.
  - 3) <u>Certification of Improvements.</u> Prior to a determination by the <u>City</u> of the value of the improvements completed, the <u>Developer's</u> Engineer shall provide the <u>City</u> with a Certificate of Improvements attesting to the adequacy of the <u>Work</u> and

compliance with all requirements set forth in this Agreement, the construction specifications and the Elko City Code (including model codes adopted therein). The City shall review the Certification of Improvements prior to approving a request for a progress payment or reduction of bond. The City shall not make a progress payment to the Developer unless a complete Certification of Improvements has been submitted in accordance with this paragraph.

- 4) Amounts of Individual Progress Payments. Except for the final progress payment following completion of the Work, any individual request for a progress payment shall be for at least twenty percent (20%) of the original Performance Guaranty and shall be submitted at least thirty (30) days after submittal of the previous request for a progress payment.
- 5) Form of Requests for Progress Payments. Requests for progress payments shall include a spreadsheet containing a detail of costs for each line item in the engineering cost estimate at Exhibit A, together with the original estimate amount, the total progress payments paid to date, the total value of the improvements completed and approved less ten percent (10%), and remaining amount of the Performance Guaranty following payment of the requested progress payment.
- 6) <u>Timing of Progress Payments.</u> The City shall pay approved progress payments to the Developer within thirty (30) calendar days of the date the request for progress payment is submitted to the City.
- 7) Reduction of Guaranty. Portions of this project have been completed and certified prior to the execution of this agreement for improvements that have already been completed for the work and therefore a reduction from the cost of required public improvements is warranted pursuant to 3-3-44(b) and the total amount of the Performance Guaranty required shall be
- CERTIFICATION AND SUBMISSION OF WORK. The Work shall be certified by the Developer's Engineer (who shall be a registered engineer, licensed in the State of Nevada) and submitted to the City for possible acceptance before the City conducts the subdivision final inspection and no later than twenty-four (24) months after the Effective Date. Upon certification, Developer's Engineer shall provide the City with a certificate attesting to the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, the construction specifications, codes and standards set forth in the Orange Book.
- D. MAINTENANCE PERIOD. The maintenance period shall commence on the date the City accepts the Work and shall continue thereafter for a period of twelve (12) months. In satisfaction of its requirement to provide a Maintenance Guaranty, Developer shall, prior to approval of the Work, provide the City with a maintenance bond, irrevocable letter of credit or cash deposit in the amount of one hundred nine thousand, five hundred seventy-seven dollars and no cents (\$109,577.00) which amount is not less than ten percent (10%) of the total cost of the required public improvements. If maintenance is required during the maintenance period, the City will provide fifteen (15) calendar days written notice of the required maintenance work to the Developer and the Developer must thereafter complete

the required maintenance work. If the **Developer** fails to complete the maintenance work within the fifteen (15) calendar day period, without limiting any other rights or remedies available, the **City** may complete or have the maintenance work completed and use the Maintenance Guaranty to satisfy the costs thereof.

- E. CERTIFICATION OF FINAL PLAT. The City will not certify the Final Plat until
  - 1) The Agreement has been approved by the City Council in conjunction with Final Plat. approval.
  - 2) The Agreement has been fully executed and filed with the City Clerk's office.
  - 3) The Developer has filed with the Elko City Clerk the Performance Guaranty calculated in the manner set forth herein and otherwise meeting the requirements of this Agreement and the Elko City Code;
  - 4) The Developer has provided the required engineering plans for all Work;
  - 5) The required engineering plans for the Work have been approved by the City;
  - 6) All other Final Plat requirements set forth in the Nevada Revised Statutes and the Elko City Code have been met.
- F. EFFECTIVE DATE. The Effective Date of this Agreement shall be \_\_\_\_\_\_, which is the date the City approved the Final Plat, and this Agreement shall operate retroactively to that date.
- G. TERM. The Term of this Agreement shall be twenty-four (24) months from the Effective Date, unless the Work is completed and accepted by the City prior to the expiration of the twenty-four (24) month period, in which event the Term shall expire on the date the Work is accepted by the City. Notwithstanding the foregoing, the City may, upon a written request and showing by the Developer of good cause, grant an extension of time to complete the Work for an additional twelve (12) months thereafter (with a corresponding extension of the Term); provided, no such extension shall be effective unless and until the Performance Guaranty and Maintenance Guaranty have been provided to the Elko City Clerk in sufficient amounts to satisfy the Developer's obligations pursuant to this Agreement; further provided, if at such time the City has certified that at least eighty percent (80%) of the Work has been completed, the City may, in its sole discretion, reduce the amount of the Performance Guaranty in a manner consistent with Elko City Code Sections 3-3-44 and 3-3-45 during the term of any extension so granted. Notwithstanding the foregoing, in no event shall the amount of the Performance Guaranty be reduced to an amount less than the anticipated full cost of the remaining required improvements, engineering inspections, incidental expenses, and the replacement and repair of any existing streets and utilities and other improvements which may be damaged during construction of requirement improvements.
- <u>H.</u> <u>DESCRIPTION OF WORK AND CONDITIONS.</u> In addition to any other requirements contained herein, the <u>Work</u> shall not be accepted by the <u>City</u> unless the <u>Developer</u> fully satisfies the following requirements:

- (1) COMPLIANCE WITH CITY CODE. Developer shall perform the Work in a manner that fully complies with the Elko City Code.
- (2) STANDARDS. The Work shall be completed in accordance with the plans, specifications and conditions approved by the City and in accordance with requirements otherwise set forth in this Agreement, to include requirements incorporated by reference.
- (3) PRECONSTRUCTION CONFERENCE. Prior to the initiation of the construction of any roadway, drainage, water or sewer improvements included in the Work, the Developer shall schedule and participate in a preconstruction conference with Developer's contractor(s) and the City Development Manager or his designee(s).
- (4) AS-BUILT PLANS. Developer shall provide complete as-built plans of all street, water, sewer and drainage improvements to the City prior to the subdivision final inspection.
- (5) SUBDIVISION CONDITIONS. Developer shall satisfy all subdivision approval conditions established by or at the direction of the City Council and the City Planning Commission.
- (6) ENGINEER'S CERTIFICATE. Before the subdivision final inspection, Developer's engineer (who shall be a registered engineer, licensed in the State of Nevada) shall provide the City with a certificate certifying the adequacy of the Work and compliance with all requirements set forth in this Agreement, to include, without limitation, City standard construction specifications, codes and standards.
- I. FINAL COMPLETION AND ACCEPTANCE OF WORK. Approval of the final completion and acceptance of the Work shall be at the discretion of the City and shall satisfy the requirements of this Agreement, to include the conditions set forth in Section 1 (REQUIRED IMPROVEMENTS, GUARANTYS AND APPROVALS). Developer shall request that the City inspect the Work no later than thirty (30) days prior to the end of the Term. The City shall have the authority to suspend the Work, in whole or in part, for such period as it may deem necessary due to unsuitable weather or other unfavorable conditions or the failure of Developer to comply with this Agreement, to include the standard construction specifications of the City.
- J. DEFAULT, NOTICE AND OPPORTUNITY TO CURE. In the event Developer fails to complete the Work during the Term of this Agreement or any extension hereof, the Developer shall be considered in Default. The City shall first serve upon the Developer written notice of such Default. Developer shall then have fifteen (15) days from the date of mailing of said notice to cure the Default. In the event of a Default, the City shall have the right to use the Performance Guaranty to complete the Work, to include, without limitation, payment of all third-party claims for labor and material.
- K. MAINTENANCE GUARANTY AS CONDITION OF FINAL PLAT CERTIFICATION. The certification of the Final Plat is, without limitation, conditioned upon Developer providing

- the Maintenance Guaranty, which may be used by the City, in its discretion, for the maintenance of all completed **Work** for a period of twelve (12) months after the aforementioned certification by **Developer's** Engineer
- L. DEVELOPER RESPONSIBLE FOR COST OF WORK OVER ESTIMATE. The amount of the Performance Guaranty is based upon the estimated cost of the improvements called for in the Engineer's Estimate. In the event the actual cost of improvements exceeds that amount, in the event of a Default, the Developer shall promptly pay to the City any additional amount over the amount of the Performance Guaranty, provided, the City may not recover from Developer any amount for which the City has been compensated from the Developer, to include amounts drawn by the City from the Performance Guaranty.

#### 2. GENERAL TERMS AND CONDITIONS.

- A. <u>WARRANTY</u>. Developer warrants to the City that the Work, upon completion, will be free of defects and in conformity with all applicable standards, to include requirements of the City Code and any plans approved by the City pertaining to the Work. Developer will, promptly upon completion of the Work, provide the City with "as-built" drawings documenting compliance with the warranty set forth in the preceding sentence and with the approved Public Improvement Plans.
- B. TERMINATION, BINDING EFFECT, DELEGATION AND OTHER MATTERS. This Agreement may not be amended, modified or terminated except by an agreement in writing and approved by the Developer and the Elko City Council. This Agreement and all of the covenants, terms, conditions and/or provisions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding any other provision contained in this Agreement, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party without the prior written consent of the other party. This Agreement is not intended to confer any rights or benefits to any entity other than to the City and to Developer; accordingly, there are no third-party beneficiaries to this Agreement.
- C. CONSTRUCTION OF AGREEMENT. This Agreement constitutes a contract under and shall be construed in accordance with the laws of the State of Nevada. The parties agree that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- D. <u>COUNTERPARTS.</u> This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
- E. <u>NOTICES</u>. All notices required to be given under this Agreement shall be deemed given upon the earlier of the actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows: if to City, to c/o Jeremy Draper, (or the then-current) Development Manager, 1751 College Avenue, Elko, Nevada 89801; if to Developer, to: Jordanelle Third Mortgage, LLC, 312 Four Mile Trail, Elko, NV 89801.
- F. <u>CITY'S AUTHORITY</u>. This Agreement is not intended to supersede the authority granted by law to the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's planning or other regulatory boards or departments (however designated) to

- approve any plans, permits, maps or other documents pertaining to any aspect of the **Work** or other action described in this Agreement.
- G. TIME OF THE ESSENCE. Time is of the essence and a material provision of this Agreement.
- H. INDEMNIFICATION. Developer hereby agrees to hold harmless, indemnify and defend the City (including, without limitation, the City's officers, agents and employees) against and to all claims, demands, actions, suits, liability, cost and expense, including defense expenses, (to include, without limitation, suits for damages and injuries to persons or property) that are claimed to have resulted from the acts or omissions of Developer (including without limitation its agents, employees and/or contractors) in any manner pertaining to the Work.
- I. <u>JURISDICTION AND VENUE</u>. The District Court for the Fourth Judicial District, in and for the County of Elko, State of Nevada, shall have jurisdiction and venue over all disputes arising from or in relation to this Agreement.
- J. <u>INTEGRATION</u>. This Agreement represents and contains the entire Agreement and understanding among the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior oral and written agreements and understandings with respect to the subject matter of this Agreement, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This Agreement shall be construed as a complete novation of any prior agreements relating to the subject matter of this Agreement.
- K. <u>DOCUMENTS PROVIDED TO CITY ARE PUBLIC</u>. This Agreement, together with any documents associated with the Work, may be recorded in any public system of records, to include the records of the Elko County Recorder. Under no circumstances shall **Developer** assert a right to confidentiality or an intellectual property interest in documents or other information provided to the City in relation to the Work.
- L. <u>ATTORNEY FEES.</u> In the event either partyis required to pursue any action to enforce any term or condition in this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- M. SEVERABILITY. In the event one or more of the provisions, or portions thereof, of this Agreement is determined to be illegal or unenforceable, the remainder of the Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- N. <u>HEADINGS</u>. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- O. <u>NO AGENCY, PARTNERSHIP OR JOINT VENTURE.</u> Nothing herein contained shall be construed to create an agency, partnership or joint venture between the parties.
- P. <u>REMEDIES NOT EXCLUSIVE</u>. No remedy provided by this Agreement, to include the right to make a claim against a bond or other Guaranty, shall be exclusive. The **City** shall have the right to pursue any remedies provided under this Agreement, or by law or equity, simultaneously or in sequence at its sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate the day and yearirst above written.				
CITY - THE CITY OF ELKO, a municipal corporation	<b>DEVELOPER - Jordanelle Third Mortgage, LLC</b> a Limited-Liability Company			
By: CHRIS J. JOHNSON, Mayor	By: Scott MacRitchie, Managing Director			
ATTEST:				
SHANELL OWEN. City Clerk				

### Elko City Council Agenda Action Sheet

- 1. Title: Review, discussion, and possible appointment of one (1) candidate to serve on the Airport Advisory Board, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: **April 24, 2018**
- 3. Agenda Category: **NEW BUSINESS**
- 4. Time Required: 5 Minutes
- 5. Background Information: The Airport Advisory Board has one (1) vacant position. Mr. James P. Carragher, Mr. Matthew Griego, and Mr. Jairus Duncan have all expressed an interest in serving on the board. Letters of Interest from the candidates have been included in the packet. CC
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Letters of Interest from James P. Carragher, Mr. Matthew Griego, and Mr. Jairus Duncan have been included in the packet.
- 9. Recommended Motion: Pleasure of the Council
- 10. Prepared By: Curtis Calder, City Manager
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution: Mr. James Carragher 554 Spring Creek Parkway Spring Creek, NV 89815

Mr. Matthew Griego mgriego@elkocitynv.gov

Mr. Jarius Duncan 182 Copper Elko, NV 89801 Jim Foster

March 30, 2018

Airport Manager

Elko, Nevada

Mr. Foster

I wish to apply for a position on the Elko Airport Advisory Board. I am retired but work for El Aero Services as a part time Flight Instructor starting in 2006. I have included a brief resume of my flying experience.

James P Carragher

554 Spring Creek Pkwy.

(Lam Planyh

Spring Creek, Nevada 89815

(775) 753-8144 Home

(775) 340-5092 Cell

James P Carragher 554 Spring Creek Pkwy.

Spring Creek, Nv. 89815

**Aviation Resume** 

Certificates/Ratings

ATP MEL LR-Jet

**Commercial Privileges** 

ASEL and Sea, Rotorcraft/Helicopter

Flight Instructor/Gold Seal Airplane Single & Multiengine

**Instrument Airplane** 

**Ground Instructor/Advanced-Instruments** 

Total time

ASEL MEL SES Heli. Instruction Given

Instrument Instruction Given Night Hrs.

6350 Hrs.

4676 1635 6

33

4800

700

250

Nov. 2006-Present

**El Aero Services** 

Elko, Nv.

Flight Instructor

Instruct student pilots so they can earn their Private

Pilot Certificate, conduct Flight Reviews, and do checkouts.

Jan. 2003-Aug. 2005

**West Air Aviation** 

Las Vegas, Nv.

Flight Instructor

Instructed FAA Part 141 approved courses

Jan. 1990-Sept.1995

**Aerleon Aviation** 

Las Vegas, Nv.

**Chief Flight Instructor** 

Instructed FAA Part 141 approved courses Private-ATP. Performed phase checks on students and standardization

checks on other instructors

Mar. 1979-Dec.1979

Scenic Airlines

Las Vegas, Nv.

Captain

Flying Cessna 400 series aircraft on tours and charter flights.

Jun 1977-Aug.1977

**CRIT Air** 

Parker, AZ.

Captain

Flew Cessna 402, air med flights to Phoenix, AZ.

1971-1977

**Advance Aviation** 

**Nevada Aviation** 

Las Vegas, Nv.

Flight instructor

Instructed FAA Part 141 approved courses Private-ATP.

When not flying full time I kept current by doing flight reviews as required by FAR part 61.57 for former students and occasional flight lessons. I also was attending flight instructor clinics every two years.

Note: First flight lesson Jan.6, 1968, soled Feb.10,1968, Private Certificate Jun.15,1968

### **Matthew Griego**

673 9<sup>th</sup> Street Elko, NV 89801 Cell 775-934-0453 mgfireus601@gmail.com

Dear Ms. Owen

I would like to apply for the position of Board Member with the Airport Advisory Board. I am an active community member with a background in aviation and would love the chance to give back by lending my advisory skills to an organization committed to promoting aviation.

I am a firefighter by profession and have twenty years of experience with Aircraft Rescue and Fire Fighting. My aviation experience includes being a licensed commercial pilot, a transport mission pilot for the Civil Air Patrol, and a command pilot for Angel Flight West. I have experience working with other community groups and government organizations in both membership and leadership roles. With this background and knowledge, I believe I would serve as an excellent advisor and board member for the Elko City Council on the Airport Advisory Board.

I am a resident of Elko County, willing to serve a four-year term on the board and understand the ethics and procedures under which members of a public board must conduct business.

I am confident you will find me a good fit for your needs as a board member to the Airport Advisory Board. Please contact me by phone or email if you would like to set up an in-person meeting. I look forward to hearing from you and thank you very much for your time.

Sincerely,

Matthew Griego

City of Elko Attention: Shanell Owen, City Clerk 1751 College Avenue Elko, Nevada 89801

Ref: Airport Advisory Board Member Vacancy

April 12th, 2018



To whom it may concern,

My name is Jairus Duncan and I would like very much to express my interest in the vacant Airport Advisory Board position.

I was hired in November of 2016 as a helicopter pilot for El Aero Services and since that time have become a true fan of the Elko area, in fact we just purchased a home in Elko this week and plan to put down deep roots for our family of five.

I have been a commercial rated helicopter pilot for 15 years and have been deeply involved in the interests of both private and commercial aviation & community relations while based at the Ogden Utah & Anchorage Alaska (Merrill Field) airports.

The Elko Airport serves a vital role in our community, from Emergency Medical Transport to Mining Operations Support to Search & Rescue and nearly every other aviation operation in between. The continued support and growth of this airport directly affects the growth of our community.

#### My quick details:

- FAA Commercial Pilot Helicopter
- FAASTEAM Master Pilot Award
- Helicopter Association International Operator Safety Award
- Formerly served as Advisory Board Member Utah Dept of Professional Licensing (4 year sworn position)
- More information & Resume/CV Available on LinkedIn or jairusduncan.com

I thank you for your time and hope to be of service to the Elko Airport in the future.

Jairus Duncan

182 Copper Elko, NV 89801

208-371-3819 (Cell)

### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration and possible approval of a Non-Exclusive Franchise Agreement between the City of Elko and Level 3 Communications, LLC for Data Communications Over, Under, In, Along and Across Public Roads in the City of Elko, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **NEW BUSINESS**
- 4. Time Required: 15 Minutes
- 5. Background Information: The proposed term of the agreement is ten (10) years and provides for a five (5) year renewal provided the terms and conditions remain the same. The proposed franchise fee is five (5) percent of the gross revenues actually collected from customers located within the corporate limits of the City. SAW
- 6. Budget Information:

Appropriation Required: NA Budget amount available: NA

Fund name: NA

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: None
- 9. Recommended Motion: Move to approve a Non-Exclusive Franchise Agreement between the City of Elko and Level 3 Communications, LLC for Data Communications Over, Under, In, Along and Across Public Roads in the City of Elko
- 10. Prepared By: Scott A. Wilkinson, City of Elko Assistant City Manager
- 11. Committee/Other Agency Review: Legal
- 12. Council Action:
- 13. Agenda Distribution: Eric Ewirn

Eric.Erwin@centurylink.com

**Lucas Schneider** 

lucas.schneider@centurylink.com

# NONEXCLUSIVE FRANCHISE AGREEMENT FOR PURPOSE OF CONVEYING DATA COMMUNICATIONS OVER, UNDER, IN, ALONG AND ACROSS PUBLIC ROADS OF THE CITY

#### **Between**

THE CITY OF ELKO, NEVADA

and

LEVEL 3 COMMUNICATIONS, LLC a Delaware Limited Liability Company

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# FRANCHISE AGREEMENT BETWEEN THE CITY OF ELKO AND LEVEL 3 COMMUNICATIONS, LLC ("GRANTEE"), A DELAWARE LIMITED LIABILITY COMPANY

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into as of the
day of, 2018 (hereinafter the "Effective Date"), by and between the City of
Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada
(hereinafter the "City"), and Level 3 Communications, LLC, a Delaware Limited Liability
Company, and its affiliates, including CenturyLink, Inc. and its subsidiaries, with offices at 102
Eldorado Blvd., Broomfield, CO 80021 (hereinafter the "Grantee").

#### WITNESSETH:

WHEREAS, the Grantee desires to provide telecommunication services ("Telecommunication Services") within the City and in connection therewith to establish a telecommunication services network in, under, along, over, and across present and future rights-of-way and other property of the City, consisting of telecommunication services lines, conduit, fiber, cables, manholes, handholes, and all other necessary appurtenances ("System" or "Telecommunication Services Network");

WHEREAS, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the Grantee a nonexclusive franchise to install, operate, repair, remove, replace, and maintain a Telecommunication Services Network in the City;

WHEREAS, the City and Grantee have negotiated an arrangement whereby the Grantee may provide its Telecommunication Services within the City pursuant to the terms and conditions outlined in this Agreement, in accordance with NRS 268.088, which provides that the City shall not impose any terms or conditions on a franchise for the provision of telecommunication service or interactive computer service other than terms or conditions concerning the placement and location of the telephone or telegraph lines and fees imposed for a business license or the franchise, right or privilege to construct, install or operate such lines; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and the Grantee agree as follows:

#### ARTICLE 1 FRANCHISE

- 1.1 Franchise. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between the City and the Grantee pursuant to which the Grantee is authorized and granted a special privilege to utilize public property in the manner and subject to the terms and conditions described herein.
- 1.2 Grant of Franchise. The Telecommunication Services Franchise ("Franchise") granted hereunder shall, subject to the terms and conditions of this Agreement, confer upon the

Grantee the nonexclusive authorization and special privilege to install, operate, repair, maintain, remove, upgrade, and replace its Telecommunication Services Network on, over, and under the present and future City-owned utility easements, streets, roads and public rights-of-way within the political boundaries of the City (hereinafter collectively referred to as the "City's Rights-of-Way") in order to provide Telecommunication Services.

1.3 Encroachment. Grantee shall only encroach in and on the City's Rights-of-Way and other City-owned property in accordance with this Agreement and shall independently obtain all permissions necessary to encroach on other property, to include privately-owned property within the City.

## ARTICLE 2 CONSIDERATION

2.1 Franchise Fee. For and in consideration of the Franchise granted hereunder, the Grantee agrees to pay to the City 5% of Grantee's gross revenues actually collected from customers located within the corporate limits of the City (the "Franchise Fee"). Such gross revenues shall exclude: (1) long distance access charges; (2) emergency 911 fees and surcharges; (3) equipment and other non-tariffed items which may be provided to the customers; and (4) any other franchise fees, permit fees, business fees, or taxes payable by the Grantee by reason of its engaging in the business of furnishing Telecommunication Services in the City. Such payments shall be made quarterly, within sixty (60) days after the expiration of each calendar quarter or portion thereof, during which the Franchise granted hereunder is in effect. The Franchise Fee shall be calculated based on revenues, as detailed above, generated by Grantee during the applicable quarter of the calendar year. The Grantee shall not be required to provide a performance bond, deposit, or other financial security in return for the Franchise granted herein.

Nothing in this Agreement shall relieve the Grantee of the obligation to obtain such City business and other licenses and permits as are then required for the furnishing, sale or distribution of fiber optic services or otherwise conducting activities within the City; provided, however, the amount of annual gross receipts or revenues used to calculate the Franchise Fee shall be reduced by the amount of the annual business license or permit fee paid by the Grantee to the City for engaging in the business of the furnishing, sale or distribution of fiber optic services to the inhabitants of the City and if in any year the business license or permit fee shall exceed the said business license or permit fee, the Franchise Fee shall not be payable to the City for that year. This paragraph shall not be interpreted as a waiver of Grantee's right to challenge a City licensing or permitting requirement through the appropriate legal process.

#### 2.2 Records and Reports.

The City shall have access at all reasonable hours to the Grantee's books, records, reports, contracts and bookkeeping and accounting procedures to the extent reasonably necessary to calculate or substantiate the amount of the Franchise Fee or to otherwise verify compliance with this Agreement, except as otherwise limited by any applicable privacy laws, including but not limited to 47 U.S.C. § 222. In addition to the foregoing, the Grantee shall, within thirty (30) days of the end of each year of the Term, file both an annual summary report showing gross revenues received by the Grantee from its operations in the City during the preceding twelve (12) month

period and such other information as the City shall reasonably request with respect to the Grantee's use of the public roads and other public property within the City. Notwithstanding the foregoing, the City shall maintain the confidentiality of all records and reports obtained from the Grantee pursuant to this Section 2.2, unless disclosure is required pursuant to the Nevada Public Records law or otherwise by operation of law.

2.3 Equal Treatment. City agrees that if any service forming part of the base for calculating the Franchise Fee under this Agreement is, or becomes, subject to competition from a third party, the City will either impose and collect from such third party a fee or tax, if any, in the same manner and amount as specified herein, plus any other fee or tax charged in this Agreement, or waive collection of the Franchise Fee and any other fee or tax specified herein that are subject to such competition.

## ARTICLE 3 TERM AND RENEWAL

- 3.1 Term and Renewal. The Franchise granted to Grantee shall be for a period of ten (10) years, commencing on the Effective Date; the foregoing period or any extension thereof is herein referred to as the "Term." At the end of the initial ten (10) year Term, the Franchise granted herein may be renewed by the Grantee upon the same terms and conditions as are contained in this Agreement for an additional five (5) year period by providing to the City's representative designated herein written notice of the Grantee's intent to renew not less than one hundred fifty (150) calendar days before the expiration of the initial ten (10) period.
- 3.2 Rights of Grantee Upon Expiration or Revocation. Upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between the Grantee and the City, or by revocation or forfeiture, the Grantee shall have the right to remove from the City's Rights-of-Way any and all of its Telecommunication Services Network, but in such event, it shall be the duty of the Grantee, immediately upon such removal, to restore the City's Rights-of-Way from which such Telecommunication Services Network was removed to as good a condition as the same was in before the removal was effected, normal wear and tear excepted.

Alternatively, upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between the Grantee and the City, or by revocation or forfeiture, the Grantee shall have the right to abandon in place any or all of its Telecommunication Services Network in its sole, reasonable discretion. Thereafter, the Grantee shall cede good title to any or all of its Telecommunication Services Network abandoned in place to the City by way of bill of sale and quit claim deed, with no express or implied warranties whatsoever, including those of merchantability, condition, quality, or fitness for a particular purpose.

# ARTICLE 4 USE AND RELOCATION OF FACILITIES UPON CITY'S RIGHTS-OF-WAY

4.1 Franchise Rights to Use the Public Right-of-Way.

- (a) The Grantee shall have the right to use the City's Rights-of-Way within the City to construct and maintain its Telecommunication Services Network subject to the conditions set forth in this Agreement.
- (b) In addition, Grantee shall have the right to utilize any easements across private property granted to the City for public utility purposes (unless otherwise limited by the easement deed or by contract), provided the City's written permission, which shall be reasonably provided, is obtained in each case. Grantee specifically understands and acknowledges that certain City easements and rights-of-way may be prescriptive in nature, and that nothing in this Franchise extends permission to use an easement or right-of-way beyond the scope of the right that the City has acquired, and Grantee's right to use such easements and rights-of-way shall be subject to any applicable third party prior or after-acquired interests.
- (c) All work performed by Grantee in the City's Rights-of-Way shall be done in compliance with the City's most recent standards and specifications and in accordance with all applicable permit requirements, all of which shall not conflict with the terms and conditions of this Agreement or NRS 268.088. The Telecommunication Services Network shall further be installed, constructed and maintained in accordance with Section 8-18-3 of the Elko City Code and any applicable Federal and state laws, orders of the Nevada Public Utilities Commission, and all work performed in relation thereto shall be done in a good and workmanlike manner.
- 4.2 Grantee Duty to Relocate; Subordination to City Use. Whenever the City shall require the relocation or reinstallation of any of the Telecommunication Services Network of the Grantee or its successors or assigns in any of the streets, alleys, rights-of-way, above ground facilities, or public property of the City, it shall be the obligation of the Grantee, upon notice of such requirement and written demand from the City to the Grantee, and within a reasonable time thereof, but not more than ninety (90) calendar days, weather permitting, to remove and relocate or reinstall such Telecommunication Services Network as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Grantee shall be at no cost to the City. Notwithstanding the foregoing, the duty of the Grantee to install or relocate its lines underground shall be subject to the provisions of paragraph 4.4 below. Any money and all rights to reimbursement from the State of Nevada or the federal government to which the Grantee may be entitled for work done by Grantee pursuant to this paragraph shall be the property of the Grantee. In the event the City or a private third party or a third-party utility has required the Grantee to relocate its Telecommunication Services Network to accommodate a private third party or third-party utility, Grantee may pursue any and all legal and equitable means to obtain compensation from such private third party or third-party utility.
- 4.3 Duty to Obtain Approval to Move Grantee's Property; Emergency. Except as otherwise provided in this Agreement, the City, without the prior written approval of the Grantee, shall not intentionally alter, remove, relocate, or otherwise interfere with any of the Grantee's Telecommunication Services Network. However, if it becomes necessary to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Telecommunication Services Network of the Grantee because of a fire, emergency posing an imminent threat of serious harm to persons or property, disaster, or imminent threat of serious harm to persons or property thereof,

these acts may be done without prior written approval of the Grantee, and the repairs thereby rendered necessary shall be made by the Grantee, without charge to the City.

**4.4** Location to Minimize Interference. All lines, pipes, conduits, equipment, property, structures, handholes, manholes, and assets of the Grantee shall be located so as to minimize interference with the use of streets, alleys, rights-of-way, and public property, including use and occupancy by others, and shall reasonably avoid interference with the rights of owners of private property that abuts any of said streets, alleys, rights-of-way, or public property. Grantee must cooperate with City and other franchisees and users of public property, and coordinate activities and schedules to minimize public inconvenience, disruption or damages.

# 4.5 Requirements Applicable to Placement of Telecommunication Services Network in City's Rights-of-Way.

- (a) If any portion of a sidewalk, curb, gutter, street, alley, public road, right of way or other public property shall be damaged by reason of defects in the Telecommunications Services Network that is utilized, maintained or constructed under this Franchise, or by reason of any other cause arising from the Grantee's operations, Grantee shall, at its own cost and expense, within sixty (60) days, unless delayed by abnormal weather conditions or acts of God, labor disputes or unavailability of materials, repair any such damage and restore such sidewalk, curb, gutter, street, alley, public road, right of way or other public property, or portion thereof, to as good a condition as it existed before such excavation disturbance, work or other cause of damage occurred.
- (b) Subject to paragraph 4.2 above, the Grantee shall relocate, without expense to the City, and within a reasonable time, but in not less than ninety (90) calendar days after the delivery of notice from the City, all or part of the Telecommunication Services Network installed pursuant to this Franchise if and when made necessary by any change of grade, alignment or width of any public road by the City; provided, however, that this provision shall remain in effect only so long as such public road shall remain under the jurisdiction of City as a public road; further provided that the City may, if available, provide a suitable substitute rights-of-way within which Grantee may relocate its Telecommunication Services Network. Notwithstanding the foregoing, in the event the City no longer owns the public road or right-of-way in which Grantee's Telecommunication Services Network is located, all obligations of the City hereunder with respect to that public road or right-of-way shall thereupon terminate. Nothing herein shall be construed to prohibit or restrict any obligation the State or any other third party might otherwise have for the cost of relocating Grantee's Telecommunication Services Network.
- (c) All of the Telecommunication Services Network of the Grantee which are installed and/or used pursuant to this Franchise shall be installed, constructed and maintained in a good and workmanlike manner and in compliance with all applicable laws and ordinances then in effect, together with the orders, rules and regulations of the Public Utilities Commission of the State of Nevada. Before the work of installing new or the upgrade of existing Telecommunication Services Network is commenced, the Grantee shall coordinate the location thereof with the City and, as an accommodation to the Grantee, the City will provide historical and other information to assist in the location of such lines and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits and other structures located in or under public roads and rights-of-way of the City;

provided, however, the City shall not be not responsible for the accuracy of any such information and Grantee shall have the sole responsibility for avoiding sewers, water pipes, conduits and other structures that are present.

- (d) Grantee shall comply with all provisions of the Elko City Code, Chapter 2, Title 8, entitled "Conditions of Utility Occupancy of Public Roads and City Street Cuts and Repairs" not in conflict with NRS 268.088 or any other applicable federal or state law or regulation.
- 4.6 Construction Standards. Prior to any construction or excavation, the Grantee shall submit plans, stamped by a registered Nevada professional engineering, depicting the locations of the proposed Telecommunication Services Network. Plans must be reasonably approved by the City and proper permits obtained prior to commencing such work. Grantee shall further supply the City, at no cost and on a yearly basis, an accurate as-built record of all Telecommunications Services Network located in the City's Rights-of-Way. The as-built records shall be submitted in an electronic AutoCAD format on the City's coordinate system, along with one (1) paper copy of the Telecommunications Services Network located in the City.

# ARTICLE 5 SEVERABILITY

5. Severability. If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid, or superseded or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof.

# ARTICLE 6 ACCEPTANCE BY THE GRANTEE OF FRANCHISE

6. Grantee Duty to Approve Franchise Agreement. If the Grantee has not duly executed this Agreement prior to the City Council's adoption of the corresponding Ordinance, within thirty calendar days after the effective date of the City Council's adoption of the Ordinance, the Grantee shall execute this Agreement; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

# ARTICLE 7 GENERAL PROVISIONS

- 7.1 Binding Agreement. The parties represent that (a) when executed by their respective representatives, this Agreement shall constitute a binding obligation of the parties; and (b) each party has complied with all applicable statutes, ordinances, resolutions, by-laws and other legal requirements needed to enter into this Agreement.
  - 7.2 Governing Law. This Agreement shall be interpreted pursuant to Nevada law.

- 7.3 Interpretation of Agreement. If any provision of this Agreement shall be held or declared to be void, invalid or illegal, for any reason, by any court of competent jurisdiction, such provision shall be ineffective but shall not in any way invalidate or effect any other clause, paragraph, section or part of this Agreement. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and article headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
- 7.4 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.
- Agreement of the parties hereto with respect to matters covered hereby, and no other agreement, statement or promise made by any party hereto, or agent of such party, which is not contained or incorporated herein, save and except any ordinance or other action of the Elko City Council in furtherance hereof, shall be binding or valid. No purported modification, amendment or other change in this Agreement shall be valid unless set forth in writing, and signed by both Grantee and the City, and approved by the City Council if so required. This Agreement replaces and supersedes any existing contract between the City and Grantee pertaining to the subject matter hereof, to include the services described herein and the Franchise Fees associated therewith. This paragraph shall not be interpreted as a waiver of Grantee's right to challenge a City licensing or permitting requirement through the appropriate legal process.
- 7.6 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.
- 7.7 Jurisdiction and Venue. Jurisdiction and venue for any disputes arising under this Agreement shall be in the United States District Court for the District of Nevada (Northern Division) or, if the Federal court lacks subject matter jurisdiction, then in the Fourth Judicial District Court in and for the County of Elko, State of Nevada.
- 7.8 Notices. Under this Agreement, whenever provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if the said notice is in writing and is personally served or is deposited in the mail in a properly stamped envelope to be delivered by certified mail, return receipt requested, addressed as follows:

If to the City:

Attention: City Manager City of Elko 1751 College Avenue Elko, Nevada 89801 If to Grantee:

Attention: Contract Management CenturyLink 1025 Eldorado Blvd. Broomfield, CO 80021

With copy to:

Attention: General Counsel CenturyLink 1025 Eldorado Blvd. Broomfield, CO 80021

Changes in the respective addresses to which such notices shall be directed may be made from time to time by either party. Notice of any such change in address shall be directed to the other party in writing by certified mail, return receipt requested.

- 7.9 Waivers. One or more waivers of any covenant, agreement or condition of default regarding provisions of this Agreement by either the City or Grantee shall not be construed as a waiver of a further breach of the same covenant, agreement, condition or the right of such party thereafter to enforce every provision.
- 7.10 Rights, Remedies and Benefits Cumulative. The rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other said rights, remedies and benefits, nor of any other rights, remedies and benefits allowed by law.

[SIGNATURE PAGE(S) FOLLOWING]

### **CITY OF ELKO**

		Ву:
		CHRIS J. JOHNSON, Mayor
ATT	EST:	
Ву:		<del></del>
	Shanell Owen, City Clerk	
		LEVEL 3 COMMUNICATIONS, LLC
		Ву:
		SEAN GERSON
		Its:

### Elko City Council Agenda Action Sheet

- 1. Title: First reading of Ordinance No. 828, an ordinance amending Title 4, Chapter 6, entitled "Room Tax", and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **ORDINANCE**
- 4. Time Required: 10 Minutes
- 5. Background Information: At its January 9, 2018 meeting, the Elko City Council initiated changes to the Room Tax Code. SO
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Ordinance No. 828
- 9. Recommended Motion: Conduct first reading of Ordinance No. 828, and direct Staff to set the matter for public hearing, second reading, and possible adoption.
- 10. Prepared By: Shanell Owen, City Clerk
- 11. Committee/Other Agency Review: Special Counsel, Lodging Committee
- 12. Council Action:
- 13. Agenda Distribution:

#### **CITY OF ELKO**

#### ORDINANCE NO. 828

# AN ORDINANCE AMENDING TITLE 4, CHAPTER 6 OF THE ELKO CITY CODE, ENTITLED "ROOM TAX" AND MATTERS RELATED THERETO

WHEREAS, the City of Elko desires to amend the Elko City Room Tax Code pertaining to room tax (also known as the "transient lodging tax") due dates and penalties;

WHEREAS, the City of Elko has determined that the proposed amendments will assist with transient lodging audits;

WHEREAS, the City of Elko has determined that the proposed amendments will provide clarification for transient lodging twenty-eight (28) day exemptions.

WHEREAS, the City of Elko has determined that the proposed amendment will assist in meeting the State requirements for transient lodging tax distributions and required reporting;

WHEREAS, the City of Elko has determined that a transient lodging tax on promotional packages associated with transient lodging is no longer needed;

# NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA

For amendment purposes, words which are in bold and underlined are additions to the Ordinance, and words which are lined through and bold are deleted from the Ordinance.

SECTION 1. Title 4, Chapter 6 of the Elko City Code entitled "Room Tax" shall be renamed "Transient Lodging Tax".

SECTION 2. Title 4, Chapter 6, Section 1 of the Elko City Code is hereby amended as follows:

#### 4-6-1 DEFINITIONS:

#### FOLIO: Document that summarizes or itemizes guest charges.

#### **RENTAL BUSINESS:**

- A. Rent: The act of permitting a person to use or occupy any portion of a transient lodging rental business in exchange for compensation, the act of using or occupying any portion of a transient lodging rental business in exchange for compensation, or the compensation paid for such use or occupancy. a fee paid, or the compensation paid for such use or occupancy. The terms "rent" and "lease" shall have the same meaning in this Chapter.
- B. Transient Lodging Rental Business: The operating of any business which provides "transient lodging", wherein a room, space of other accommodation is rented for a period of less than twenty-eight (28) days for use by the same tenant, to include any room, space or other accommodation which is rented to the same tenant in successive terms, the total of which is less than twenty-eight (28) days each, but not to include any room, space or other accommodation which is rented for a term of

twenty-eight days (28) or longer. In the event a business rents a portion of its rooms, spaces or other accommodations for terms of less than twenty eight (28) days and another portion of its rooms, spaces or other accommodations for terms of twenty eight (28) days or more, only those rooms, spaces or other accommodations rented for terms of less than twenty eight (28) days shall constitute a "transient lodging rental business". A form of lodging in which a room, space or other accommodation is rented to a person for a period of less than twenty-eight (28) consecutive calendar days for use by the same tenant, to include any room, space or other accommodation that is rented to the same tenant in successive terms, the total of which consecutive terms is less than twenty-eight (28) consecutive calendar days, but not to include any room, space or other accommodation that is rented to a tenant who is a natural person and who signs, prior to the commencement of the tenancy, a Transient Occupancy Tax 28-Day Exemption Form in the manner required by this Chapter.

C. Transient Lodging Rental Business: Any business having one (1) or more rooms, spaces or other accommodations that provides transient lodging to tenants in exchange for compensation. In the event a business rents a portion of its rooms, spaces or other accommodations for terms of less than twenty-eight (28) days and another portion of its rooms, spaces or other accommodations for terms of twenty-eight (28) days or more, only those rooms, spaces or other accommodations rented for terms of less than twenty-eight (28) days shall constitute a "transient lodging rental business".

**TRANSIENT LODGING:** The following types of lodging:

- A. Hotels:
- B. Motels;
- C. Apartments:
- D. Timeshare projects, except when an owner of a unit in the timeshare project who has a right to use or occupy the unit is occupying the unit pursuant to a timeshare instrument as defined in Nevada Revised Statutes section 119A.150;
- E. Apartment hotels;
- F. Vacation trailer parks;
- G. Campgrounds;
- H. Parks for recreational vehicles; and
- I. Any other establishment that rents rooms, spaces or other accommodations to temporary or transient guests having four (4) or more rooms, spaces or other accommodations for rent.

SECTION 3. Title 4, Chapter 6, Section 2 of the Elko City Code is hereby amended as follows:

#### 4-6-2: TAX ON TRANSIENT LODGING:

There is hereby fixed and imposed on every licensee operating a transient lodging rental business within the city a transient lodging tax in the total amount of fourteen percent (14%) to be collected as follows:

Fourteen percent (14%) of the gross income actually received, excluding the <u>transient</u> lodging tax, by each licensee <u>in exchange</u> for transient lodging rentals, <u>shall be paid as a tax on transient lodging</u>. Complimentary transient lodging (transient lodging which is provided at no cost to the occupant) is nontaxable. To be considered complimentary transient lodging, the transient lodging must be provided on an individual basis and not as part of any established package, advertised or otherwise, which includes other products or services. <u>Transient lodging included in promotional packages is taxable</u>. The taxable amount for such transient lodging, except those promotional packages that include airfare, is computed by obtaining the percentage that the transient lodging rack rate bears to the retail value of the package and multiplying that percentage by the package cost to the occupant, or the actual amount charged for the transient lodging, whichever is greater.

Example: Transient lodging with an established rack rate of fifty dollars (\$50.00) is included in the following package, which is sold for forty dollars (\$40.00):

Food credit	\$ <del>-10.00</del>
Coins	10.00-
Cabaret show	20.00
Drink tokens	10 .00
Rack rate	50 .00
-	
Retail value of package	100 .00

The rack rate equals fifty percent (50%) of the retail value of the package. Therefore, fifty percent (50%) of the package cost, or twenty dollars (\$20.00), must be allocated to transient lodging and included in taxable revenue.

Transient lodging tax charged for transient lodging rented as part of a promotional package that includes airfare shall be set by resolution of the city council.

SECTION 4. Title 4, Chapter 6, Section 4 of the Elko City Code is hereby amended as follows:

There shall be, and hereby is, exempted from the license tax on transient lodging, each rental by any person who rents transient lodging if: lessee of a room, space or other accommodation when the room, space, or other accommodation is paid for, directly, from a federal, state or local governmental entity.

- A. The transient lodging is directly reserved and paid for by a federal, state or local governmental entity, to include a school district; provided, a Governmental Agency Exemption Claim Form must be completed and retained in accordance with the retention standards set forth in 4-6-11 (B); or
- B. The tenant signs, prior to occupancy, a contract, lease, or other written agreement, or signs a Transient Occupancy Tax 28 Day Exemption Form, pursuant to which the tenant promises to stay at the subject transient lodging facility for a period of at least 28 days. Notwithstanding the foregoing, if the occupant does not stay at the transient lodging facility for at least 28 days, the operator shall pay to the City the transient lodging tax due for the period the room was occupied. Except as otherwise provided in this Chapter, no rental shall be deemed to have been made for a period of 28 days or more unless the room or rooms rented to the tenant are continuously occupied by the tenant for 28 continuous calendar days without interruption.

SECTION 5. Title 4, Chapter 6, Section 9 of the Elko City Code is hereby amended as follows:

#### 4-6-9: PAYMENT OF TAX, INTEREST AND PENALTIES:

Every licensee shall pay the transient lodging tax to the city clerk on or before the fifteenth day of the month when such tax shall accrue and shall submit the payment with a completed form supplied by the City entitled "Operator's Transient Lodging Tax Return." Payment of the transient lodging tax shall become delinquent at 5:00 p.m. on the fifteenth day of the month. on the sixteenth day of the month. Such tax becomes payable to the city clerk by the licensee pursuant hereto. All electronic payments must be transmitted and received by the city clerk on or before 5:00 p.m. on the fifteenth day of the month. Notwithstanding the foregoing, mailed payments postmarked on or before the tenth day of the month will not be assessed delinquent fees.

SECTION 6. Title 4 Chapter 6, Section 10 of the Elko City Code is hereby amended as follows:

#### 4-6-10: ALLOCATION AND USE OF TRANSIENT LODGING TAX FUNDS:

The transient lodging tax in the total amount of fourteen percent (14%) of the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals pursuant to section 4-6-2 of this chapter shall be allocated and used by the city on the following percentages under the following categories. The transient lodging tax allocation shall be reviewed annually by the city council:

A. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the recreation transient lodging tax fund in the amount of six and 1/8 percent (6 1/8%) shall be deposited in a special fund in the city treasury to be known as or designated as the recreation fund.

- B. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Elko eonvention and visitors authority

  Convention and Visitors Authority transient lodging tax fund in the amount of two and three-eighths percent (2³/8%) shall be paid to the Elko eonvention and visitors authority

  Convention and Visitors Authority as collected on and after July 1, 1998.
- C. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals in the amount of one percent (1%), promotion of tourism transient lodging tax, shall be paid as follows:
- 1. Three-eighths (<sup>3</sup>/<sub>8</sub>) of all proceeds of the promotion of tourism transient lodging tax must be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
- 2. Five-eighths (<sup>5</sup>/<sub>8</sub>) of all proceeds of the promotion of tourism transient lodging tax must be deposited with the Elko County recreation board created pursuant to Nevada Revised Statutes section 244A.597, to be used to advertise the resources of the county of Elko related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
  - D. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Western Folklife Center transient lodging tax fund in the amount of one-fourth of one percent (0.25%) shall be paid to the Western Folklife Center fund as collected on and after July 1, 1998.
  - E. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the agricultural district 4 transient lodging tax, in the amount of one-half of one percent (0.5%) shall be paid to agricultural district 4 as collected on and after July 1, 1998.
  - F. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Elko Sno Bowl Foundation transient lodging tax in the amount of one-eighth of one percent (0.125%) shall be paid to Elko Sno Bowl Foundation as collected on and after July 1, 1998.
  - **GF**. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the marketing/tourism promotion transient lodging tax in the amount of one and three-fourths percent (1<sup>3</sup>/<sub>4</sub>%) shall be paid to the Elko **convention and visitors authority** Convention and Visitors Authority on the condition that it creates a separate marketing and tourism promotion fund to account for all collections and expenditures made on and after July 1, 2001.
  - H. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals will first be applied to the Elko Regional Airport debt service transient lodging tax fund in the amount of up to two percent (2%) and shall be paid to the Elko Regional Airport as collected on and after August 1, 2007. Any amounts in

excess of the debt service requirement, as determined by the annual audit, shall be paid to the Elko **convention and visitors authority** Convention and Visitors Authority on the condition that it creates a separate facility fund to account for all collections and expenditures. No portion may be used for salaries or benefits.

- I. All recipients of the transient lodging tax shall render to the city an annual account showing in detail the use of all transient lodging tax received from the city. (Ord. 794, 5-12-2015, eff. 7-1-2015)
- SECTION 7. Title 4, Chapter 6, Section 11 of the Elko City Code is hereby amended as follows:

#### 4-6-11: EXAMINATION OF BOOKS AND RECORDS:

The tax administrator and his duly authorized agent are empowered to examine and audit the books, papers and records of any licensee or person operating a transient lodging rental business and to make investigations in connection therewith. <u>Audits will cover a three (3) year period.</u>

The audit will be conducted at no expense to the licensee.

- A. Required Records. Each licensee is required to maintain daily records which support amounts reported on the Operator's Transient Lodging Tax Returns. These daily records shall include, without limitation, the following information:
  - 1. Total rooms available and occupied.
  - 2. Total daily gross room receipts.
  - 3. Total amount of transient lodging tax collected.
  - 4. Number of rooms, spaces or other accommodations provided for no compensation.
  - 5. <u>Contract, lease, Transient Occupancy Tax 28-Day Exemption Forms or rental</u> agreement.
  - 6. Government Agency Exemption Claim Forms.
  - 7. Any and all documentation used to complete the Operator's Transient Lodging Tax Return, to include all documents that support the calculations shown on the Return.

An acceptable record retention practice includes maintaining bound receipt books, guest folios, registration cards, daily transaction reports, general ledgers, cash journals, register and/or computer printouts, computerized records, and any other books and records deemed reasonably necessary to support all information supplied to the City as required by this Chapter. Licensees shall retain and provide all documents that support revenues and exemptions reported to the City.

B. Retention of Records. Every licensee shall keep all records which must be maintained pursuant to Section 4-6-11 for a period of not less than four (4) years from the close of the accounting year to which the Returns relate.

C. Availability of Records. Upon written notification of a transient lodging tax audit, the licensee shall provide the City or City auditors with all records supporting the Transient Lodging Tax Returns filed with the City of Elko during the audit period. These records shall be made available to the City or City Auditors at the transient lodging rental business or the offices of the City of Elko within ten (10) business days of the date the notice is sent, unless other arrangements are made with the City of Elko.

If the transient lodging tax audit is conducted at the transient lodging rental business, the licensee shall provide reasonable accommodations to the City auditors. The City auditors may be City employees or independent contractors acting on the City's behalf.

Auditors may make copies of all original records reviewed in the course of conducting the audit. Auditors may request copies of records which must be provided by the licensee either through copy, e-mail, cd or flash drive to be retained as part of the audit work papers which substantiate the audit findings.

Failure of a licensee to retain or refusal of a licensee to furnish any such records required to be maintained pursuant to this Section may provide grounds for the assessment of a deficiency in the payment of the transient lodging tax for the period that is subject to the audit. The City may utilize any available data or other information to calculate the correct transient lodging tax for the period being audited.

- D. Failure to Cooperate with a Transient Lodging Tax Audit. Upon determination by the city clerk that a licensee is failing to cooperate with an auditor conducting an audit of Transient Lodging Tax Returns pursuant to this Section, the City Council may terminate, suspend or revoke the licensee's Business License pursuant to City Code 4-1-14. Failing to cooperate, as that term is used in this Subsection, includes refusing to provide sufficient information to the auditor in order to conduct the audit.
- E. Notice of Audit Determination. Following the completion of an audit pursuant to this Section, the City will provide a written determination of the audit results to the licensee. The foregoing notice may be served personally, by certified mail, and/or e-mail.
- F. <u>Time Limitation</u>. If the city clerk assesses an additional amount for underpayment or nonpayment of transient lodging tax, the licensee has thirty (30) calendar days in which to pay the assessed amount and/or file a written notice appeal of the findings with the city clerk.
- G. Appeals of an assessment by the city clerk pursuant to this subsection shall be placed on a City Council agenda for consideration no later than sixty (60) days from the date the notice of appeal is filed with the city clerk. The decision of the City Council to uphold the assessment, in whole or in part, shall be deemed a final decision for purposes of judicial review. The licensee shall thereafter have thirty (30) calendar days in which to file a petition for judicial review with the Fourth Judicial District Court in and for the County of Elko, State of Nevada.

Should the city clerk determine that a credit for overpayment of a transient lodging tax is due, the credit will be refunded to the licensee within thirty (30) calendar days from the date of the determination.

SECTION 8. Title 4, Chapter 6, Section 12 of the Elko City Code is hereby amended as follows:

#### 4-6-12: PENALTIES AND INTEREST:

If the transient lodging tax is not paid on or before 5:00 p.m. on the fifteenth day of the month in which it becomes due, or if such day falls on a Saturday, Sunday or legal holiday, by 5:00 p.m. on the next succeeding day not a Saturday, Sunday or legal holiday, then the licensee shall pay a penalty of fifteen percent (15%) of the unpaid, due and delinquent transient lodging tax, and the licensee shall also pay the costs of collection of the tax, penalty, court costs and attorney fees. If payment of the transient lodging tax is not received within sixty (60) calendar days following the fifteenth day of the month when due, the City may thereafter place a lien on the property upon which the transient lodging rental business is located in the manner set forth in NRS 269.095, as amended. If payment of the transient lodging tax is not received within seventy (70) calendar days following the fifteenth day of the month when due, the City may terminate, suspend or revoke the transient lodging rental business's Business License in the manner outlined in Elko City Code Section 4-1-14.

SECTION 9. Title 4, Chapter 6, Section 13 of the Elko City Code is hereby amended as follows:

### 4-6-13: USES AND PURPOSES OF TRANSIENT LODGING TAX PROCEEDS: 🚭 🖃



The city council shall use the proceeds of the transient lodging tax provided by this chapter for the following use, uses, purpose or purposes, or any one or more thereof, at such times, in such amounts and in such manner as they shall determine, from time to time:

- A. Recreation Fund Tax On on Transient Lodging:
- 1. Operating and maintaining recreation facilities under the jurisdiction of the city council.
- 2. Improving, extending and bettering such recreation facilities.
- 3. Constructing, purchasing or otherwise acquiring such recreation facilities.
- 4. Whenever any recreation facility is affected by or will be affected by any flood control project being constructed or to be constructed under the provisions of any federal law if the city council finds that such flood control project will improve, better and protect such recreation facility, the city council shall have the power and authority to give assurances to and perform any other acts required by and satisfactory to the secretary of the army that the location and cooperation required for such flood control project by such federal law will be furnished by the city to the extent that the city council shall determine.
- 5. To establish, construct, purchase, lease, rent, acquire by gift, grant, bequest, devise, or otherwise acquire, reconstruct, improve, extend, better, alter, repair, equip, furnish, regulate,

maintain, operate and manage recreation facilities within or without the city, including personal property, real property, lands, improvements and fixtures thereof, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

- 6. To accept contributions, grants or other financial assistance from the federal government or any agency or instrumentality thereof, corporate or otherwise, the state of Nevada or any of its political subdivisions, or from any other source, for or in aid of any recreation facility within the area of operation of the city council, and to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable.
- 7. To use such funds to pay the necessary expense of imposition, collection and expenditure of this transient lodging tax and the proceeds thereof.
- 8. To use such proceeds to repay any loans, debts or bonded indebtedness that the city council may incur in connection with such recreation facilities, and that in that connection to pledge this transient lodging tax and the proceeds thereof as security for the repayment of any such loans, debts, obligations secured by bond, bonds, and other indebtedness which may be incurred in connection with such recreation facilities.
- 9. For marketing and/or promotion of transportation services serving the city.
- B. Elko Convention And and Visitors Authority On on Transient Lodging Tax Fund: To pay the proceeds thereof to the Elko convention and visitors authority Convention and Visitors Authority, to be used by it for any lawful purposes, as it shall determine in carrying out its powers under Nevada Revised Statutes chapter 227, as may be amended from time to time.
- C. Promotion Of of Tourism On on Transient Lodging Tax Fund:
- 1. Three-eighths  $(^{3}/_{8})$  of all proceeds of the tax must be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
- 2. Five-eighths (<sup>5</sup>/<sub>8</sub>) of all proceeds of the tax must be deposited with the Elko County recreation board created pursuant to Nevada Revised Statutes sections 244A.597 and 244A.599 to be used to advertise the resources of the county related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
- D. Western Folklife Center On Transient Lodging Tax Fund: To donate the proceeds thereof to the Western Folklife Center, a Utah corporation licensed to do business in the state of Nevada, to be used by it to help operate and finance cultural and educational activities within the city relating to the events and activities which said corporation engages in within the city.
- E. Agricultural District 4 On Transient Lodging Tax Fund: To donate the proceeds thereof to the agricultural district 4 to be used by it for any lawful purposes as it shall determine in carrying out its powers pursuant to applicable Nevada Revised Statutes provisions.

- F. Elko Sno Bowl Foundation On Transient Lodging Tax Fund: To donate the proceeds thereof to the Elko Sno Bowl Foundation, a Nevada nonprofit corporation to be used by it to help operate and finance the Sno Bowl skiing facility which is located on land owned by Elko County, Nevada.
- G. F. Marketing/Tourism Promotion On on Transient Lodging Tax Fund:
- 1. To use for marketing efforts to increase travel to Elko by tourists, on a national and/or regional level. The Elko convention and visitors authority Convention and Visitors Authority will determine the appropriate marketing packages and programs to be funded by this tax.
- 2. This tax may not be used for administration or overhead for the Elko convention and visitors authority. Convention and Visitors Authority.
- 3. The city will exercise reasonable efforts to provide, on a monthly basis, summary reports of the confidential room occupancy reports to the Elko eonvention and visitors authority

  Convention and Visitors Authority and the city council as a tool to monitor the success of the marketing efforts funded by this tax. (Ord. 705, 4-28-2009)
- H. Elko Regional Airport Debt Service Transient Lodging Tax Fund: To use such proceeds to repay any loans, debts or bonded indebtedness that the city council may incur in connection with such airport facilities, and that in that connection to pledge this transient lodging tax and the proceeds thereof as security for the repayment of any such loans, debts, obligations secured by bond, bonds, and other indebtedness which may be incurred in connection with such airport facilities.
- 1. Any amounts in excess of the debt service requirement, as determined by the annual audit, shall be paid to the Elko eonvention and visitors authority Convention and Visitors

  Authority on the condition that it creates a separate facility fund to account for all collections and expenditures. No portion may be used for salaries or benefits.
- SECTION 10. Title 4, Chapter 6, Section 15 of the Elko City Code is hereby amended as follows:

#### 4-6-15 FORMS, AND COSTS AND REQUIRED REPORTING:

A. The city clerk is hereby empowered and authorized to designate the form of and have prepared or printed all stationery, supplies, records, notices, receipts, licenses and other forms that the city clerk deems necessary or advisable in connection with the collection, administration and disbursement of the proceeds of this transient lodging tax, and to obtain all supplies, records and other property and equipment deemed necessary by the city clerk in connection with the collection, administration, use and disbursement of the said transient lodging tax proceeds. All costs, expenses, charges and debts incurred by the city, or by the city clerk under the provisions of this chapter, in connection with the imposition, collection, administration, use and disbursement of this transient lodging tax

and the proceeds thereof shall be paid out of the recreational fund provided for in this chapter.

B. The licensee shall complete all forms required by this Chapter in their entirety. The licensee may supply additional information as an addendum to any form required by this Chapter to the extent reasonably necessary to supply complete and accurate information to the City.

SECTION 11. All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

SECTION 12. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid, unenforceable or unconstitutional by any court of competent jurisdiction, the invalidity, unenforceability of such section, paragraph, clause or provision shall not affect any remaining provision of this Ordinance.

SECTION 13. Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

SECTION 14. This Ordinance shall be effective July 1, 2018.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_\_, 2018, by the following vote of the Elko City Council.

VOTE:
AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_\_, 2018.

CITY OF ELKO

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

CHRIS JOHNSON, Mayor

ATTEST:	
SHANELL OWEN, City Clerk	

#### CITY OF ELKO OPERATOR'S MONTHLY TAX ON TRANSIENT LODGING RETURN INSTRUCTIONS

The Operator's Monthly Tax on Transient Lodging Return Form must be completed in its entirety.

The Elko Hotel/Motel/RV Occupancy Report is required form that is used for statistical purposes.

**Line A.** Enter the total number of rooms or RV spaces on the property.

**<u>Line B.</u>** Enter the total number of room nights or RV spaces available for the entire reporting month, excluding all out of order rooms or spaces and those permanently reserved for 28 day stays.

**<u>Line C.</u>** Enter the number of room nights or RV spaces occupied during the reporting month. (Include 28 day stays, all other exemptions and all complimentary room nights)

<u>Line D.</u> Enter the number of room nights or RV spaces occupied by complimentary visitors during the reporting month.

<u>Line E.</u> Enter the number of room nights or RV spaces occupied by 28 day guests during the reporting month. A Transient Occupancy Tax 28 Day Exemption Form **MUST** be on file for each lessee receiving the exemption. This form must be kept by the Licensee for not less than four (4) years from the close of the accounting year to which the returns relate.

<u>Line F.</u> Enter the number of room nights or RV spaces occupied by Government employees during the reporting month. A Government Exemption Claim Form **MUST** be on file for each lessee receiving the exemption. This form must be kept by the Licensee for not less than four (4) years from the close of the accounting year to which the returns relate.

<u>Line 1.</u> Enter the total gross rental income from room nights/spaces for the month, including 28 day rentals and all complimentary rooms.

<u>Line 2</u>. If any revenue was not included on your last month room tax return and should have been, it should be included on this line with a brief explanation.

#### Line 3.

- a. Total dollar amount of refunds paid this month.
- b. Total dollar value of complimentary rooms.
- c. Total dollar amount received from 28 day rentals and government exemptions.

<u>Line 4.</u> This is the total taxable amount at 14% (effective 7/1/2015). Add lines 1 and 2 and then subtract line 3.

Line 5. Multiply line 4 by 14% to compute the sub-total tax.

<u>Line 6.</u> The Tax on Transient Lodging Return and payment are due on the 10<sup>th</sup> day of the month immediately following the month you are reporting. The payment becomes delinquent on the 16<sup>th</sup> day of the month. If you received notice from the City of a penalty, or you are paying your tax on transient lodging <u>after the 15<sup>th</sup> day of the month immediately following the month you are reporting, you must include the penalty on this <u>line.</u></u>

**Line 7.** Add line 5 and 6 for the total amount due to the City for the month.

ALL PAYMENTS MUST BE POSTMARKED ON OR BEFORE THE 10<sup>TH</sup> DAY OF THE MONTH. ALL ELECTRONIC PAYMENTS MUST BE TRANSMITTED AND RECEIVED ON OR BEFORE THE FIFTEENTH DAY OF THE MONTH.

### ALL AREAS MUST BE FILLED OUT AND ARE REQUIRED ON THIS FORM

### CITY OF ELKO OPERATOR'S MONTHLY TAX ON TRANSIENT LODGING RETURN

LICENS	EE	MONTH	`	EAR
Мс	otel/Hotel AND RV Park Oc	ccupancy (Red	uired Information)	
A.	Number of rooms or spaces on proper	ty. Gross rooms / sp	aces per night times days in the	month).
В.	Number of room nights or spaces avail	lable this month. (Ex	clude out of order Rooms).	
C.	Number of room nights or spaces occu	upied this month. (In	clude complimentary room nigh	s)
D.	D. Number of room nights or spaces occupied by complimentary visitors this month.			
E.	Number of room nights or spaces occu (Transient Occupancy Tax 28 Day Exe			
F.	Number of room nights or spaces occu (Government Exemption Claim Form		t employees this month	
Re	gular Tax on Transient Lo	odging (Requi	red Information)	
1.	Enter gross rental revenue from roand all complimentary rooms	oom nights/spaces, in	cluding over 28 day rentals	1)
2.	Enter any adjusted revenue for price	or month(s). Attach	an explanation.	2)
3.	Cost Deductions  a. Deduct refunds paid by you thing the best of the best of the complex of the complex of the best of the bes	is month d government	 	o,c) 3)
4.	Enter total of lines 1 and 2 minus 3.		TAXABLE AMOU	· · · · · · · · · · · · · · · · · · ·
5.	Enter 14% of line 4. This is your su		SUB-TOTAL TAX	,
6.	Enter 15% of total of line 5 as late p			, <del></del>
7.	Add lines 5 and 6.		TOTAL REMITTA	NCE 7)

Payment is due on the 10<sup>th</sup> day of the month immediately following the month you are reporting, and becomes delinquent at the end of business on the 15<sup>th</sup> day and should include the delinquent penalty. Remit payment to:

CITY OF ELKO
TAX ON TRANSIENT LODGING
1751 COLLEGE AVE.
ELKO, NV 89801

# ELKO HOTEL/MOTEL/RV PARK DETAILED OCCUPANCY REPORT

 NAME:	
MONTH:	,20

	COLUMN A	COLUMN B	COLUMN C	COLUMN	COLUMN E	COLUMN F	COLUMN G (C – D – E – F)
DATE	TOTAL ROOMS / SPACES	TOTAL ROOMS / SPACES AVAILABLE	TOTAL ROOMS / SPACES OCCUPIED	TOTAL COMPLIMENTARY ROOMS / SPACES	TAXES DUE TO 28	TOTAL OTHER EXEMPTIONS	TOTAL ROOMS / SPACES MINUS ALL EXEMPTIONS
DATE	SPACES			OCCUPIED	DAY EXEMPTION	i.e. Govt,	EXCIVIP HONS
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4							
5							
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31			_				
TOTALS			_				

<sup>\*</sup> Please exclude any out of order rooms or spaces or those permanently reserved for 28 day stays only.

<sup>\*\*</sup> Please include all rooms or spaces occupied, including 28 day occupancies of rooms or spaces usually available for shorter stays, all exemptions and all complimentary rooms or spaces.



# CITY OF ELKO

# Office of the City Clerk

Website: www.elkocity.com
Email: cityclerk@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7126 · Fax (775) 777-7129

TO:			
	(Name of Hotel/Motel/RV)	Address	
Agency indicate forth below have	ERTIFY that I, the undersigned, am a red below; that the charges for the occupive been, or will be paid for by such Gov performance of my official duties as a red.	pancy at the above estab vernmental Agency; and	olishment on the dates set I that such charges are
Number of Roo	oms:		
Name of Agen	cy:		
Agency Address	ss:		
Arrival:	Departure	Total Paid	•
I HEREBY CE correct.	RTIFY (or declare) under penalty of pe	rjury, that the foregoing	g statements are true and
(Signature of C	Sovernmental Agency Representative/En	mployee)	(Date)
HOTEL/MOT	EL/RV OPERATORS		
all the required with a credit ca vacation are no exemption by l	his certificate <i>unless</i> the person present conditions. The Government must either dissued by the Governmental Agency t exempt from transient lodging tax. A egibly cosigning the form, and listing the ears from the close of the accounting ye	ter pay you directly, or to the employee. Gove hotel employee must value ir job title. This form	the employee may pay ernmental employees on alidate the Governmental must be kept not less
(Signature of V	alidating Hotel/Motel/RV Employee)	(Name of Hotel/M	Motel/RV Employee)



# **CITY OF ELKO**

Website: www.elkocity.com
Email: cityclerk@elkocitynv.gov

Office of the City Clerk

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7126 · Fax (775) 777-7129

# TRANSIENT OCCUPANCY TAX 28 DAY EXEMPTION FORM

In order to qualify for a 28 day exemption, **PRIOR** to occupancy, this form must be completed in full by the operator and signed by the occupant. Absent such obligatory agreement, occupant is deemed to be a transient and subject to the City's Transient Lodging Tax (TLT) for exercising occupancy for a period of 27 consecutive calendar days or less. Please complete in ink.

Room Rate:	\$	per_		Roor	n Numbe	er:	
	-		Day/Week/Month				
Period of Res	sidency: m/d/yr		to m/d/yr				
			st to be exempted from pay suse the tenancy is for mor				of
B. \$		x		=	\$		
Daily	Room Rate		Number of Days Subject to TLT Exemption	1	To TL	tal Rent Subject to T Exemption	
\$		x	14%	=	\$		
Dail	y Room Rate		TLT Rate			Daily Tax Rate	
\$		x		=	\$	Total TLT	
Dail	y Tax		Number of Days				
		5	Subject to TLT Exemption		S	ubject to Exemption	
agreed upon daily room r	. I also agree that ate/rent and trans	if I do n ient lodg	days, I shall be liable to a tot stay twenty-seven (27) ging tax in the amount of atements made herein are	consecut 14%. I d	tive days leclare u	s that I will be responsib under penalty of perjury	ble for the
Sign	ature of Occupan	t			Date		
Prin	t Name of Occupa	nt			Tele	phone Number	
Hotel Note: occupant wit		el must :	upant. This form must b file and maintain origina he returns relate.				
Name of Hot	el/Motel/RV Park		Sign	ature of l	Employe	ee: .	

# **Chapter 6 ROOM TAX**

# 4-6-1: DEFINITIONS:

Unless it is apparent from the context that another meaning is intended, the following words when used herein shall have the following meanings:

LESSEE: Any person renting rooms, spaces or other accommodations from a licensee.

LICENSEE: Any person operating or conducting a transient lodging rental business.

RECREATION FACILITY OR RECREATION FACILITIES: A place, structure, area or other facility used for community recreation, such as playgrounds, playing fields or courts, beaches, lakes, rivers, swimming pools, dams constructed across streams or rivers for the creation of swimming pools and recreational reservoirs, gymnasiums, auditoriums, camps, parks, ski facilities, golf courses, natural reservoirs, recreation grounds, fairgrounds, exposition buildings, convention halls, field houses, amusement halls and recreation centers.

RENTAL BUSINESS: A. Rent: The act of permitting a person to use or occupy any portion of a transient lodging rental business in exchange for a fee paid, or the compensation paid for such use or occupancy. The terms "rent" and "lease" shall have the same meaning in this chapter.

B. Transient Lodging Rental Business: The operating of any business which provides "transient lodging", wherein a room, space or other accommodation is rented for a period of less than twenty eight (28) days for use by the same tenant, to include any room, space or other accommodation which is rented to the same tenant in successive terms, the total of which is less than twenty eight (28) days each, but not to include any room, space or other accommodation which is rented for a term of twenty eight days (28) or longer. In the event a business rents a portion of its rooms, spaces or other accommodations for terms of less than twenty eight (28) days and another portion of its rooms, spaces or other accommodations for terms of twenty eight (28) days or more, only those rooms, spaces or other accommodations rented for terms of less than twenty eight (28) days shall constitute a "transient lodging rental business".

TAX ADMINISTRATOR: When used in this chapter, the Elko city clerk.

TAX ON TRANSIENT LODGING: A tax imposed herein on the rental of transient lodging by the authority of the laws of Nevada and especially Nevada Revised Statutes sections 268.095 and 268.096, and all amendments thereto.

TENANT: The person actually occupying a room, space or other accommodation in a

transient lodging rental business, regardless of the method or means of payment.

TRANSIENT LODGING: The following types of lodging:

- A. Hotels;
- B. Motels;
- C. Apartments;
- D. Timeshare projects, except when an owner of a unit in the timeshare project who has a right to use or occupy the unit is occupying the unit pursuant to a timeshare instrument as defined in Nevada Revised Statutes section 119A.150;
- E. Apartment hotels;
- F. Vacation trailer parks;
- G. Campgrounds;
- H. Parks for recreational vehicles; and
- I. Any other establishment that rents rooms, spaces or other accommodations to temporary or transient guests having four (4) or more rooms, spaces or other accommodations for rent. (Ord. 627, 11-9-2004)

# 4-6-2: TAX ON TRANSIENT LODGING:

There is hereby fixed and imposed on every licensee operating a transient lodging rental business within the city a transient lodging tax in the total amount of fourteen percent (14%) to be collected as follows:

Fourteen percent (14%) of the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals. Complimentary transient lodging (transient lodging which is provided at no cost to the occupant) is nontaxable. To be considered complimentary transient lodging, the transient lodging must be provided on an individual basis and not as part of any established package, advertised or otherwise, which includes

other products or services. Transient lodging included in promotional packages is taxable. The taxable amount for such transient lodging, except those promotional packages that include airfare, is computed by obtaining the percentage that the transient lodging rack rate bears to the retail value of the package and multiplying that percentage by the package cost to the occupant, or the actual amount charged for the transient lodging, whichever is greater.

Example: Transient lodging with an established rack rate of fifty dollars (\$50.00) is included in the following package, which is sold for forty dollars (\$40.00):

Food credit	\$ 10 .00
Coins	10 .00
Cabaret show	20 .00
Drink tokens	10 .00
Rack rate	50 .00
Retail value of package	100 .00

The rack rate equals fifty percent (50%) of the retail value of the package. Therefore, fifty percent (50%) of the package cost, or twenty dollars (\$20.00), must be allocated to transient lodging and included in taxable revenue.

Transient lodging tax charged for transient lodging rented as part of a promotional package that includes airfare shall be set by resolution of the city council. (Ord. 794, 5-12-2015, eff. 7-1-2015)

# 4-6-3: LICENSE REQUIRED:

- A. It shall be unlawful for any person, either for himself or for another person, to commence or to carry on any transient lodging rental business without first having procured a license from the tax administrator so to do; provided, that a licensee may secure the license within ten (10) days of commencement of business and the license shall be issued as of the date of the commencement of business.
- B. The tax administrator shall, upon receipt of an application for a license, issue a license to such applicant who shall keep the same posted in his place of business in a conspicuous place. (Ord. 627, 11-9-2004)

# 4-6-4: EXEMPTIONS AND EXCEPTIONS:

There shall be, and hereby is, exempted from the license tax on transient lodging, each rental by any lessee of a room, space or other accommodation when the room, space or other accommodation is paid for, directly, from a federal, state or local governmental entity. (Ord. 627, 11-9-2004)

# 4-6-5: TRANSIENT LODGING TAX TO BE COLLECTED FROM LESSEE:

Each licensee is, and shall be, required to add the amount of the transient lodging tax onto the amount of the transient lodging rentals due from each lessee. The amount of the tax shall be displayed separately from the price of the transient lodging rent on the registration card or other record of the licensee. (Ord. 627, 11-9-2004)

# 4-6-6: DISPLAY OF NOTICE:

Each licensee shall prominently display in each room, space or other accommodation rented or at the option of the licensee, in the lobby at or in the immediate vicinity of the registration desk, a sign reading substantially as follows:

# **NOTICE**

This business is required by law to collect a fourteen percent (14%) transient lodging tax on any rental of transient lodging of less than twenty eight (28) days.

The Management

(Ord. 794, 5-12-2015, eff. 7-1-2015)

# 4-6-7: LICENSES:

Licenses required by this chapter shall be issued by the city clerk. Such licenses may be issued by the city clerk on an annual calendar year basis; or on a semiannual calendar year basis, the first period being from January 1 through June 30 of such year and the second period being from July 1 through December 31 of such year; or on a quarterly basis, the first quarter commencing January 1 and ending March 31, the second quarter commencing April 1 and ending June 30, the third quarter commencing July 1 and ending September 30 and the fourth quarter commencing October 1 and ending December 31. All licenses issued shall

be valid for the period of time specified in such license. No licenses issued hereunder shall be transferable. There shall be no charge made to the licensee for any license issued hereunder. (Ord. 627, 11-9-2004)

# 4-6-8: AUTHORITY TO COLLECT TAX:

The city clerk is hereby authorized and empowered to collect the proceeds of this transient lodging tax, together with any and all interest and penalties in connection therewith, and to enforce by all appropriate and lawful means the provisions of this chapter, and to bring suit therefor as well as to proceed by any appropriate criminal action. The city clerk is also hereby authorized and empowered to collect information related to daily occupancy and average daily rate; however, such information shall be deemed confidential pursuant to Nevada Revised Statutes section 268.490 (records; confidentiality). (Ord. 627, 11-9-2004)

# 4-6-9: PAYMENT OF TAX, INTEREST AND PENALTIES:

Every licensee shall pay the transient lodging tax to the city clerk on or before the tenth day of the month when such tax shall accrue. Payment of the transient lodging tax shall become delinquent on the sixteenth day of the month. Such tax becomes payable to the city clerk by the licensee pursuant hereto. (Ord. 627, 11-9-2004)

# 4-6-10: ALLOCATION AND USE OF TRANSIENT LODGING TAX FUNDS:

The transient lodging tax in the total amount of fourteen percent (14%) of the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals pursuant to section 4-6-2 of this chapter shall be allocated and used by the city on the following percentages under the following categories. The transient lodging tax allocation shall be reviewed annually by the city council:

A. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the recreation transient lodging tax fund in the amount of six percent (6%) shall be deposited in a special fund in the city treasury to be known as or designated as the recreation fund.

- B. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Elko convention and visitors authority transient lodging tax fund in the amount of two and three-eighths percent (2<sup>3</sup>/<sub>8</sub>%) shall be paid to the Elko convention and visitors authority as collected on and after July 1, 1998.
- C. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals in the amount of one percent (1%), promotion of tourism transient lodging tax, shall be paid as follows:
  - 1. Three-eighths (<sup>3</sup>/<sub>8</sub>) of all proceeds of the promotion of tourism transient lodging tax must be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
  - 2. Five-eighths (<sup>5</sup>/<sub>8</sub>) of all proceeds of the promotion of tourism transient lodging tax must be deposited with the Elko County recreation board created pursuant to Nevada Revised Statutes section 244A.597, to be used to advertise the resources of the county of Elko related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
- D. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Western Folklife Center transient lodging tax fund in the amount of one-fourth of one percent (0.25%) shall be paid to the Western Folklife Center fund as collected on and after July 1, 1998.
- E. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the agricultural district 4 transient lodging tax, in the amount of one-half of one percent (0.5%) shall be paid to agricultural district 4 as collected on and after July 1, 1998.
- F. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the Elko Sno Bowl Foundation transient lodging tax in the amount of one-eighth of one percent (0.125%) shall be paid to Elko Sno Bowl Foundation as collected on and after July 1, 1998.
- G. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals for the marketing/tourism promotion transient lodging tax in the amount of one and three-fourths percent (1<sup>3</sup>/<sub>4</sub>%) shall be paid to the Elko convention and visitors authority on the condition that it creates a separate

marketing and tourism promotion fund to account for all collections and expenditures made on and after July 1, 2001.

- H. All proceeds from the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals will first be applied to the Elko Regional Airport debt service transient lodging tax fund in the amount of up to two percent (2%) and shall be paid to the Elko Regional Airport as collected on and after August 1, 2007. Any amounts in excess of the debt service requirement, as determined by the annual audit, shall be paid to the Elko convention and visitors authority on the condition that it creates a separate facility fund to account for all collections and expenditures. No portion may be used for salaries or benefits.
- I. All recipients of the transient lodging tax shall render to the city an annual account showing in detail the use of all transient lodging tax received from the city. (Ord. 794, 5-12-2015, eff. 7-1-2015)

# 4-6-11: EXAMINATION OF BOOKS AND RECORDS:

The tax administrator and his duly authorized agent are empowered to examine and audit the books, papers and records of any licensee or person operating a transient lodging rental business and to make investigations in connection therewith. (Ord. 627, 11-9-2004)

# 4-6-12: PENALTIES AND INTEREST:

If the transient lodging tax is not paid on or before the fifteenth day of the month in which it becomes due, or if such day falls on a Saturday, Sunday or legal holiday, on the next succeeding day not a Saturday, Sunday or legal holiday, then the licensee shall pay a penalty of fifteen percent (15%) of the unpaid, due and delinquent transient lodging tax, and the licensee shall also pay the costs of collection of the tax, penalty, court costs and attorney fees. (Ord. 627, 11-9-2004)

# 4-6-13: USES AND PURPOSES OF TRANSIENT LODGING TAX PROCEEDS:

The city council shall use the proceeds of the transient lodging tax provided by this chapter

for the following use, uses, purpose or purposes, or any one or more thereof, at such times, in such amounts and in such manner as they shall determine, from time to time:

# A. Recreation Fund Tax On Transient Lodging:

- 1. Operating and maintaining recreation facilities under the jurisdiction of the city council.
- 2. Improving, extending and bettering such recreation facilities.
- 3. Constructing, purchasing or otherwise acquiring such recreation facilities.
- 4. Whenever any recreation facility is affected by or will be affected by any flood control project being constructed or to be constructed under the provisions of any federal law if the city council finds that such flood control project will improve, better and protect such recreation facility, the city council shall have the power and authority to give assurances to and perform any other acts required by and satisfactory to the secretary of the army that the location and cooperation required for such flood control project by such federal law will be furnished by the city to the extent that the city council shall determine.
- 5. To establish, construct, purchase, lease, rent, acquire by gift, grant, bequest, devise, or otherwise acquire, reconstruct, improve, extend, better, alter, repair, equip, furnish, regulate, maintain, operate and manage recreation facilities within or without the city, including personal property, real property, lands, improvements and fixtures thereof, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.
- 6. To accept contributions, grants or other financial assistance from the federal government or any agency or instrumentality thereof, corporate or otherwise, the state of Nevada or any of its political subdivisions, or from any other source, for or in aid of any recreation facility within the area of operation of the city council, and to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable.
- 7. To use such funds to pay the necessary expense of imposition, collection and expenditure of this transient lodging tax and the proceeds thereof.
- 8. To use such proceeds to repay any loans, debts or bonded indebtedness that the city council may incur in connection with such recreation facilities, and that in that connection to pledge this transient lodging tax and the proceeds thereof as security for the repayment of any such loans, debts, obligations secured by bond, bonds, and other indebtedness which may be incurred in connection with such recreation facilities.
- 9. For marketing and/or promotion of transportation services serving the city.
- B. Elko Convention And Visitors Authority On Transient Lodging Tax Fund: To pay the proceeds thereof to the Elko convention and visitors authority, to be used by it for any

lawful purposes, as it shall determine in carrying out its powers under Nevada Revised Statutes chapter 227, as may be amended from time to time.

- C. Promotion Of Tourism On Transient Lodging Tax Fund:
  - 1. Three-eighths  $(^3/_8)$  of all proceeds of the tax must be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
  - 2. Five-eighths (<sup>5</sup>/<sub>8</sub>) of all proceeds of the tax must be deposited with the Elko County recreation board created pursuant to Nevada Revised Statutes sections 244A.597 and 244A.599 to be used to advertise the resources of the county related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
- D. Western Folklife Center On Transient Lodging Tax Fund: To donate the proceeds thereof to the Western Folklife Center, a Utah corporation licensed to do business in the state of Nevada, to be used by it to help operate and finance cultural and educational activities within the city relating to the events and activities which said corporation engages in within the city.
- E. Agricultural District 4 On Transient Lodging Tax Fund: To donate the proceeds thereof to the agricultural district 4 to be used by it for any lawful purposes as it shall determine in carrying out its powers pursuant to applicable Nevada Revised Statutes provisions.
- F. Elko Sno Bowl Foundation On Transient Lodging Tax Fund: To donate the proceeds thereof to the Elko Sno Bowl Foundation, a Nevada nonprofit corporation to be used by it to help operate and finance the Sno Bowl skiing facility which is located on land owned by Elko County, Nevada.
- G. Marketing/Tourism Promotion On Transient Lodging Tax Fund:
  - To use for marketing efforts to increase travel to Elko by tourists, on a national and/or regional level. The Elko convention and visitors authority will determine the appropriate marketing packages and programs to be funded by this tax.
  - 2. This tax may not be used for administration or overhead for the Elko convention and visitors authority.
  - 3. The city will exercise reasonable efforts to provide, on a monthly basis, summary reports of the confidential room occupancy reports to the Elko convention and visitors

authority and the city council as a tool to monitor the success of the marketing efforts funded by this tax. (Ord. 705, 4-28-2009)

- H. Elko Regional Airport Debt Service Transient Lodging Tax Fund: To use such proceeds to repay any loans, debts or bonded indebtedness that the city council may incur in connection with such airport facilities, and that in that connection to pledge this transient lodging tax and the proceeds thereof as security for the repayment of any such loans, debts, obligations secured by bond, bonds, and other indebtedness which may be incurred in connection with such airport facilities.
  - 1. Any amounts in excess of the debt service requirement, as determined by the annual audit, shall be paid to the Elko convention and visitors authority on the condition that it creates a separate facility fund to account for all collections and expenditures. No portion may be used for salaries or benefits. (Ord. 758, 9-11-2012)

# 4-6-14: REFUND:

Any person aggrieved by the provisions contained herein shall present his claim to the city council prior to seeking any other form of administrative relief or judicial relief, except as otherwise required by law. The city council shall have the authority to grant any appropriate relief from the provisions of this chapter, to include the authority to refund, with interest if appropriate, to any licensee, any transient lodging tax improperly collected by the city council or the city clerk from such licensee and to include the authority to grant relief to any person who is determined by the city council to have been adversely affected by any retroactive amendments to this chapter. (Ord. 627, 11-9-2004)

# 4-6-15: FORMS AND COSTS:

The city clerk is hereby empowered and authorized to designate the form of and have prepared or printed all stationery, supplies, records, notices, receipts, licenses and other forms that the city clerk deems necessary or advisable in connection with the collection, administration and disbursement of the proceeds of this transient lodging tax, and to obtain all supplies, records and other property and equipment deemed necessary by the city clerk in connection with the collection, administration, use and disbursement of the said transient lodging tax proceeds. All costs, expenses, charges and debts incurred by the city, or by the city clerk under the provisions of this chapter, in connection with the imposition, collection, administration, use and disbursement of this transient lodging tax and the proceeds thereof shall be paid out of the recreational fund provided for in this chapter. (Ord. 627, 11-9-2004)

# 4-6-16: PENALTIES:

Any person violating any of the provisions of this chapter, or failing or refusing to collect or pay the transient lodging tax proceeds as herein provided, shall, upon conviction thereof, be punished as provided in <a href="title-1">title 1</a>, chapter 3 of this code. Each day's violation of the provisions of this chapter may be deemed a separate offense. The city, by and through its city clerk, or mayor and/or city council, is further empowered and authorized to pursue all rights, remedies, procedures, claims and causes of action it may have at law or in equity to enforce the provisions of this chapter and to collect this transient lodging tax from the persons owing the same, by civil action, including, without being limited to, injunctions. (Ord. 627, 11-9-2004)

# Elko City Council Agenda Action Sheet

- 1. Title: First Reading of Ordinance No. 830, an ordinance increasing the corporate limits of the City of Elko, Nevada, pursuant to the provisions of N.R.S. 268.670 annexing thereto a certain tract of land partially contiguous to and not embraced within the present limits of the City of Elko described as follows: a parcel of land located southwest of the intersection of P and H Drive and West Idaho Street in Section 30, T. 34 N., R. 55 E., MDM, Elko County, Nevada, consisting of 32.74 acres, filed by Legend Engineering on behalf of Ed and Sharon Netherton and JoyGlobal Surface Mining Inc. and processed as Annexation No. 1-18, and to direct Staff to set the matter for public hearing, second reading and possible adoption, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **ORDINANCE**
- 4. Time Required: 10 Minutes
- 5. Background Information: City Council accepted the petition for the subject annexation on March 27, 2018, and directed Staff to continue with the annexation process by referring the matter to the Planning Commission. The Planning Commission considered the annexation on April 3, 2018, and took action to forward a recommendation of approval with findings back to the Council. CL
- 6. **Budget Information:**

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: **Not Required**
- 8. Supplemental Agenda Information: Ordinance, P.C. Action Report, Staff reports and application
- 9. Recommended Motion: Conduct First Reading of Ordinance No. 830 and direct Staff to set the matter for a public hearing, Second Reading
- 10. Prepared By: Cathy Laughlin, City Planner
- 11. Committee/Other Agency Review: Planning Commission, Elko County
- 12. Council Action:

# Agenda Item VII.B.

13.

Agenda Distribution: Ed and Sharon Netherton 1072 Kahaapo Loop

Kihei, HI 96753

Email: ednetherton@gmail.com

**Legend Engineering Lonny Reed** 52 West 100 North Heber City, UT 84032

lonny@legendenginnering.com

JoyGlobal Surface Mining Inc. 4450 P&H Drive Elko, NV 89801 Robert.richens@mining.komatsu

# CITY OF ELKO ORDINANCE NO. 830

AN ORDINANCE INCREASING THE CORPORATE LIMITS OF THE CITY OF ELKO, NEVADA, PURSUANT TO THE PROVISIONS OF NRS 268.670 ANNEXING THERETO A CERTAIN TRACT OF LAND CONTIGUOUS TO AND NOT EMBRACED WITHIN THE PRESENT LIMITS OF THE CITY OF ELKO, DESCRIBED AS FOLLOWS: A PARCEL OF LAND LOCATED IN THE NORTHWEST ¼ CORNER OF SECTION 30, T. 34 N., R. 55 E., M.D.B. & M., ELKO COUNTY, NEVADA, CONSISTING OF 32.74 ACRES, MORE OR LESS.

WHEREAS, Harnischfeger Corporation is the owner of 75% and Ed and Sharon Netherton are the owners of 25% of the property to be annexed;

WHEREAS, one hundred percent (100%) of the aforementioned owners of record of parcels of land within such area have petitioned the Elko City Council to annex such area into the City of Elko; and

WHEREAS, not less than fifteen percent (15%) of the total boundary of the property is coterminous with the boundary of the City of Elko and the property is not embraced within the present limits of the City of Elko; and

WHEREAS, the Elko City Council desires to annex the property, pursuant to the terms of N.R.S. 268.670, after notifying the Board of Commissioners of Elko County of its intent to annex such area to the City of Elko; and

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELKO DOES ORDAIN:

**SECTION 1:** The Elko City Council has determined that the territory described above to be annexed has not less than fifteen percent (15%) of the total boundary of the property coterminous with the boundary of the City of Elko and the property is not embraced within the present limits of the City of Elko; and the Elko City Council has jurisdiction to annex the property into the City of Elko.

<u>SECTION 2:</u> The corporate limits of the City limits of the City of Elko are extended and increased to include and embrace within the corporate limits of the City of Elko the territory located generally southwest of the intersection of West Idaho Street and P&H Drive, and legally described in Exhibit "A" attached hereto, and such territory is hereby annexed and declared to be a part of the City of Elko.

<u>SECTION 3:</u> The map and plat attached to this ordinance as Exhibit "B" are an accurate map and plat of the territory annexed; and the map and plat show the legal boundaries thereof, together with all existing easements, streets, alleys and rights-of-ways.

**SECTION 4:** The conditions for annexation and development are set forth in the ordinance as Exhibit "C;" failure of the applicant to satisfy these conditions may, at the

discretion of the City of Elko and in addition to any remedies at law or in equity, result in the detachment of the annexed area from the City of Elko.

**SECTION 5:** The Mayor of the City of Elko is hereby authorized and directed to certify that the map is an accurate map of the territory annexed under the provisions of this ordinance.

**SECTION 6:** This ordinance, with a copy of the legal description, official map and plat and conditions for development attached hereto, shall be recorded in the office of the Elko County Recorder, Elko County, Nevada.

**SECTION 7:** All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

SECTION 8: If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by any court of competent jurisdiction, the invalidity, unenforceability or provision shall not affect any remaining provisions of this ordinance.

**SECTION 9:** Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper printed and published in the City of Elko, for at least one publication.

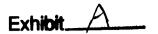
SECTION 10: This ordinance shall be effective up	pon the publication mentioned in Section 8
<b>PASSED AND ADOPTED</b> thisth day of City Council.	, 2018 by the following vote of the
AYES:	
NAYS:	
ABSTAIN:	
ABSENT:	
APPROVED thisth day of, 2018.	
	CITY OF ELKO
	BY:

ATTEST:

CHRIS J. JOHNSON, MAYOR

# SHANELL OWEN, CITY CLERK

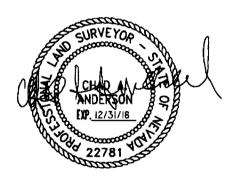
# **ELKO ANNEXATION DESCRIPTION**



BEGINNIG AT THE FOUND NORTHWEST CORNER OF SECTION 30, TOWNSHIP 34 NORTH, RANGE 55 EAST, MOUNT DIABLO BASE AND MERIDAIN, BASIS OF BEARINGS BEING SOUTH 01°02′00″ WEST MEASURED BETWEEN SAID NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SAID SECTION; AND RUNNING THENCE ALONG THE CURRENT ELKO CITY BOUNDARY THE FOLLOWING NINE (9) BEARINGS AND DISTANCES, (1) NORTH 89°58′16″ EAST 446.33 FEET; (2) THENCE SOUTH 00°01′36″ EAST 255.00 FEET; (3) THENCE NORTH 89°58′22″ EAST 482.63 FEET; (4) THENCE SOUTH 00°01′38″ EAST 53.00 FEET; (5) THENCE NORTH 89°58′22″ EAST 219.40 FEET; (6) THENCE SOUTH 57°57′49″ EAST 40.00 FEET; (7) THENCE NORTH 32°02′04″ EAST 234.84 FEET; (8) THENCE ALONG THE ARC OF A 1160.00 FOOT RADIUS CURVE TO THE LEFT 171.94 FEET (CHORD BEARS SOUTH 62°13′10″ EAST 171.78 FEET); (9) THENCE SOUTH 01°19′23″ WEST 230.20 FEET; THENCE LEAVING SAID ELKO CITY BOUNDARY SOUTH 32°02′04″ WEST 796.12 FEET; THENCE SOUTH 89°58′22″ WEST 98.20 FEET; THENCE SOUTH 20°44′31″ WEST 223.89 FEET TO THE CURRENT ELKO CITY BOUNDARY; THENCE NORTH 89°59′20″ WEST 877.75 FEET ALONG THE CURRENT ELKO CITY BOUNDARY; THENCE NORTH 01°02′00″ EAST 1323.99 FEET TO THE POINT OF BEGINNING.

AREA = 32.74 ACRES

Prepared by Chad A Anderson P.L.S.



RECEIVED

APR 1 8 2018



#### SURVEYOR'S CERTIFICATE

I, CHAD ALLEN ANDERSON, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HOLD LICENSE NO. 2278I, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF NEVADA. I HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED PARCEL AND THAT THIS ANNEXATION PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID PROPERTY AS IT RELATES TO THE CURRENT CITY BOUNDARY.





#### ANNEXATION DETAILS

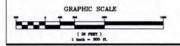
PROPOSED ACREAGE TO BE ANNEXED = 32.74 ACRES

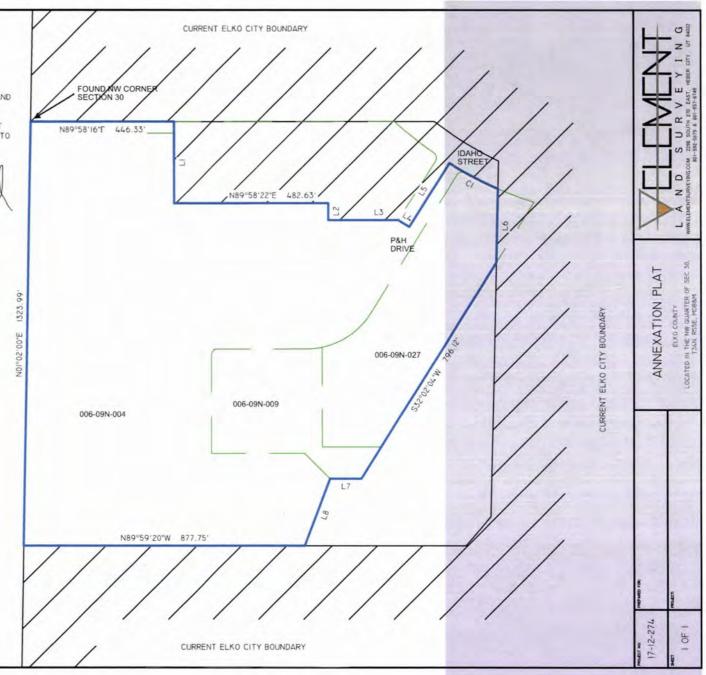
LENGTH OF COMMON BOUNDARY WITH THE CORPORATE LIMITS OF THE CITY= 3.01I FEET

PERCENTAGE OF COMMON BOUNDARY WITH THE CORPORATE LIMITS OF THE CITY = 55%

	LINE T	ABLE	
LILNE	LENGTH	DIRECTION	
L1	255.00'	S00'01'36"E	
L2	53.00'	S00'01'38"E	
L3	219.40'	N89*58'22"E	
L4	40.00'	S57*57'49"E	
L5	234.84	N32*02'04"E	
L6	230.20'	S01"19'23"W	
L7	98.20'	S89*58'22"W	
L8	223.89	S20'44'31"W	

CURVE TABLE							
CURVE LENGTH RADIUS DELTA CHORD BEARING TANGENT							
C1	171.94	1160.00'	8'29'33"	171.78	S62"13'10"E	86.13	





# CITY OF ELKO CONDITIONS APPLICABLE TO ORDINANCE NO. 830 JOYGLOBAL SURFACE MINING INC., ED & SHARON NETHERTON ANNEXATION Exhibit "C"

# **Development Department:**

1. The property owners shall receive approval for a zone designation for the property to be consistent with the Land Use designation in the City of Elko Master Plan.

# **Utility Department:**

- 1. Joy Global Surface Mining shall extend the water main on P&H Drive the full frontage of the APN 006-09N-004 (Joy), 007 & 009 (Netherton), and make a point of connection in West Idaho Street. Water service (potable and fire protection) shall be extended within 180 days of annexation of the properties and the existing facility shall be connected to the City water system at that time; or, the water main shall be extended in conjunction with development of a new facility provided that Joy Global Surface Mining has applied for and received a Building Permit from the City and is actively engaged in constructing the new facility within the stipulated 180 days. Extension of water service and connection to the City water system may be extended by the length of time required for development of a new facility and will be required to obtain a Certificate of Occupancy for a new facility.
- 2. Joy Global Surface Mining shall file applications with Nevada Division of Water Resources to transfer all City water rights back to the City as stipulated in its agreement with the City dated November 1, 2013. The total water rights stipulated in the agreement is 58-acre feet. The same point of diversion shall be listed on the application. The application to transfer the water rights shall be filed no later than 60 days after extension of the water main in P & H drive and connection to either the existing facility or a newly developed facility.
- 3. The existing well shall be dedicated to the City of Elko no later than 90 days after the water rights have been transferred to the City. An easement shall be granted to the City of Elko to include access to the well, the wellsite including a 20' perimeter outside of the well house, and Joy Global Surface Mining shall also grant to the City of Elko a 20' wide utility easement westerly to the westerly property boundary at the time of well dedication.
- 4. Joy Global Surface Mining shall extend dry sewer mains at the time of new facility development or expansion of the existing use.
- 5. The City shall not be responsible for operation of the existing water supply system pending the extension of water service by Joy Global Surface Mining as stipulated in Item 1
- 6. Cross connections between the existing water system and the City's water system will not be allowed. All points of cross connection are to be properly abandoned under City approval.



City of Elko 1751 College Avenue Elko, NV 89801 (775) 777-7160 FAX (775) 777-7119

# **CITY OF ELKO STAFF REPORT**

DATE:

March 19, 2018

PLANNING COMMISSION DATE:

April 3, 2018

AGENDA ITEM NUMBER:

I.B.1

APPLICATION NUMBER:

Annexation 1-18

APPLICANT:

Legend Engineering on behalf of JoyGlobal

Surface Mining Inc. & Ed and Sharon Netherton

+32.74 Acres

PROJECT DESCRIPTION:

An annexation of approximately 32.74 acres. The property is located in Elko County adjacent to the City's incorporated boundary as shown below.



# STAFF RECOMMENDATION:

RECOMMEND APPROVAL, subject to findings of fact and conditions as stated in this report.

# **PROJECT INFORMATION**

**PARCEL NUMBER**: 006-09N-004, 006-09N-007 & 006-09N-009

PARCEL SIZE: 32.74 Acres

**EXISTING ZONING:** Light Industrial (Elko County Zoning)

MASTER PLAN DESIGNATION: Industrial Business Park (IND-BS-PARK)

**EXISTING LAND USE:** Light Industrial – Joy Global Surface Mining parcel

and no existing land use for vacant parcels owned

by Ed and Sharon Netherton.

# **NEIGHBORHOOD CHARACTERISTICS:**

• The property is surrounded by:

o North: Light Industrial (LI) / Developed

o West: General Agriculture (AG) / Undeveloped

o South: General Agriculture (AG) / Undeveloped

o East: General Agriculture (AG) / Undeveloped

# PROPERTY CHARACTERISTICS:

- The area is currently undeveloped on parcels 006-09N -007 & 006-09N-009 and developed on parcel 006-09N-004 with a light industrial land use.
- The area is generally flat.
- The area is accessed from West Idaho Street and P & H Drive.

# **MASTER PLAN AND CITY CODE SECTIONS:**

Applicable Master Plan Sections, NRS Sections and City Code Sections and other coordinating plans are:

- City of Elko Master Plan Land Use Component
- City of Elko Master Plan Transportation Component
- City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012
- Nevada Revised Statutes 268.610 to 268.670, inclusive
- City of Elko Zoning Section 3-2-4 Establishment of Zoning Districts
- City of Elko Wellhead Protection Program

# **BACKGROUND INFORMATION:**

- 1. The petition has been filed by Legend Engineering on behalf of the property owners.
- 2. There are two separate property owners petitioning for annexation.

- 3. The properties are owned by Harnischfeger, the parent company to Joy Global Surface Mining, (APN 006-09N-004) and Ed and Sharon Netherton.
- 4. The petition includes all of APN 006-09N-004 (JoyGlobal), 007 & 009 (Netherton). The properties are located west of the 298 interchange on I-80 at the intersection of P & H Drive and West Idaho Street.
- 5. The City Council accepted the petition for the subject annexation on March 27, 2018, and directed Staff to continue with the annexation process by referring the matter to the Planning Commission.
- 6. The area fronts West Idaho Street and P & H Drive.
- 7. The area is identified as having annexation potential in the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.
- 8. City utilities have not been extended to the properties.
- 9. The developed property is served by a water well intended to serve several properties in the immediate vicinity. Currently Joy Global and Coach USA facilities are utilizing the well for water service. The City of Elko provided water rights for development of the well under an agreement that requires relinquishment of the water rights to the City upon annexation of the properties. The agreement is between Joy Global and the City.
- 10. In 2016, The City of Elko extended the water line down Cattle Drive to a location near the properties.
- 11. Sewer has not been extended to the area. Existing facilities in the area utilize septic for sanitary sewer.
- 12. Other non-city utilities are located in the immediate area.
- 13. Annexation of the properties promotes development and utilizes the Exit 298 interchange for the full benefit of the City.
- 14. Elko County was notified of the proposed annexation on March 9, 2018. The County has expressing that they have no concerns.
- 15. The applicant has not applied for a rezone application at this time.
- 16. There is an assignment and assumption of water rights agreement, dated November 1, 2018, between the City and Joy Global Surface Mining in which the City approved the assignment of a water rights agreement between the City and Calvin Dean Stitzel and Marilyn E. Lund for use of 58 acre feet of water to develop certain properties identified in the agreement. The agreement contains a provision requiring the transfer of the water rights back to the City in the event the area is annexed into the City and the City is required to furnish water from its system.

# **MASTER PLAN:**

# **Land Use:**

- 1. Land Use is shown as Industrial Business Park.
- 2. The annexation application identifies the zoning classification upon annexation as a Light Industrial District. At this time, a zone application has not been filed in conjunction with the annexation petition.
- 3. Supporting zone districts for Industrial Business Park are Industrial Business Park, Light Industrial and Industrial Commercial.

- 4. The petitioner is not proposing any amendments to the Land Use Component of the Master Plan as a result of the annexation petition as provided for under Section 3-2-4(D) of City code.
- 5. The existing land use of one of the properties is consistent with the designated land use and the remaining properties are vacant.
- 6. Future zone classification of the properties are required to conform with the Master Plan. Objective 5: Encourage development that strengthens the core of the City, and new annexations that are logical and orderly and do not promote sprawl.
- 7. Objective 7: Promote high quality and visually appealing industrial uses, where appropriate, to promote economic sustainability and strengthen the community's image.
- 8. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The petitioner is not requesting an amendment to the Land Use Component of the Master Plan. The existing land use of one of the properties is consistent with the Master Plan. The remaining properties are vacant. The annexation and subsequent zone classification of the properties must conform to the Master Plan.

# **Transportation:**

- 1. The area will be accessed from West Idaho Street.
- 2. West Idaho Street is classified as a Minor Collector.
- 3. The area is near the Exit 298 and I-80 interchange.

The proposed annexation and existing land uses are compatible with the Transportation Component of the Master Plan. Master Plan.

# <u>DEVELOPMENT FEASIBILITY, LAND USE, WATER INFRASTRUCTURE, SANITARY SEWER INFRASTRUCTURE, TRANSPORTATION INFRASTRUCTURE AND ANNEXATION POTENTIAL REPORT – NOVEMBER 2012</u>

- 1. The area is identified as having annexation potential in the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012. That plan, for the most part, identified areas as having annexation based on established of transportation and utility corridors potential in the plan.
- 2. The property is adjacent to developed land within the City of Elko.
- 3. The area can be served from the existing 5400 water zone. A water main was constructed along Cattle Drive in 2016.
- 4. Developable area is estimated to be approximately 32.74 acres. The property owned by Joy Global Surface Mining is partially developed. The property owned by Ed and Sharon Netherton is not developed.
- 5. Sewer is currently not available in this location. The city has completed preliminary design work for the establishment of sanitary sewer in the area.
- 6. Annexation of the area is a logical and orderly expansion of the City's incorporated boundary.
- 7. As stipulated in the assignment and assumption of water rights agreement, dated November 1, 2018, between the City and Joy Global Surface Mining, the City will receive a benefit of 58 acre feet of water transferred back to the City upon annexation of the properties.

The proposed annexation is consistent with the goals, objectives and supports long range planning as outlined in the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.

# **AIRPORT MASTER PLAN**

- 1. The area is partially located within the defined runway approach airspace area delineated in the airport master plan.
- 2. Development within the area will restricted in accordance 14 CFR Part 77.9.
- 3. The restrictions stipulated in the federal code are not expected to have a significant, if any, impact on property development under the allowable land use stipulated in city which are in conformance with the City Master Plan.

The proposed annexation is in conformance with the City's Airport Master Plan.

# **NEVADA REVISED STATUTE:**

NRS 268.636(1) states whenever the majority of property owners of any territory lying contiguous to a city desire to annex such territory to the city, they may cause an accurate map of plat of the territory to be made under the supervision of a competent surveyor. The map is to be filed with the city.

The property owner's representative has submitted the required map. The applicants owns the entire area proposed for annexation. The property boundary is approximately 7,269.5 feet with 2,597.2 feet contiguous to City of Elko boundary on the north, south and easterly lot lines. This equates to approximately 35% of the property boundary as contiguous to the City's incorporated boundary.

# NRS 268.646 requires minimum factors to be considered in the review of a proposed annexation.

NRS 268.646(1) requires the evaluation of factors such as population, population density, land area and land uses, per capita assessed valuation, topography, proximity to other populated areas and the likelihood of significant growth within the next 10 years in the area and adjacent areas.

The total area proposed for annexation is approximately 32.74 acres. The Elko County Assessor's Office indicates initial development of the property occurring in 2001 under the current use.

The location and proposed land uses of the area are supported by existing and proposed roadways.

There is a high probability of property development based on recent and current property development in the immediate vicinity. Joy Global Surface Mining is planning the development of a new regional facility. This is due to the water line extension to I-80 Exit 298.

NRS 268.646 (2) requires the evaluation for the need for organized community services, the present cost of and adequacy of governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of the proposed formation and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent area.

## General

Annexation of the property does provide the opportunity to provide continued light industrial land use along West Idaho Street. West Idaho Street is classified as a major arterial and falls under NDOT jurisdiction. The location provides excellent access to either I-80 or the community.

# Land Division and Potential Zoning

APN 006-09N-004 is partially developed with a light industrial land use. APN 006-09N-007 & 009 are undeveloped.

The application identifies the zoning classification that is being requested upon annexation of the property as Light Industrial. At this time a zone application has not been filed with the City. The purpose of the (LI) Light Industrial zoning district is to provide and preserve areas reserved primarily for less intensive industrial use and activity normally associated with previously prepared materials and with minimal levels of noise, dust, odor, vibration or smoke, and to preclude encroachment of land uses such as residential uses that could be in conflict with the industrial and manufacturing environment.

The proposed zoning would be complimentary to the land use shown in the Master Plan.

# Sewer

Sanitary sewer does not exist in the immediate area. A dry gravity sewer will be installed along the frontage of the property until a time that the city can complete the installation of a lift station and force main to the WRF. The developed portion of the property is currently developed with the use of septic system.

#### Water

City of Elko water infrastructure is located in the immediate area at the north corner of the adjacent property owned by Coach USA. The area can be served off the existing 5400 water zone.

The City of Elko will receive the benefit of 58 acre feet transferred back to the City upon annexation of the properties.

#### Access

Primary access is off P & H Drive. West Idaho Street, a major arterial, provides connectivity between P & H Drive, I-80 and the City.

# **Other Services**

The size, location and use of the property will not place any significant burden on other City services.

NRS 268.646(3) requires the evaluation of the proposed annexation and of alternative actions on adjacent areas, on mutual social and economic interests and on local governmental structure of the county.

Annexation of the property will not have any long-term adverse impacts on adjacent areas. The property is partially developed.

Annexation and development of the property will not adversely influence the local government structure of the County nor the City.

NRS 268.646(4) requires the evaluation of the proposed annexation and of alternative actions upon the availability of water and requirement of water and other natural resources throughout the affected area.

The City currently has approximately 18,000-acre feet of water rights available and is utilizing approximately 50% of that supply. Based on the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012, there was projected deficit of 700 - 800 (3.8% – 4.4% of the total) acre feet of water to serve annexed areas in addition to areas identified as a having annexation potential. Upon adoption of the report, the Council determined that through optimization of the plan and optimization of water usage, the projected shortfall did not present a significant concern. Areas identified in the report as having annexation potential provide orderly and logical growth of the City and are generally aligned with future transportation and utility corridors.

The Council has taken action, subsequent to the adoption of the report, to approve a realignment of Errecart Blvd. reducing area required for annexation along the Errecart Blvd alignment. This decision has resulted in a net reduction of projected water consumption by over 500 acre feet, nearly offsetting the projected deficit referenced.

Proper storm water controls would mitigate any potential impacts from storm water runoff.

Annexation of the property will not negatively impact other natural resources in the area.

NRS 268.646(5) requires a determination by the Bureau of Land Management that the territory proposed to be annexed is suitable for residential, commercial, or industrial development, or will be opened to private acquisition.

The area proposed for annexation does not fall under the jurisdiction of the Bureau of Land Management.

NRS 268.646(6) requires a determination that the annexation is consistent with any applicable comprehensive regional plan, area plan or master plan and any program of annexation adopted and certified pursuant to NRS 268.625.

The City of Elko is not required nor does it have a program adopted and certified pursuant to NRS 268.625.

The City of Elko Master Plans specifically addresses the annexation of property under Objective 5 as outlined in Best Practice 5.1 and Best Practice 5.3. City Staff has identified areas having potential for annexation that promote logical and orderly growth of the community. Those areas are identified in the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012. This area is identified as having annexation potential in the report. The proposed annexation is consistent with the goals, objectives and supports long range planning as outlined in the report.

The proposed annexation is consistent with the Land Use component of the Master Plan and the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.

NRS 268.663(3) requires the evaluation and possible annexation of County roadways under certain circumstances to possibly become city streets.

The area proposed for annexation is not a subdivision and therefore the City is not required to annex entire roadways that provide primary access to the area.

West Idaho Street appears to currently be located within the City of Elko. P & H Drive is included in the annexation application with the exception of the ½ street frontage of Coach USA that was previously annexed into the city with Annexation 1-16.

All of the roadways providing access to the area will be annexed into the City upon approval of the annexation.

#### City Code Section 3-2-4

The annexation application identifies the zoning classification upon annexation as a Light Industrial District. At this time, a zone application has not been filed in conjunction with the annexation petition.

The following section of code provides the Planning Commission and City Council the discretion to designate an appropriate zone district after holding the appropriate public hearing:

Section 3-2-4 D. Classification Of Annexed Areas: All territory which is annexed to the city after the effective date hereof shall be zoned upon annexation AG general agriculture, unless the planning commission shall recommend and/or the city council shall otherwise designate the zoning district after holding duly advertised public hearings in accordance with section 3-2-21 of this chapter. As part of considering any petition for annexation of territory to the city, a review of conformance with the city master plan, including land use designation, shall be performed by the planning commission, with recommendations forwarded to the city council. If said annexation necessitates substantial amendment to the master plan, the planning commission may adopt such amendment only after holding duly advertised public hearings in accordance with Nevada Revised Statutes section 278.210.

# CITY OF ELKO WELLHEAD PROTECTION PROGRAM

A proposed well (test hole/monitoring well currently exists) approximately 240 feet from the property is expected to be installed as development occurs in the area. At that time, it could be expected that this property will be located within the 2 year capture zones. The City of Elko may complete the installation of a sewer main and lift station prior to the installation of the proposed well to eliminate a number of septic systems and leach fields in the area.

# **FINDINGS**

1. The petitioner is not requesting an amendment to the Land Use Component of the Master Plan. The existing land use of one of the properties is consistent with the Master Plan. The remaining properties are vacant. The annexation and subsequent zone classification of the properties must conform to the Master Plan.

- 2. The proposed annexation and existing land uses are compatible with the Transportation Component of the Master Plan. Master Plan.
- 3. The proposed annexation is consistent with the goals, objectives and supports long range planning as outlined in the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.
- 4. The proposed annexation is in conformance with the City's Airport Master Plan.
- 5. In conformance with NRS 268.636(1) the property owners have submitted a map showing a boundary contiguous to the city of approximately 35%.
- 6. In conformance with NRS 268.646(2), inclusive, it has been determined that the proposed annexation satisfies considerations and/or concerns identified as minimum factors for consideration under.
- 7. In conformance with NRS 268.646(3), it has been determined that the proposed annexation will not have any long-term adverse impacts on adjacent areas nor will the proposed annexation and development of the property have an adverse influence the local government structure of the County or the City.
- 8. In conformance with NRS 268.646(4), it has been that the proposed annexation will not place a burden of the availability of water, the requirement for water or have a negative impact other natural resources in the area. In addition, the City will receive 58 acre feet of water rights upon annexation of the properties.
- 9. In conformance with NRS 268.646(5) it has been determined that the area proposed for annexation does not fall under the jurisdiction of the Bureau of Land Management.
- 10. In conformance with NRS 268.646(6) it has been determined that The City of Elko is not required nor does it have an annexation program adopted and certified pursuant to NRS 268.625. The proposed annexation is consistent with the Land Use component of the Master Plan and the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.
- 11. In conformance with NRS 268.663(3), although not required, it has been determined that all portions of County roads that provide primary access to the area have been or will be annexed into the City and will become City streets.
- 12. The annexation application identifies the zoning classification upon annexation as a Light Industrial District. At this time, a zone application has not been filed in conjunction with the annexation petition. Future zone designation must conform with section 3-2-4 of city code.
- 13. The proposed annexation is in conformance with the City's Wellhead Protection Plan.
- 14. Annexation of the property provides an immediate accrual to the tax base for the City.
- 15. Annexation of the property provides an opportunity for expanded Light Industrial uses.

- 16. The area proposed for annexation is not localized or isolated.
- 17. Other, required, utilities will be installed at developer expense to facilitate development of the properties.
- 18. The topography of the area is well suited for the proposed light industrial land uses.
- 19. Expanded uses on the properties will result in a positive economic impact to the community.

# STAFF RECOMMENDATION:

Staff recommends approval of Annexation 1-18 to be forwarded to the City Council based on the conditions outlined below. If approved by the City Council, the conditions will be included in the annexation ordinance.

# **Development Department:**

1. The property owners shall receive approval for a zone designation for the property to be consistent with the Land Use designation in the City of Elko Master Plan.

# **Utility Department:**

- 1. Joy Global Surface Mining shall extend the water main on P&H Drive the full frontage of the APN 006-09N-004 (Joy), 007 & 009 (Netherton), and make a point of connection in West Idaho Street. Water service (potable and fire protection) shall be extended within 180 days of annexation of the properties and the existing facility shall be connected to the City water system at that time; or, the water main shall be extended in conjunction with development of a new facility provided that Joy Global Surface Mining has applied for and received a Building Permit from the City and is actively engaged in constructing the new facility within the stipulated 180 days. Extension of water service and connection to the City water system may be extended by the length of time required for development of a new facility and will be required to obtain a Certificate of Occupancy for a new facility.
- 2. Joy Global Surface Mining shall file applications with Nevada Division of Water Resources to transfer all City water rights back to the City as stipulated in its agreement with the City dated November 1, 2013. The total water rights stipulated in the agreement is 58 acre feet. The same point of diversion shall be listed on the application. The application to transfer the water rights shall be filed no later than 60 days after extension of the water main in P & H drive and connection to either the existing facility or a newly developed facility.
- 3. The existing well shall be dedicated to the City of Elko no later than 90 days after the water rights have been transferred to the City. An easement shall be granted to the City of Elko to include access to the well, the wellsite including a 20' perimeter outside of the well house, and also a 20' wide utility easement westerly to the westerly property boundary at the time of well dedication.
- 4. Joy Global Surface Mining shall extend dry sewer mains at the time of new facility development or expansion of the existing use.

- 5. The City shall not be responsible for operation of the existing water supply system pending the extension of water service by Joy Global Surface Mining as stipulated in Item 1.
- 6. Cross connections between the existing water system and the City's water system will not be allowed. All points of cross connection are to be properly abandoned under City approval.



CITY OF ELKO DEVELOPMENT DEPARTMENT 1755 COLLEGE AVENUE ELKO, NEVADA 89801 (775)777-7210 (775)777-7219 FAX

To: Planning Commission

From: Jeremy Draper, Development Department

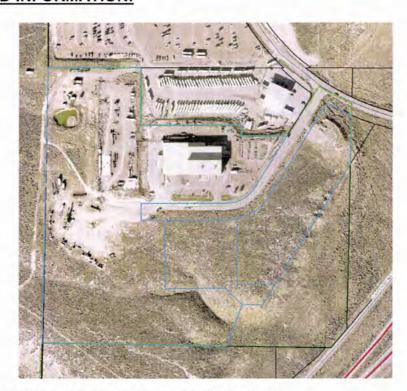
Date: March 28, 2018

Re: Annexation Petition 1-18, Joy Global/Komatsu

The City of Elko Development Department has reviewed the annexation application offers the following comments for consideration to aid the Planning Commission's review of the above referenced application: Applicable Master Plan Sections, NRS Sections and City Code Sections and other coordinating plans are:

- City of Elko Master Plan Land Use Component
- · City of Elko Master Plan Streets and Highways Component
- City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012
- Nevada Revised Statutes 268.610 to 268.670, inclusive
- City of Elko Zoning Section 3-2-4 Zoning Districts
- · City of Elko Wellhead Protection Program

# **BACKGROUND INFORMATION:**



C:\Users\Sarchuleta\Downloads\Annex 1-18 Komatsu PC 031318 (2).docx Created by Jeremy Draper

- 1. The application is submitted by Legend Engineering on behalf of Harnischferger a parent company to Joy Global Surface Mining Inc. and Ed and Sharon Netherton.
- 2. The petition includes that portion of APN 006-09N-004, -007, and -009 lying approximately 1,200' northwest of Idaho Street and Interstate 80 containing more or less 32.74 acres of land including 1.88 acres of right-of-way in P&H Drive as shown on parcel map 452341.
- 3. The area is identified as having annexation potential as shown in the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.
- 4. The area fronts W. Idaho Street and P&H Drive.
- 5. City water has been extended to the edge of the property and the property lies within the 5400 water service zone. City sewer does not exist in this area, however preliminary design has been completed by the City of Elko Engineering Department.
- 6. Other non-city utilities are located in the immediate area.
- 7. Annexation of the property is at the request of the City of Elko based on the an agreement for the assignment and assumption of water rights dated November 1, 2013 between the City of Elko and Joy Global Surface Mining, Inc. This agreement provided water rights to these users as the City of Elko could not provide water during the original period of development of these properties.
- 8. The area was included in the land use component of the master plan showing a proposed Industrial Business Park.
- 9. The City Council accepted the application for annexation at their March 27, 2018 meeting.
- 10. The proposed annexation is logical and orderly.

# **MASTER PLAN:**

# Land Use:

- 1. Land Use is shown as Business Park Industrial.
- 2. The petitioner has not submitted an application for rezone at this time.
- 3. Corresponding zoning districts for Business Park Industrial Land Use are
  - Industrial Business Park, IBP
  - Light Industrial, LI
  - Industrial Commercial, IC
- 4. Section 3-2-4-D of City Code states that a review of conformance with the city master plan, including land use designation, shall be performed by the planning commission.
- 5. Objective 7: Promote high quality and visually appealing industrial uses, where appropriate, to ensure economic sustainability as well as strengthen the community's image.
- 6. Objective 8: Ensure that new development does not negatively impact County-wide natural systems,, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

# **Transportation:**

1. The area fronts W. Idaho St., a Major Arterial.

# <u>DEVELOPMENT FEASIBILITY, LAND USE, WATER INFRASTRUCTURE, SANITARY SEWER INFRASTRUCTURE, TRANSPORTATION INFRASTRUCTURE AND ANNEXATION POTENTIAL REPORT – NOVEMBER 2012</u>

- The area is identified as having annexation potential.
- This area is adjacent to developed property currently located within the incorporated boundary of the City.
- The area can be served of the existing 5400 water zone.
- Developable area is estimated to be approximately 32.74 acres
- Under an Industrial Development we estimated that this would result in approximately in the development of 2.4 industrial units, and a commitment of 2.73 acre-feet of water per vear.
- Parcel 006-09N-004 is currently developed as Joy Global Surface Mining Inc.
- Parcels 006-09N-007 and -009 are currently undeveloped.
- Sewer is currently unavailable in this location. The developer will be required to install a
  dry sewer and utilize a septic system until such time that a force main is installed to the
  Water Reclamation Facility.
- Annexation of the area does appear to be logical and orderly and continues the development of land near exit 298 of I-80.

# **NEVADA REVISED STATUTE:**

NRS 268.636(1) states whenever the majority of property owners of any territory lying contiguous to a city desire to annex such territory to the city, they may cause an accurate map of plat of the territory to be made under the supervision of a competent surveyor. The map is to be filed with the city.

The property owner's representative has submitted the required map.

# NRS 268.646 requires minimum factors to be considered in the review of a proposed annexation.

NRS 268.646(1) requires the evaluation of factors such as population, population density, land area and land uses, per capita assessed valuation, topography, proximity to other populated areas and the likelihood of significant growth within the next 10 years in the area and adjacent areas.

The total annexed area consists of approximately 32.74 acres.

The property is currently developed.

NRS 268.646 (2) requires the evaluation for the need for organized community services, the present cost of and adequacy of governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of the proposed formation and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent area.

#### Page 4 of 7

The area being considered for annexation is currently within our mutual aid area for fire services, annexation to the City will not increase the need for governmental services and controls in the area.

#### **General**

Annexation of the property does provide the opportunity to provide continued light industrial land use along Idaho Street, a Major Arterial. The annexation of this property will also result in the fulfillment of a agreement between the City of Elko and Joy Global to provide water rights for the development of the property. Once within the City, Joy Global will be able to abandon the non-compliant water system and relinquish the water rights back to the City of Elko.

#### **Land Division and Potential Zoning**

The property is partially developed and is slated for redevelopment with the construction of a new facility. Two parcels are currently vacant and are ready for development. Some parceling of all parcels may take place in the future.

The application has not submitted a rezone application at this time.

#### Sewer

Sanitary sewer does not exist in the immediate area. A dry sewer and septic system will be required to be installed and utilized until a force main can be installed providing service to the Water Reclamation Facility.

#### Water

City of Elko water service exists in the immediate area. The property can be served off the existing 5400 water zone with the extension of a waterline from Idaho Street.

#### Access

Primary access is from P&H Drive and Idaho Street.

#### **Other Services**

The size and location of the property is not expected to place any significant burden on other City services.

NRS 268.646(3) requires the evaluation of the proposed annexation and of alternative actions on adjacent areas, on mutual social and economic interests and on local governmental structure of the county.

Annexation of the property is <u>not</u> expected to have any long-term adverse impacts on adjacent areas.

NRS 268.646(4) requires the evaluation of the proposed annexation and of alternative actions upon the availability of water and requirement of water and other natural resources throughout the affected area.

The City currently has approximately 18,000 acre feet of water rights available and is utilizing approximately 50% of that supply. Based on the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012, the City could face a potential **shortfall** of 700 – 800 acre feet of water to serve annexed areas in addition to areas identified as a having annexation potential. Areas identified as having annexation potential provide orderly and logical growth of the City and are generally aligned with future transportation corridors.

The applicant is part of a user group that was granted water rights by the City of Elko for the development of a private water system. As part of the agreement, revised in 2013 with Joy Global, the water rights would be returned to the City of Elko when the City completes the installation of a waterline to this area and annexation to the City has been completed.

Proper storm water controls would mitigate any potential impacts from storm water runoff.

Annexation of the property will not negatively impact other natural resources in the area.

The completion of this annexation will result in no additional water rights being required for future development due to the existing agreement between the City and Joy Global.

NRS 268.646(5) requires a determination by the Bureau of Land Management that the territory proposed to be annexed is suitable for residential, commercial, or industrial development, or will be opened to private acquisition.

The area proposed for annexation does not fall under the jurisdiction of the Bureau of Land Management.

NRS 268.646(6) requires a determination that the annexation is consistent with any applicable comprehensive regional plan, area plan or master plan and any program of annexation adopted and certified pursuant to NRS 268.625.

The City of Elko Master Plans specifically addresses the annexation of property under Objective 5 as outlined in Best Practice 5.1 and Best Practice 5.3. City Staff has identified areas having potential for annexation that promote logical and orderly growth of the community. The proposed annexation is not in an area that was identified as having annexation potential; however, it should not be excluded from consideration for annexation.

The Land Use component of the Master Plan contains an exhibit showing the area as industrial business park.

NRS 268.663(3) requires the portions of the county roads which provide the primary access to the subdivision are also annexed and become city streets.

Idaho Street is currently a under City jurisdiction, P&H Drive will fall under City jurisdiction with this annexation.

#### City Code Section 3-2-4

A companion rezone application has not been filed with the City at this time.

#### Page 6 of 7

The following section of code provides the PC and CC the discretion to designate an appropriate zone district after holding the appropriate public hearing:

Section 3-2-4 D. Classification Of Annexed Areas: All territory which is annexed to the city after the effective date hereof shall be zoned upon annexation AG general agriculture, unless the planning commission shall recommend and/or the city council shall otherwise designate the zoning district after holding duly advertised public hearings in accordance with section 3-2-21 of this chapter. As part of considering any petition for annexation of territory to the city, a review of conformance with the city master plan, including land use designation, shall be performed by the planning commission, with recommendations forwarded to the city council. If said annexation necessitates substantial amendment to the master plan, the planning commission may adopt such amendment only after holding duly advertised public hearings in accordance with Nevada Revised Statutes section 278.210.

#### CITY OF ELKO WELLHEAD PROTECTION PROGRAM

The property is not located within the wellhead protection area. However it should be noted that the City has plans for a future well within 600 feet of the proposed annexation, this would most likely result in the annexation falling within the 2-year capture zone for this well. Compliance with this plan will be required once developed.

#### **SUMMARY**

#### Factors for consideration

- The area is identified as having annexation potential in the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012. The annexation of this property appears to promote the logical and orderly growth of the City.
- 2. The area is identified in the Master Plan as suitable for Business Park Industrial land use.
- 3. The City resources committed in support for development of the property under a Business Park Industrial land use are minimal.
- 4. Maintenance obligations are not a concern with the annexation of the property. City obligations for infrastructure maintenance will occur as the property develops.
- 5. The property is currently developed and the property owners have indicated they wish to redevelop the property, two parcels remain undeveloped at this time.

#### **FINDINGS**

1. The annexation is consistent with the City' Land Use Component of the Master Plan. Appropriate zoning of the property is required as the property develops to ensure conformance with the land use designation shown in the Master Plan.

#### Page 7 of 7

- 2. The annexation is consistent with the City' Transportation Component of the Master Plan.
- 3. The Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012, does identify the area as having potential for annexation.
- 4. The area proposed for annexation is not localized, isolated and does promote future transportation and utility corridors promoting future growth opportunities within the City.
- 5. Annexation of the area is not expected to have any immediate or negative impact on City resources. The area can be served from the existing 5400 water zone. Additional utility and roadway infrastructure will be installed at developer expense to facilitate development of the property.

#### **RECOMMENDATION**

The City of Elko **Development Department** recommends approval of Annexation 1-18 be forwarded to the City Council based on the following conditions:

1. The property owners shall receive a rezone of their property to be consistent with the Land Use designation in the City of Elko Master Plan.

Website: www.elkocity.com Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

# CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of April 3, 2018

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on April 3, 2018 per City Code Section 3-2-4 C.:

Annexation No. 1-18 filed by Legend Engineering on behalf of Ed and Sharon Netherton and JoyGlobal Surface Mining Inc., consisting of approximately 32.74 acres of property located southwest of the intersection of West Idaho Street and P&H Drive, and matters related thereto.

WHEREAS, the Planning Commission, upon review and consideration of the application and supporting data, public input and testimony, forward a recommendation to City Council to adopt an ordinance which conditionally approves Annexation No. 1-18 subject to the conditions listed in the City of Elko Staff Report dated March 19, 2018 listed as follows:

#### **Development Department:**

1. The property owners shall receive approval for a zone designation for the property to be consistent with the Land Use designation in the City of Elko Master Plan.

#### **Utility Department:**

- 1. Joy Global Surface Mining shall extend the water main on P&H Drive the full frontage of the APN 006-09N-004 (Joy), 007 & 009 (Netherton), and make a point of connection in West Idaho Street. Water service (potable and fire protection) shall be extended within 180 days of annexation of the properties and the existing facility shall be connected to the City water system at that time; or, the water main shall be extended in conjunction with development of a new facility provided that Joy Global Surface Mining has applied for and received a Building Permit from the City and is actively engaged in constructing the new facility within the stipulated 180 days. Extension of water service and connection to the City water system may be extended by the length of time required for development of a new facility and will be required to obtain a Certificate of Occupancy for a new facility.
- 2. Joy Global Surface Mining shall file applications with Nevada Division of Water Resources to transfer all City water rights back to the City as stipulated in its agreement with the City dated November 1, 2013. The total water rights stipulated in the agreement is 58 acre feet. The same point of diversion shall be listed on the application. The application to transfer the water rights shall be filed no later than 60 days after extension of the water main in P & H drive and connection to either the existing facility or a newly developed facility.

- 3. The existing well shall be dedicated to the City of Elko no later than 90 days after the water rights have been transferred to the City. An easement shall be granted to the City of Elko to include access to the well, the wellsite including a 20' perimeter outside of the well house, and also a 20' wide utility easement westerly to the westerly property boundary at the time of well dedication.
- 4. Joy Global Surface Mining shall extend dry sewer mains at the time of new facility development or expansion of the existing use.
- 5. The City shall not be responsible for operation of the existing water supply system pending the extension of water service by Joy Global Surface Mining as stipulated in Item 1.
- 6. Cross connections between the existing water system and the City's water system will not be allowed. All points of cross connection are to be properly abandoned under City approval.

#### **Engineering Department:**

- 1. Revisions to legal description to be completed prior to Council Approval:
  - a. Description beings at the northwest corner, not \( \frac{1}{4} \) corner.
  - b. State a basis of bearings on the description.
  - c. The description should state who prepared it, and if it is by a licensed surveyor, it must be stamped and signed.
- 2. Revisions to map to be complete prior to Council approval:
  - a. Show the location of the northwest corner of Section 30 as stated in the description.
  - b. Label the parcels by APN, and the streets by name.

The Planning Commission's findings to support its recommendation are the petitioner is not requesting an amendment to the Land Use Component of the Master Plan. The existing land use of one of the properties is consistent with the Master Plan. The remaining properties are vacant. The annexation and subsequent zone classification of the properties must conform to the Master Plan. The proposed annexation and existing land uses are compatible with the Transportation Component of the Master Plan. The proposed annexation is consistent with the goals, objectives and supports long range planning as outlined in the Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report dated November 2012. The proposed annexation is in conformance with the City's Airport Master Plan. In conformance with NRS 268.636(1) the property owners have submitted a map showing a boundary contiguous to the City of approximately 35%. In conformance with NRS 268.646(2), inclusive, it has been determined that the proposed annexation satisfies considerations and/or concerns identified as minimum factors for consideration under. In conformance with NRS 268.646(3), it has been determined that the proposed annexation will not have any long-term adverse impacts on adjacent areas nor will the proposed annexation and development of the property have an adverse influence on the local government structure of the County or the City. In conformance with NRS 268.646(4), it has been determined that the proposed annexation will not place a burden of the availability of water, the requirement for water or have a negative impact on other natural resources in the area. In addition, the City will receive 58 acre feet of water rights upon annexation of the properties. In conformance with NRS 268.646(5), it has been determined that the area proposed for annexation does not fall under the jurisdiction of the Bureau of Land Management. In conformance with NRS 268.646(6), it has been determined that the City of Elko is not required, nor does it have an

annexation program adopted and certified pursuant to NRS 268.625. The proposed annexation is consistent with the Land Use Component of the Master Plan and the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report dated November 2012. In conformance with NRS 268.663(3), although not required, it has been determined that all portions of County Roads that provide primary access to the area have been or will be annexed into the City and will become City Streets. The annexation application identifies the zoning classification as Light Industrial District. At this time, a zone application has not been filed in conjunction with the annexation petition. Future zone designation must conform with Section 3-2-4 of City Code. The proposed annexation is in conformance with the City's Wellhead Protection Plan. Annexation of the property provides an immediate accrual to the tax base for the City. Annexation of the property provides an opportunity for expanded Light Industrial Uses. The area proposed for annexation is not localized or isolated. Other, required, utilities will be installed at developer expense to facilitate development of the properties. The topography of the area is well suited for the proposed light industrial land uses. Expanded Uses on the properties will result in a positive economic impact to the community.

Cathy Laughlin City Planner

Attest:

Shelby Archuleta, Planning Technician

CC: Applicant

Jeremy Draper, Development Manager (via email)

Shanell Owen, City Clerk Ryan Limberg, Utility Director Bob Thibault, Civil Engineer

## CONSENT TO ASSIGNMENT AND ASSUMPTION OF WATER RIGHTS AGREEMENT

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF WATER RIGHTS

AGREEMENT (hereinafter the "Consent") is made and entered into this day of

Love Loc , 2013, by and between THE CITY OF ELKO, NEVADA, a municipal

corporation and political subdivision of the State of Nevada (hereinafter the "City"), CALVIN

DEAN STITZEL and MARILYN E. LUND (hereinafter "Stitzel/Lund") and P&H MINING

EQUIPMENT INC. also known as JOY GLOBAL SURFACE MINING INC., a Delaware

Corporation (hereinafter "P&H").

#### RECITALS

WHEREAS, on the 28<sup>th</sup> day of February, 1994, the City and Stitzel/Lund entered into the Water Rights Agreement attached hereto at Exhibit "1;"

WHEREAS, the Water Rights Agreement provides that Stitzel/Lund may not assign the water rights obtained by them on the real property without the prior written consent of the City;

WHEREAS, Stitzel/Lund desire to obtain the consent of the City to assign the Water Rights Agreement to P&H;

WHEREAS, P&H desires to assume the rights and obligations of Stitzel/Lund, subject to the terms and conditions of this Consent, upon the purchase from Stitzel/Lund of the real property described at Exhibit "2" hereto (hereinafter the "Real Property");

NOW, THEREFORE, in consideration of the above recitals, the parties do hereby agree as follows:

1. **CONSENT.** The City hereby consents to the assignment of the Water Rights

Agreement attached hereto at Exhibit "1" from Stitzel/Lund to P&H, and the assumption thereof by P&H, subject to the terms and conditions herein contained.

- 2. PURCHASE OF REAL PROPERTY: This Consent and the amendments to the Water Rights Agreement described herein shall become effective upon the purchase of the Real Property from Stitzel/Lund by P&H within six (6) months of the date this Consent is approved by the Elko City Council. In the event P&H does not purchase the Real Property within six (6) months of the date this Consent is approved by the Elko City Council, this Consent shall automatically become null and void and shall be of no further effect.
- 3. <u>ADDITIONAL TERMS:</u> The following terms are hereby made part of this Consent and, moreover, upon the purchase of the Real Property by P&H within six (6) months of the date this Consent is approved by the Elko City Council, the following terms shall be automatically deemed added to and made part of the Water Rights Agreement:
- A. ENTIRE AGREEMENT. This Consent and the Water Rights

  Agreement, as amended, together constitute the entire agreement between the parties with regard to the subject matter described therein, and those documents supersede all prior agreements, offers and negotiations in relation thereto, and may not be amended except by an Agreement in writing signed by the parties.
- B. <u>APPLICABLE LAW.</u> This Consent and the Water Rights Agreement, as amended, shall be construed, given effect and governed by the laws of the State of Nevada, and in the event of a breach of this Consent or the Water Rights Agreement, as amended, by any of the parties, the other party shall have all remedies at law or equity provided by the laws of the State of Nevada.

- C. <u>VENUE</u>. Irrespective of any statutory provisions to the contrary, venue for any action arising under this Consent or the Water Rights Agreement, as amended, shall be in the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko.
- **D.** <u>ATTORNEY'S FEES.</u> Should either party be required to seek legal action to enforce or interpret the terms and conditions of this Consent or the Water Rights Agreement, as amended, the prevailing party shall be entitled to reasonable attorney fees and costs.

CITY	OF	TO T	VΩ	
CITY	UF	LL.	ΛU	

By:

Its: Mayor

Attest:

SHANELL OWEN, CITY CLERK

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MARILYN E. LUND

STITZEL/LUND

P&H MINING EQUIPMENT, INC.

By:\_

Its: General Manager

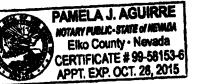
#### **NOTARY**

This instrument was acknowledged before me on this 3154 day of October, 2013,

2013, by:

Calvin Dean Stitzel	
Marilyn E. Lund	
	-
	<del>-</del>

NOTARY PUBLIC STATE OF NEVADA



#### WATER RIGHTS AGREEMENT

THIS WATER RIGHTS AGREEMENT made and entered into this 28 day of February, 1994 by and between THE CITY OF ELKO ("Elko") and CALVIN DEAN STITZEL and MARILYN E. LUND ("Stitzel/Lund").

#### **RECITALS:**

Elko has filed an Application for Permit to Appropriate the Public Waters of the State of Nevada, Application Number 56590 which was filed with the Nevada Division of Water Resources on July 26, 1991, a copy of which is attached as Exhibit "A".

Stitzel/Lund have filed an Application for Permit to Appropriate the Public Waters of the State of Nevada, Application Number 58379, which Second Amended application was filed with the Nevada Division of Water Resources on January 6, 1993, a copy of which is attached as Exhibit "B".

#### AGREEMENT:

Elko agrees not to utilize a portion of their water rights under Permit Number 56590 so that Stitzel/Lund can develop this property pursuant to the following terms and conditions:

- 1. Elko agrees not to use 58 acre-feet of water authorized for their use under Permit 56590 in order to allow Stitzel/Lund to obtain a permit pursuant to their application for a permit under Application Number 58379. The actual portion transferred shall not exceed the amount Stitzel/Lund place to beneficial use as specified on the Certificate of Appropriation issued by the Division of Water Resources.
- 2. Stitzel/Lund shall use the water solely for the development of real property located in the N/W 1/4 of the N/W 1/4, Section 30, T. 34 N., R. 55 E., MDB&M.
- 3. Stitzel/Lund agree that at any time the real property is annexed into the City of Elko, the water rights developed by Stitzel/Lund on the real property shall be transferred to the City of Elko at the request of the City. Upon such request, Elko shall furnish water from the municipal water system to the Stitzel/Lund properties as they are developed at that time.
- 4. Stitzel/Lund shall not assign or transfer the water rights obtained by them on the real property without the prior written consent of Elko, which consent shall not be unreasonably withheld.

5. This Water Rights Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first hereinabove written.

ATTEST:

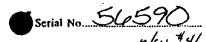
Skulina Murphy. City Clerk

THE CITY OF ELKO

LÒRRY LIP**H**ARELLI, City Manager

Calvin Dean STITZEL

Marilyn E. LUND



# APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

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Returned to	applicant for correction	•		. , ,		
Corrected ap	oplication filed		Map filed	*		****
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Nevada	Street and No. or P.O. Box No. 89801 State and Zip Code No.					
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•	The water is to be diverted facility source at the following point.  The SE 1/4 of the NE 1/4 of Section 10 T34N R55E, M.D. 86M, or at a point from survey, and by course and distance to a section country. If on unarreved land, it should be so startd.  Which the NE correct of Section 10 become N 10 and
	which the NE corner of Section 10 bears N 19°30'00°E., a distance of 2250.00'
6.	Place of use All of Sections 25, 30, 31, 36 T35N R56E; Section 6 T34N R56E; Sections  Describe by legal subdivision. If on unserveyed land, it should be as stated.  1 through 5, 8 through 17, 20 through 24 T34N R55E M.D.B.&M.
7.	Use will begin about Janaury 1 and end about December 31 of each year.  Month and Day Month and Day
8.	Description of proposed works (Under the provisions of NRS 535.010 you may be required to submit plans and
	specifications of your diversion or storage works.) a drilled and cased well equipped with motor.  State manner in which water is to be diversed, i.e. diversion structure.
	pump and pipeline to place of use.  diches and flumes, drilled well with pump and motor, etc.
9.	Estimated cost of works \$200,000
0.	Estimated time required to construct works 5 years If well completed, describe works.
i.	Estimated time required to complete the application of water to beneficial use
2.	Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.
	The total combined duty of this application and the existing water right shall
	not exceed 18,000 acre feet per year. The estimated consumptive use under this
	application is 4,343 acre feet per year.
	·
	Ilati Da Ral Da
	EPHONE NUMBER  By ICAM Signature, applicant or agent  Michael D. Brucchell Brussell
7	5 Strature, applicant or agent Michael D. Buschelman, Agent Storest and No., or P.O. Box No.
۱P	PLICATION MUST BE SIGNED  Reno, Nevada 89523  City, Suite, Zip Code No.

\$200 FILING FEE MUST ACCOMPANY APPLICATION ....

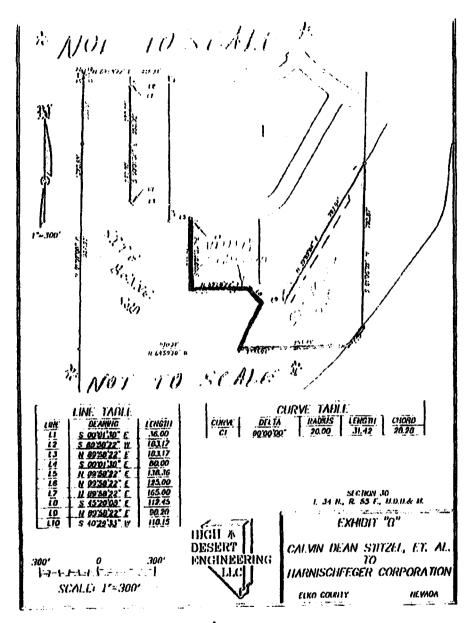
D)-4577 (Rev. 7-89)

# APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE	FOR OFFICE USE ONLY	
Date of filing in State Engineer's Office		
Returned to applicant for correction		
Corrected application filed.	Map filed	
The applicant Calvin Dean Stitzel &	k Marilyn E. Lund	
	£1ko	· · · · · · · · · · · · · · · · · · ·
P. O. Box 1182  Street and No. or P.O. Box No.  Nevada 87801  State and Zip Code No.	City and Town  City and Town  , hereby make application for permissi	on to appropriate
the public waters of the State of Nevada, as hereina		
incorporation; if a copartnership or association give a		<u>-</u>
**************************************		
s applicant a U.S. citizen? Yes 🗓 No 🗆		·•.
s applicant 21 years of age or older? Yes 🗍 No	0.0	
NRS 533.325 requires that applicant be a citizen of the citizen, and that they be 21 years of age or older.		
1. The source of the proposed appropriation is	Inderground	
		<b>38.</b>
2. The amount of water applied for is		second feet.
(a) If stored in reservoir give number of acre-fee		·
3 The worse to be used for		
3. The water to be used for	r, mining, commercial, domestic or other use. Must limit to one major	1 466.
4. If use is for:		•
(a) Irrigation, state number of acres to be irrigate	d	······
(b) Stockwater, state number and kind of animals		
(c) Other use (describe fully under "No. 12. Ren	marks")	
(d) Power:		
(1) Horsepower developed		EXHIBIT
(2) Point of return of water to stream		B

· · · · · · · · · · · · · · · · · · ·	Describe ling within a 40-acre subdivision of public MDB & M., at a point from which the NV
survey, and by course and distance to a section corner. If on unsur- Corner of said Section 30,	veyed land, it should be so stated. bears N 44° 29' 49" W, 210.20 feet.
Describe by leg	1) of Section 30, T 34 N, R 55 E, MDB &
M.	
Use will begin about	December 31 and end aboutof each yea
Description of proposed works (Under the prov	visions of NRS 535.010 you may be required to submit plans an
specifications of your diversion or storage works	Well, Pipelines and Storage Tank  Some manuer in which water is to be diversed, i.e. diversion structure
	Some commercial waters where to be develous, i.e. diversing sometime
ditches and flumes, drilled well with pump and motor, etc.  Estimated cost of works	\$20,000
	three years
Estimated time required to construct works	If well completed, describe works.
Estimated time required to complete the applicat	five years
Estimated and required to complete the applical	tion of water to occurred the same of the
consumptive use.	k watering, state number and type of units to be served or an annumber and type of units typ
Repair Shop, Tire Shop, 2-Ba	y Truck Wash, Cafe and 500 Motel Units.
: :	
•	
	HIGH DESERT Engineering, Agent
LEPHONE NUMBER	ByRubert Esignified/applicator agent
02 738 - 4053	640 Idaho Street
PPLICATION MUST BE SIGNED Y THE APPLICANT OR AGENT	Street and No., or P.O. Box No. Elko, Nevada 87801  City, State, Zip Code No.
•	IUST ACCOMPANY APPLICATION

# Exhibit II



MJ

08.8

#### WATER RIGHTS AGREEMENT

THIS WATER RIGHTS AGREEMENT made and entered into this 28 day of February, 1994 by and between THE CITY OF ELKO ("Elko") and CALVIN DEAN STITZEL and MARILYN E. LUND ("Stitzel/Lund").

#### **RECITALS:**

Elko has filed an Application for Permit to Appropriate the Public Waters of the State of Nevada, Application Number 56590 which was filed with the Nevada Division of Water Resources on July 26, 1991, a copy of which is attached as Exhibit "A".

Stitzel/Lund have filed an Application for Permit to Appropriate the Public Waters of the State of Nevada, Application Number 58379, which Second Amended application was filed with the Nevada Division of Water Resources on January 6, 1993, a copy of which is attached as Exhibit "B".

#### **AGREEMENT:**

Elko agrees not to utilize a portion of their water rights under Permit Number 56590 so that Stitzel/Lund can develop this property pursuant to the following terms and conditions:

- 1. Elko agrees not to use 58 acre-feet of water authorized for their use under Permit 56590 in order to allow Stitzel/Lund to obtain a permit pursuant to their application for a permit under Application Number 58379. The actual portion transferred shall not exceed the amount Stitzel/Lund place to beneficial use as specified on the Certificate of Appropriation issued by the Division of Water Resources.
- 2. Stitzel/Lund shall use the water solely for the development of real property located in the N/W 1/4 of the N/W 1/4, Section 30, T. 34 N., R. 55 E., MDB&M.
- 3. Stitzel/Lund agree that at any time the real property is annexed into the City of Elko, the water rights developed by Stitzel/Lund on the real property shall be transferred to the City of Elko at the request of the City. Upon such request, Elko shall furnish water from the municipal water system to the Stitzel/Lund properties as they are developed at that time.
- 4. Stitzel/Lund shall not assign or transfer the water rights obtained by them on the real property without the prior written consent of Elko, which consent shall not be unreasonably withheld.

5. This Water Rights Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first hereinabove written.

ATTEST:

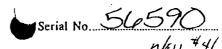
Leulina Murphy, City Clerk

THE CITY OF ELKO

LORRY LIPHARELLI, City Manager

Calvin Dean STITZEL

Marilyn E. LUND



# APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

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Date of fili	ng in State	Engineer's (	Office	· · · · · · · · · · · · · · · · · · ·	*****************		· ,	1	**		***********
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Corrected a	application 1	iled	·> • • • • • • • • • • • • • • • • • • •		Мар	filed		*********			
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	(	ity of E	Elko								
he applicant							**********	*******		*******	1 <del>57</del> 7 99-99-77
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corporation; i	f a copartne	rship or ass	ociation g	ive names o	of members.).			A		···	.,
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applicant 21 RS 533.325 re lizen, and that	years of age equires that a t they be 21	or older? applicant be years of ag	No  Yes  a citizen e e or older	No 🗆 of the United		<b>.</b>					become a
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applicant 21 RS 533.325 retizen, and that  The source  The amount  (a) If stored  The water t  If use is for  (a) Irrigatio  (b) Stockwa	years of age	or older? applicant be years of ag osed appropoliced for is r give number	No  Yes  a citizen of a citizen	No  of the United under  6.0 cfs One see	name of stream	ell No., lake, spring,	41 undergrow	and or oth	er source.	sec	ond feet
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٦٠,	The SE 1/4 of the NE 1/4 of Section 10 T34N R55E, M.D. R&M, or at a point from
	which the NE corner of Section 10 bears N 19°30'00"E., a distance of 2250.00'
	All of Sections 25, 30, 31, 36 T35N R56E; Section 6 T34N R56E; Sections  Place of use  Describe by legal subdivision. If on unsurveyed land, it should be so stated.  1 through 5, 8 through 17, 20 through 24 T34N R55E M.D.B.&M.
7.	Use will begin about Janaury 1 and end about December 31 of each year.  Month and Day Month and Day
8.	Description of proposed works (Under the provisions of NRS 535.010 you may be required to submit plans and
	specifications of your diversion or storage works.) a drilled and cased well equipped with motor  State manner in which water is to be diverted, i.e. diversion structure,
	pump and pipeline to place of use.  ditches and flumes, drilled well with pump and motor, etc.
9.	Estimated cost of works \$200,000
10.	Estimated time required to construct works. 5 years  If well completed, describe works.
11.	Estimated time required to complete the application of water to beneficial use
	Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.
	The total combined duty of this application and the existing water right shall
	not exceed 18,000 acre feet per year. The estimated consumptive use under this
	application is 4,343 acre feet per year.
,	
	· · ·
	Mali De Anal De
	EPHONE NUMBER  By Control Signature, applicant or agent  Nichael D. Buschelman, Agent
	54U5 Mae Anne Avenue Street and No., or P.O. Box No.
	PLICATION MUST BE SIGNED  Reno, Nevada 89523  City. State, Zip Code No.

\$200 FILING FEE MUST ACCOMPANY APPLICATION (\*\*\* \*)

(O)-4577 (Rev. 7-89)

SECOND AMENDED

rial No. 58379

# APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE I	FOR OFFICE USE ONLY
Date of filing in State Engineer's Office	
Returned to applicant for correction	
Corrected application filed	Map filed
The applicant Calvin Dean Stitzel &	Marilyn E. Lund
P. O. Box 1182	of Elko
Street and No. of P.U. Box No.	City and Town  City and Town  hereby make application for permission to appropriate
	ter stated. (If applicant is a corporation, give date and place of members.)
s applicant a U.S. citizen? Yes No No Sapplicant 21 years of age or older? Yes No No NRS 533.325 requires that applicant be a citizen of the itizen, and that they be 21 years of age or older.  1. The source of the proposed appropriation is	United States or have legally declared their intention to become a
	Name of stream, lake, spring, underground or other source.
2. The amount of water applied for is	One second foot equals 448.83 gallons per minute.
(a) If stored in reservoir give number of acre-feet.	
3. The water to be used for	mining, commercial, domestic or other use. Must limit to one major use.
4. If use is for:	•
(a) Irrigation state number of acres to be irrigated	· 
(a) Illigation, same nations of actor to be illigated	
(b) Stockwater, state number and kind of animals	
(b) Stockwater, state number and kind of animals (c) Other use (describe fully under "No. 12. Remains	arks'')

5. The water is to be diverted fromource at t	Describe and the within a 40-acre subdivision of but
survey, and by course and distance to a section corner. If on unsur	, MDB & M., at a point from which the NI rveyed land, it should be so stated. bears N 44° 29' 49" W, 210.20 feet.
Place of lice	1) of Section 30, T 34 N, R 55 E, MDB of subdivision. If on unsurveyed land, it should be so stated.
·	
Use will begin about Month and Day	December 31of each yea
Description of proposed works (Under the pro- specifications of your diversion or storage work	Well, Pipelines and Storage Tank  (State manner in which water is to be diverted, i.e. diversion structu
ditches and flumes, drilled well with pump and motor, etc.	\$20,000
Estimated cost of works	
Estimated time required to construct works	three years  If well completed, describe works.
Estimated time required to complete the condition	five years
Estimated time required to complete the applica	Mon of water to beneficial use
Remarks: For use other than irrigation or stoconsumptive use. Waters applied for under t	ck watering, state number and type of units to be served or annu
	ay Truck Wash, Cafe and 500 Motel Units.
•	
<del></del>	HIGH DESERT Engineering, Agent
LEPHONE NUMBER 02 738 - 4053	ByRobert Esignifico Japhico or agent 640 Idaho Street
PPLICATION MUST BE SIGNED	Street and No., or P.O. Box No. Elko, Nevada 89801
Y THE APPLICANT OR AGENT	City, State, Zip Code No.

\$200 FILING FEE MUST ACCOMPANY APPLICATION

(Q)-4577 (Rev. 7-89)



## **CITY OF ELKO**

## Planning Department

Website: www.elkocity.com Email:planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

March 9, 2018

Elko County Planning and Zoning Attn: John Kingwell 540 Court Street, Suite 104 Elko, NV 89801

Re: Annexation No. 1-18

In accordance with the Communication Policy between the City of Elko and Elko County and pursuant to Section 268.670 (1) of Nevada Revised Statutes, the City of Elko hereby notices and advises the Board of County Commissioners of the County of Elko of the City's intention to consider annexation of contiguous territory as petitioned by JoyGlobal Surface Mining Inc. and Ed & Sharon Netherton. Please find enclosed a double-sided copy of the application for annexation and map of the area for your review and comment.

The subject property consists of approximately 32.74 acres and is located generally on the north and south of P&H Drive, approximately 1,000 feet northwest of I-80 Exit 298.

The subject property satisfies minimum State criteria for annexation.

Review by the Elko City Planning Commission is scheduled for April 3, 2018.

Please submit written comments to the City of Elko Planning Department as soon as possible. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

Shelby Archuleta Planning Technician

May to Chutalo

**Enclosures** 

#### RECEIVED

FEB 2 2 2018

### CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801 (775) 777-7160 \* (775) 777-7119 fax

## **APPLICATION FOR ANNEXATION**

The applicant (100% of all proper	ty owners) hereby petitic	ons the Elko City	Council to annex to the
City of Elko-certain real property			
property petitioned for annexation Attached to the end of this docu		ollows: (Attach if	necessary)
	006000000	06001000	00000007
ASSESSOR PARCEL NUMBER ( (This is not the legal description	and the second s	iubuainuua,	000091007
PROPE	ERTY OWNERS / AUG	yadditional page	s if necessary)
Ed & Sharon Netherton		, X	(406) 295-5556
34 Camp Creek Rd. Troy. MT 5993	· 166 166	1 / Marton	Felephone Number 775-934-83
1072 Kahaapo Loop, t	The Mailing Address	H1 96753	100
JoyGlobal Surface Mining Inc.	Pat RJ	Rus	(775) 748-4650
(Print Name) 4450 P&H Drive Elko, NV 89801	Signature		Telephone Number
	Mailing Addres	S	
(Print Name)	Signature	י	elephone Number
	Mailing Address		

#### **FILING REQUIREMENTS:**

<u>Complete Application Form</u>: In order to begin processing the application, an application form must be complete and signed. Applications go before the City Council, Planning Commission, and back to City Council twice, and will take a <u>minimum</u> of 8 weeks.

<u>Fee</u>: 10 acres or less \$500.00, greater than 10 acres through 50 acres \$750.00, greater than 50 acres \$1,250.00. The filing fee shall be paid in full prior to consideration of the annexation request by the Planning Commission.

Annexation Map: An annexation map or record of survey of the area proposed for annexation provided by a properly licensed surveyor. Such map shall include the proposed acreage to be annexed, and the length and percentage of common boundary (at least 15%) with the corporate limits of the City. If the property abuts a road not already in the City limits, at least one half of the road must be included in the map and legal description (see N.R.S. 268.663).

**<u>Legal Description</u>**: A complete legal description of all property proposed for annexation.

<u>Plot Plan</u>: If the property is improved, a surveyed plot plan showing property lines, existing buildings, building setbacks, parking and loading areas and any other pertinent information.

<u>Note</u>: One .pdf (email is okay) of the entire application must be submitted, as well as one set of legible, reproducible plans 8  $\frac{1}{2}$ " x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

<u>Other Information</u>: The applicant is encouraged to submit other information and documentation to support this Annexation request

- 1. Identify the existing zoning classification of the property: Light Industrial (LI)
- 2. Identify the zoning classification being requested upon annexation: Light Industrial (LI)

  (A separate zone change application must be submitted for the requested classification.)
- Explain in detail the type and nature of the use anticipated for the property.
   Approximately 180,000 S.F. heavy equipment rental, repair and parts facility.
- 4. Identify any unique physical features or characteristics associated with the property.

The property is currently occupied by a 40,000 S.F. repair facility.

Revised 12/04/15 Page 2

streets, sewer, and water service.
P&H drive will be improved and culinary water extended as well
as dry sewer for future connnection.
6. Identify any water rights which will support the annexed property:
Existing well will be capped and water rights transferred to city.
(Use additional pages if necessary to address questions 3 through 6)

Revised 12/04/15 Page 3

by My Signature	below:
	naving the City of Elko Staff enter on my property only for the sole purpose of operty as part of this application process.
this application. (Y	ving the City of Elko Staff enter onto my property as a part of their review of our objection will not affect the recommendation made by the staff or the final determination ning Commission or the City Council.)
by the City Plannin	ge that submission of this application does not imply approval of this request ng Department, the City Planning Commission and the City Council, nor does i rantee issuance of any other required permits and/or licenses.
	e that this application may be tabled until a later meeting if either I or my entative or agent is not present at the meeting for which this application is
I have careful best of my ability.	ly read and completed all questions contained within this application to the
Applicant / Agent	Lonny Reed
	(Please print or type)
Mailing Address	52 West 100 North
	Street Address or P.O. Box
	Heber City, UT 84032
	City, State, Zip Code
	Phone Number: (435) 654-4828
	Email address: Ionny@legendengineering.com
SIGNATURE:	
	FOR OFFICE USE ONLY
le No.: 1-18	Date Filed: 2/22/18 Fee Paid: 1,000 CV# 7424

#### **Shelby Archuleta**

From:

Cathy Laughlin

Sent:

Thursday, March 8, 2018 2:28 PM

To:

Shelby Archuleta

Subject:

FW: Permission to act as agent

#### Cathy Laughlin City Planner

(775)777-7160 ph (775)777-7219 fax claughlin@elkocitynv.gov

City of Elko 1751 College Avenue Elko, NV 89801

From: Robert Richens [mailto:robert.richens@mining.komatsu]

**Sent:** Thursday, March 08, 2018 2:24 PM **To:** Cathy Laughlin <claughlin@elkocitynv.gov> **Cc:** Lonny Reed <lonny@legendengineering.com>

Subject: Re: Permission to act as agent

Yes, Harnischfeger is a parent company organization to JoyGlobal.

Originally the Elko facility was P&H MinePro and so the name of the road in Elko Nevada in which the property sits. It is derived from Pawling and Harnischfeger, The original founders.

Thanks Robert

On Mar 8, 2018, at 3:17 PM, Cathy Laughlin < claughlin@elkocitynv.gov > wrote:

#### Lonny,

We show the property owner as Harnischfeger Corporation. Is this a parent corporation to the JoyGlobal Surface Mining Inc.? If you could please clarify this for our application.

Thanks,

Cathy Laughlin
City Planner

(775)777-7160 ph (775)777-7219 fax claughlin@elkocitynv.gov

City of Elko 1751 College Avenue Elko, NV 89801

#### **Shelby Archuleta**

From:

Cathy Laughlin

Sent:

Wednesday, March 7, 2018 3:43 PM

To:

Shelby Archuleta

Subject:

FW: Permission to act as agent

#### Cathy Laughlin City Planner

(775)777-7160 ph (775)777-7219 fax claughlin@elkocitynv.gov

City of Elko 1751 College Avenue Elko, NV 89801

From: Lonny Reed [mailto:lonny@legendengineering.com]

Sent: Wednesday, March 07, 2018 3:34 PM
To: Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: Fwd: Permission to act as agent

#### Hi Cathy,

I understand that you got an email from the Nethertons giving us permission to act as agent? Let me know if that's not the case please. See below for Robert Richens' approval.

Thank you,

Lonny

#### Lonny Reed, P.E.

Legend Engineering lonny@legendengineering.com www.legendengineering.com Tel 435 654-4828 Mobile 801 633-0444 52 West 100 North Heber City, UT 84032



#### Begin forwarded message:

From: Robert Richens < robert.richens@mining.komatsu >

Subject: RE: Permission to act as agent Date: March 2, 2018 at 2:14:47 PM MST

To: Lonny Reed < lonny@legendengineering.com >, Ed Netherton < ednetherton@gmail.com >

Cc: John Pfisterer < johnp@komatsueq.com >, Andrew Bollschweiler < andrew@aeurbia.com >, David

Kuhn <davidk@kuhnpm.com>

Lonny,

Please use this email as authorization to act as our Agent for the annexation.

Thanks Robert

#### **Robert Richens**

Executive Vice President – KEC Operations JoyGlobal Surface Mining, Inc. Office: +1 801 952 4739 Mobile: +1 435 650 0774

## KOMATSU

From: Lonny Reed [mailto:lonny@legendengineering.com]

Sent: Friday, March 02, 2018 1:07 PM

To: Ed Netherton < ednetherton@gmail.com >; Robert Richens < robert.richens@mining.komatsu >

Cc: John Pfisterer < johnp@komatsueg.com >; Andrew Bollschweiler < andrew@aeurbia.com >; David Kuhn

<davidk@kuhnpm.com>

Subject: Fwd: Permission to act as agent

Hi Ed and Robert.

Cathy from the City of Elko is asking for an email from each of you that assigns Legend Engineering to act as agent for the annexation. Please respond to this email as soon as you can and I will forward to Cathy.

Thank you, Lonny

#### Lonny Reed, P.E.

Legend Engineering lonny@legendengineering.com www.legendengineering.com Tel 435 654-4828 Mobile 801 633-0444 52 West 100 North Heber City, UT 84032



#### Begin forwarded message:

From: Cathy Laughlin < claughlin@elkocitynv.gov>

Subject: Permission to act as agent Date: March 2, 2018 at 1:00:14 PM MST

To: Lonny Reed < lonny@legendengineering.com >

Cc: Shelby Archuleta < sarchuleta@elkocitynv.gov >, Jeremy Draper < idraper@elkocitynv.gov >

Lonny,

Could you get an email or written permission from both JoyGlobal and Nethertons to assign you as their agent for this annexation as we are showing Legend as the applicant on behalf of the property owners.

Thanks,

#### Cathy Laughlin City Planner

(775)777-7160 ph (775)777-7219 fax claughlin@elkocitynv.gov

City of Elko 1751 College Avenue Elko, NV 89801

This electronic mail transmission contains information from Joy Global Inc. which is confidential, and is intended only for the use of the proper Addressee. If you are not the intended recipient, please notify us immediately at the return address on this transmission, and delete this message and any attachments from your system. Unauthorized use, copying, disclosing, distributing, or taking any action in reliance on the contents of this transmission is strictly prohibited and may be unlawful. Privacy-JGI

#### **Cathy Laughlin**

From:

Sharon Netherton <ssnetherton@yahoo.com>

Sent:

Monday, March 05, 2018 4:16 PM

To:

Cathy Laughlin

Cc:

Ed Netherton

Subject:

**Netherton Annexation** 

Dear Cathy,

I give my permission to Lonnie Reed from Legend Engineering to sign as my agent for the annexation of the property at mile marker 298.

Sincerely

**Sharon Netherton** 

#### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and public hearing for Notice of a Proposed Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Dr. to C-A-L Stores Companies, Inc., and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **PUBLIC HEARING**
- 4. Time Required: 5 Minutes
- 5. Background Information: C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

6. Budget Information:

Appropriation Required: N/A Budget amount available: Fund name: Water

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Public Hearing Notice, Resolution No. 11-18, Prior Lease Agreement, New Lease Agreement
- 9. Recommended Motion: Conduct public hearing and declare the continued interest to lease City owned property located at 2953 Manzanita Drive to C-A-L Stores Companies, Inc.
- 10. Prepared By: Ryan Limberg, Utilities Director
- 11. Committee/Other Agency Review:
- 12. Council Action:
- 13. Council Agenda Distribution: b.bunker@calranch.com

#### NOTICE OF PROPOSED LEASE OF REAL PROPERTY (NRS 268.064)

NOTICE IS HEREBY GIVEN, that, pursuant to NRS 268.064(2)(a), the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada, proposes to lease to C-A-L Ranch Stores Companies DBA C-A-L Ranch Stores, the following described real property, said property consisting of less than 25,000 square feet:

All that certain lease area being a portion of Parcel 8 as shown on the "Sun Rise Shopping Center-A Subdivision, Final Plat" File No. 160687, located in Section 11, Township 34 North, Range 55 East, M.D.M located in the City of Elko, Elko County, Nevada, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 34 North, Range 55 East, M.D.M as shown on the "Sun Rise Sopping Center- A Subdivision, Final Plat" File No. 160687; thence South 47°59'47" East 202.75 feet; thence South 42°00'13" West 1833.88 feet to the point of beginning, thence from said point of beginning South 42°00'13" West 210.10 feet; thence North 58°28'06" West 88.21 feet; thence North 31°31'54" East 206.60 feet; thence South 58°28'06" East 126.40 feet to the point of the beginning.

The total lease area shall be 22,169 SF or .51 acres.

The Elko City Council has adopted a resolution stating that it is the best interest of the City to lease the property without offering the property to the public. A public hearing will be held on the aforementioned proposed lease of real property on April 24 at 5:30 p.m. at Elko City Hall, 1751 College Avenue, Elko, NV 89801.

DATED this 11th day of April, 2018

CITY OF ELKO By: SHANELL OWEN, MMC CITY CLERK

Publish: April 13

Upon introduction and motion by Councilman Reece Keener and seconded by Councilman Robert Schmidtlein the following Resolution and Order was passed and adopted:

### CITY OF ELKO RESOLUTION NO. 11-18

### A RESOLUTION OF THE ELKO CITY COUNCIL APPROVING THE LEASE OF REAL PROPERTY LESS THAN 25,000 SQUARE FEET

WHEREAS, Nevada Revised Statute 268.064 provides that, subject to meeting publication requirements and conducting a public hearing, the governing body of a city may offer any city-owned building or any portion thereof or any other real property for lease without complying with the provisions of NRS 268.059, 268.061 and 268.062 if: (a) the area of the building space or other real property is less than 25,000 square feet; and (b) the governing body adopts a resolution stating that it is in the best interest of the city to lease the property: (1) without offering the property to the public; and (2) for less than the fair market value of the building space or other real property, if applicable.

WHEREAS, a lease of a city-owned building or any portion thereof or any other real property pursuant to Nevada Revised Statute 268.064 may be made on such terms and conditions as the governing body of the city deems proper; *provided*, the duration of such a lease must not exceed 3 years but may include an extension for not more than an additional 2 years.

**WHEREAS**, the Elko City Council has received a request from C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores to continue leasing the following-described real property:

All that certain lease area being a portion of Parcel 8 as shown on the "Sun Rise Shopping Center-A Subdivision, Final Plat" File No. 160687, located in Section 11, Township 34 North, Range 55 East, M.D.M located in the City of Elko, Elko County, Nevada, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 34 North, Range 55 East, M.D.M as shown on the "Sun Rise Shopping Center- A Subdivision, Final Plat" File No. 160687; thence South 47°59'47" East 202.75 feet; thence South 42°00'13" West 1833.88 feet to the point of beginning, thence from said point of beginning South 42°00'13" West 210.10 feet; thence North 58°28'06" West 88.21 feet; thence North 31°31'54" East 206.60 feet; thence South 58°28'06" East 126.40 feet to the point of the beginning.

The total lease area shall be 22,169 SF or .51 acres.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE ELKO CITY COUNCIL that, in accordance with NRS 268.064(2)(a), the City Clerk is hereby directed to

have published at least once, in a newspaper qualified under chapter 238 of NRS that is published in Elko County, a notice setting forth a description of the Property to be leased; and

IT IS FURTHER RESOLVED that this Resolution shall be effective and shall be in force immediately upon adoption, and that upon adoption of this Resolution by the Elko City Council it shall be signed by the Mayor and attested to by the City Clerk.

PASSED AND ADOPTED this 10<sup>th</sup> day of April, 2018.

ABSTAIN:

None

### **CITY OF ELKO**

	By:		
ATTEST:			
SHANELL	OWEN, CITY CLERK		
VOTE:			
AYES:	Mayor Chris Johnson, Councilwoman Mandy Simons, Councilmen: John Rice, Robert Schmidtlein, Reece Keener		
NAYS:	None		
ABSENT:	None		

# APPROVAL TO EXTEND LEASE between THE CITY OF ELKO AND C-A-L RANCH STORES

This Approval is made and entered into this 22nd day of April, 2014, by and between C-A-L Stores, Inc. dba C-A-L Ranch Stores and the CITY OF BLKO, an incorporated city (hereinafter the "City").

### RECITALS

WHEREAS, on August 21, 2008, C-A-L Ranch Stores and the City entered into a Lange Agreement for the lease of City owned property (hereinafter the "Agreement"), and;

WHEREAS, the Elko City Council met on April 22, 2014 and discussed a request from C-A-L Ranch Stores to extend the Agreement, and;

WHEREAS, the parties desire to extend the existing Agreement to August 21, 2020, according to the renewal terms of the existing Agreement, and;

NOW, THEREFORE, IN CONSIDERATION of the recitals and the promises and covenants hereafter contained, it is egreed that per Article II the adjustment in rest shall be \$6,283.00 per year beginning September 1, 2014.

Except as otherwise provided herein, the Agreement shall remain unchanged and in full force and effect during the term above stated.

C-A-L STORES, COMPANIES, INC.

Jarry N. Word, President

THE CITYOF ELKO:

30----

Attest: Manual City Clark

### LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into by and between THE CITY OF ELKO, a municipal corporation organized and existing under the laws of the State of Nevada, hereinafter referred to as "Lessor," and C-A-L STORES COMPANIES, INC. dba C-A-L RANCH STORES, hereinafter referred to as "Lessee", both hereinafter referred to in the singular, neuter, whether one or more or person or entity.

### WITNESSETH:

For and in consideration of the mutual covenants contained herein, and subject to approval of the City of Elko through its Mayor and City Council, Lessor does hereby rent, demise, let and lease unto Lessee, the property described in Section 1.01 upon the terms and conditions hereinafter set forth:

### ARTICLE I.

### **DESCRIPTION OF REAL PROPERTY AND TERM**

Section 1.01. <u>Description</u>: Lessor leases to Lessee that certain real property in the City of Elko, Elko County, Nevada, consisting of .51 acres more or less, located at 2953 Manzanita Drive, more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (hereinafter referred to as the "Property").

Section 1.02. <u>Term</u>: Term of this Lease shall be for a period of six (6) years commencing on the date hereof.

Section 1.03. Renewal: On the condition that Lessee is then in good standing under this Lease, Lessee shall have the option, but not obligation, to renew this Lease for up to an additional six (6) year term upon the same terms and conditions set forth below in Section 2.02. If Lessee exercises the option to renew, Lessee must do so by serving upon Lessor a written notice thereof specifying the numbers of years that the Lease is renewed up to a maximum of six (6) years.

#### ARTICLE II.

### **RENT/COMPUTATION**

Section 2.01. <u>Amount</u>: Subject to adjustment as hereinafter provided, Lessee shall pay rent in the amount of \$6,100.00, commencing upon the date of execution of this Lease, and continuing on or before the same date of each and every year thereafter. Said annual rent shall be payable in advance and shall be paid to the Lessor at 1751 College Avenue, Elko, Nevada 89801, or at such other address or addresses as Lessor may from time to time specify by written notice to Lessee.

Section 2.02. Adjustments in Rent: Rent for the first three years of the optional six-year renewal term provided to Lessee hereunder, if said option is exercised, shall be \$6,283.00 per year, payable as set forth in Section 2.02. Rent for the second three years of the optional six-year renewal term provided to Lessee hereunder, if said option is exercised, shall be \$6,472.00 per year, also payable as set forth in Section 2.02.

Section 2.03. Additional Assessments and Charges: In addition to the rent payable under this section, Lessee shall pay and discharge promptly as the same become due and before delinquency all taxes and assessments, whether general or special, of every kind which may be levied or assessed or become a lien on or against the Property, or any part thereof, or any building or improvements thereon, or on or against the leasehold of Lessee, during the term of this Lease. Any such taxes or assessments which shall relate to the fiscal year during which the terms of this Lease shall commence or terminate shall be prorated between Lessor and Lessee.

#### ARTICLE III.

### **USE OF PROPERTY**

Section 3.01. <u>Use</u>: The Property may be used by Lessee only as a storage site for their store inventory. However, this location is within the City's wellhead protection area. As such, the storage of treated lumber/posts, chemicals-including fertilizers, pesticides, and herbicides, as well as all oils and fuels, and any other substance the City

determines to be potentially detrimental to the well shall be prohibited. Lessee agrees to restrict the use of the Property to such uses unless obtaining prior written consent of Lessor to use the Property in any other manner.

### SECTION IV.

### **CONSTRUCTION OF IMPROVEMENTS**

Section 4.01. <u>Compliance With Laws</u>: All construction, work, improvements, and alterations thereto, to the Property by Lessee or its agents, shall be done in a good and workmanlike and in full compliance with all applicable local, state and federal laws, regulations and codes applicable to the uses to which the Property will be put by Lessee. Lessor must give its prior written approval to all plans and specifications prior to the start of construction, which consent may not be unreasonably withheld.

### ARTICLE V.

### REPAIRS AND DESTRUCTION OF PROPERTY

Section 5.01. Maintenance of Improvements: Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the Property, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and net order, condition and repair, and except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Lessee shall also comply with and abide by all Federal, State, County, municipal and other governmental statutes, ordinances, laws and regulations affecting the Property, the improvements thereon or any activity or condition on or in such Property.

Section 5.02. <u>Damage and Destruction of Improvements</u>: The non-material damage, destruction, or partial destruction of any building or other improvement which is a part of the Property shall not release Lessee from any obligation hereunder, and in case

thereof, Lessee shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. In case of a material damage or destruction of any building or other improvement, Lessee shall have the option to terminate this Lease.

If, in the event of such destruction or damage, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering such damage or destruction shall be made available to Lessee for such repair or replacement, and Lessee shall be obligated to repair or rebuild the building as above provided.

### ARTICLE VI.

### **COMPLIANCE WITH LAWS/WASTE**

Section 6.01. <u>Applicable Laws</u>: During the term of this Lease, Lessee shall comply with all City, County, State and Federal and other applicable laws affecting the Property, the breach of which might result in penalty on Lessor or forfeiture of Lessor's title to the Property.

Section 6.02. Waste, Nuisance or Unlawful Activities: Lessee shall not commit, or allow to be committed, any waste on the Property, create or allow a nuisance to exist on the Property, or use or allow the Property to be used for any unlawful purpose.

#### ARTICLE VII.

### UTILITIES

Section 7.01. <u>Payment by Lessee</u>: Lessee shall pay for all utilities in connection with the Property, including, but not limited to, telephone, electricity, water, sewer and/or any other public utility services used or furnished on the Property during the term hereof.

#### ARTICLE VIII.

### LIENS

Section 8.01. <u>Prohibition against Liens</u>: Lessee shall keep the fee estate of the Property free and clear from all mechanics' and materialmen's and other liens for work or labor done, services performed, materials, appliances, power contributed, used or furnished or to be used in or about the Property for or in connection with any operations of Lessee, or any alteration, improvement, repairs, or additions which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the Property.

### ARTICLE IX.

### INDEMNIFICATION OF LESSOR

Section 9.01. <u>Indemnification</u>: Lessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessor or by any person whomsoever may at any time be using or occupying or visiting the Property or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall indemnify Lessor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that shall be hereafter placed or built on the Property and to the property of Lessee in, on or about the Property, and for injuries to persons or property in or about the Property, from any cause arising at any time during the term hereof. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or intentional misconduct of Lessor, its agents or employees.

Section 9.02. <u>Insurance/Liability</u>: Lessee shall procure and maintain in force during the term of this Lease and any extension thereof, at Lessee's expense, public liability insurance adequate to protect Lessee and Lessor against liability for damage claims through public use or arising out of accidents occurring in or around the Property in a minimum amount of \$500,000.00 for each person injured, \$1,000,000.00 for any one accident, and \$50,000.00 for property damage. Lessee agrees to obtain a written obligation from insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal or renew any such policies. Lessee agrees that if such insurance policies are not kept in force during the entire term of this Lease or any extension thereof, Lessor may procure the necessary insurance and pay the premium therefore, and that such premium shall be repaid to Lessor as an additional rent installment for the month following the date on which such premiums are paid.

Section 9.03. "Blanket" Insurance Policies: Notwithstanding anything to the contrary contained in this section, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called "blanket" policy or policies of insurance carried and maintained by Lessee; provided, however, that the coverage afforded Lessor will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance.

Section 9.04. <u>Cost of Insurance deemed Additional Rental</u>: The cost of insurance required to be carried by Lessee in this Section shall be deemed to be additional rental hereunder.

### ARTICLE X.

### ASSIGNMENT AND SUB-LETTING

Section 10.01. <u>Restrictions</u>: Lessee shall not sub-leases or assign any part of the Property or any of Lessee's rights hereunder without the express written consent of Lessor first had and obtained. In the event any assignment or sub-lease is granted by

Lessor, any such assignment or sub-lease shall incorporate fully all of the terms of this Lease Agreement and Lessee shall remain responsible to Lessor for all of the terms of this Lease.

### ARTICLE XL

### **DEFAULT**

Section 11.01. Lessee's Default: If Lessee shall fail or neglect to observe, keep or perform any of the covenants, terms, or conditions herein contained on Lessee's part to be observed, kept or performed, and such default shall continue for a period of forty-five (45) days after written notice from Lessor setting forth the nature of Lessee's default, then and in any such event, Lessor shall have the following cumulative default remedies on written notice to Lessee: (A) to terminate this Lease and forfeit all rights of Lessee hereunder; (B) to terminate this Lease and sue Lessee for all damages caused by such default or breach; and (C) immediately to enter the Property and take possession thereof with or without process of law and to remove all personal property from the Property and all persons occupying the Property and to use all necessary force therefore and in all respects to take the actual, full and exclusive possession of the Property and every part thereof as of Lessor's original estate, without incurring any liability to Lessee or to any persons occupying or using the Property for any damage caused or sustained by reason of such entry on the Property or such removal of such persons or property therefrom.

### ARTICLE XII.

### OWNERSHIP OF IMPROVEMENTS ON TERMINATION OF LEASE

Section 12.01. Ownership: On termination of this Lease for any cause or upon the natural expiration of this Lease, Lessor shall become the owner of any buildings and improvement on the Property not removed by Lessee within four (4) months from the date of termination of this Lease.

### SECTION XIII.

### LESSEE'S OPTION TO TERMINATE LEASE

Section 13.01. Option: On the condition that Section 4.01 is fully complied with, Lessee shall have the right, by notice to Lessor given at least 365 days prior to the surrender effective date, to terminate this Lease and surrender its leasehold interest hereunder to Lessor.

### SECTION XIV.

### LESSOR'S OPTION TO TERMINATE LEASE

Section 14.01. On the condition that any governmental agency (including Lessor) shall commence an eminent domain proceeding to acquire all or any part of the Property, or Lessee's interest therein, Lessor shall have the right, by notice to Lessee given at least 180 days prior to the termination effective date, to terminate this Lease and cause a vacation of the Property by Lessee.

#### SECTION XV.

### **CONDITION OF PROPERTY ON TERMINATION**

Section 15.01. On termination of this Lease for any cause, or upon the natural expiration of this Lease, Lessee must, at Lessee's sole expense, forthwith remove any improvements from, or from under, the Property and level it; PROVIDED HOWEVER, that Lessor shall have the option of waiving this requirement as to any and all improvements Lessor desires to remain in place. Lessor hereby waives this requirement as to any paving of the Property and any fencing of the Property, as long as such improvements are the only improvements made by Lessee to the Property during the term of this lease.

#### XVI.

### MISCELLANEOUS PROVISIONS

Section 16.01. Waiver: The waiver by Lessor of its right to declare a forfeiture or pursue any other remedy pursuant to this Lease upon any default on the part of Lessee shall not violate any provision therefore herein contained, nor constitute a waiver of such right in connection with any future default, or any other obligation of Lessee herein contained to be done and performed.

Section 16.02. <u>Inspection</u>: Lessor, by its officers, employees or other authorized agents, shall have the right to enter upon the Property at any and all reasonable times during the term hereof for the purpose of informing itself as to the compliance or non-compliance by Lessee of the terms, covenants and conditions of this Lease to be kept upon its part.

Section 16.03. <u>Miscellaneous Costs</u>: Lessee agrees to pay for all labor and material in connection with the construction of any buildings or improvements, social security and old age benefits, Nevada State Industrial Insurance System and Occupational Disease Coverage and for any and all such obligations or bills incurred during the term of this Lease. Upon the termination of this Lease, Lessee will discharge, pay and satisfy all bills and debts incurred by Lessee, to the end that there is no responsibility or liability imposed upon Lessor.

Section 16.04. Notices: Whenever in this Lease it shall be required or permitted that notice be given by either party to this Lease or to the other, such notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

LESSOR: THE CITY OF ELKO 1751 College Avenue Elko, Nevada 89801 LESSEE:
C-A-L STORES COMPANIES, INC.
dba C-A-L RANCH STORES
P.O. Box 1866
Idaho Falls, ID 83403

Such addresses may be changed from time to time by notice given hereunder.

Section 16.05. <u>Binding Effect</u>: This Lease shall be binding upon, and inure to the benefit of, and shall apply to the respective heirs, personal representatives, successors and assigns of Lessor and Lessee and all references in this Lease to Lessor and Lessee shall be deemed to refer to and include successors and assigns of successors or assigns.

Section 16.06. <u>Time of Essence</u>: Time is of the essence of this Lease and all of its provisions.

Section 16.07. <u>Attorney's Fees</u>: In the event of litigation, the prevailing party shall recover reasonable attorney's fees and expenses, together with costs of suit.

Section 16.08. <u>Venue</u>: At the option of either party, the venue of any action by the established in the County of Elko, State of Nevada. Personal service either within or without the State of Nevada shall by sufficient to give that Court jurisdiction.

Section 16.09. <u>Captions</u>: The captions contained herein are inserted only for convenience of reference and are in no way to be construed as part of the agreement or as a limitation on the scope of the particular paragraphs to which they refer.

Section 16.10. <u>Title Enjoyment</u>: Lessor covenants that Lessor is the owner of the within described Property in fee simple and has full right to make this Lease.

Section 16.11. <u>Quiet Enjoyment</u>: Lessee shall have the quiet and peaceable possession of the Property during the term hereof.

THE CITY OF ELKO

By: Michael J. Franzola, Mayor

ATTEST:

Land Oven
SHANELL OWEN, City Clerk

LESSEE:

C-A-L STORES COMPANIES, INC.
dba C-A-L RANCH STORES

By: May M. - Assay

Title: Focsdont / CE

#### EXHIBIT A

A portion of APN 001-560-040 (22,169 sq. ft. or .51 acres)

All that certain lease area being a portion of Parcel 8 as shown on the "Sun Rise Shopping Center - A Subdivision, Final Plat" File No. 160687, located in Section 11, Township 34 North, Range 55 East, M.D.M. located in the City of Elko, Elko County, Nevada, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 34 North, Range 55 East, M.D.M. as shown on the "Sun Rise Shopping Center - A Subdivision, Final Plat" File No. 160687; thence South 47°59'47" East 202.75 feet; thence South 42°00'13" West 1833.88 feet to the point of beginning, thence from said point of beginning South 42°00'13" West 210.10 feet; thence North 58°28'06" West 88.21 feet; thence North 31°31'54" East 206.60 feet; thence South 58 °28'06" East 126.40 feet to the point of the beginning.

TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents issues and profits thereof, or of any part thereof.

### LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this day of	
, 2018, by and between the CITY OF ELKO, a municipal corporation	
organized and existing under the laws of the State of Nevada, hereinafter referred to	as
"Lessor," and C-A-L STORES COMPANIES, INC. dba C-A-L RANCH STORES,	an
Idaho corporation, hereinafter referred to as "Lessee."	

### WITNESSETH

For and in consideration of the mutual covenants contained herein, and subject to ratification and approval by the Elko City Council, Lessor does hereby rent, demise, let and lease unto Lessee the real property described in Section 1.01 upon the terms and conditions hereinafter set forth:

### ARTICLE I. DESCRIPTION OF LEASED PREMISES

Section 1.01. <u>Description</u>: Lessor leases to Lessee that certain real property located in the City of Elko, State of Nevada, more particularly shown or described in the legal description attached hereto as Exhibit "A," consisting of .51 acres (22,215 square feet) more or less, located at 2953 Manzanita Drive, within the City of Elko. The foregoing is herein referred to as the "Leased Premises."

### Section 1.02. Term:

- (a) The initial term of this Lease shall commence on the date this agreement is executed by the Mayor and shall continue thereafter for a period of three (3) years (the "Initial Term").
- (b) At the expiration of the Initial Term, Lessee shall have the option to extend the Lease for an additional two (2) year period (the "Extension Term"). To exercise said option, Lessee must notify Lessor in writing of its election to extend no more than 120 days and no less than 60 days prior to the expiration of the Initial Term. In the event of such extension, the terms and conditions of this Lease shall continue to apply.

### Section 1.03: Delivery of Possession.

(a) Lessor shall put Lessee into physical possession of the Leased Premises upon the Mayor's execution of this lease.

- (b) Lessor makes no representations regarding whether Hazardous Substances have been deposited, stored, disposed of or placed upon, about or under the Leased Premises.
- Section 1.04. <u>Improvements</u>: Lessee shall not construct any improvements upon the Leased Premises without the prior written approval of Lessor. In the event any improvements are authorized or Lessee undertakes any maintenance of the Leased Premises, such work shall meet all of Lessor's applicable standards.

### ARTICLE II. RENT

Section 2.01. Amount: Lessee shall pay rent for the Leased Premises as follows:

- (a) Lessee shall pay monthly rent of \$6,710.00 during the Initial Term and \$7,381.00 during the Extension Term (if any), which rent shall be due and payable on the first day of each month in advance. In the event the Lease begins or terminates resulting in less than one month of occupancy, Lessee shall pay a pro rata portion of a month's rent, which sum shall be due and payable at the beginning of such month or within 5 days of the execution of this Lease or any extension thereof.
- (c) Until further notice by Lessor to Lessee, rent checks shall be payable to and mailed to:

City of Elko, c/o City Clerk's Office 1751 College Ave. Elko, NV 89801

Section 2.02. <u>Additional Assessments and Charges:</u> In addition to the rent payable under this section, Lessee shall pay and discharge promptly as the same becomes due and before delinquency all taxes and assessments, whether general or special, of every kind which may be levied or assessed or become a lien on or against the Leased Premises.

### ARTICLE III. USE OF LEASED PREMISES

- Section 3.01. <u>Use:</u> The Leased Premises may be used by Lessee only for inventory storage purposes in connection with its adjacent retail store.
- Section 3.02. <u>Chemical Storage Prohibited:</u> This location is within the City's wellhead protection area. Accordingly, the storage of treated lumber/posts and chemicals (including fertilizers, pesticides, herbicides, oils, fuels, and any other substances determined by Lessor or any other governmental authority to present a risk of

environmental contamination) is prohibited on the Leased Premises. Lessee agrees to restrict the use of the Leased Premises to permitted uses unless it obtains the prior written consent of Lessor to use the Leased Premises in any other manner.

3.03. <u>Nuisances</u>, <u>Waste</u>, <u>Unlawful Uses Prohibited</u>: Lessee shall not commit, or allow to be committed, any waste on the Leased Premises, or create or allow a nuisance to existing on the Leased Premises, or use or allow the Leased Premises to be used for any unlawful purpose.

### ARTICLE IV. CONSTRUCTION IMPROVEMENTS

Section 4.01. All construction, work, improvements, and alterations to the Leased Premises by Lessee or its agents shall be done in a good and workmanlike manner and in full compliance with all applicable local, state and federal laws, regulations and codes applicable to the use to which the Leased Premises will be put by Lessee.

### ARTICLE V. REPAIRS AND DESTRUCTION OF LEASED PREMISES

Section 5.01. Lessee shall, throughout the term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Leased Premises, including all improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and expect as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. In addition, any access points on the Leased Premises shall be maintained by Lessee.

### ARTICLE VI. COMPLIANCE WITH LAWS

Section 6.01. <u>Applicable Laws:</u> During the term of this Lease, Lessee shall comply with all city, county, state and federal and other applicable laws affecting the Leased Premises.

Section 6.02. Environmental Indemnity: If it is determined by a governmental agency with jurisdiction that as a result of Lessee's activities in operating the Leased Premises there is a violation of any Environmental Law and such governmental agency requires a cleanup or remediation program on the Leased Premises, Lessee will indemnify Lessor from expenses resulting from that cleanup or remediation program. As used herein, the term "Environmental Law" means all federal and state statutes and county and city ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the

Federal Clean Water Act, 33 U.S.C. Section 1351 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq.; the Nevada Hazardous Waste Law (NRS Chapter 459), as currently in force or as hereafter amended and all rules and regulations promulgated thereunder.

### ARTICLE VII. UTILITIES

Section 7.01. Lessee shall pay for all utilities associated with its use and occupancy of the Leased Premises.

### ARTICLE VIII. SIGNS, LESSEE'S FIXTURES

Section 8.01. <u>Signs and Other Advertising Matter Prohibited</u>: Lessee shall not install or operate interior or exterior electric or other signs or advertising matter, or associated machinery and other mechanical equipment on the Leased Premises.

Section 8.02. <u>Removal of Fixtures.</u> Lessee shall at all times have the right to remove all fixtures, machinery, equipment, appurtenances and other property furnished or installed by Lessee at Lessee's expense, provided the Leased Premises is returned to the original state.

### ARTICLE IX IMPROVEMENTS AND ALTERATIONS

Section 9.01. <u>Alterations Prohibited Without Prior Appoval:</u> Lessee covenants and agrees that during the term of this Lease, Lessee shall not, without Lessor's express written consent, construct any buildings, improvements, alterations, additions and/or fixtures on the Leased Premises.

Section 9.02. Ownership of Alterations and Improvements: On termination of this Lease for any cause or upon the natural expiration of this Lease, Lessor shall automatically become the owner of any buildings, improvements, alterations, additions and/or fixtures on the Leased Premises not removed by Lessee within four (4) months from the date of termination of this Lease; provided, in the event Lessor determines to remove and/or otherwise dispose of said buildings, improvements, alterations, additions and/or fixtures, Lessee shall be responsible for the Lessor's reasonable cost of removal and/or disposal. Nothing herein shall be interpreted as giving Lessee an interest in buildings, improvements, alterations, additions and/or fixtures existing on the effective date of this Lease.

### ARTICLE X. LIENS

Section 10.01. Lessee shall keep the Leased Premises free and clear from all mechanics' and materialmen's liens and other liens and encumbrances.

### ARTICLE XI. INDEMNIFICATION OF LESSOR

Section 11.01. Indemnification: Lessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person whomsoever may at any time be using, occupying or visiting the Leased Premises or who may be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor or user of any portion of the Leased Premises, or which may result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall indemnify and defend Lessor from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damages. Lessee hereby waives all claims against Lessor for damages to improvements existing on or that shall be hereafter placed or built on the Leased Premises, and for injuries to persons or property in or about the Leased Premises from any cause arising at any time during the term hereof. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or intentional misconduct of Lessor, its agents or employees.

Section 11.02. <u>Insurance</u>: Lessee shall procure and maintain in force during the term of this Lease and any extension thereof, at Lessee's expense, public liability insurance adequate to protect Lessee and Lessor against liability for damage claims though public use or arising out of accidents occurring in or around the Leased Premises in a minimum amount of \$1,000,000 for each person injured; \$2,000,000 for any one accident; and \$500,000 for property damage. Lessee agrees to obtain a written obligation from insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal to renew any such policies. Lessee agree that if such insurance policies are not kept in force during the entire term of this Lease or any extension thereof, Lessor may procure the necessary insurance and pay the premium thereof, and that such premium shall be repaid to Lessor as an additional rent installment.

### ARTICLE XII. ASSIGNMENT AND SUB-LETTING

Section 12.01. Lessee shall not assign this Lease or sublet all or or any part of the Leased Premises without the prior written approval of Lessor.

### ARTICLE XIII. CASUALTY

Section 13.01. If the Leased Premises shall be damaged or destroyed by fire or other casualty, then Lessee at its option and sole cost and expense may repair and restore the same to such condition as Lessee deems necessary or desirable (with such changes as Lessee deems appropriate), and in the event of such restoration, the fixed rent and all other charges shall abate proportionately according to the extent of such damage or destruction; such abatement shall include a period reasonably necessary for Lessee to perform and complete such restoration. Lessee's repair and restoration (if any) shall be subject to then-applicable legal requirements. If Lessee elects not to repair and restore the Leased Premises as herein provided, Lessee shall remove the damaged portions of the site improvements. If Lessee elects not to rebuild and restore the Leased Premises as herein provided, and such casualty has resulted in damage or destruction to fifty percent (50%) or more of the Leased Premises, then Lessee may cancel this Lease.

### ARTICLE XIV. INGRESS AND EGRESS

Section 14.01. Lessor reserves the right to itself, its contractors and its designees to enter upon the Leased Premises for the purpose of constructing, maintaining, and repairing any right-of-ways and easements which may be placed or constructed or any utilities which exist or may be constructed in the future.

### ARTICLE XV. DEFAULT

Section 15.01. If any fixed rent is due and remains unpaid for ten (10) days after the date it is due, or if Lessee breaches any of the other covenants of this Lease and such other breach continues for fourteen (14) days after receipt of notice from Lessor, Lessor shall then have all legal rights and remedies available at law or equity and such default shall constitute grounds for termination of this Lease, in the sole discretion of Lessor. In the event Lessor terminates this Lease based on a default by Lessee, Lessee shall automatically forfeit all rights hereunder and Lessor may immediately enter the Leased Premises and take possession thereof with or without process of law, and may remove all personal property from the Leased Premises without incurring any liability to Lessee, and may further store such property and dispose of such personal property in any manner it

sees fit, and Lessee shall be responsible for all reasonable costs of storing, transporting, removing, selling and/or otherwise disposing of said personal property.

### ARTICLE XVI. TITLE AND POSSESSION

Section 16.01. Lessor represents that Lessor has fee simple title to the Leased Premises and the right to make this Lease.

### ARTICLE XVII. CONDITION OF THE LEASED PREMISES ON TERMINATION

Section 17.01. On termination or cancellation of this Lease for any cause, or upon the natural expiration of this Lease, Lessee, at its sole expense, must remove any personal property stored on the Leased Premises and restore the Leased Premises to its original state. If all personal property is not removed by said date, Lessee agrees to pay the City of Elko liquidated damages in the amount of \$100 per day for each day any of the personal property is not removed from the Leased Premises; provided, Lessor shall have the option of waiving this requirement, in writing, as to any and all improvements Lessor desires to remain in place. Lessor's rights and remedies pursuant to this Section17.01 are in addition to and not in lieu of any other rights and remedies Lessor may have pursuant to this Lease.

### ARTICLE XVIII. MISCELLANEOUS PROVISIONS

Section 18.01. No Waiver: The waiver by Lessor of its right to declare a default or pursue any other remedy pursuant to this Lease upon any breach on the part of Lessee shall not violate any provision therefore herein contained, nor constitute a waiver of such right in connection with any future default, or any other obligation of Lessee herein contained to be done and performed. No delay on the part of either party in enforcing any of the provisions of this Lease shall be considered as a waiver thereof, nor shall such delay entitle Lessee to assert the equitable defense of laches. Any consent or approval granted by either party under this Lease must be in writing and shall not be deemed to waive or render unnecessary the obtaining of consent or approval with respect to any subsequent act or omission for which consent is required or sought.

Section 18.02. <u>Inspection</u>: Lessor, by its officers, employees or other authorized agents, shall have the right to enter upon the Leased Premises at any and all reasonable time during the term hereof for the purpose of informing itself as to the compliance by Lessee of the terms, covenants and conditions of this Lease to be kept upon its part.

Section 18.03. <u>Notice</u>: Whenever in this Lease it shall be required or permitted that notice be given by either party to this Lease or to the other, such notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

Lessor:

City of Elko

City Manager

1751 College Avenue Elko, NV 89801

Lessee:

C-A-L Stores Companies, Inc.

dba C-A-L Ranch Stores

P.O. Box 1866

Idaho Falls, ID 83403

Such addresses may be changed from time to time by notice given hereunder.

Section 18.04. <u>Binding Effect</u>: Subject to the restriction on assignments, this Lease shall be binding upon, and inure to the benefit of, and shall apply to the respective heirs, personal representatives, successors and assigns of Lessor and Lessee.

Section 18.05. <u>Time of Essence</u>: Time is of the essence of this Lease and all of its provisions.

Section 18.06. <u>Attorney Fees</u>: In the event of litigation, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses, together with cost of suit.

Section 18.07. <u>Captions</u>: The captions contained herein are inserted only for convenience of reference and are in no way to be construed as part of the agreement or as a limitation on the scope of the particular paragraph to which they refer.

Section 18.08. <u>Quiet Enjoyment</u>: Lessee shall have the quiet and peaceable possession of the Leased Premises during the term hereof.

Section 18.09. Governing Law and Jurisdiction: The validity, construction and enforceability of this Lease shall be governed by and interpreted under the laws of the State of Nevada The Fourth Judicial District Court in and for the County of Elko, State of Nevada, shall have jurisdiction and venue over all disputes arising hereunder.

Section 18.10. Entire Agreement; Modification; Waiver: This Lease constitutes the entire agreement between Lessor and Lessee pertaining to the subject matter hereto and supersedes all prior and contemporaneous agreements, representations and understandings to include, without limitation, the Lease Agreement dated August 21, 2008, as extended on April 22, 2014. No supplement, modification or amendment of this Lease shall be binding unless executed in writing by all the parties. No waiver of any of

the provisions of this Lease shall be deemed or shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the parties making the waiver.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the year and date first above written.

LESSOR:	<u>LESSEE:</u>
THE CITY OF ELKO	C-A-L STORES COMPANIES, INC., dba C-A-L RANCH STORES
By: CHRIS J. JOHNSON, Mayor	By:
ATTEST:	
SHANELL OWEN, City Clerk	_

### Elko City Council Agenda Action Sheet

- 1. Title: Review, consideration, and possible action to adopt Resolution No. 12-18, a resolution of the Elko City Council adopting a change in zoning district boundaries from R (Single Family and Multiple Family Residential) to PQP (Public, Quasi-Public) approximately 1.314 acres of property located northwest of the intersection of College Avenue and Golf Course Road, filed by The City of Elko and processed as Rezone No. 1-18, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: April 24, 2018
- 3. Agenda Category: **PUBLIC HEARING**
- 4. Time Required: 10 Minutes
- 5. Background Information: The Planning Commission considered the Subject Zone Change Request on April 3, 2018, and took action to forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 1-18. CL
- 6. Budget Information:

Appropriation Required: N/A Budget amount available: N/A

Fund name: N/A

- 7. Business Impact Statement: Not Required
- 8. Supplemental Agenda Information: Resolution, P.C. action report, Staff memos and related correspondence
- 9. Recommended Motion: Adopt Resolution No. 12-18 as recommended by the Planning Commission
- 10. Prepared By: Cathy Laughlin, City Planner
- 11. Committee/Other Agency Review: Planning Commission
- 12. Council Action:
- 13. Agenda Distribution:

Upon introduction and motion by C	Councilman	and seconded by
		on and Order was passed and adopted:
	CITY OF EL	KO
J	RESOLUTION N	
	· · · · · · · · · · · · · · · · · · ·	ELKO CITY COUNCIL ING DISTRICT BOUNDARIES
WHEREAS, the Elko City Council Revised Statutes, Section 278.260 a	-	ublic hearing in accordance with Nevada Code, Section 3-2-21(C), and
City of Elko (petitioner), together v	with any public inp	reviewed the application submitted by the ut, supporting data and evidence, and the extaining to Rezone Application No. 1-18.
that Rezone Application No. 1-18, Multiple-Family Residential) to PQ of property located generally on the	involving a change P (Public, Quasi-Pe northwest corner	DERED BY THE ELKO CITY COUNCIL e in zoning from R (Single-Family and Public) involving approximately 1.314 acres of College Avenue and Golf Course Road, in the map at Exhibit B attached hereto is
IT IS FURTHER RESOLVED AN Mayor and attested to by the City C		this Resolution shall be signed by the
PASSED AND ADOPTED this	day of, 201	8.
	C	CITY OF ELKO
	В	gy: , MAYOR
ATTEST:		
, CITY CLERK	_	
VOTE:		

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4 1			

NAYS:

ABSENT:

ABSTAIN:

Exhibit A

### LEGAL DESCRIPTION TO ACCOMPANY A ZONE CHANGE

A parcel within the southeast quarter of Section 10, and the southwest quarter of Section11, Township 34 North, Range 55 East, M.D.B.&M., which is further described as follows:

Beginning at a point at the intersection of the northwesterly right-of-way of College Avenue and the southwesterly right-of-way of Golf Course Road, that bears North 1°18′56″ East, a distance of 804.85 feet from the centerline monument at the intersection of Court Street and 13<sup>th</sup> Street as shown on the map of the Smith's Addition to the City of Elko, recorded in the office of the Elko County Recorder as file no. 43255, on November 5, 1927;

Thence, North 48°11'00" West, along the right-of-way of Golf Course Road a distance of 264.70 feet;

Thence, South 14°49'00" West, a distance of 202.00 feet;

Thence along a tangent circular curve to the left, with a radius of 14.70 feet, a central angle of 90°00′00″, and an arc length of 23.09 feet, to a point along the northeasterly right-of-way of VFW Drive;

Thence, South 48°11'00" East along said northeasterly right-of-way of VFW Drive, a distance of 235.30 feet;

Thence, along a tangent circular curve to the left, with a radius of 14.70 feet, a central angle of 90°00′00″, and an arc length of 23.09 feet, to a point along the northwesterly right-of-way of College Avenue;

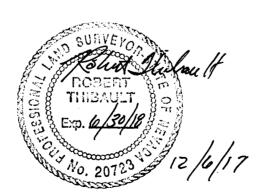
Thence, North 41°49'00" East along said northwesterly right-of-way of College Avenue, a distance of 202.00 feet more or less, to the point of beginning.

This parcel contains a total of  $\pm 1.314$  acres.

The basis of bearings for this description is the map of the Smith's Addition to the City of Elko, recorded in the office of the Elko County Recorder as file no. 43255, on November 5, 1927.

Description prepared by:

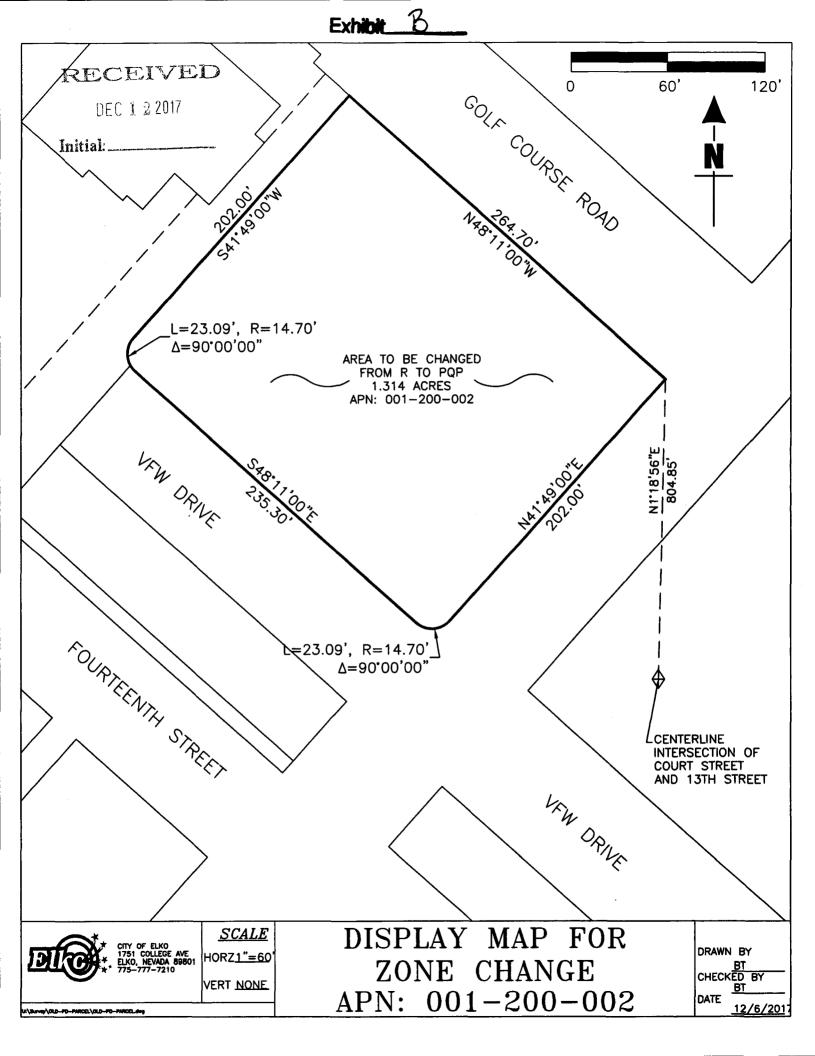
Robert Thibault, PE, PLS City of Elko Civil Engineer

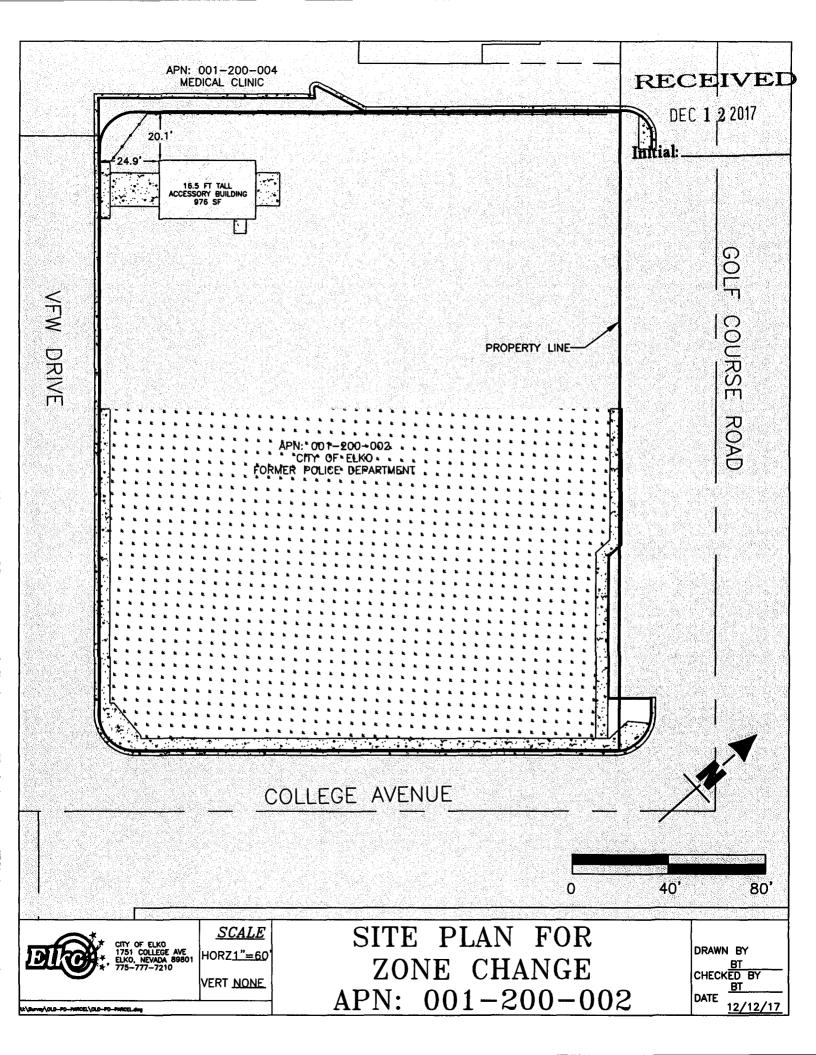


RECEIVED

DEC 1 2 2017

Initial:







City of Elko 1751 College Avenue Elko, NV 89801 (775) 777-7160 FAX (775) 777-7119

### **CITY OF ELKO STAFF REPORT**

MEMO DATE:

March 13, 2018

PLANNING COMMISSION DATE:

April 3, 2018

**APPLICATION NUMBER:** 

**REZONE 1-18** 

APPLICANT:

City of Elko

PROJECT DESCRIPTION:

A rezone from (R) Single Family and Multiple Family Residential to (PQP) Public, Quasi-Public initiated by the City of Elko Planning Commission.



### STAFF RECOMMENDATION:

RECOMMEND APPROVAL, subject to facts, findings and conditions.

### **PROJECT INFORMATION**

PARCEL NUMBER:

001-200-002

**PARCEL SIZE:** 

1.314 acres

**EXISTING ZONING:** 

(R) Single Family and Multiple Family Residential

MASTER PLAN DESIGNATION:

(PUBLIC) Public

**EXISTING LAND USE:** 

Developed land, previously Elko Police Department which was demolished. An accessory building and parking area are still exiting on the property.

### **BACKGROUND:**

1. Planning Commission made a motion at their January 4, 2018 meeting to amend the district boundaries and therefore the City of Elko is the applicant for the rezone.

2. The surrounding area is developed with public land use although many parcels are zoned Residential.

- 3. The property was previously developed with a principal structure utilized as the City's Police Department and related accessory structures. The principal structure has been demolished. The accessory structure has been leased to the local VFW.
- 4. The property has developed parking areas.
- 5. The property is accessed off Golf Course Road and VFW Drive.

### NEIGHBORHOOD CHARACTERISTICS:

- The property is surrounded by:
  - o Northeast: Developed as City of Elko Swimming Pool
  - o Northwest: Developed as Elko Family Medical and Clinic
  - o East: Developed as City of Elko Park
  - o Southwest: Developed as VFW Hall

### **PROPERTY CHARACTERISTICS:**

- The property is developed.
- The property can be accessed from Golf Course Rd, College Ave. or VFW Drive

### **MASTER PLAN AND CITY CODES:**

Applicable Master Plans and City Code Sections are:

- City of Elko Master Plan Land Use Component
- City of Elko Master Plan Transportation Component
- City of Wellhead Protection Plan
- City of Elko Zoning Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning Section 3-2-8 PQP Public, Quasi-Public District

- City of Elko Zoning Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning Section 3-2-21 Amendments
- City of Elko Zoning Section 3-8 Flood Plain Management

### **MASTER PLAN - Land use:**

- 1. The Master Plan Land Use Atlas shows the area as Public. This parcel was part of the Master Plan Amendment Resolution 10-18.
- 2. PQP is listed as a corresponding district for the Public land use designation.
- 3. Objective 3: Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.
- 4. This parcel would be identified in the Master Plan as intended to meet the goals of Objective 3.

The proposed zone district is in conformance with the Land Use Component of the Master Plan.

### **MASTER PLAN - Transportation:**

1. The area can be accessed from Golf Course Rd, College Ave. or VFW Drive.

The proposed zone district is in conformance with the Transportation Component of the Master Plan.

### **ELKO REDEVELOPMENT PLAN:**

The property is not located within the redevelopment area and consideration of the plan is not required.

### **ELKO WELLHEAD PROTECTION PLAN:**

1. The property is located within the 2 year capture zone for City wells.

The proposed zone district and allowed uses do not present a hazard to City wells and is therefore in conformance with the city wellhead protection plan.

### **SECTION 3-2-4 Establishment of Zoning Districts:**

- 1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
  - No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
  - No building or other structure shall hereafter be erected or altered:
    - a. To exceed the heights required by the current City Airport Master Plan;
    - b. To accommodate or house a greater number of families than as permitted in this chapter;
    - c. To occupy a greater percentage of lot area; or

- d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.
- No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
- No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

There is not a minimum lot area nor dimensions stipulated for the proposed zone district. The location of the accessory structure requires specific approval by the Planning Commission for the property to be in conformance with City Code 3-2-4 (B).

### **SECTION 3-2-8 PQP- Public- Quasi-Public District:**

- 1. There is no minimum lot area or dimensions stipulated for this section of code
- 2. The accessory building location requires approval by the Planning Commission under Section 3-2-8(E)(2): Accessory buildings, whether attached or detached, shall be located in accordance with location on the lot as approved by the planning commission.
- 3. The height of the accessory structure meets the requirements stipulated in code.

With Planning Commission approval of the existing accessory structure location, as shown on the site plan, the proposed rezone is in conformance with Section 3-2-8 of city code.

### **SECTION 3-2-17 Traffic, Access, Parking and Loading Regulations:**

1. The property has developed parking and access sufficient for the accessory structure use.

The current use of the property under the proposed district is in conformance with Section 3-2-17 of city code.

### **SECTION 3-2-21 Amendments:**

1. The applicant has conformed to this section of code with the filing of the application.

### **SECTION 3-8**

1. This parcel is not designated in a Special Flood Hazard Area (SFHA).

### **FINDINGS**

- 1. The proposed zone district is in conformance with the Land Use Component of the Master Plan.
- 2. The proposed zone district is in conformance with the Transportation Component of the Master Plan.

- 3. The property is not located within the redevelopment area and consideration of the plan is not required.
- 4. The proposed zone district and allowed uses do not present a hazard to City wells and is therefore in conformance with the city wellhead protection plan.
- 5. There is not a minimum lot area nor dimensions stipulated for the proposed zone district. The location of the accessory structure requires specific approval by the Planning Commission for the property to be in conformance with City Code 3-2-4 (B).
- 6. With Planning Commission approval of the existing accessory structure location, as shown on the site plan, the proposed rezone is in conformance with Section 3-2-8 of city code.
- 7. The current use of the property under the proposed district is in conformance with Section 3-2-17 of city code.
- 8. The proposed rezone is consistent with surrounding land uses.
- 9. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.
- 10. The parcel is not located within a designated Special Flood Hazard Area.

#### STAFF RECOMMENDATION:

Staff recommends this item be conditionally approved with the following conditions:

### **Planning Department:**

1. The location of the remaining accessory structure is approved by the Planning Commission under Section 3-2-8 (E)(2) as shown on the site plan included with the application. The approval is included in the motion of the Planning Commission.



CITY OF ELKO DEVELOPMENT DEPARTMENT 1755 COLLEGE AVENUE ELKO, NEVADA 89801 (775)777-7210 (775)777-7219 FAX

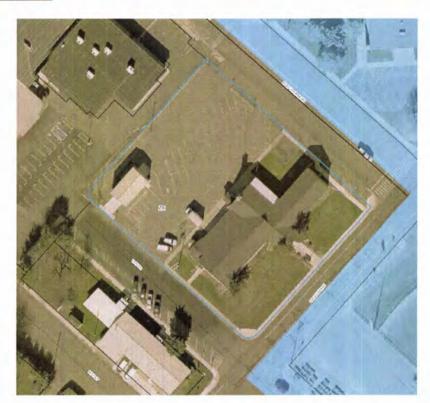
To: Elko City Planning Commission

From: Jeremy Draper, Development Manager RE: Rezone 1-18, Elko City, 1401 College Ave

Date: March 13, 2018

The City of Elko Development Department is providing this correspondence to aid the Planning Commission's review of Rezone Application 1-18.

### **Project Information**



- The property is located generally at the intersection of Golf Course Road and College Ave
- The property is identified as a portion of APN 001-200-002.
- · The parcel is currently partially developed.
- The parcel is currently zoned R-Single Family and Multiple Family Residential.
- The proposed rezone would result in a rezone of proposed parcel 1 being 1.314 acres of PQP-Public Quasi Public.

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### Page 2 of 3

- The property is bound by R, to the north and west, and PQP to the south and east.
- The property is not located within a FEMA Floodzone.
- The property is the location of the former Elko Police Station, a small accessory shop remains on the property and a parking lot remains.

### **Master Plan**

#### Land Use:

- The Land Use component of the Master Plan identifies this area as Public.
- This area is identified in the Master Plan under Objective 3 to Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.
- The property was the location of the former Elko Police Station.
- Corresponding zoning districts for Public/Quasi-Public are: PQP-Public, Quasi-Public.

### **Elko Wellhead Protection Plan**

- The property is located within the 2-year capture zone.
- Conformance with the Wellhead Protection Plan is required.

### Section 3-2-4-Establishment of Zoning Districts

Conformance with this section is required

### Section 3-2-8- (PQP) Public, Quasi-Public District

 Conformance with this section is required, a site plan review of the existing accessory structure should be conducted by the Planning Commission.

### Section 3-2-17-Traffic, Access, Parking and Loading Regulations

Conformance with this section is required

### Section 3-2-21-Amendments

Conformance with this section is required

### **Findings**

1. The proposed rezone does not appear to frustrate the Master Plan's goals and policies.

### Page 3 of 3

- 2. The rezone of this property helps to meet Objective 3 of the Land Use Component of the Master Plan, preserving the Civic Center of the City.
- 3. The proposed rezone is in conformance with City Code 3-2-4-B and C
- 4. The proposed rezone is in conformance with City Code 3-2-17
- 5. The proposed rezone is in conformance with City Code 3-2--8
- 6. The proposed rezone is in conformance with the City of Elko Wellhead Protection Plan.
- 7. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.

### Recommendation

The City of Elko **Development Department** recommends that the proposed zone changes be approved.

## Rezone 1-18 City of Elko - CC

YPNO PANAME	PMADD1	PMADD2	PMCTST	PZIP
001202005 KANDREOZZI, ROBERTA		1360 CEDAR ST	ELKO NV	89801-3418
001252010 BEACH, JACKIE LEE & LORRAINE K		572 13TH ST	ELKO NV	89801-3407
001202008 BYERS, DIANNA F		1385 OAK ST	ELKO NV	89801-3433
001203005 CAVALIERE, RICHARD J & JANICE J		10566 RIDGECREST DR	JACKSON CA	95642-9348
001202009 COSHWAY, JON & DOROTHY		1375 OAK ST	ELKO NV	89801-3433
001250001 ELKO LODGE NO 15 OF MASONS		PO BOX 15	ELKO NV	89803-0015
001620014 <b>K</b> ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001200002 <b>K</b> ELKO, CITY OF \( \int \ NO \( \bar{P.C} \)		1755 COLLEGE AVE	ELKO NV	89801
001620018 <b>X</b> ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001620017 <b>K</b> ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001560001 ELKO, CITY OF (PARKS)	C/O MAIN CITY PARK	1515 IDAHO ST	ELKO NV	89801-4021
001200004 ELKO, COUNTY OF		540 COURT ST	ELKO NV	89801-3515
001250003 GIRL SCOUTS OF THE SIERRA NEVAD	D.C	605 WASHINGTON ST	RENO NV	89503-4328
001250002 GIRL SCOUTS OF THE SIERRA NEVAD	P.C	605 WASHINGTON ST	RENO NV	89503-4328
001200005 HCPI/UTAH LLC		1920 MAIN ST STE 1200	IRVINE CA	92614-7230
001252001¥HONEA, RYAN C & LACHELLE M		588 13TH ST	ELKO NV	89801-3407
001202007 HOUCHIN, KENNETH W		875 14TH ST	ELKO NV	89801-3414
001202010 JACKSON, HARRY B SR		1365 OAK ST	ELKO NV	89801-3030
001203007 JACKSON, REN		1380 OAK ST	ELKO NV	89801-3434
001203004 <b>K</b> KENNEDY, MARK E		1340 OAK ST	ELKO NV	89801-3434
001202006 KNIGHT, BENJAMIN		1376 CEDAR ST	ELKO NV	89801-3418
001252011 <b>≰L</b> OPATEGUI, JESUS & DENISE TR		515 14TH ST	ELKO NV	89801-3410
001203006 MCBETH, TWYLA P ETAL		838 A ST	ELKO NV	89801-2905
001252002 NAYLOR, RORY ET AL		1376 COLLEGE AVE	ELKO NV	89801-3428
00125200 <b>9</b> ≰PACINI, KAREN L		550 13TH ST	ELKO NV	89801-3407
001252004 PRICKETT, KENNETH W		537 14TH ST	ELKO NV	89801-3410
001252003 PUCCINELLI, CAROL A ET AL		13725 48TH PL W	<b>EDMONDS WA</b>	98026-3417
001203009 <b>/</b> RHOADS, DEAN A & SHARON L TR		PO BOX 8	TUSCARORA NV	89834-0008
001202011 <b>‡</b> SHINN, KAREN L		1355 OAK ST	ELKO NV	89801-3433
001200001 VETERANS OF FOREIGN WARS OF THE	,	PO BOX 1266	ELKO NV	89803-1266
001203014 WEBB, WILLIAM Z		1375 COLLEGE AVE	ELKO NV	89801-3427
001203010∰WHITE, JUDITH A		1351 COLLEGE AVE	ELKO NV	89801-3427
001203015 WINTERMOTE, KELLY		1387 COLLEGE AVE	ELKO NV	89801-3427
		N. W.	wand Drawy	11 Aumore

(77)

Mailed 4/12/18

\* = Different Property Owners from the original 800ft radius to achoine 20 Damels

### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Council will conduct a public hearing on Tuesday, April 24, 2018 beginning at 5:30 p.m. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

Rezone No. 1-18, having a hearing as Resolution 12-18, filed by The City of Elko for a change in zoning from R (Single Family and Multiple Family Residential) to PQP (Public, Quasi Public), approximately 1.314 acres of property, specifically APN 001-200-002, located generally on the northwest corner of the intersection of College Avenue and Golf Course Road, more particularly described as: A parcel within the southeast quarter of Section 10, and southwest quarter of Section 11, Township 34 North, Range 55 East, M.D.B.&M., which is further described as follows:

Beginning at a point at the intersection of the northwesterly right-of-way of College Avenue and the Southwesterly right-of-way of Golf Course Road, that bears North 1°18'56" East, a distance of 804.85 feet from the centerline monument at the intersection of Court Street and 13<sup>th</sup> Street as shown on the map of Smith's Addition to the City of Elko, recorded in the office of the Elko County Recorder as file no. 43255, on November 5, 1927;

Thence, North 48°11'00" West, along the right-of-way of Golf Course Road a distance of 264.70 feet;

Thence, South 14°49'00" West, a distance of 202.00 feet;

Thence along a tangent circular curve to the left, with a radius of 14.70 feet, a central angle of 90°00'00", and an arc length of 23.09 feet, to point along the northeasterly right-of-way of VFW Drive;

Thence, South 48°11"00" East along said northeasterly right-of-way of VFW Drive, a distance of 235.30 feet;

Thence, along a tangent circular curve to the left, with a radius of 14.70 feet, a central angle of 90°00'00", and an arc length of 23.09 feet, to a point along the northwesterly right-of-way of College Avenue;

Thence, North 41°49'00" East along said northwesterly right-of-way of College Avenue, a distance of 202.00 feet more or less, to the point of beginning.

This parcel contains a total of  $\pm 1.314$  acres.

The basis of bearings for this description is the map of Smith's Addition to the city of Elko, recorded in the office of the Elko County Recorder as file no. 43255, on November 5, 1927.

The intent of the zone change is to allow for incorporation into the Elko City Parks.

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

#### **ELKO CITY COUNCIL**

Website: www.elkocity.com
Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

## CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of April 3, 2018

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on April 3, 2018 under Public Hearing format in accordance with notification requirements contained in N.R.S. 278.260 and Elko City Code Section 3-2-21:

Rezone No. 1-18, filed by The City of Elko, for a change in zoning from R (Single-Family and Multiple-Family Residential) to PQP (Public, Quasi-Public), approximately 1.314 acres of property, to allow for incorporation into the Elko City Parks, and matters related thereto.

The subject property is located generally on the northwest corner of the intersection of College Avenue and Golf Course Road (1401 College Ave, APN 001-200-002).

NOW THEREFORE, upon review and consideration of the application, supporting data, public input and testimony, the Planning Commission approved the location of the existing accessory structure shown on the site plan and forwarded a recommendation to City Council to adopt a resolution which conditionally approves Rezone No. 1-18, subject to the conditions listed in the City of Elko Staff Report dated March 13, 2018, listed as follows:

### **Planning Department:**

1. The location of the remaining accessory structure is approved by the Planning Commission under Section 3-2-8 (E)(2) as shown on the site plan included with the application. The approval is included in the motion of the Planning Commission.

The Planning Commission's findings to support its recommendation are the proposed zone district is in conformance with the City of Elko Master Plan Land Use Component. The proposed zone district is in conformance with the Master Plan Transportation Component. The property is not located within the redevelopment area and consideration of the plan is not required. The proposed zone district and allowed uses do not present a hazard to City wells and is therefore in conformance with the City Wellhead Protection Plan. There is not a minimum lot area nor dimensions stipulated for the proposed zone district. The location of the accessory structure requires specific approval by the Planning Commission for the property to be in conformance with City Code 3-2-4(B). With Planning Commission approval of the existing accessory structure location, as shown on the site plan, the proposed rezone is in conformance with Section 3-2-8 of City Code. The current use of the property under the proposed district is in conformance with Section 3-2-17 of City Code. The proposed rezone is consistent with surrounding land uses. Development under the proposed rezone will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to

human health and safety. The parcel is not located within a designated Special Flood Hazard Area.

Cathy Laughlin, City Planner

Attest:

Shelby Archuleta, Planning Technician

CC: Applicant

Jeremy Draper, Development Manager (via email)

Shanell Owen, City Clerk



### CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801 (775) 777-7160 phone \* (775) 777-7119 fax RECEIVED

### APPLICATION FOR ZONE CHANGE

DEC 1 2 2017

Initial:

APPLICANT(s): City of EUGO
MAILING ADDRESS: J 1751 College Ave
PHONE NO (Home) (Business) 775 - 777 - 7160
NAME OF PROPERTY OWNER (If different): City of Elbo
(Property owner's consent in writing must be provided.)
MAILING ADDRESS:
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO .: 001 - 200 - 002 Address 1401 College Ave
Lot(s), Block(s), &Subdivision
Or Parcel(s) & File No.

### FILING REQUIREMENTS:

**Complete Application Form**: In order to begin processing the application, an application form must be complete and signed. Complete applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month).

Fee: A \$300.00 non-refundable filing fee.

**Area Map**: A map of the area proposed for this zone change must be provided.

<u>Plot Plan</u>: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible. reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

Identify the existing zoning classification of the property: R - Single - Family and Multi-Family Presidential
Identify the zoning Classification being proposed/requested: POP - Public, Quasi -
Explain in detail the type and nature of the use anticipated on the property: this property is to be incorporated into the City of Elko tarks.
Explain how the proposed zoning classification relates with other zoning classifications in the area: Property is adjacent to the City Municiple swimming pool and the City Park, which are Foned Pap
Identify any unique physical features or characteristics associated with the property:

Revised 12/04/15 Page 2

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:
I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
I acknowledge that submission of this application does not imply approval of this request the City Planning Department, the City Planning Commission and the City Council, nor does it i and of itself guarantee issuance of any other required permits and/or licenses.
I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
I have carefully read and completed all questions contained within this application to the best of my ability.
Applicant / Agent City of Elko (Please print or type)
Mailing Address 1751 College Ave Street Address or P.O. Box
City, State, Zip Code
Phone Number:
Email address:
SIGNATURE: Cathy laybe
FOR OFFICE USE ONLY
ile No.: 1−18 Date Filed: 12∫12∫17 Fee Paid: NA

by in



### **CITY OF ELKO**

### **Planning Department**

Website: www.elkocity.com
Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

## CITY OF ELKO PLANNING COMMISSION ACTION REPORT Special Meeting of January 4, 2018

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on January 4, 2018 per City Code Sections 3-2-21:

Initiate an amendment to the City of Elko district boundary, specifically APN 001-200-002, removing the R (Single-Family Multi-Family Residential) Zoning District and replacing it with the PQP (Public, Quasi-Public) Zoning District, and matters related thereto.

WHEREAS, the Planning Commission, upon review and consideration of the application and supporting data, public input and testimony, initiate an amendment to the City of Elko district boundaries, and direct staff to bring the item back as a public hearing.

Cathy Laughlin, City Planne

Attest:

Shelby Archuleta, Planning Technician

CC: Jeremy Draper, Development Manager (via email)

Shanell Owen, City Clerk