

PUBLIC NOTICE IS HEREBY GIVEN THAT

The Town Council of Fairfield, Utah

Shall hold a Regular Session Meeting

On April 11, 2024 @ 7:00 P.M.

At the Town Office 103 East Main Street Fairfield, Utah

Agenda

1. Open The Town Council Regular Session Meeting.
2. Roll call
3. Prayer / Pledge Of Allegiance
4. Public comments (2-minute limit per person) Time has been set aside for the public to express their ideas, concerns, and comments on items not scheduled as public hearings on the Agenda. Those wishing to speak are encouraged to show respect for those who serve the town. Comments should focus on issues concerning the Town. Those wishing to speak should have signed in before the beginning of the meeting. (Please limit your comments to 2 minutes or less.)
5. Motion to approve the special session minutes for March 13, 2024.
6. Motion to approve the regular session minutes for March 14, 2024.
7. Motion to approve the special session minutes for March 28, 2024.
8. Motion to approve the Fairfield Town financials for the month ending March 31, 2024.
9. Sheriff's Department Update.
10. Discussion with Brent Ault.
11. Planning Commission Update.
12. Discussion of the BESS Ordinance.
13. Motion to Approve the Ordinance #2024-01. Title 10.00. An Ordinance Adopting Amendments to Title 10.11.00. Light Industrial Zone East., adding #9. Battery Energy Storage Systems to the list of Conditional Uses in Section 10.11.210.L., and also amending Title 10.17.00. Conditional Uses., adding #10. Battery Energy Storage Systems to the list in Section 10.17.100.A; and adding K. Minimum Standards for Battery Energy Storage Systems to Section 10.17.100.
14. Discussion and motion to approve Resolution #2024-6. A Resolution adopting and establishing an investment policy for Fairfield.
15. Discussion on the Cedar Valley Fire Department and Unified Fire Department.
16. Motion to approve the contract with Utah County Fire Marshal for Business inspections.
17. Discuss and approve the contract with Sunrise Engineering
18. Discuss interlocal agreement for the division of Alpine School District
19. Discuss a public hearing for May 1st to start the process of dividing the Alpine school district, a budget amendment, fee schedule, and purchasing policy
20. Discuss and approve McNeil Engineering contracts.
21. Discussion on adopting the APWA standards.
22. Discussion and motion to approve the road maintenance agreement with North Pointe, IRL, and the Town.
23. Discussion on the water requirements for businesses in Fairfield.

- 24. Discussion of sewer for developments.
- 25. Discussion of the standards for Caretaker Dwelling and ADUs.
- 26. Town Park update.
- 27. Discuss and motion to purchase materials for the park sprinkler system.
- 28. Discuss the Budget and things that need to be added for the next fiscal year.
- 29. Discussion On Old Business & New Business.
- 30. Adjourn The Town Council Regular Meeting.

Certificate Of Posting

The above agenda notice was posted on or before the 10th day of April 2024 at the location of the meeting, Fairfield town office 103 East Main Street Fairfield, UT, and at the Fairfield town website <https://fairfieldtown.org/agendas-minutes/>, and on the Utah state public notice website at <https://www.utah.gov/pmn/index.html>.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Town offices at 801-766-3509.

Date

Town Recorder/Clerk Stephanie Shelley

Join Zoom Meeting

<https://us06web.zoom.us/j/88207250867?pwd=NXBYcnhmaFNCSEdWOVB5NG9WMDgxZz09>

Meeting ID: 882 0725 0867

Passcode: 499981

Ordinance #2024-01. Title 10.00. An Ordinance Adopting Amendments to Title 10.11.00. Light Industrial Zone East., adding #9. Battery Energy Storage Systems to the list of Conditional Uses in Section 10.11.210.L., and also amending Title 10.17.00. Conditional Uses., adding #10. Battery Energy Storage Systems to the list in Section 10.17.100.A; and adding K. Minimum Standards for Battery Energy Storage Systems to Section 10.17.100.

Dated April 11, 2024

Document Control Changes: Created: April 11, 2024.

WHEREAS, the Planning Commission held public hearings on November 1, 2023, February 7, 2024, regarding a proposed amendment to Title 10, Section 10.11.00; adding Light Industrial Zone East; adding #9-Battery Energy Storage Systems to the list of conditional uses in Section 10.11.210.L. and also amending Title 10.17.00. Conditional Uses., adding #10. Battery Energy Storage Systems, to the list in Section 10.17.100.A; and adding K. Minimum Standards for Battery Energy Storage Systems., to Section 10.17.100;

WHEREAS, the Fairfield Town Council deems it to be in the best interest of Fairfield Town to amend the Fairfield Town Code, Title 10.11.00., Light Industrial Zone East; adding #9-Battery Energy Storage Systems to the list of conditional uses in Section 10.11.210.L. and also amending Title 10.17.00. Conditional Uses., adding #10. Battery Energy Storage Systems, to the list in Section 10.17.100.A; and adding K. Minimum Standards for Battery Energy Storage Systems., to Section 10.17.100;

Whereas, the Fairfield Town Council has reviewed the proposed amendment to the Fairfield Town Code:

NOW THEREFORE, be it ordained by the Town Council of Fairfield Town, in the State of Utah, that certain sections of Title 10 of the Town Code be amended as follows:

Add:
10.11.210.L.9. Battery Energy Storage Systems., to the list of approved conditional uses in the Light Industrial East Zone.

Add:
Section 10.17.100.A.10. Battery Energy Storage Systems, to the list of approved conditional uses.

Add:
Section 10.17.100 K.- Minimum Standards for Battery Energy Storage Systems.

1. Battery Energy Storage Systems. The purpose of this chapter is to establish the minimum requirements and regulations for the placement, construction, modification and decommissioning of Battery Energy Storage Systems within Fairfield Town (the "Town"), and issuing a conditional use permit subject to reasonable conditions that promote and protect the public health, safety, and welfare of the Town and its residents, by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

- a. To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of Battery Energy Storage Systems;
- b. To ensure compatible land uses in the vicinity of the areas by Battery Energy Storage Systems;
- c. To mitigate the impacts of Battery Energy Storage Systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources; and
- d. To create synergy between Battery Energy Storage System development and other goals of the Town pursuant to its Master Plan.

2. Definitions. For the purpose of this chapter, the following words and terms shall have the meaning ascribed to them unless such definition is inconsistent with the manifest intent or contrary to the context of the language of the ordinance.

Abandoned Battery Energy Storage System. Means any Battery Energy Storage System that remains nonfunctional or inoperative, meaning it is not being used or is not maintained in compliance with the terms of an approved conditional use permit for a continuous period of one hundred eighty (180) days. A Battery Energy Storage System that is nonfunctional or inoperative for any period of time as a result of a force majeure event, any maintenance, repair, or any other periods of nonuse that are planned or scheduled by the owner or operator for which advance notice is provided to the Town shall not be deemed abandoned for purposes of this ordinance.

ANSI. Means American National Standards Institute.

Battery(ies). Means a single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products, mobile applications or for household purposes are excluded from these requirements.

Battery Energy Storage Management System. Means a control system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

Battery Energy Storage System. Means one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

1. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology; and
2. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600 kWh or are composed of more than one storage battery technology, which may be located outdoors in a cabinet, container, or which may be located outdoors, in a cabinet, container, or enclosed area.

Cell. Means the basic electrochemical unit, characterized by an anode and a

cathode, used to receive, store, and deliver electrical energy.

Commissioning. Means a systematic process that provides documented confirmation that a Battery Energy Storage System functions according to the intended design criteria and complies with applicable code requirements.

Fire Code. Means the Utah Fire Code Act Title 15A Chapter 5 and Building Code adopted as currently in effect and as hereafter amended from time to time.

Nationally Recognized Testing Laboratory (NRTL). Means the U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC. Means National Electric Code.

NFPA. Means National Fire Protection Association.

Uniform Code. Means the Utah Fire Code Act 15A Building Code adopted as currently in effect and as hereafter amended from time to time.

3. Applicability.

- a. The requirements of this section shall apply to all Battery Energy Storage Systems permitted, installed, or modified in Fairfield Town after the effective date of this section, excluding general maintenance and repair of such facilities; and
- b. Unless approved as part of an existing conditional use permit, modifications to, retrofits or replacements of an existing Battery Energy Storage System that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this code and shall require the issuance of a new conditional use permit or approval by the Planning Commission of an amendment to an existing conditional use permit that complies with the requirements of this chapter.

4. General Requirements.

- a. A building permit and an electrical permit shall be required for installation of all Battery Energy Storage Systems;
- b. Issuance of permits and approvals by the Planning Commission shall include review of applicable state and federal environmental laws and implementing regulations; and
- c. All Battery Energy Storage Systems and all other buildings or structures that (1) contain or are otherwise associated with a Battery Energy Storage System and (2) are subject to the Uniform Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code and other applicable codes, including the Town Code.

5. Permitting Requirements for Tier 1 Battery Energy Storage Systems. Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the Fire Code, and exempt from site plan review.

6. Permitting Requirements for Tier 2 Battery Energy Storage Systems. Tier 2 Battery Energy Storage Systems are permitted through the issuance of a Conditional Use Permit only within the Light Industrial East Zone, and shall be subject to the Uniform Code, the Fire Code, and the site plan application requirements set forth in this section. Applications for a Conditional Use Permit for the installation of Tier 2 Battery Energy Storage System shall be:

a. Reviewed by the Planning Commission for completeness. An application shall be complete when it addresses all matters listed in this section including, but not limited to:

i. Compliance with all applicable provisions of the Uniform Code, the Fire Code, and all other applicable codes;

ii. Applicants shall be advised within ten (10) business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review;

iii. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation of any poles, with new easements and rights-of-way;

iv. Project description. A narrative identifying the applicant, owner and operator, and describing the proposed Tier 2 Battery Energy Storage System, including a detailed overview of the project and its location; the approximate estimated rated capacity of the Tier 2 Battery Energy Storage System; the approximate number, representative types and expected footprint of solar equipment to be used or constructed; if applicable and a description of any ancillary equipment, buildings, and structures, if applicable; an estimated construction schedule and project life;

v. Site and development plans. Site and development plans. For a Tier 2 Battery Energy Storage System requiring a Conditional Use Permit, shall include the following information:

(a) Property lines, including roads, for the project site;

(b) Property lines and setback lines;

(c) Existing and proposed buildings and structures;

(d) Existing and proposed access roads, drives, turnout locations, parking; and

(e) Any other physical features, not mentioned above.

vi. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation, or structures;

vii. A single line electrical diagram detailing the Battery Energy Storage System layout, associated components, and electrical interconnection methods, with

all National Electrical Code compliant disconnects and overcurrent devices;

- viii. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that is to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit;
- ix. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Battery Energy Storage System. Such information of the final system installer shall be submitted prior to the issuance of building permit;
- x. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Battery Energy Storage System;
- xi. Zoning district designation for the parcel(s) of land comprising the project site;
- xii. Commissioning Plan. A commissioning plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Battery Energy Storage System commissioning shall be conducted by a Utah State Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to Building Department prior to final inspection and approval and maintained at an approved on-site location;
- xiii. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code;
- xix. Operation and Maintenance Manual. Such plan shall describe continuing Battery Energy Storage System maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code;
- xx. Erosion and sediment control and stormwater management plans and to such standards as may be established by the Planning Commission;
- xxi. Prior to the issuance of the building permit but not required as part of the application, engineering documents must be signed and sealed by a Utah State

Licensed Professional Engineer;

- xxii. Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
- (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions;
 - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls;
 - (c) Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure;
 - (d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire;
 - (e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required;
 - (f) Procedures for dealing with Battery Energy Storage System equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged Battery Energy Storage System equipment from the facility;
 - (g) Other procedures as determined necessary by Fairfield Town to provide for the safety of occupants, neighboring properties, and emergency responders;
 - (h) Procedures and schedules for conducting drills of these procedures; and
 - (i) Fencing or other methods of ensuring public safety.
- xxii. Areas of wildlife habitat and migration corridors and areas of historic, archeological, and cultural resources within one-quarter mile of the Battery

Energy Storage System;

- xxiii. Any floodplains or wetlands;
- xxiv. Additional information may be required, as determined by Town officials or staff, such as a scaled elevation view and other supporting drawings, photographs of the proposed Site, photos or other realistic simulations or modeling of the project, coverage map, and additional information that may be necessary for a technical review of the proposal;
- xxv. Documentation of the Right to use the Site for the Proposed Project. Documentation shall include proof of ownership or control over the site or legal proof of the owner/operator's right to use the site in the manner requested. The applicant may redact sensitive financial or confidential business information from the documentation provided, so long as doing so does not prevent Town officials or staff from confirming the applicant's legal right to utilize the site for the proposed purpose. Copies of recorded deeds or memoranda of leases and easements shall be deemed sufficient for purposes of demonstrating site control under this Code;
- xxvi. Documentation of Permits or Permit Applications. As a condition of approval of any conditional use permit approved pursuant to this Code, the applicant shall be required to provide Town staff with certified copies of all necessary permits to construct and operate a Tier 2 Battery Energy Storage System prior to the issuance of a building permit;
- xxvii. Local Economic Benefits. The applicant must provide an analysis of local economic benefits, describing estimated project cost, generated taxes, the percentage of construction dollars to be spent locally, and the number of local construction and permanent jobs that are anticipated to be created as a result of the project. In addition to these factors, the analysis of local economic benefits shall include an analysis of the anticipated life of the project, the costs of decommissioning the project at the end of its useful life, an estimate of the costs of disposal of all components of the project, including the potential cleanup costs of any hazardous waste generated both by the operation of the project and as part of the decommissioning the project and disposal of the buildings, materials, components, waste, and accessory structures that exist because of the project;
- xxviii. Solid and Hazardous Waste. Include plans for the spill prevention, clean-up, and disposal of fuels, oils, and hazardous waste, as well as collection methods for all solid waste generated by the project. In addition, an application for a conditional use permit pursuant to this ordinance shall include, as part of the decommissioning plan required under section 17.100.5(K)(7) a disposal plan for all solid waste and any hazardous waste that will be generated by the implementation of the decommissioning plan. The calculation of the decommissioning costs (as defined in Section 17.100.5 (K)(7) shall include the costs to dispose of any hazardous waste generated by a proposed Tier 2 Battery Energy Storage System as part of

the decommissioning of the project. Prior to the issuance of a building permit, an applicant shall provide the Town with the Safety Data Sheets (SDS) from the manufacturer of the batteries proposed for the project, as well as the SDS for all other components of the proposed project for which SDSs exist;

- xxix. Transportation Plan for Construction and Operation Phases. Indicate by both a narrative description and a map the roads the applicant will utilize during the construction and operational phases of the project, along with their existing surfacing and condition. In addition, the application must specify any new roads and proposed upgrades or improvements needed to the existing road system to serve the project during both the construction and operation of the project. Any application must also identify all areas where modification of the topography is anticipated (cutting/filling) to construct or improve the roadways, address road improvement, restoration or maintenance needs associated with the construction, ongoing maintenance/repair, and potential dismantling and/or decommissioning of the project, provide projected traffic counts for the construction period, broken down by the general type/size of vehicles, and identify approximately how many trips will have oversized or overweight loads. If significant impacts to the Town's transportation system are anticipated, the Town may require financial guarantees to ensure proper repair/restoration of roadways or other infrastructure damaged or degraded during construction or dismantling of the project. In such cases, the "before" conditions of the roadways and other infrastructure must be documented through appropriate methods such as videos, photos, and written records, in order to provide a proper reference for restoration;
- xxx. Public Safety. Identify and address any known or suspected potential safety hazards to the Town, adjacent properties, public roadways, communities, and any other potential impacts to public safety that may be created by the proposed project;
- xxxi. Noise limitations. Include sufficient information regarding noise generated during both the construction and the operation of the proposed project so as to demonstrate compliance with Fairfield Nuisance code 5.1.00.;
- xxxii. Revegetation Areas and Methods;
- xxxiii. Dust and Erosion Control;
- xxxiv. Agreements/Easements. If the land on which the project is proposed is to be leased, rather than owned by the applicant, all property within the project boundary must be included in a recorded easement(s), lease(s), or consent agreement(s) specifying the applicable uses for the duration of the project necessary leases, easements, or other agreements between the applicant and the affected parties must be in place prior to commencing construction, unless specified otherwise by the conditional use permit;

- xxxv. Identify the anticipated points of interconnections between the Tier 2 Battery Energy Storage System and the power grid of the utility whose facilities will transmit the power stored and released by the Tier 2 Battery Energy Storage System for which a conditional use permit is being sought.
 - xxxvi. Plans to mitigate the reasonably anticipated detrimental effects the Tier 2 Battery Energy Storage System; and
 - xxxvii. Additional Impacts. In addition to the impacts identified above, the Planning Commission may require the identification, assessment, avoidance, or mitigation of any other probable and significant impacts as identified through the review process.
 - xxxviii. Applicants shall commit to following the Solar Industry Commitment to Environmental & Social Responsibility developed by the Solar Energy Industries Association by including with their application a declaration to that effect.
7. Decommissioning Plan. Submit a decommissioning plan which complies with this chapter.
- a. Standards for a Decommissioning Plan. As part of the Conditional Use Permit application, applicant must submit a Decommissioning Plan, which must include the following:
 - i. The anticipated life of the project;
 - ii. The estimated cost to remove, dismantle and dispose of the project improvements at the end of their useful life (the “decommissioning cost”), as determined by a licensed professional engineer not employed by the applicant, owner or operator, with experience in the design/construction or operation of Tier 2 Battery Energy Storage Systems; and
 - iii. The manner in which the project will be decommissioned.
 - (a) Before any conditional use permit may be issued pursuant to this Code, the Planning Commission must approve the decommissioning plan submitted in connection with the application for a conditional use permit issued pursuant to this ordinance. Any such approval must include an election by the applicant of the means by which assurance will be provided to the Town that the applicant for the conditional use permit will be able to implement its proposed decommissioning plan, chosen from the following alternatives, which shall be provided to the Town prior to the issuance of a building permit authorizing the commencement of construction of the project:
 - (i) A federally insured certificate of deposit in the name of the Town in the amount of one hundred twenty-five (125) percent of the decommissioning cost, along with a power of attorney, made in favor of the Town, allowing the Town to access the certificate of deposit in the event the applicant either fails to fulfill its decommissioning plan, declares bankruptcy, or is otherwise deemed to be insolvent by a court with competent jurisdiction;

- (ii) A cash deposit in the amount of one hundred twenty-five (125) percent of the decommissioning costs, along with a power of attorney, made in favor of the Town, in the event the applicant fails to fulfill its decommissioning plan, declares bankruptcy, or is otherwise deemed to be insolvent by a court with competent jurisdiction;
 - (iii) An irrevocable letter of credit in favor of the Town, in the amount of one hundred twenty five percent (125 %) of the decommissioning cost, along with a power of attorney, made in favor of the Town, allowing the Town to access the letter of credit in the event the applicant either fails to fulfill its decommissioning plan, declares bankruptcy, or is otherwise deemed to be insolvent by a court with competent jurisdiction; or
 - (iv) Posting a performance bond of one hundred twenty five percent (125%) of the decommissioning cost, such bond to be made in favor of the Town and allowing the Town to access the bond in the event the applicant either fails to fulfill its decommissioning plan, declares bankruptcy, or is otherwise deemed to be insolvent by a court with competent jurisdiction.
- b. If the owner of any Tier 2 Battery Energy Storage System finances the project with debt secured by the project, the owner shall ensure that the debt shall not be secured by and the lender(s) may not access the financial assurance posted by the applicant, owner, or operator to ensure the decommissioning costs of the project.
- c. In order to assure that the decommissioning cost upon which the decommissioning plan required by this section remain valid, the applicant shall prepare and present to the Town an updated decommissioning plan and decommissioning cost not later than five (5) years following the issuance of any building permit issued by the Town for any project permitted pursuant to this Code.
- d. **Unsafe or Abandoned Project.** If the Planning Commission, after the delivery of notice to the owner or operator, finds that a Tier 2 Battery Energy Storage System is in violation of any Town Code, or has been abandoned (as defined in this Code), the owner or operator shall repair the Tier 2 Battery Energy Storage System in a manner so as to assure that the project complies with all federal, state, and local safety standards, or, if the Planning Commission finds that the project has been abandoned, the owner or operator shall remove the project in accordance with the decommissioning plan. Such a finding by the Planning Commission must be made in writing and be preceded by a Public Hearing that complies with applicable Utah law. An owner or operator may appeal a finding of the Planning Commission pursuant to the Town's Land Use Appeal Ordinance within thirty (30) days of the date such a finding has been made. The Planning Commission may extend the one hundred eighty (180) day deadline set forth in the definition of an "abandoned project", if the Planning Commission finds that the owner or operator intends to repair and restore operations of the project and provides the Planning Commission with a restoration plan and timeline for completing such work. If the owner or operator fails to repair or decommission an abandoned Tier 2 Battery Energy Storage System within the time frame set forth in the decommissioning plan (or as otherwise approved by the Planning Commission as provided herein) or fails to file a

timely appeal with the Land Use Appeal Authority, this failure will be deemed as sufficient cause for the Town to utilize the security accepted by the Town pursuant to the previous section of this ordinance and to remove the project and implement the decommissioning plan prepared by the applicant. When the owner, operator or other responsible party decommissions a Tier 2 Battery Energy Storage System, that person or persons shall handle and dispose of the equipment and other project components in conformance with all state and local requirements. At such time as a Tier 2 Battery Energy Storage System is scheduled to be decommissioned at the end of the project's useful life, the owner, operator, or other responsible party shall notify the Town no less than three hundred sixty five (365) days prior to the date of decommissioning, as well as notify the Town of the schedule within which the owner, operator or other responsible party shall complete the physical removal of the Tier 2 Battery Energy Storage System. This period may be extended at the request of the owner, operator, or other responsible party, upon approval of the Town Council.

8. Standards for Location, Appearance, and Operation of a Project Site:

- a. Height Restrictions. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district;
- b. Setbacks. Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures;
- c. Fencing. An appropriate security/livestock fence (height and material to be established through the conditional use permit process) shall be placed around the perimeter of any Tier 2 Battery Energy Storage Systems. To the extent consistent with the Fire Code, the Knox key lock boxes and keys shall be provided at locked entrances in order to allow emergency personnel access;
- d. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated use building and not interfering with ventilation or exhaust ports;
- e. Signage on Tier 2 Battery Energy Storage Systems. Signage for Battery Energy Storage Systems shall be required as follows:
 - i. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the Battery Energy Storage System, any special hazards associated, the type of suppression system installed in the area of the Battery Energy Storage System, and 24-hour emergency contact information, including reach-back phone number;
 - ii. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations; and
 - iii. Signage shall be in compliance with Fairfield Town Title 10. Chapter 21. Signs
- f. Noise Requirements. Tier 2 Battery Energy Storage Systems shall comply with all

applicable Town noise ordinances or codes;

- g. Buildings and Accessory Structures. All buildings and accessory structures incorporated into any Tier 2 Battery Energy Storage Systems shall use materials, colors, and textures that are of a natural earth tones that blend the facility into the existing environment; white, gray, silver and black are acceptable 'colors' for buildings and accessory structures as it pertains to this Chapter;
- h. Landscaping. Appropriate landscaping and/or screening materials that are consistent with the fire safety compliance plans may be required to help screen a Tier 2 Battery Energy Storage System and buildings and accessory structures from major roads and neighboring residences;
- i. Lighting. Lighting shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties. Cut-off lighting as required by the Town Lighting Code may be required when determined necessary to mitigate visual impacts;
- j. Fire Protection. Tier 2 Battery Energy Storage System shall have a defensible space for fire protection with a fire protection plan which will be approved and signed off by the Fire Marshall; and
- k. Local, State and Federal Permits. Tier 2 Battery Energy Storage System shall be required to obtain all necessary permits from the Utah PSC, the Utah Department of Environmental Quality ("Utah DEQ"), including the Utah Division of Air Quality and the Utah Division of Water Quality, any applicable permits required by the Town, and all applicable Federal permits. A condition of approval of any conditional use permit for a Tier 2 Battery Energy Storage System shall require the applicant to submit reasonable documentation that the applicant has obtained all required permits to construct the Tier 2 Battery Energy Storage System from FERC, the Utah PSC, and the Utah DEQ, prior to the issuance of a building permit. The Town may withhold approval of a building permit for a Tier 2 Battery Energy Storage System if such condition is not satisfied at the time the applicant applies for such building permit.

9. Standards of Approval for a Conditional Use Permit:

- a. A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards set forth in this chapter and with all other applicable portions of the Town's land use code. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied. For purposes of this chapter, the applicable standards which shall be applied in assessing any application submitted pursuant to this ordinance shall be:
 - i. Whether the proposed use meets the applicable requirements for conditional use of a Tier 2 Battery Energy Storage System in the proposed zone;
 - ii. The use is compatible, or with conditions of approval, can be

made compatible, with surrounding uses;

iii. The use is consistent with all applicable adopted Town planning policies and master plans; and

iv. The reasonably anticipated detrimental effects of the proposed use can be mitigated by the imposition of reasonable conditions.

b. Limitations on Conditional Use Approval. Subject to an extension of time granted by the Planning Commission, no conditional use permit approved pursuant to this Code shall be valid for a period longer than three (3) years, unless a building permit has been issued or complete building plans have been submitted to the Town building department within that period and the permitted project is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period, or unless a longer period of time is requested and granted by the Planning Commission. Any request for a time extension shall be required not less than thirty (30) days prior to the expiration of the three (3) year time period.

10. Safety.

a. System Certification. Battery Energy Storage Systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

i. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications);

ii. UL 1642 (Standard for Lithium Batteries);

iii. UL 1741 or UL 62109 (Inverters and Power Converters);

iv. Certified under the applicable electrical, building, and fire prevention codes as Required; and

v. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

b. Site Access. Battery Energy Storage Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.; and

c. Battery Energy Storage Systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within

weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

11. The Planning Commission is the approval authority.
12. Enforcement. Any violation of this Section regulating Battery Energy Storage Systems shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the Town's zoning or land use regulations.
13. Appeals See 10.5.170.
14. Application to Successors and Assigns. The terms of any conditional use permit issued pursuant to this Code shall run with the land and be binding on any successor or assignee of an applicant, owner or operator and any party that purchases and/or operates a Battery Energy Storage System. Any person who seeks to sell or otherwise transfer a controlling interest in a permitted Battery Energy Storage System shall provide the Town no less than 30 days prior notice of the pending transfer along with a written commitment from the proposed new owner or operator to comply with all terms of the conditional use permit for the Battery Energy Storage System.
15. Savings Clause. If any part of this ordinance shall be deemed invalid by an administrative agency or court of competent jurisdiction, such decision shall not affect the legality and enforceability of any other provision hereof.
16. Penalties. Any person or entity who violates any of the provisions of this chapter or who fails to comply therewith, or who violates or fails to comply with any order or directive made thereunder, shall severally for each and every such violation and noncompliance respectively, be guilty of a class B misdemeanor, subject to penalty as provided in section 10.1.25 of this code. Furthermore, the imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons or entities shall be required to correct or remedy such violations or defects within a reasonable time and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

Effective Date: This Ordinance shall become effective immediately upon passage and adoption.

Passed and Adopted this 28th day of March 2024.

FAIRFIELD TOWN

Hollie McKinney

RL Panek	yes	no
Tyler Thomas	yes	no
Michael Weber	yes	no
Richard Cameron	yes	no

ATTEST:

Stephanie Shelley, Town Recorder/Clerk

FAIRFIELD TOWN

Updated: 24-03-18

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Stephanie Shelley, Town Recorder of Fairfield Town, Utah, do hereby certify and declare that the above and foregoing is a true, full and correct copy of an ordinance passed by the Town Council of Fairfield Town, Utah, on the 28th day of March, 2024.

Ordinance # 2024-01 Title 10.00. An Ordinance Adopting Amendments to Title 10.11.00. Light Industrial Zone East., adding #9. Battery Energy Storage Systems to the list of Conditional Uses in Section 10.11.210.L., and also amending Title 10.17.00. Conditional Uses., adding #10. Battery Energy Storage Systems to the list in Section 10.17.100.A; and adding K. Minimum Standards for Battery Energy Storage Systems to Section 10.17.100.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Fairfield Town Utah this _____ day of _____, 20____.

_____,
Stephanie Shelley
Fairfield Town Recorder/Clerk

(SEAL)

AFFIDAVIT OF POSTING

STATE OF UTAH)
)
COUNTY OF UTAH)

I, Stephanie Shelley, Town Recorder of Fairfield Town, Utah, do hereby certify and declare that I posted in three (3) public places the following summary of the ordinance which was passed by the Fairfield Town Council on the _____ day of _____, 20____, and herein referred to as:

SUMMARY.

An Ordinance amending the Fairfield Town Code by amending the Light Industrial Zone East., by adding #9 Battery Energy Storage Systems to the list of Conditional Uses in Section 10.11.210.L., and also amending Title 10.17.00. Conditional Uses., by adding #10. Battery Energy Storage Systems to the list in Section 10.17.100.A; and also by adding K. Minimum Standards for Battery Energy Storage Systems to Section 10.17.100.

The three places are as follows:

1. Fairfield Town Hall
2. Fairfield Town Website
3. Utah State Public Notice Website

Stephanie Shelley
Fairfield Town Recorder/Clerk

Date of Posting _____ day of _____, 20____

ROAD MAINTENANCE AGREEMENT

This **Road Maintenance Agreement** (“**Agreement**”) is entered into as of the date of the last dated signature appearing below (the “**Effective Date**”) between and among Fairfield Town, a political subdivision of the State of Utah (“**Fairfield**” or the “**Town**”), North Pointe Solid Waste Special Service District, a political subdivision of the State of Utah (“**North Pointe**”), and ROC Fund Landfill Holdings, LLC dba Intermountain Regional Landfill, a Delaware limited liability company (“**IRL**”). Each of the Town, North Pointe and IRL may be referred to herein as “**Party**” or, collectively, as the “**Parties**”.

RECITALS

WHEREAS, North Pointe operates a Construction & Demolition (C&D) landfill in Fairfield on Tax Parcel No. 59:116:0016) (the “**North Pointe Landfill**”) access to which is had along Allen Ranch Road (the “**Road**”); and

WHEREAS, IRL operates a commercial landfill in Fairfield on Tax Parcel No. 59:124:0005 (the “**IRL Landfill**”) access to which is also had along the Road; and

WHEREAS, the Road is a public right-of-way because it has been used by the public for more than 10 years; and

WHEREAS, the majority of the traffic along the Road from State Road 73 to the turn off to the IRL Landfill is currently traffic related to the two landfills; and

WHEREAS, by separate agreement with the Town, IRL has certain road improvement and road maintenance responsibilities for the Road from the entrance to the North Pointe Landfill, which location may change from time-to-time, to the turn off to the IRL Landfill;

WHEREAS, by separate agreement with IRL, the Town has certain duties to assist IRL with IRL’s road improvement and road maintenance responsibilities for the Road by, among other things, using the Town’s reasonable efforts to require other landowners and/or operators of other properties benefitted by the Road to share in the costs of road construction, maintenance, and improvement; and

WHEREAS, the Road from State Road 73 to the entrance to the North Pointe Landfill has been improved some (the “**Improved Road**”); and

WHEREAS, the Parties desire to memorialize their agreement regarding maintenance of the Improved Road; and

WHEREAS, on _____, 2024, Fairfield’s Town Council approved this Agreement; and

WHEREAS, on _____, 2024, North Pointe’s Administrative Control Board approved this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged hereby, the Parties desire now to enter into this Agreement.

1. Term. This Agreement shall be for a term of five years and will automatically renew every five years for subsequent five-year terms, unless one Party has given written notice at least 90 days prior to the end of a term that it is withdrawing from the Agreement.

2. Scope. This Agreement defines the duties and responsibilities, including financial contributions, of each Party toward maintenance of the Improved Road.

3. Percentage Participation. For the first two years of this Agreement, the Parties shall divide the financial responsibility for road maintenance as follows: IRL—60 percent; North Pointe—25 percent; Fairfield—15 Percent. At the end of two years, the Parties may agree to continue with the same participation percentages. If either IRL or North Pointe, however, request a new traffic use review, IRL and North Pointe will review and provide to each other their truck counts for the prior two years and will realign the participation percentages roughly consistent with their respective truck counts as has been done in the past. If either IRL or North Pointe requests a traffic study to determine and/or re-allocate the percentage that should be allocated to the Parties either may do so by commissioning at its own expense a traffic study to be completed by a qualified expert showing the number of trips on the Improved Road resulting from trips to North Pointe, trips to IRL, and trips to land uses south of either the IRL or North Pointe properties (which shall be allocated to the Town). In the event IRL or North Pointe exercise their right to re-allocation based upon a traffic study, the Parties' financial responsibility for the Improved Road shall be re-allocated based upon the results of the traffic study with trips to North Pointe allocated to North Pointe, trips to IRL allocated to IRL, and all other trips allocated to the Town.

4. Work Covered. Except as set forth herein, the Parties shall contribute towards all costs incurred to maintain the Improved Road pursuant to this Agreement. This includes any cost incurred to determine what work is needed as well as any cost incurred maintaining the Improved Road. It is anticipated that North Pointe will move the entrance to the North Pointe Landfill farther south down the Road. The Parties agree that within a reasonable time after North Pointe moves the entrance, and after utilizing the process set forth in Section 7 of this Agreement, the Road will be paved from the old entrance to the new entrance, and that the cost to pave the Road to the new entrance is part of the work covered by this Agreement. Once the entrance to the North Pointe Landfill has been relocated, the Road to that point shall be considered part of the Improved Road.

5. Work Not Covered. At its own cost, North Pointe will improve the entrance to the North Pointe Landfill so that trucks and other vehicles can exit the landfill without dragging mud onto or damaging the Improved Road.

6. Maintenance Standards The pavement along the Improved Road must be 24-feet wide and at least 3 inches thick, with some sections requiring 4 inches of thickness. In accordance with maintaining the existing 38-foot road profile, the Improved Road will also have a three-foot shoulder and a four-foot cut ditch on each side to prevent flooding and erosion. Additionally, proper drainage must be ensured. The pavement must be maintained to a standard so that regular large truck traffic hauling solid waste at the frequency seen in the prior two years can navigate the Improved Road without causing damage requiring more than routine maintenance more than once each year.

7. Duty to Cooperate for Road Maintenance & Improvement. The Parties agree to cooperate when determining the level of work needed to maintain the Improved Road to the standard required in this Agreement. IRL will take the lead in gathering at least two competitive contractor bids, analyzing the bids, and making written recommendations to the other parties on which bid to proceed with. For the year when it happens, this includes the improvement of the

Road from the current entrance of the North Pointe Landfill to North Pointe's new entrance, including the paving of the Improved Road. When IRL's recommended bid is provided, the other Parties will have ten (10) business days to accept or challenge it in writing. If no written challenge or objection is made, the recommended bid will be deemed to have been accepted by all Parties. If a Party objects to IRL's recommended bid, it shall, at its own cost and expense, gather at least two competitive contractor bids to be analyzed and shall make a recommended counter-bid to the other Parties within thirty (30) days of the written challenge/objection. If no such counter-bid is timely provided to the Parties, the original recommended bid of IRL will be deemed to have been accepted by all Parties. Within thirty (30) days of the counter-bid being provided to the Parties, the Parties shall vote on which bid recommendation to proceed with, and the bid recommendation that receives the support of two Parties to this Agreement shall control. If no bid recommendation is accepted by two Parties, the Parties together will unanimously appoint an independent engineer to review the initial IRL recommended bid and any counter-bid, and that engineer shall, in her/his sole discretion, select the best bid for implementing and maintaining the standards required by this Agreement and her/his decision shall be final and binding upon the Parties. If the Parties cannot agree upon the selection of the neutral engineer, then the Parties' respective engineers shall, by a majority vote, select the independent engineer and her/his decision shall be binding upon the Parties. Once a bid/recommendation has been chosen, IRL shall take the lead to procure the contractors, subcontractors, and other providers and materials necessary to execute the agreed upon bid/recommendation.

8. Payment. North Pointe and the Town shall reimburse IRL for any monies advanced by IRL for the approved roadwork contemplated by this Agreement within ninety (90) days of invoicing from IRL and shall promptly seek budget amendment approvals, if necessary, to ensure timely payment to IRL. It is understood that North Pointe and the Town are each political subdivisions of the State of Utah and, as such, they are only allowed by law to budget expenditures one year in advance. Notwithstanding this, North Pointe and the Town each covenant and agree to request sufficient budget each year to fund their portions of the financial participation agreed to herein. To enable them to do so, the Parties agree to cooperate to develop an estimated annual budget North Pointe and the Town may use for the budgeting process. The Parties shall work together to ensure that the financial participation they have each agreed to contribute can be paid in a timely manner to allow needed maintenance to be completed to allow traffic to continue to flow safely along the Improved Road.

9. Notices. Any notice required or permitted to be given by this Agreement shall be in writing and shall be deemed sufficiently given if hand-delivered or deposited in the United States Mail, postage prepaid, and addressed as follows:

IRL:
1220 N 500 W, Ste 102
Lehi, UT 84043

North Pointe:

Fairfield Town:

10. Assignment. This Agreement is binding on each Party and their successors and assigns.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Venue for any action to interpret, enforce, or arising under the terms of this Agreement shall be in the courts of the State of Utah in and for Utah County.

12. No Joint Venture or Partnership. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, and does not create any rights or benefits to third parties. No agent, employee or servant of a Party is or shall be deemed to be an employee, agent or servant of the other Parties. The parties shall each be solely and entirely responsible for their respective acts and for the acts of their respective employees, agents, contractors and servants throughout the term of this Agreement.

13. Severability. If any part or provision of this Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific part or provision determined to be unconstitutional, invalid or unenforceable.

DATED this ____ day of _____, 2024.

FAIRFIELD TOWN, a Utah municipal corporation
and political subdivision of the State of Utah

By: _____
Printed Name: _____
Its: Mayor

Attest:

By: _____
Printed Name: _____
Its: Town Recorder

DATED this ____ day of _____, 2024.

NORTH POINTE SOLID WASTE SPECIAL SERVICE DISTRICT
dba North Pointe,

By: _____
Printed Name: _____
Its: Board Chair

DATED this ____ day of _____, 2023.

ROC FUND LANDFILL HOLDINGS, LLC
dba Intermountain Regional Landfill,
a Delaware limited liability company

By: _____
Printed Name: _____
Its: Manager



April 2, 2024

Fairfield Town
103 East Main Street
Fairfield, UT 84013

Attn: Hollie McKinney, Mayor

Subject: Proposal/Agreement to Provide Building Inspection Services

for: Fairfield Town

Dear Hollie,

Sunrise Engineering, LLC (SE) is pleased to provide the following proposal/agreement to provide Professional Building Inspection Services for Fairfield Town (Client). SE agrees, upon receipt of your acceptance to this agreement, to perform the following identified services in accordance with the terms and conditions contained herein.

Scope of Services

1. Provide Building Inspection on call services, by Certified ICC Inspector, as requested, at the rate of Eighty-Six Dollars (\$86) per hour.
2. A travel charge of \$45 per trip.
3. Scheduling building inspections require 24 hours' notice. Please call 435-743- 6151 to schedule inspections.

If you are interested in having us complete the services, please execute the agreement below, make a copy for your files and return the original to our Corporate Office (25 East 500 North, Fillmore, UT 84631). If you have any questions regarding this agreement please contact me at (801) 550.1837. We look forward to working with you.

Sincerely,
SUNRISE ENGINEERING, LLC

A handwritten signature in black ink, appearing to read 'J. Short', with a long horizontal flourish extending to the right.

James Short
Building & Safety Group Manager

Accepted and Agreed:

FAIRFIELD TOWN

By:

Name:

Title:

Date:

TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** These Terms and Conditions are enclosed with, attached to and/or incorporated by referenced into a proposal or agreement (the "Proposal/Agreement") prepared by Sunrise Engineering, LLC ("SE") offering/agreeing to provide the consulting services described in the Proposal/Agreement as such consulting services are changed by agreement of the Parties (hereinafter, the "Services"). SE agrees to provide the Services for the sole and exclusive use and benefit of the person or entity described in the Proposal/Agreement to be SE's client for the provision of the Services (the "Client"). If the Proposal/Agreement does not expressly identify the Client, the Client shall be the person or entity to whom SE provides the Services. The Proposal/Agreement shall become binding on SE and Client upon its written acceptance by Client, or Client's acceptance of the performance by SE of the Services without written objection to the terms of the Proposal/Agreement, whichever first occurs. SE may use the services of subconsultants in the performance of the Services ("SE's Consultants") when, in SE's sole discretion, it is appropriate to do so. For purposes of the Proposal/Agreement and these Terms and Conditions, the "Parties" are SE and Client, and their successors and permitted assignees.

2. **EFFECT OF TERMS AND CONDITIONS.** If any of the Services are performed by SE or SE's Consultants prior to the acceptance by Client of the Proposal/Agreement, such Services shall be governed by these Terms and Conditions the same as if they had been performed after the acceptance by Client of the Proposal/Agreement. These Terms and Conditions shall be binding upon the Parties except to the extent these Terms and Conditions directly conflict with the Proposal/Agreement. In the event of direct conflict between the Proposal/Agreement and these Terms and Conditions, the Proposal/Agreement shall supersede and replace these Terms and Conditions.

3. **PAYMENT TERMS.** Payment on account of Services rendered, including fees and Reimbursable Expenses, shall be made monthly upon presentation of SE's statement of services. No deductions shall be made from SE's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors ("Contractor") performing all or a portion of the work or services (the "Work") for the construction of improvements designed by SE or SE's Consultants, or on account of the cost of changes in the Work other than those for which SE has been adjudicated to be liable. If payment is not received within thirty (30) calendar days from the invoice date (i) Client agrees to pay interest on the past due amount at the rate of 18% per annum until paid in full; (ii) Client agrees to pay reasonable attorneys' fees and collection costs incurred by SE to collect or obtain an award or judgment to collect all or any portion of the past due amount; (iii) SE reserves the right to suspend all Services until payment of the past due amount is received in full; and (iv) SE may terminate the Proposal/Agreement for cause if payment of the past due amount is not received in full within forty-five (45) calendar days of the date it is due.

**Please remit all check payments to:
SUNRISE ENGINEERING, LLC
DEPT #2071
PO BOX 29675
PHOENIX, AZ 85038-9675**

4. **TERMINATION/SUSPENSION OF PROPOSAL/AGREEMENT** Either Party may terminate the Proposal/Agreement for cause if the other Party shall fail substantially to perform in accordance with its terms through no fault of the Party initiating the termination upon ten (10) calendar days prior written notice and failure of the Party in default to cure the default within such ten (10)-day period. Either Party may terminate the Proposal/Agreement without cause and for convenience upon delivery to the other Party of a written notice of termination for convenience. Either Party may suspend all or a portion of the Services upon written notice to the other Party,

provided that (i) Client shall compensate SE for extra fees and costs due to such suspension of the Services; and (ii) SE may terminate the Proposal/Agreement for cause if the Services or any portion of the Services are suspended in the aggregate for more than one hundred twenty (120) calendar days due to suspensions of the Services for Client's convenience. In the event of a termination of the Proposal/Agreement for any or no reason, SE shall be compensated for the Services performed prior to termination, together with Reimbursable Expenses then due and all expenses directly attributable to the termination. In the event of a termination of the Proposal/Agreement for cause, the terminating Party shall be entitled to recover from the defaulting Party all damages caused by the defaulting Party's breach of the Proposal/Agreement.

5. **STANDARD OF SKILL AND CARE.** The Services (whether performed by SE or SE's Consultants) shall be performed in accordance with the standard of skill and care ordinarily exercised by licensed professionals of the same discipline in the state in which the Project is located on projects of similar size and scope and under like circumstances. SE disclaims that any warranties, expressed or implied, are made or intended by SE regarding the quality, fitness, accuracy, suitability or completeness of the Services or the Instruments of Service, or regarding any other matter.

6. **INSURANCE.** SE shall maintain the following insurance coverages with insurance limits not less than specified below:

- a) Worker's Compensation Insurance – statutory limits;
- b) Employer's Liability Insurance – \$1,000,000;
- c) Automobile Liability – Combined single limits per accident, \$1,000,000;
- d) Commercial General Liability Insurance – Combined single limits per occurrence, \$1,000,000;
- e) Professional Liability – \$1,000,000 per claim

7. **LIMITATION OF LIABILITY.** Client agrees that the liability of SE and SE's Consultants, and their former and current officers, directors, employees and agents to Client, and any third party, due to any negligent acts, errors or omissions, breach of contract or breach of any other legal duty shall be limited in the aggregate to \$50,000, or the total fee paid to SE for the Services, whichever is greater. Client shall indemnify, defend and hold harmless SE and SE's Consultants, and their past and current officers, directors, employees and agents, and each of them, from and against any liability arising or resulting from liabilities in excess of the applicable aggregate limit of liability of SE and SE's Consultants for the Services.

8. **SITE OBSERVATIONS AND SOIL CONDITIONS.** SE shall have access to the Project site and to all areas where the Work is performed or located. Client shall procure all permits, licenses, rights-of-entry and access for SE to enter upon and to perform Services at any public or private property required for SE to perform the Services.

- a) By virtue of entering into this Agreement or providing the Services, SE does not assume control of or responsibility for the Project site or the persons at the Project site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the Project site that may present a potential danger to public health, safety or the environment.
- b) Unless SE provides a soils report or conducts soils testing as Services under the Proposal/Agreement, SE makes no representations concerning soils conditions and is not responsible for any claims, damages, liabilities, losses or expenses that may arise out of the making or failure to make soils investigations or reports, or soils testing.

- c) If a Contractor is involved in the Project, Client agrees that Contractor will be solely and completely responsible for the conditions at all locations where the Work is performed, including the safety of all persons and property during performance of the Work, and compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that SE will not be responsible for job or site safety on the Project.
- d) Client acknowledges and agrees that SE is not responsible for the performance of the Work by third parties, including, but not limited to, the Contractor and the Contractor's subcontractors, sub-subcontractors of any tier and suppliers. Client further agrees to indemnify, defend and hold harmless SE and SE's Consultants, and their officers, directors, employees and agents from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon the operations of such third parties in the performance of the Work unless such claims, liabilities, damages, costs or expenses are adjudicated to be caused by the sole negligence or other fault of SE and/or SE's Consultants.

9. RELIANCE ON OWNER FURNISHED INFORMATION.

SE and SE's Consultants shall be entitled to rely upon the accuracy and completeness of services and information furnished by Client and Client's consultants, agents and representatives, and SE and SE's Consultants shall have no duty to investigate the accuracy or completeness of such services or information.

10. UNKNOWN CONDITIONS. Conditions or occurrences may be encountered during the performance of the Services and/or the Work that require changes in the Services or impose risk to SE and/or SE's Consultants, or their employees or agents, in the performance of the Services not known to SE when the Proposal/Agreement was entered ("Unknown Conditions"). If Unknown Conditions are encountered, SE shall notify Client of the Unknown Conditions and the probable impact of the Unknown Conditions on the Services and the Work, and SE shall consult with Client regarding possible actions, including:

- a) Suspend the Services and/or the Work until the Unknown Conditions are further studied by Client and the additional risks imposed by the Unknown Conditions are eliminated by Client or are reduced by Client to levels acceptable to both SE and Client;
- b) Complete the Services in accordance with the scope of Services described in the Proposal/Agreement, if to do so is agreed by both SE and Client to be practical;
- c) Agree to a change in the Services; or
- d) Agree to a termination of the Proposal/Agreement for Client's convenience.

11. HAZARDOUS MATERIALS. Client agrees to give written disclosure to SE prior to the execution of the Proposal/Agreement of any hazardous material or toxic substances existing in, on or near the Project site known to Client that may present a potential for harm to human health, the environment or equipment. Unless otherwise included in the Services, SE and SE's Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site, unless the hazardous materials or toxic substances were brought to the Project site by SE or SE's Consultants.

In the event SE or any other person or entity encounters hazardous

materials or toxic substances at the Project site, or should it become known that such materials or substances are present at the Project site or its adjacent areas that may affect the performance of SE's

Services, SE may, at its option, and without liability for consequential or other damages, suspend performance of the Services until Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials or toxic substances and such consultants represent that such hazardous materials or toxic substances have been rendered harmless. Client shall indemnify, defend and hold harmless SE and SE's Consultants and their past and current officers, directors, employees and agents, and each of them, from and against all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any hazardous materials or toxic substances in any form at the Project site, including claims, damages, costs and expenses caused by the negligence or fault of the persons or entities being indemnified, unless such claims, liabilities, damages, costs or expenses are adjudicated to be caused by the hazardous materials or toxic substances brought to the Project site by SE or SE's Consultants.

12. INDEMNITY. To the fullest extent permitted by law, Client agrees to indemnify and hold harmless SE and SE's Consultants, and their past and current officers, directors, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss caused by any negligent act, error or omission or intentionally wrongful conduct of Client or Client's consultants or their employees or agents.

13. INSTRUMENTS OF SERVICE. Drawings, specifications, reports and other documents, including those in electronic form, prepared by SE and SE's Consultants for the Project are Instruments of Service for use solely with respect to the Project. SE and SE's Consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Engineer grants to Client a nonexclusive license to reproduce SE's Instruments of Service solely for the purpose of constructing, using and maintaining the Project, provided that Client shall comply with all obligations, including prompt payment to SE of all consideration when due under the Proposal/Agreement. Except for the license granted in this Paragraph 13, no other license or right shall be deemed granted or implied under the Proposal/Agreement.

Client shall not use the Instruments of Service for future additions or alterations of the Project or for other projects, unless Client obtains the prior written agreement of SE and SE's Consultants. Any unauthorized use or modification of the Instruments of Service shall be at Client's sole risk and without liability to SE or SE's Consultants.

To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless SE and SE's Consultants and their past and current officers, directors, employees and agents, and each of them, from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any unauthorized use or modification of the Instruments of Service by Client or any person or entity that obtain the Instruments of Service from or through Client or Client's agents or representatives.

14. OPINIONS OF COST. If the Services include the evaluation of Client's budgets for construction costs or include providing SE's opinions of probable construction costs, Client understands that SE has no control over regional economies, availability of materials or labor or the competitive climate existing at the time of bidding or

negotiation, over the costs or the prices of labor, equipment or materials, or over Contractor's methods of pricing, and that the

evaluations of Client's budgets and/or opinions of probable construction costs provided by SE are SE's professional judgment

as a design professional familiar with the construction industry. SE makes no warranty, expressed or implied, as to the accuracy of such opinions or evaluations as compared to bids or negotiated prices or actual construction costs, and SE does not represent or warrant that bids or negotiated prices or actual construction costs will not vary from Client's budget for the Project or from opinions of probable construction costs or from evaluations of Client's budgets prepared or agreed to by SE.

15. PROVIDING EVIDENCE. If SE or an employee of SE is requested by Client or is compelled by subpoena or other legal process by Client or a third party to provide testimony, documents or evidence in relation to the Services and in connection with any public hearing, dispute resolution proceeding or legal proceeding in which SE is not a party, Client agrees to compensate SE on the basis of hourly rates and Reimbursable Expenses according to SE's Rate Schedule then in effect for the time and expenses reasonably incurred by SE in providing such evidence, provided that SE is not compensated in full for such reasonable time and expenses by the party compelling or requesting the evidence.

16. SEVERABILITY. In the event that any provision of these Terms and Conditions is found to be unenforceable, the other provisions shall remain in full force and effect.

17. SURVIVAL. All obligations arising prior to the termination of the Proposal/Agreement and all provisions of these Terms and Conditions allocating responsibility or liability between Client and SE shall survive the completion of the Services and the termination of the Proposal/Agreement, and Paragraphs 5, 6, 7, 9, 11, 12, 13, and 15 shall survive the completion of the Services and the termination of the Proposal/Agreement.

18. INTEGRATION. The Proposal/Agreement and these Terms and Conditions incorporated therein constitute the entire agreement between the Parties and cannot be changed except by written instrument signed by both Parties.

19. GOVERNING LAW. The Proposal/Agreement and these Terms and Conditions incorporated therein shall be governed in all respects by the laws of the state in which the Project is located.

20. THIRD PARTY FEES. SE shall pay the fees and costs specifically required by the Proposal/Agreement and these incorporated Terms and Conditions. Unless specifically required by the Proposal/Agreement, SE shall not be required to pay the fees and costs of the checking and/or inspection of the Instruments of Service and/or the Work by persons or entities other than SE or SE's Consultants, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title insurance charges, costs of reproductions of the Instruments of Service or other documents, and other charges not specifically required to be paid by SE by the Proposal/Agreement.

21. THIRD PARTY BENEFICIARIES. Nothing contained in the Proposal/Agreement and these incorporated Terms and Conditions shall create a contractual relationship with or a cause of action in

favor of a third party against either Client or SE. SE's Services under the Proposal/Agreement are being performed solely for Client's benefit, and no other person or entity shall have any claim against SE arising under the Proposal/Agreement or arising from the performance or non-performance of the Services.

22. EMPLOYMENT FEES. In the event Client hires directly any employee of SE within one (1) year after final payment is due to SE for the Services, Client agrees to reimburse SE a monetary amount equal to six (6) months' wages for the employee so hired by Client as an employment fee. The employment fee shall be calculated as six (6) times the gross monthly full-time wages of the employee immediately prior to the hiring.

23. ASSIGNMENTS. Neither Client nor SE shall assign the Proposal/Agreement or any right, interest or claim for damages arising under the Proposal/Agreement without the written consent of the other, except that Client may make a conditional collateral assignment of the Proposal/Agreement to an institutional lender providing financing for the Project, conditioned on Client's default in its obligations to such lender regarding the financing for the Project. In the event the condition of such collateral assignment is satisfied, the lender shall assume Client's rights and obligations under the Proposal/Agreement. If SE's Services are affected or delayed by Client's default or the assignment of the Proposal/Agreement to the lender, SE's fees for the remaining Services of the Project and the time schedules for performance of the remaining Services of the Project shall be equitably adjusted.

24. CONSEQUENTIAL DAMAGES WAIVER. SE and Client mutually waive as to one another and as to the present and current officers, directors, partners, members, employees, agents and consultants of one another, any and all consequential damages for claims, disputes or other matters in question arising out of or relating to the Proposal/Agreement or the performance or non-performance of the Services. This mutual waiver is applicable, without limitation, to all consequential damages due to either Parties' termination of the Proposal/Agreement or suspension of the Services.

25. DISPUTE RESOLUTION. All claims, counterclaims, disputes and other matters in question between Client and SE arising out of or relating to the Proposal/Agreement or these incorporated Terms and Conditions, or the breach of the Proposal/Agreement or these incorporated Terms and Conditions, or the Services performed pursuant thereto, shall be decided in such dispute resolution proceedings as Client and SE shall mutually agree upon in writing after the dispute arises or, in the absence of mutual agreement, in a court of competent jurisdiction within the State in which the Project is located.

26. CHANGES AND/OR ADDITIONAL SERVICES. The Client reserves the right, at its sole discretion, to change and or increase the scope of consulting services including award of additional phases of consulting services to SE without conducting additional procurement procedures. Such changes shall include negotiated scope, time and compensation and shall be binding on SE and Client when mutually agreed upon in writing by SE and Client.

February 23, 2024

Hollie McKinney
Fairfield Town
103 East Main Street
Fairfield Town, Utah

RE: Fairfield Town Water Main Line Design Proposal for Civil Engineering Services

Hollie,

Attached is our fee proposal to provide consulting services for the water main project on Allen Ranch Road in Fairfield Town, Utah.

PROJECT UNDERSTANDING & ASSUMPTIONS

- Project site is approximately 4400 LF along Allen Ranch Road with a connection in S.R. 73, and is approximately as shown on the conceptual plan provided with the RFP; • It is anticipated that a UDOT Encroachment Permit will be required for work within the State right-of-way.
- An Alta topographical utility survey will be provided to us in CAD format;

SCOPE OF SERVICES

CIVIL ENGINEERING

- Attend up to five (5) team coordination meetings or conference calls during design; • Attend up to three (3) UDOT virtual meetings.
- Site Utility Plan including:
 - Water main alignment. Location to be approved prior to proceeding to design.
 - Water main preliminary and final designs.
 - Plan and profile drawing of water main and sleeving within the UDOT right-of-way.
 - Standard construction details will be provided per APWA and UDOT.
 - Specifications will be provided per APWA and AWWA and UDOT
- Erosion Control Plan including:
 - Recommended BMP's and details for construction period;
 - State SWPPP template, color coded sections to be completed by Contractor.
- General Construction Notes
- Construction phase services including review of submittals, responding to RFI's, providing interpretation of construction documents.

CIVIL ENGINEERING FEE: \$8,500.00

**Providing Quality Engineering & Surveying for Over 40
Years www.mcneilengineering.com**

ADDITIONAL SERVICES

Any services not listed are excluded from the scope of work. We will be happy to provide a fee for these services, if requested. These additional services include:

1. Redesign of road grades or drainage.
2. Design of site lighting and site electrical;
3. Redesign due to changes beyond our control once the preliminary design has been accepted by the Owner and we have been authorized to proceed with final design;
4. Additional design services due to unforeseeable conditions or construction errors;
5. Construction staking;
6. Record Plans;
7. Easement exhibits and legal descriptions;
8. Water pressure analysis;
9. Design of treatment or chlorination for the water system.
10. Traffic control plans during construction.
11. Site visits during construction or SWPPP inspection

We appreciate the opportunity to provide a proposal for this project. If you have any questions or need additional information, please do not hesitate to call.

Sincerely,

Robert Poirier, PE
McNeil Engineering

PROFESSIONAL SERVICES AGREEMENT

Date: **February 23, 2024**

P.M.: **RJP**

Job No.:

FAIRFIELD TOWN hereinafter CLIENT, does hereby authorize **McNEIL GROUP, INC.**, which sometimes does business as **McNEIL ENGINEERING** hereinafter ENGINEER, a Corporation organized and existing under the laws of the State of Utah, to perform the services set forth below, subject to the terms and conditions set forth below and on the following page.

A. Client Information:

Company: **Fairfield Town**

Name: **Hollie McKinney**

Address: **103 E Main Street**

City/State/Zip: **Fairfield Town**

Phone:

E-Mail Address:

B. Project Description: **Municipal Utility**

Project Name: **Fairfield Town-Allen Ranch Water Main**

Location: **Allen Ranch Road Fairfield Town, Utah**

Description of Engineer's Services: **As per proposal letter dated February 23, 2024**

C. Compensation:

Civil Engineering \$8,500.00

D. See Terms and Conditions on the following page. By signing below, CLIENT acknowledges they have read and agree to the Terms and Conditions of this contract.

E. It is understood and agreed that the Consultant's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by CLIENT. CLIENT assumes all responsibility for interpretation of the Contract Documents and for all construction observation and CLIENT waives any claims against the Consultant that may be in any way connected thereto. *Refer to Article 2.7 of Terms and Conditions on reverse side.*

F. Having read, understood and agreed to the foregoing, CLIENT and ENGINEER, by and through their authorized representatives, have subscribed their names hereon effective the 23rd day of February 2024.

FAIRFEILD TOWN McNEIL ENGINEERING

Title: Mayor Hollie McKinney Manager

Date Date: February 23, 2024

ARTICLE 1. COMPENSATION

- 1.1 **INVOICING PROCEDURE:** CLIENT will be invoiced at the end of the first calendar month following the effective date of this Agreement and at the end of each calendar month thereafter. Such invoices shall reflect billing for work performed by ENGINEER or SURVEYOR during the month invoiced. Payment of invoice is due upon receipt of invoice by CLIENT.
- 1.1.1 If CLIENT objects to all or any portion of an invoice, CLIENT shall, nevertheless, pay timely the full amount of such invoice and CLIENT shall notify ENGINEER or SURVEYOR within fourteen (14) calendar days of the invoice date the cause of disagreement and the portion of the invoice in dispute. Thereafter, ENGINEER or SURVEYOR and CLIENT shall make a good faith effort to resolve such dispute.
- 1.2 **LATE PAYMENT:** ENGINEER or SURVEYOR will assess a carrying charge of 1.5% per month on invoice amounts due and not paid within thirty (30) days of date of invoice, which charge CLIENT warrants will be paid on demand. Application of the percentage rate indicated above as a consequence of CLIENT's late payments does not constitute any willingness on ENGINEER or SURVEYOR's part to finance CLIENT's operation and no such willingness should be inferred. If CLIENT fails to pay invoiced amounts within thirty (30) calendar days of the date of the invoice, ENGINEER or SURVEYOR may, at any time, without waiving any other claim against CLIENT and without thereby incurring any liability to CLIENT, suspend or terminate this Agreement. Termination shall not relieve CLIENT of its obligation to pay amounts incurred up to termination. ENGINEER or SURVEYOR further reserves the right to withhold any instruments of its service, or copies thereof, from CLIENT on any project pending payment on CLIENT's outstanding indebtedness.
- 1.3 **OBLIGATION TO PAY:** CLIENT's obligation to pay for the services performed under this Agreement is in no way contingent upon CLIENT's ability to obtain financing, zoning, approval of governmental or regulatory agencies or final adjudication of a lawsuit in which ENGINEER or SURVEYOR is not involved, or upon CLIENT's successful completion of the project. No deduction shall be made from any invoice on account of penalty, liquidated damages, retentions or other sums withheld from payments to CLIENT. It is agreed that all expenses incurred by ENGINEER or SURVEYOR in enforcing this Agreement, or in obtaining liens, judgments or collecting any delinquent amounts due, including reasonable attorney fees, shall be recoverable from CLIENT.
- 1.4 **REIMBURSABLE EXPENSES:** Reimbursable Expenses include, but are not limited to:
- 1.4.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project.
- 1.4.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses and fees paid for securing approval of authorities having jurisdiction over the Project.
- 1.4.3 Expense of all reproduction, postage and handling of drawings, specifications, reports or other Project-related instruments of service of ENGINEER or SURVEYOR.
- 1.4.4 Expense of preparing perspectives, renderings or models.

ARTICLE 2. SPECIAL TERMS AND CONDITIONS

- 2.1 **SCOPE OF WORK:** The scope of work shall include all services to be provided by ENGINEER or SURVEYOR which are reasonable, necessary and appropriate for the effective and prompt fulfillment of ENGINEER or SURVEYOR's obligations outlined in the proposal.
- 2.2 **ADDITIONAL SERVICES:** It is understood that the scope of work and time schedule defined in the Proposal are based on the information provided by CLIENT. If this information is incomplete or inaccurate, or if unexpected conditions are discovered, the scope of work may change even as the work is in progress. If CLIENT requests additional services, or when a change in the scope of work or time schedule is necessary, a written amendment (Supplemental Agreement) to the Agreement shall be executed by CLIENT and ENGINEER or SURVEYOR as soon as is practicable and consent to such amendments shall not be unreasonably withheld.
- 2.3 **TERMINATION:** This agreement may be terminated by either party with or without cause upon seven (7) days written notice. If this agreement is terminated through no fault of ENGINEER or SURVEYOR, CLIENT shall pay ENGINEER or SURVEYOR for services performed and expenses incurred through the date of termination.
- 2.4 **CONSTRUCTION ESTIMATES:** ENGINEER or SURVEYOR's opinions, if any, of probable construction costs, quantities or time are subject to change and are contingent upon persons and factors over which ENGINEER or SURVEYOR has no control. ENGINEER or SURVEYOR does not guarantee the accuracy of such estimates.
- 2.5 **LIMITATION OF LIABILITY:** In recognition of equitable allocation of the relative risks and benefits of the project, CLIENT agrees to limit the total aggregate liability of ENGINEER or SURVEYOR, et al, to CLIENT and its successors and assigns on all Claims for whatever reason to ENGINEER or SURVEYOR's base fee. Prior to the initiation of ENGINEER or SURVEYOR's services hereunder, this limitation may be increased up to ENGINEER or SURVEYOR's then effective professional liability insurance limits upon mutual agreement and CLIENT's payment of an additional fee of 0.5% of the requested limitation. ENGINEER or SURVEYOR, et al, is not in any event, liable to CLIENT for consequential or incidental damages for any Claim, and any and all liability shall end one year from Substantial Completion.
- 2.6 **PERFORMANCE STANDARD:** ENGINEER or SURVEYOR's services shall be performed in accordance with and judged solely by the skill and care ordinarily exercised by members of the same profession performing like services in the State of Utah at the same time. ENGINEER or SURVEYOR disclaims and CLIENT waives any and all other standards or warranties, express or implied, regarding the quality of its services or the instruments thereof including, but not limited to, warranties of fitness, merchantability or compliance with Federal, State or local laws, rules, regulations, ordinances or design, or building codes or standards.
- 2.7 **CONSTRUCTION SERVICES:** ENGINEER or SURVEYOR's construction observation or monitoring services, if any, or unless specified otherwise, are neither exhaustive nor continuous and consist solely of periodic visits to the Project site to determine whether construction is progressing in general conformance with the technical plans and specifications. ENGINEER or SURVEYOR's approval or recommendation of payments to the contractor, if any, is based solely upon said services. ENGINEER or SURVEYOR is not responsible for the timeliness, means, methods, or sequences of construction, nor for the safety of workers or others at or near the Project site. ENGINEER or SURVEYOR does not guarantee the performance of the contractor, subcontractors, suppliers or others providing labor, material, equipment or services for the Project, nor is it responsible for their acts, errors or omissions. Should ENGINEER or SURVEYOR not be retained to provide construction observation, monitoring or similar services, CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER or SURVEYOR, et al, from and against any and all Claims against ENGINEER or SURVEYOR, et al, based in whole or in part upon actual or alleged defects in construction, workmanship and/or materials, excepting Claims arising out of the indemnitee's sole negligence.

- 2.8 **RECORD DOCUMENTS:** Any record documents drafted by ENGINEER or SURVEYOR are intended to record variations between design and actual construction are based on information provided by the contractor. ENGINEER or SURVEYOR is entitled to rely on and has no legal or contractual duty to verify, the accuracy or completeness of such information and does not warrant the accuracy or completeness of record documents. CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER or SURVEYOR, et al, from and against any and all Claims against ENGINEER or SURVEYOR, et al, arising out of actual or alleged deficiencies in any such record documents, excepting Claims arising out of the indemnitee's sole negligence.
- 2.9 **DOCUMENT REUSE:** Documents including, but not limited to, technical drawings, notes, test data, calculations, plans and estimates furnished to the CLIENT pursuant to this Agreement are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Without ENGINEER or SURVEYOR's written consent will be at the CLIENT's sole risk. CLIENT's liability to ENGINEER or SURVEYOR, et al, and CLIENT shall indemnify and defend ENGINEER or SURVEYOR, et al, from all claims, damages, losses or expenses, including attorney fees arising out of or resulting therefrom.
- 2.10 **CHANGE ORDERS:** Under no circumstances shall ENGINEER or SURVEYOR be liable for extra work or other consequences due to changed conditions or for the failure of the construction contractor, materialmen or service providers to conform to the plans and specifications.
- 2.11 **INTERPRETATION OF INFORMATION:** Any surveys, testing, exploration or other data associated with the work will be performed by ENGINEER or SURVEYOR for the sole use to fulfill the purpose of this Agreement and ENGINEER or SURVEYOR shall be responsible for interpretation by others of the information developed.
- 2.12 **OWNERSHIP OF DOCUMENTS:** Unless otherwise agreed, ENGINEER or SURVEYOR retains ownership of and all proprietary rights in and to all plans, drawings, reports, notes, data, calculations, documents, electronic media, CADD data, and other instruments of ENGINEER or SURVEYOR's professional service, in any form, medium or content, prepared by or on behalf of ENGINEER or SURVEYOR. Where this agreement is terminated prior to completion, CLIENT is granted a nontransferable license to use said instruments on and for this Project only. All sums due ENGINEER or SURVEYOR hereunder are a condition precedent to the assignment of rights CLIENT has in and to said instruments. Said instruments are intended by CLIENT as an integrated set on this project. Modification, use or dissemination of such instruments to others by, through or on behalf of CLIENT necessary for the completion, operation, maintenance or repair of the Project, without ENGINEER or SURVEYOR's prior express written consent, is at CLIENT's expense. CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER or SURVEYOR, et al, from and against any and all Claims against ENGINEER or SURVEYOR, et al, arising out of any such non-permissive modification or dissemination.
- 2.13 **RETURN OF DOCUMENTS:** CLIENT agrees that all documents, plans, reports, or work furnished to CLIENT not paid for in full will be returned to ENGINEER or SURVEYOR upon demand and will not be used for design, construction, permits or licenses.
- 2.14 **SUPPLIED INFORMATION:** ENGINEER or SURVEYOR, et al, are entitled to rely on and has no legal or contractual duty to verify, the accuracy or reliability of such information. CLIENT agrees to hold harmless, indemnify and defend ENGINEER or SURVEYOR, et al, against any and all Claims against ENGINEER or SURVEYOR, et al, arising out of actual or alleged deficiencies in any such information.
- 2.15 **SUBMITTALS:** Any review of contractor's shop drawings and other documents by ENGINEER or SURVEYOR, et al, is for the sole purpose of determining conformance of the information contained therein with design intent. It is not intended to verify the accuracy or completeness of the details contained therein, which is the responsibility of the contractor.

ARTICLE 3. GENERAL TERMS AND CONDITIONS

- 3.1 **APPLICABLE LAW, JURISDICTION AND VENUE:** This agreement shall be governed by and enforced according to the laws of the State of Utah. Venue of any dispute arising out of or related to this agreement, or the services hereunder, shall be exclusively in Salt Lake County, State of Utah.
- 3.2 **ASSIGNMENT AND SUBCONTRACTING:** Neither party shall assign its obligations or subcontract any portion of its services without the prior written consent of the other party. ENGINEER or SURVEYOR may subcontract any portion of its services without such consent.
- 3.3 **FORCE MAJEURE:** Any default in the performance of this agreement caused by following events and without fault on the part of the defaulting party shall constitute a breach of contract: act of God, government or public enemy, strike, epidemic, unusually severe weather and/or other extraordinary natural events and/or quarantine.
- 3.4 **DISPUTE RESOLUTION:** Any dispute related to this agreement, arising out of or related to the performance hereunder and/or ENGINEER or SURVEYOR's, et al, services, shall be submitted to mediation before a mutually acceptable mediator prior to initiation of any other formal adjudicative procedures. In the event the parties are unable to agree on a mediator, said mediator shall be appointed by a court of competent jurisdiction in the proper venue.
- 3.5 **NO THIRD PARTY RIGHTS:** Third party beneficiary rights are not intended under this agreement in others, nor does this agreement create any cause of action for any third party against either party hereto.
- 3.6 **LIMITATION PERIODS:** As to Claims between the parties hereto, any and all statutes of limitation shall begin to run and any said Claims shall be barred if not accrued no later than the date of substantial completion or occupancy of the portion of the project as to which the Claim is made, or the date of abandonment of the project, whichever date is earliest.
- 3.7 **MISCELLANEOUS:** This agreement constitutes the entire and integrated agreement between the parties and supersedes all prior or contemporaneous oral or written representations and/or agreements, whether written or oral, and may be modified only by a written instrument expressly referring hereto and duly signed by the parties. No oral modification, alteration or change of this agreement, as prepared by or for ENGINEER or SURVEYOR, shall not be effective unless accepted in writing by ENGINEER or SURVEYOR. Acceptance or use of ENGINEER or SURVEYOR's services shall constitute acceptance of this agreement whether or not signed by CLIENT. Any provision herein, or portion thereof, is invalid or unenforceable, the remainder shall remain valid and enforceable. Waiver of a breach of any provision is not a waiver of subsequent breach of the same or any other provision.



8610 South Sandy Parkway, Suite 200 Sandy, Utah 84070 801.255.7700 mcneilengineering.com

January 23, 2024

Fairfield Town
103 East Main Street
Fairfield Town, Utah

Via Email:

RE: Fairfield Park and Town Hall Master Plan Proposal for Civil Engineering services.

To whom it may concern,

This letter is to provide a fee proposal for civil engineering design services associated with the concept plan provided for a new park and Town Hall in Fairfield, UT.

PROJECT UNDERSTANDING & ASSUMPTIONS

- The project site is approximately 6 acres and as shown as on the conceptual plan provided with the RFP;
- The project will consist of a new paved access road entering from the north along an existing gravel road.
- There are 3 new structures planned for the site; a Town Hall building, pavilion and 700 s.f. research library.
- There is a new little league baseball field, a regulation size soccer field, a playground, a walking path with history exhibits, and 4 pickleball courts planned.
- A one acre parking lot with ~70-80 stalls will service the new park.
- The 2 areas in the northeast and northwest corners of the concept plan are not included • A geotechnical report will be provided to us with an infiltration or percolation test; • The Site plan will be completed by others and will be provided to us in AutoCAD format. •
- It has been assumed there are water and sewer main lines directly adjacent to the site that adequate for the project needs.

CIVIL ENGINEERING

- Up to 8 coordination meetings or conference calls during design phase for civil engineering discussion items;
- Site Plan- We will provide a dimensioned site plan illustrating conformance with building setbacks and city code and proper setbacks. Sizes for layout of the ball fields and

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parking areas will be provided. ADA parking and accessible routes to the new buildings and public right-of-way will be shown.

- Grading and Drainage Plan including:
 - Coordinate with the design team to establish proposed elevations for the finish floor of the buildings;
 - Curb spot elevations;
 - Grading for asphalt pavement;
 - Grading for sidewalks and other hardscape areas;
 - We will design the ball fields and ball courts with approximately 1% slopes.
- Storm Water Design including:
 - On-site 100 year storm drain retention system per city and State requirements. This assumes a good infiltration rate.
- Drainage Report with calculations per city requirements;
 - LID stormwater retention system with calculations per state code;
 - We will identify the flood zone for the property and provide a FEMA map to illustrate it.
- Erosion Control Plan including:
 - Recommended BMP's and details for construction period;
- On-Site Site Utility Plan including submittal and coordination with the local Improvement District. If sewer service is not available, we will work with a geotechnical engineer to provide a design of a septic system for the site.
- Culinary water facilities. Details will be provided for trenching new connections to the buildings and any drinking fountains on the site.
- State SWPPP Template.
- Coordination with the plumbing design for the size and location of utility services for the project.
- Coordination with the electrical engineer for the location of electrical facilities including light poles, transformers, communication facilities. Power line voltage for the existing power lines closest to the site will be identified to provide the proper setback from them.
- Construction management- This is limited to review of submittals, answering RFI's and interpretation of the construction document. We have allocated 5% of the fee for this phase.
- Two Site visits are included. One pre-design and one during construction. Additional site visits with documented photos and an observation report is \$475 per visit.

CIVIL ENGINEERING DESIGN FEE: \$24,900.00

ADDITIONAL SERVICES

Any services not listed are excluded from the scope of work. We will be happy to provide a fee for these services, if requested. These additional services include:

1. Off-site roadway or utility improvements, deceleration lanes, re-striping plans, UDOT permits;
2. FEMA flood plain studies or analysis;
3. Redesign due to changes beyond our control once the preliminary design has been completed and accepted by the Owner and we have been authorized to proceed

with final design;

4. Attendance at Planning Commission or City Council meetings;

Page 3 of 3

5. On-site representation during construction other than what is specifically included. Site visits with observation reports and photos are \$475 per visit;
6. Additional design services due to unforeseen conditions or construction errors;
7. Construction staking;
8. Post completion ALTA survey or GIS plans.
9. Photometric Plan
10. Perc or infiltration test
11. Septic system Design
12. Well designs or water tanks
13. SWPPP monitoring during construction.
14. Computer modeling water or storm drain systems

We appreciate the opportunity to provide this proposal. If you have any questions or need additional information, please do not hesitate to call.

Sincerely,

Robert Poirier, PE
McNeil Engineering



8610 South Sandy Parkway, Suite 200 Sandy, Utah 84070 801.255.7700 mcneilengineering.com

PROFESSIONAL SERVICES AGREEMENT

Date: **January 23, 2024**

P.M.: **RJP**

Job No.:

FAIRFIELD TOWN hereinafter CLIENT, does hereby authorize **McNEIL GROUP, INC.**, which sometimes does business as **McNEIL ENGINEERING** hereinafter ENGINEER, a Corporation organized and existing under the laws of the State of Utah, to perform the services set forth below, subject to the terms and conditions set forth below and on the following page.

A. Client Information:

Company: **Fairfield Town**

Name: **Hollie McKinney**

Address: **103 E Main Street**

City/State/Zip: **Fairfield Town**

Phone:

E-Mail Address:

B. Project Description:

Project Name: **Fairfield Town Park**

Location: **Fairfield Town, Utah**

Description of Engineer's Services: **As per proposal letter dated January 23, 2024**

C. Compensation: Please initial next to the services you are selecting at this time.

Civil Engineering \$24,900.00

D. See Terms and Conditions on the following page. By signing below, CLIENT acknowledges they have read and agree to the Terms and Conditions of this contract.

E. It is understood and agreed that the Consultant's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by CLIENT. CLIENT assumes all responsibility for interpretation of the Contract Documents and for all construction observation and CLIENT waives any claims against the Consultant that may be in any way connected thereto. *Refer to Article 2.7 of Terms and Conditions on reverse side.*

F. Having read, understood and agreed to the foregoing, CLIENT and ENGINEER, by and through their authorized representatives, have subscribed their names hereon effective the 23rd day of January 2024.

FAIRFEILD TOWN McNEIL ENGINEERING

Title: Mayor Hollie McKinney **Manager**

Date Date: **January 23, 2024**

INTERLOCAL AGREEMENT FOR THE CREATION OF A SCHOOL DISTRICT BETWEEN THE CITIES AND TOWNS OF EAGLE MOUNTAIN, FAIRFIELD, CEDAR FORT, SARATOGA SPRINGS AND LEHI

This *Interlocal Agreement* (hereinafter “Agreement”) is entered into by and between Eagle Mountain City (hereinafter “Eagle Mountain”), the Town of Fairfield, (hereinafter “Fairfield”), the Town of Cedar Fort (hereinafter “Cedar Fort”), the City of Saratoga Springs (hereinafter “Saratoga Springs”), and Lehi City (hereinafter “Lehi”) (collectively the “Parties”), pursuant to the State of Utah’s Interlocal Cooperation Act, Utah Code Ann. § 11-13-101, et seq.

This Agreement shall be binding and effective upon the completion of each of the following: (1) each party affixing their respective signatures hereto; (2) the Agreement has been approved by each party as contemplated by Utah Code Ann. §§ 11-13-202(2) and 11-13-202.5; and (3) the Agreement is filed with the keeper of records of each of the parties hereto (hereinafter “Effective Date”) as required by Utah Code Ann. § 11-13-209.

Section 1. Recitals.

1.1. WHEREAS, the Parties have determined that it would be in the public interest to cooperate to provide for the improvement and more efficient administration of the public education system for grades K-12 in the incorporated limits of each entity.

1.2. WHEREAS, pursuant to Utah Code Ann. § 53G-3-302(2)(C), in order to make such improvements, the Parties have determined to create a new school district throughout the contiguous area of the incorporated limits of each entity, which new school district boundaries will not result in any geographically isolated areas.

1.3. WHEREAS, a feasibility study was conducted by MGT Education to meet the requirements under Utah Code Ann. § 53G-3-302(2)(b)(i)(A).

1.4. WHEREAS, the entities combined, exceed the minimum required population threshold of at least 50,000, as required by Utah Code Ann. § 53G-3-302(2)(b)(i)(B).

1.5. WHEREAS, the Parties desire to cooperate in obtaining voter approval for the creation of a new school district (hereinafter “District”) pursuant to Utah Code Ann. § 53G-3-302.

1.6. WHEREAS, pursuant to Utah Code, the Parties intend to end their relationship with Alpine School District (“Alpine”) and create the District.

Section 2. Terms of Agreement.

2.1. Pursuant to Utah Code Ann. § 53G-3-302, the Parties are entering into this Agreement to submit a proposal for voter approval to create the District. The Parties shall work together in a close and cooperative relationship to implement the establishment of the District.

The Parties agree to proportionately share the respective costs and fees associated with this Agreement.

2.2. In September 2023, Alpine began a feasibility study with MGT Education related to the reconfiguration of Alpine. This feasibility satisfies the requirements under Utah Code Ann. § 53G-3-302(2)(b)(i)(A) in order to allow the Parties to submit the proposal to Utah County.

2.3. The District shall run for the contiguous area of the Parties and shall incorporate all the incorporated limits of the Parties into the District leaving the remaining boundaries of Alpine contiguous, which will leave no isolated portion. The District shall be entirely contained within the geographical areas of the Parties and shall not cross county lines.

2.4. Pursuant to Utah Code Ann. § 11-13-207, the Parties shall create a joint board with representation from each entity having equal voting power.

2.5. The Parties intend to cooperate and work together in meeting all requirements as required by Utah Code Ann. § 53G-3-101, et seq. in the creation of the District including but not limited to submitting the matter for voter approval, establishment of a transition team should the creation of the District be approved. The Parties shall also work together collectively to seek reimburse the Parties' costs incurred in the creation of the District pursuant to Utah Code § 53G-3-302(4)(e)(iii).

Section 3. Term and Termination.

3.1. This Agreement shall commence on the Effective Date and continue indefinitely, until terminated in accordance with this Agreement, applicable law, or until the Parties agree that the purpose of this Agreement is complete.

3.2. This Agreement may be terminated by the Parties in the event that any party materially breaches its obligations under this Agreement. Provided that a breaching party shall be entitled to thirty (30) days' notice to cure the breach, if the breaching party fails to cure the breach within this period, the non-breaching parties may terminate this Agreement.

Section 4. Taxes.

Each party shall be solely responsible for any tax liability which it may incur as a result of this Agreement.

Section 5. Liability and Indemnification.

5.1. Each party shall be solely responsible for responding to and defending any claims which may be asserted against it which occur prior to the formation of the District. Consequently, to the fullest extent permitted by law, each party shall indemnify, defend, and hold harmless the other party against all claims, damages, lawsuits, losses, liabilities, liens, cost, citations, penalties, fines and expenses, including (but not limited to) attorneys' fees, arising out of or resulting upon the indemnifying party's responsibilities under this Agreement. However, the provisions of this Section 5.1. shall not be applicable if any claim of liability is the result of some negligent, grossly negligent, intentional, or unethical act or inaction attributable to the other party. After the formation of the District and expiration of any appeal, referendum, or

challenge periods, this Section shall terminate and the District shall be responsible for its own liability including any and all claims and actions against it.

5.2. Nothing in this Agreement, nor the performance hereof, shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which either party or its employees, officers and directors may assert under State or federal law, including but not limited to The Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101, *et seq.* All claims against the either party or its employees, officers and directors are subject to the provisions of the aforementioned Act, which controls all procedures and limitations in connection with any claim of liability.

Section 6. Representations and Warranties.

Each party represents that its signatory has the authority to bind the party to this Agreement.

Section 7. Confidentiality.

The Parties acknowledge and agree that this Agreement may be subject to public disclosure pursuant to the Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*, as the same may be amended from time to time.

Section 8. Recitals and Exhibits.

8.1. The introduction, as well as the recitals set forth in Section 1.0., are hereby incorporated into this Agreement by this reference.

8.2. Likewise, any exhibit referenced in this Agreement, or attached hereto, is incorporated into this Agreement by this reference.

Section 9. Notice.

9.1. If any notice is required to be provided pursuant to the terms and conditions of this Agreement, said notice must be provided as follows:

To the City of Eagle Mountain:

Attn: _____

To the City of Saratoga Springs:

Attn: _____

To the Town of Fairfield:

Attn: _____

To the Town of Cedar Fort:

Attn: _____

To the City of Lehi:

Attn: _____

9.1.1. The designation of a contact individual or address may be changed by providing written notice to the Parties in the same manner contemplated by this Section 9. Such a change in designation shall not be subject to Section 13.

9.2. If notice is sent via regular mail, commercial courier, and the like, receipt thereof shall be presumed on the third calendar day thereafter.

Section 10. Attorney's Fees and Costs.

10. Each party shall bear its own attorney's fees and costs incurred in connection with the execution and performance of this Agreement. However, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, legal costs, and other collection fees and costs incurred by said prevailing party in connection with the suit, both before and after judgment, in addition to any other relief to which such party may be entitled.

Section 11. Further Assurances.

The Parties mutually agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

Section 12. Time.

Time is of the essence with this Agreement, as well as every term, covenant, and condition contained herein, including (but not limited to) the provisions contemplated in Section 2.

Section 13. Amendments.

13.1. This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by each party hereto.

13.2. Other entities may become parties to this Agreement, by executing an Addendum to this Agreement. In order for an entity to be added to this Agreement by Addendum, the Addendum must be approved by resolution of the governing body of the entity to be added and the Addendum must be reviewed for proper form and compliance with applicable law by the attorney for the entity to be added. Prior to becoming effective, this Agreement and any Addendum shall be filed with the official keeper of records of the entity being added to this Agreement.

Section 14. Waivers.

No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

Section 15. Drafting and Voluntary Execution.

15.1. The drafting and negotiation of this Agreement have been accomplished collectively by each party, and for all purposes this Agreement shall be deemed to have been drafted jointly by each such party. The Parties acknowledge that they have been represented by counsel of their choice in all matters connected with the negotiation and preparation of this Agreement, or that they have had the opportunity to be represented by counsel, and that they have reviewed this Agreement with their counsel, or that they have had the opportunity to review this Agreement with their counsel, and that they fully understand the terms of this Agreement and the consequences thereof.

15.2. The Parties hereto have been afforded the opportunity to negotiate as to any and all terms of this Agreement, and each party is executing this Agreement voluntarily and free of any undue influence, duress, or coercion. The Parties hereto further acknowledge that they have relied on their own judgment, belief, knowledge, and advice from their affiliates and agents, as well as any other representative or consultant, as to the extent and effect of the terms and conditions contained herein without any reliance upon any statement or representation of any other party or any officer, director, employee, agent, servant, adjustor, or attorney on acting on behalf of any other party.

15.3. The headings in this Agreement are for convenience only and shall not be interpreted to limit or affect in any way the meaning of the language contained herein.

Section 16. Severability.

If any provision of this Agreement is determined by a court of proper jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall, nevertheless, be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

Section 17. Third-Party Beneficiaries.

This Agreement is not intended to create any rights or benefits (whether intended or incidental) for any third party. Only the named Parties hereto may enforce the terms and conditions of this Agreement.

Section 18. Entire Agreement.

All agreements, covenants, representations and warranties – express or implied, oral or written – of the Parties concerning the subject matter hereof are contained solely in this Agreement. No other agreements, covenants, representations, or warranties – express or implied, oral or written – have been made by any party to any other party concerning the subject matter

hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter of this Agreement are merged herein. This is an integrated agreement. This Agreement may be executed in identical duplicate originals, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

WHEREFORE, Eagle Mountain, Fairfield, Cedar Fort, Saratoga Springs, and Lehi voluntarily enter into this Agreement, as evidenced by affixing their respective signatures below.

Eagle Mountain City:

Saratoga Springs:

Eagle Mountain City

By:

Its:

Dated: _____

Attest:

_____, City Recorder

Dated: _____

Reviewed and approved as to
proper form and compliance
with applicable law:

_____, City Attorney

The City of Saratoga Springs

By:

Its:

Dated: _____

Attest:

_____, City Recorder

Dated: _____

Reviewed and approved as to
proper form and compliance
with applicable law:

_____, City Attorney

Fairfield Town:

Town of Cedar Fort:

Fairfield Town

By:

Its:

Dated: _____

Attest:

_____, City Recorder

Dated: _____

Reviewed and approved as to
proper form and compliance
with applicable law:

_____, City Attorney

The Town of Cedar Fort

By:

Its:

Dated: _____

Attest:

_____, City Recorder

Dated: _____

Reviewed and approved as to
proper form and compliance
with applicable law:

_____, City Attorney

Lehi City:

Lehi City

By:

Its:

Dated: _____

Attest:

_____, City Recorder

Dated: _____

Reviewed and approved as to
proper form and compliance
with applicable law:

_____, City Attorney