

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
STRAWBERRY VALLEY PROJECT
STRAWBERRY HIGH LINE CANAL

LICENSE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
AND
PAYSON CITY

THIS LICENSE AGREEMENT, made this ____day of _____, 2023, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Laws, and particularly pursuant to Section 14 of the Act of August 4, 1939, (53 Stat. 1187) between the UNITED STATES OF AMERICA, hereinafter referred to as the United States and PAYSON CITY, hereinafter referred to as the Licensee.

WITNESSETH THAT:

WHEREAS, Licensee, at its sole cost and expense, proposes to utilize a portion of Project Lands in a manner and at the location hereinafter described, which will not be incompatible with Project purposes;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the United States, to the extent of its interest in the Project Lands, hereby grants to the Licensee, upon the terms hereinafter provided, a license for the following purposes and in the location described below:

- A. Purpose: In connection with the Patterson Homes project to construct Phase 3 of the Payson View Estates residential subdivision, Licensee will construct and operate a public access roadway extending 1900 South Street easterly across the Strawberry High Line Canal. The roadway will provide access to the new phase of the subdivision which will involve the construction of 300 residential dwelling units which will match the adjoining properties in lot sizes and lifestyles. The Phase 3 project will also involve the construction of a box culvert that the Strawberry High Line Canal will be routed through to allow for the roadway crossing. Conduits for municipal utilities such as water and sewer, and commercial utilities such as natural gas and fiber optic lines will be installed below the box culvert.
- B. Period: 25 years from date hereof.
- C. Location: Location: (Legal Description): the subject property is generally described as a parcel of land 150 feet long, and 60 feet in width, which will form part of the extension of 1900 South Street, traversing from west to east and crossing the

Strawberry High Line Canal right of way, as shown on the attached exhibits, being constructed along the section line lying between Sections 20 and 29 of Township 9 South Range 2 East, Salt Lake Based and Meridian, Payson City, Utah County, Utah.

D. Plans, Drawing, or Maps (Attached Hereto and made a part hereof:

1. EXHIBIT B: Google Earth image of subject property
2. EXHIBIT C: Engineering drawings of license area on fee title land owned by the United States.

E. Consideration: \$3,150

F. Land Status: Fee Title

1. WORK SATISFACTORY. The Licensee shall perform all work under this License Agreement in accordance with the plans, drawings, or maps attached hereto and, in a manner, satisfactory to the United States.

2. TERM OF AGREEMENT – REVOCATION/TERMINATION:

a. This Agreement may be revoked by the United States upon thirty (30) days written notice to the Permittee:

1. At the expiration of the term as provided by Article B. above; or,
2. For nonuse of the Project Lands by Permittee for a period of two (2) continuous years; or,
3. The United States determines that the Permittee's use of the land is no longer compatible with project purpose; or,
4. After failure of the Permittee to observe any of the conditions of this Agreement and on the tenth day following service of written notification on the Permittee of the termination because of failure to observe such conditions; or,
5. At the sole discretion of the United States.

The United States, its agents or assigns, will determine if the Permittee's facilities will be removed upon termination. If the United States, its agents or assigns, determines that the facility shall be removed, removal will be made within sixty (60) days after termination, and the site will be restored as nearly as practicable to its original condition. Removal of the facilities and restoration of the site will be at the sole expense of the Permittee.

4. ASSIGNMENT OR TRANSFER: This License Agreement shall not be assigned or transferred by the Licensee without the prior written consent of the United States.

5. SEVERABILITY: Each provision of this use authorization shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this use authorization shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such

provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the use authorization as a whole.

6. HOLD HARMLESS:

(a) In consideration of the United States agreeing to encroachment upon the Project Lands by the Licensee, the Licensee hereby agrees to indemnify and hold the United States, their agents, employees, and assigns, harmless from any and all claims whatsoever for personal injuries or damages to property when such injuries or damages directly or indirectly arise out of the existence, construction, maintenance, repair, condition, use or presence of the encroachment upon fee title land of the United States, regardless of the cause of said injuries or damages; provided, however, that nothing in this agreement shall be construed as releasing the United States from responsibility for their own negligence.

(b) In consideration of the United States agreeing to the Licensee encroaching upon fee title land of the United States, the Licensee agrees that the United States shall not be responsible for any damage caused to facilities, equipment, structures, or other property if damaged by reason of encroachment upon fee title land of the United States by the Licensee. The Licensee hereby releases the United States, their officer, employees, agents, or assigns, from liability for any and all loss or damage of every description or kind whatsoever which may result to the Licensee from the construction, operation, and maintenance of Project works upon said lands; provided that nothing in this Agreement shall be construed as releasing the United States from liability for their own negligence.

(c) If the maintenance or repair of any or all structures and facilities of the United States located on the Project Lands should be made more expensive by reason of the existence of the encroachment improvements or works of the Licensee or its Contractor will promptly pay to the United States, their agents or assigns, responsible for operation and maintenance of said structures or facilities, the full amount of such additional expense upon receipt of an itemized bill.

7. RELEASE FROM LIABILITY: The Licensee hereby releases the United States officers, employees, agents, or assigns, from liability of any and all loss or damage of every description or kind whatsoever, which may result to the Licensee from the construction, operation, and maintenance of Project Works upon said lands, provided that nothing in this License Agreement shall be construed as releasing the United States, from liability for their own negligence. Nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 989 (28 U.S.C. § 1346(b), 2671 et seq.) or other applicable law.

8. LICENSEE TO DEFEND TITLE: The Licensee shall defend the United States from and against any action which challenges the Licensee's use of Lands or facilities under this License Agreement, provided the United States promptly tenders such defense prior to the time an answer is due in the proceedings.

9. INTERFERENCE PROHIBITED: The Licensee shall use, occupy, and maintain said facilities with due care to avoid damage to or obstruction of the other structures of the United States, or any interference in any way with the operation and maintenance of the same.

10. RECLAMATION LAND USE STIPULATION: There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within ten (10) years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

11. PROTECTION OF UNITED STATES INTERESTS: The Licensee shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any Federal, state, or local governmental body having jurisdiction over the encroachment.

12. UNRESTRICTED ACCESS: The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever.

13. HAZARDOUS MATERIALS:

(a) The Licensee may not allow contamination or pollution of Federal lands, waters or facilities and for which the Licensee has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

(b) The Licensee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.

(c) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., and the regulations promulgated pursuant to that Act.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the Licensee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full

details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(e) Violation of any of the provisions of this Article, as determined by the Contracting Officer, may constitute grounds for termination of this contract. Such violations require immediate corrective action by the Licensee and shall make the Licensee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(f) The Licensee agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any assignment, sublease, or other subcontract or third-party contract it may enter into pursuant to this Lease.

(g) Reclamation agrees to provide information necessary for the Licensee using reasonable diligence, to comply with the provisions of this Article.

14. PEST CONTROL:

(a) The Licensee shall not permit use of any pesticides on Federal lands without prior written approval by Reclamation. The Licensee shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application.

(b) All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.) and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with State requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.

(c) Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.

(d) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.

(e) The Licensee shall initiate any necessary measures for containment and cleanup of pesticide spills. Spills shall be reported to the Contracting Officer with full details of the actions taken. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the spill if it is an emergency, or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(f) Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.

(g) The Licensee agrees to include the provisions contained in paragraph (a)

through (f) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.

15. ILLEGAL USE: Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

16. NO WARRANTY: The United States makes no warranty, expressed or implied, as to the extent or validity of the grant contained herein.

17. COVENANT AGAINST CONTINGENT FEES: The Licensee warrants that no person or selling agency has been employed or retained to solicit or secure this License Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this License Agreement without liability or in its discretion to require the Licensee to pay, in addition to the License Agreement consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

18. DISCOVERY OF CULTURAL RESOURCES: The Licensee shall immediately provide an oral notification to Reclamation's authorized official of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on Reclamation lands. The Licensee shall follow up with a written report of their finding(s) to Reclamation's authorized official within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this authorization. The Licensee shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from the authorized official before resuming the activity. Protective and mitigation measures specified by Reclamation's authorized official shall be the responsibility of the Licensee.

19. ENVIRONMENTAL COMPLIANCE: The Licensee agrees to abide by all applicable Federal, State, and local laws and regulations pertaining to pollution control and environmental protection.

20. LANDSCAPE PRESERVATION AND NATURAL BEAUTY:

(a) The Licensee shall exercise care to preserve the natural landscape and shall conduct its construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage which may be caused by the Licensee's construction operations and equipment. Movement of crews and equipment within the rights-of-way and over routes provided for access to the work shall be performed in a manner to prevent damage to grazing land, crops, or property.

(b) Upon completion of the work, the construction site shall be smoothed and graded in a manner to conform to the natural topography of the landscape and shall be repaired, replanted, reseeded, or otherwise corrected as directed by the Contracting Officer at the Licensee's expense.

21. OFFICIALS NOT TO BENEFIT: No member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the

United States, or to any benefit to arise thereupon.

22. SUCCESSORS IN INTEREST OBLIGATED: The provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto; provided, however, that no such heir, executor, administrator, personal representative, successor or assign of the Licensee shall have the right to use, alter, or modify the encroachment in a manner which will increase the burden of the encroachment of the Project Lands.

23. SPECIAL PROVISIONS: The Special Provisions, attached hereto, are hereby made a part of this License Agreement the same as if they had been expressly set forth herein. See Exhibit "A"

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed the day and year first above written.

UNITED STATES OF AMERICA

By: _____
Rick Baxter
Manager, Provo Area Office

PAYSON CITY

By: _____
William R. Wright, Payson City Mayor

CONCUR:

STRAWBERRY HIGH LINE CANAL COMPANY

By: _____
Title:

EXHIBIT "A"

PROTECTION CRITERIA

A. For and in consideration of the License Agreement herein granted, Licensee agrees to pay the United States the following amount: to be determined, per paragraph E, above.

B. Prior to the expiration of the term of this License Agreement, and upon application in writing by Licensee and approval by the United States, this License Agreement may be renewed for such period as the parties hereto may agree upon. If so renewed, the consideration to be paid for renewal will be determined by reappraisal by the United States. Furthermore, the renewed License Agreement, will be subject to the regulations existing at the time of renewal and such other terms and conditions as may be deemed necessary by the United States to protect the public interest or its projects

C. The Licensee shall notify the United States at (801) 379-1000 at (435) 738-2241, five (5) days in advance of its intent to commence any construction operations associated with rights herein granted.

D. Existing gravity drainage of the United States rights-of-way must be maintained. No new concentration of surface or subsurface drainage may be directed onto or under the United States rights-of-way without adequate provision for removal of drainage water or adequate protection of the United States rights-of-way.

E. During construction, operation, and maintenance, the Licensee shall be particularly alert to take all reasonable and necessary precautions to protect and preserve historic or prehistoric ruins and artifacts on or adjacent to the lands herein described. Should sites, ruins, or artifacts be discovered during these operations, the Licensee will immediately suspend work involving the area in question, and advise the United States of suspected values. The Licensee shall promptly have the area inspected to determine significance of values and to consult with the United States on appropriate actions to follow (recovery, etc., and resumption of work). Cost of any recovery work shall be borne by the Licensee. The Licensee shall provide the United States with a copy of any cultural resources survey reports concerning sites located on the lands described herein and shall develop a mitigation plan acceptable to the Utah State Historic Preservation officer (SHPO) for those significant sites subject to an adverse impact. All objects of antiquity recovered from public lands are the property of the United States and shall be turned over to the Bureau of Reclamation. The Licensee is responsible for obtaining required Utah SHPO clearance for any additional survey and report completed.

Any person who knows or has reason to know that he or she has inadvertently discovered possible human remains on Federal or Tribal land, must provide immediate telephone notification of the inadvertent discovery to the Bureau of Reclamation Provo Area Office archaeologist. Work will stop until the proper authorities are able to assess the situation on site. This action must promptly be followed by written confirmation to the responsible Federal Agency official with respect to Federal lands. On Tribal lands, it is to be reported to the responsible Indian Tribal official. This requirement is prescribed under the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3042) of November 1990.

F. Prior to construction of any structure that encroaches within United States rights-of-way, an excavation must be made to determine the location of existing United States facilities. The excavation must be made by or in the presence of the United States.

G. Any contractor or individual constructing improvements in, on, or along United States rights-of-way must limit his construction to the encroachment structure previously approved and construct the improvements strictly in accordance with plans or specifications.

H. All United States land areas where soils and surface materials are disturbed through actions incident to construction, operation and maintenance shall be restored to their natural state insofar as practical by water barring, scarifying, leveling and reseeding, or other practices as prescribed by the United States and to its satisfaction.

I. The Licensee shall restore any damaged or disturbed improvements such as fences, roads, watering facilities, etc., encountered during construction, maintenance, and operation. Functional use of these improvements must be maintained at all times.

J. Within sixty (60) days after conclusion of construction operations, all construction materials and related litter and debris, including vegetative cover accumulated through land clearing, shall be disposed of in an appropriate manner (State of Utah approved sanitary landfill).

K. The owner of newly constructed facilities that encroach on United States rights-of-way shall notify the United States and/ upon completion of construction and shall provide the United States with two copies of as-built drawings showing actual improvements in, on, or along the rights-of-way. Also, provide one copy of drawings on a CD in AutoCAD version 14 format or other format approved by United States, Bureau of Reclamation, within 30 days of completion.

L. Except in case of ordinary maintenance and emergency repairs, an owner of encroaching facilities shall give at least 10 days' notice in writing before entering upon United States rights-of-way for the purpose of reconstructing, repairing, or removing the encroaching structure or performing any work on or in connection with the operation of the encroaching structure.

M. If unusual conditions are proposed for the encroaching structure or unusual field conditions within United States rights-of-way are encountered, the United States reserves the right to impose more stringent criteria than those prescribed herein.

N. All backfill material within United States rights-of-way shall be compacted to 95 percent of maximum density unless otherwise shown. Mechanical compaction shall not be allowed within 6 inches of the projects works whenever possible. In no case will mechanical compaction using heavy equipment be allowed over the project works or within 18 inches horizontally of the projects works.

O. That the backfilling of any excavation or around any structure within the United States rights-of-way shall be compacted in layers not exceeding 6 inches thick to the following requirements:
(1) cohesive soils to 90 percent maximum density specified by ASTM Part 19, D-698, method A;
(2) noncohesive soils to 70 percent relative density specified by ANSI/ASTM Part 19, d-2049, par. 7.1.2, wet method.

P. Any nonmetallic encroaching structure below ground level shall be accompanied with warning tape. This tape shall be located 12 inches above the structure and extend from the right-of-way

to right-of-way. If the encroaching structure is nonmetallic, the warning tape must include a metallic strip.

Q. No use of United States lands or rights-of-way shall be permitted that involve the storage of hazardous material.

R. Utility pipe crossing of Reclamation pipelines must be approved on an individual basis. Metal pipes which do not have a dielectric coating will require a polyethylene plastic wrap for corrosion protection of Reclamation's pipeline by induced current from utility crossings.

S. For all utility crossings, a permanent placard shall be placed at each point that the utility enters or exits the right-of-way of the United States. This placard shall identify the type of utility located below it, the name of the utility company and a telephone number where the utility company can be reached.

T. Overhead wires across Reclamation pipeline and canal ROWs should be at least 32 feet above all ground levels in the Reclamation ROW. For electrical powerlines of 69 kilovolts (kV) or higher voltage, the minimum clearance should be 40 feet plus 0.25 inch per kV of line-to-line voltage above 450 kV. In any case, the minimum clearance is to be that determined to be needed with an ambient temperature of 120 degrees Fahrenheit.

U. While within the Project lands the Permittee or their contractor shall follow the Bureau of Reclamation's "Engineering and O&M Guidelines for Crossings", a copy of which will be provided upon request or maybe acquired from Reclamation's Website at:

https://www.usbr.gov/gp/mtao/canal_crossing_guidance.pdf

EXHIBIT B

Lat 40° 0'43.79"N Long 111°44'0.19"W

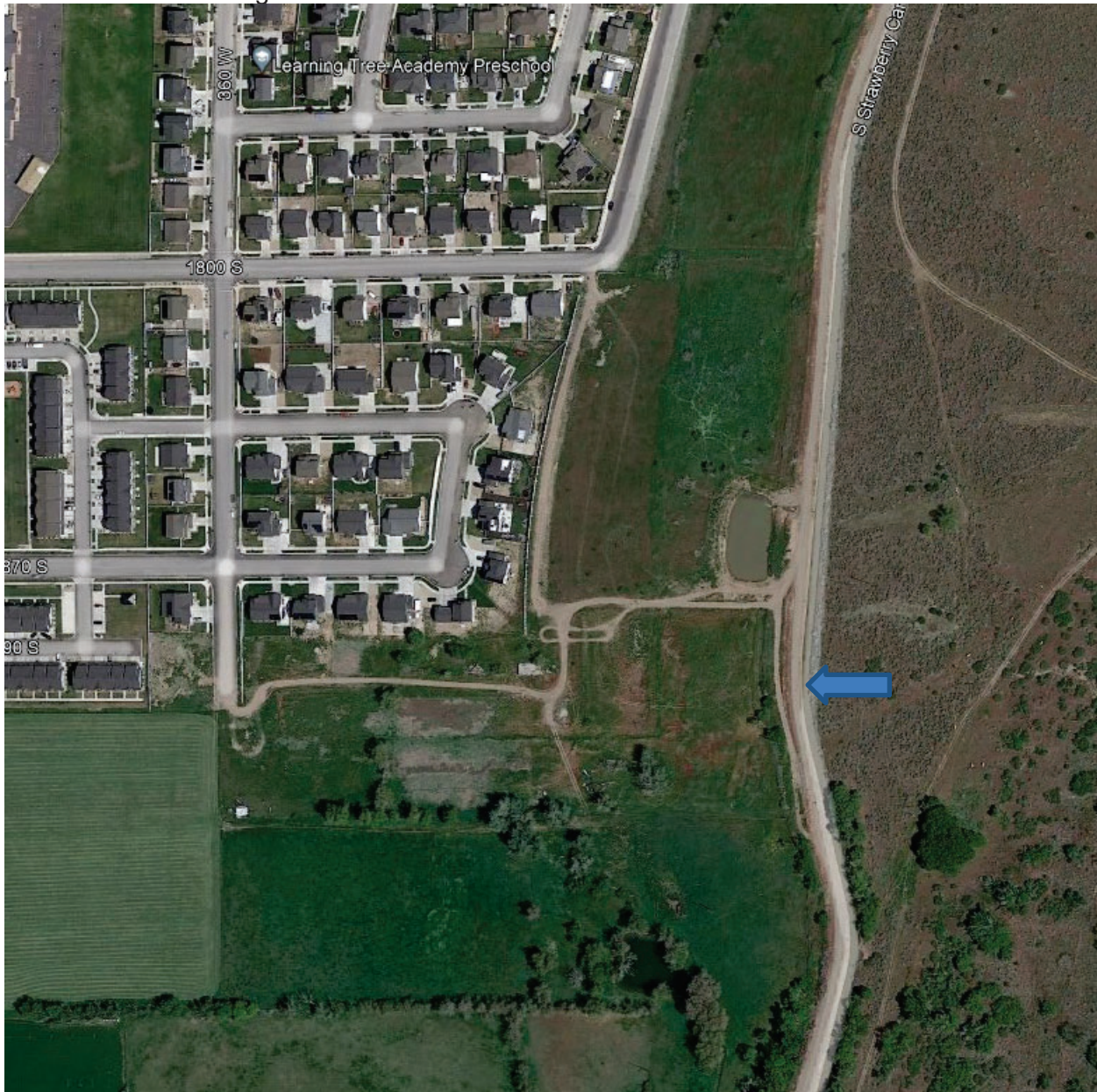


EXHIBIT C1

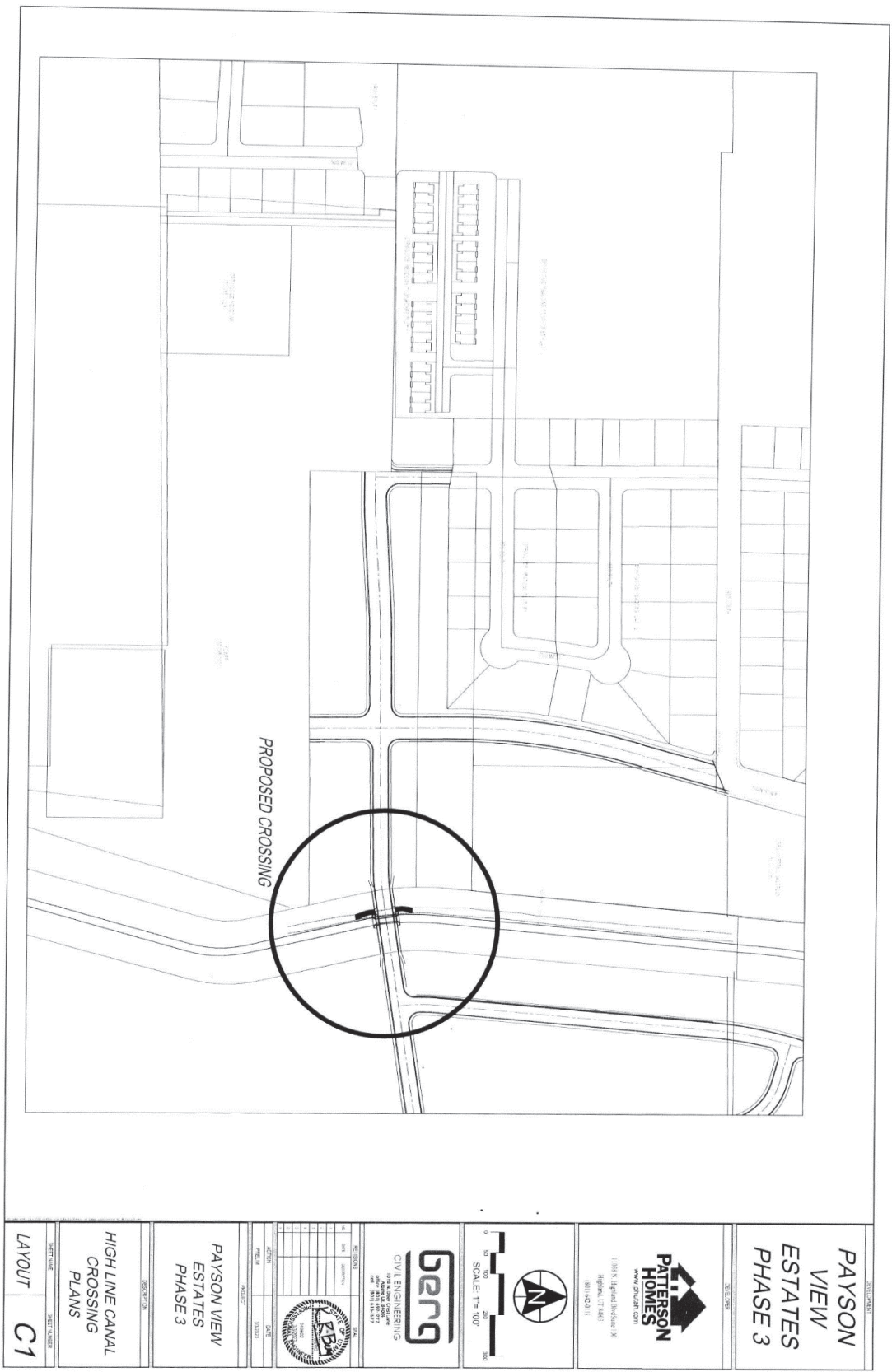


EXHIBIT C2

