

**ORDINANCE 14-01**

**AN ORDINANCE AMENDING THE NIBLEY CITY SUBDIVISION ORDINANCE**

WHEREAS, Nibley City has a subdivision ordinance which lays out certain standards and specifications for development in Nibley City; and

WHEREAS, portions of the subdivision ordinance are no longer consistent with state law and development practices; and

WHEREAS, Nibley City desires to bring its subdivision ordinance into compliance with current law and practices.

NOW THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL LOCATED AT NIBLEY, UTAH, THAT:

1. The attached document, entitled "Nibley City Subdivision Ordinance" is hereby adopted, by fact and by reference.
2. All ordinances, resolutions and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution or ordinance or part thereof.
3. Specifically repealed is Title 11 of the Nibley City Code entitled "Subdivision Regulations".
4. Should any provision, clause or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply, The valid part of any provision, clause or paragraph of this ordinance shall be given independence from the invalid provisions or applications and to this end the parts, sections and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
5. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
J. Shaun Dustin, Mayor

ATTEST: \_\_\_\_\_  
City Recorder

11-1: General Provisions and Administration

11-1-1: PURPOSES:

The purposes of this title are:

A. To promote the health, safety and general welfare of the residents of the city.

B. To promote the efficient and orderly growth of the city.

~~B.C. The Nibley City Council adopts this title pursuant to the Utah Municipal Land Use Development Management Act, Title 10, Chapter 9-a, Utah Code Annotated, 1953, as amended, for the purposes set forth therein. Maps referenced herein are a part hereof. The intent of this title is to provide a means of ensuring predictability and consistency in the use of land and individual properties and to implement the goals and policies of the Nibley City General Plan.~~

**Comment [S1]:** This was added in in order to show where the City gets authority to adopt a subdivision ordinance.

~~C.D. To provide standards for the physical development of subdivisions of land, construction of buildings and improvements within the city, including, but not limited to, the construction and installation of roads, streets, curbs, gutters, drainage systems, water, stormwater and sewer systems, design standards for public facilities and utilities, accesses to public rights of way, dedication of land and streets, granting easements or rights of way and to establish fees and other charges for the authorizing of a subdivision.~~

**Comment [S2]:** We not have federal and state stormwater requirements so need to include that in here.

11-1-27: VIOLATION:

A.

~~No person shall subdivide any tract or parcel of land located wholly or in part in the city, except in compliance with the provisions of this title. No person shall purchase, sell or exchange any parcel of land which is any part of a subdivision or a proposed subdivision submitted to the planning commission, nor offer for recording in the office of the county recorder any deed conveying such parcel of land or any fee interest therein, unless such subdivision has been created pursuant to and in accordance with the provisions of this title.~~

**Comment [S3]:** Sections A-C were moved from later on in the ordinance.

B. ~~Whoever shall violate any of the provisions of this title shall be guilty of a class C misdemeanor and, upon conviction of any such violation, shall be subject to penalty as provided in section 1-4-1 of this code.~~

C. ~~Any person or corporation that allows to continue any violation of any provision of this title shall be guilty of a misdemeanor for each and every day the violation continues, and each day shall be a separate violation.~~

D. ~~Any plat of a subdivision, or any survey description, filed or recorded without the approvals required by this title is deemed to be void, for the purposes of development or the issuance of a building permit.~~

**Comment [S4]:** Sections D-F were added in from the Cache County subdivision ordinance.

E. ~~Any owner or agent of the owner of any land located in a subdivision, as defined herein, who transfers or sells any land located within the subdivision before the subdivision has been approved and recorded in the office of the Cache County Recorder, consistent with the requirements of this~~

title, and applicable state and federal requirements, is guilty of a violation of this title, and of §10-9a, Utah Code Annotated, for each lot or parcel transferred or sold.

A-F. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring lots, plots, parcels, sites, units, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions does not exempt the transaction from the requirements of this title and such action from the penalties or remedies provided by this title, Nibley City land use ordinances, or the laws of the State of Utah.

#### 11-1-32: PERMITS:

From the time of the effective date hereof, the building inspector shall not grant a permit for the use of any land or the construction or alteration of any building or structure on a lot which would be in violation of any provisions of this title until a subdivision plat therefor has been recorded or approved as herein required. Any license or permit issued in conflict with such provisions shall be void. Approved development plans shall be filed with the planning commission and city recorder.

#### 11-1-4: GENERAL REQUIREMENTS

- A. The subdivider shall prepare a plat consistent with the standards contained herein and also as may be described in the Nibley City Design Standards & Specifications and shall pay for the design and inspection of the public improvements required. The City shall process said plats in accordance with the regulations set forth herein.
- B. All improvements shall be constructed in accordance with the International Building Code, the Nibley City Design Standards & Specifications and other applicable federal, state and local regulations.
- C. The City shall review the plats for design, for conformity to the Nibley City General Plan and to the land use ordinance; for the environmental quality of the subdivision design; and shall process the subdivision plats and reports as provided for in this title.
- D. Proposed subdivisions shall be referred by the City to such City departments and special districts, governmental boards, bureaus, utility companies, and other agencies which will provide public and private facilities and services to the subdivision for their information and comment. The City is responsible for coordinating the comments received from all public and private entities and shall decide to which agencies to refer the proposed subdivision.
- E. The City engineer shall make comments as to engineering requirements for plans submitted for construction, including, but not limited to, street widths, grades, alignments and flood control, whether the proposed public improvements are consistent with this title and other applicable ordinances and for the inspection and approval of all construction of public improvements. Street layout and overall circulation shall be coordinated with the Nibley City Transportation Master Plan.
- F. The Planning Commission shall act as an advisory agency to the City Council. It is charged with making investigations, reports and recommendations on proposed subdivisions as to their conformance to the Nibley City General Plan and land use ordinances, and other pertinent

documents. The Planning Commission shall recommend approval, approval with conditions, or denial of the preliminary and final plats to the City Council.

G. The City, in conjunction with the City engineer and City attorney, shall approve the form of the final plat, that the subdivider dedicating land for use of the public is the owner of record, and that the land is free and clear of unacceptable encumbrances according to the title report.

A.H. The Nibley City Council has final jurisdiction in the approval of subdivision plats; the establishment of requirements for and design standards of public improvements; and the acceptance of lands and public improvements that may be proposed for dedication.

#### 11-1-5: SITE PREPARATION AND WORK PROHIBITED

No excavation, grading, regarding or removal of vegetation for a proposed subdivision shall take place and no building permits shall be issued until a proposed subdivision has received approval from the Nibley City Council.

#### 11-1-6: COMPLETE SUBMITTAL REQUIRED

No application for a subdivision shall be reviewed by the City, Planning Commission or City Council, until the applicant has submitted all documents required by this Chapter. The City shall inform applicants of the information needed to provide a complete application. Once a complete application has been received, the application shall be reviewed/approved as outlined in this Chapter.

#### 11-1-7: EFFECT OF APPROVAL

Any approval granted under this title, whether it be for a preliminary plat or for a final plat for all or part of a subdivision shall be effective for a period of one year from the date of approval by the City Council, or their designee. If the applicant has not recorded the plat or, in the case of the preliminary plat, a final plat for a phase of the subdivision, within that one year period, the City shall provide thirty (30) days' notice to the applicant and thereafter, the approval shall be void. Applicants shall then be required to submit a new application for review and approval, subject to local, state and federal laws and ordinances in effect at the time of the new submittal.

#### 11-1-8: PHASING

When developing a large tract of land, subdividers may choose to phase in the subdivision rather than develop the entire property at once. Subdividers opting to phase the subdivision shall have one year from the date of preliminary approval to present the first phase for final approval.

The phasing shall be done in a manner that maximizes connectivity between portions of the subdivision and shall be presented as part of the preliminary plat approval.

Following approval of the final plat for the first phase of the subdivision, subdividers shall have one year between phases for approval of the subsequent final plats. Example: If Phase 1 is given final approval on February 1, 2014, the subdivider would have until February 1, 2015 to present Phase 2 for final approval. Upon a subdivider's failure to receive approval within that one year period, the City shall provide thirty (30) days' notice to the applicant and thereafter, the approval shall be void. Applicants

**Comment [S5]:** This should be done in close consultation with the City engineer. While the Council should retain the authority to decide that certain specs have to be followed, I believe that the specifics of those specs should be left to the City engineer.

**Comment [S6]:** This was added in order to keep people from beginning work until their plans have been approved. Another suggestion for this section is to have it state this work is prohibited until the engineer has reviewed and approved any construction drawings.

**Comment [S7]:** Time limits were added in so that we don't have people who get approval, wait 5+ years to record and then record under old ordinances when the standards for development have changed.

shall then be required to submit a new application for review and approval, subject to local, state and federal laws and ordinances in effect at the time of the new submittal.

11-1-96: APPEAL:

In the event the layout or plat of a subdivision has been disapproved by the planning commission, the applicant for approval may petition the city council for a hearing upon said rejection. After a public hearing, the city council, upon a majority vote of its entire membership, may approve the subdivision or take other action consistent with the provisions of this title.

11-1-103: FEES:

A. Preliminary Plat Filing Fee: The subdivider shall pay a nonrefundable filing fee in such amount as established by resolution of the city council for each lot within the subdivision on or before the date the preliminary plat is submitted to the Planning Commission for approval.

B. Plan Check Fees: The subdivider shall pay a nonrefundable plan check fee in such amount as established by resolution of the city council for each lot within the subdivision. The fee shall be paid assessed as part before approval of the final plat application for the phase of the subdivision.

~~B.C. Final Plat Filing Fee: The subdivider shall pay a nonrefundable filing fee in such amount as established by resolution of the City Council for each lot within the subdivision on or before the date the final plat is submitted to the Planning Commission for approval.~~

11-1-114: ENFORCEMENT:

The planning commission, the city engineer and such other departments and agencies of the city as are specified under the provisions of this title are hereby designated and authorized as the agencies charged with the enforcement of this title and shall enter such actions in court as are necessary. Failure of such departments to pursue appropriate legal remedies shall not legalize any violation of such provisions.

11-1-125: INSPECTION:

Appropriate agencies and departments of the city shall inspect or cause to be inspected all public improvements in the course of construction, installation or repair. Excavations for fire hydrants and water and sewer mains and laterals shall not be covered or backfilled until such installation shall have been approved by the city engineer. If any such installation is covered before being inspected and approved, it shall be uncovered after notice to uncover has been issued to the responsible person by the inspector.

11-1-6: APPEAL:

~~In the event the layout or plat of a subdivision has been disapproved by the planning commission, the applicant for approval may petition the city council for a hearing upon said rejection. After a public hearing, the city council, upon a majority vote of its entire membership, may approve the subdivision or take other action consistent with the provisions of this title.~~

**Comment [S8]:** It would be best if it were paid as part of the application.

**Comment [S9]:** An alternate suggestion to itemizing the fees would be to lump them in to one simple thing such as "Subdividers shall pay any and all fees which may be established by resolution of the CC, including, but not limited to: preliminary filing fees, final filing fees, plan check fees, etc..."

**11-1-7: VIOLATION:**

~~No person shall subdivide any tract or parcel of land located wholly or in part in the city, except in compliance with the provisions of this title. No person shall purchase, sell or exchange any parcel of land which is any part of a subdivision or a proposed subdivision submitted to the planning commission, nor offer for recording in the office of the county recorder any deed conveying such parcel of land or any fee interest therein, unless such subdivision has been created pursuant to and in accordance with the provisions of this title.~~

**11-1-8: PENALTY:**

- A. ~~Whoever shall violate any of the provisions of this title shall be guilty of a class C misdemeanor and, upon conviction of any such violation, shall be subject to penalty as provided in section 1-4-1 of this code.~~
- B. ~~Any person or corporation that allows to continue any violation of any provision of this title shall be guilty of a misdemeanor for each and every day the violation continues, and each day shall be a separate violation.~~

**11-2: DEFINITIONS**

**11-2-1: DEFINITIONS:**

As used herein the following words shall mean:

**ALLEY:** A public thoroughfare less than twenty six feet (26') wide and not intended for general traffic circulation.

**BLOCK:** The land surrounded by streets and other rights of way other than an alley, or land which is designated or shown as a block on any recorded subdivision plat or official map or plat adopted by the city council.

**CITY COUNCIL:** The governing body of the city of Nibley.

**CITY ENGINEER:** The person appointed by the city of Nibley to be the city engineer.

**COLLECTOR STREET:** See definition of Street, Collector.

**CONSTRUCTION STANDARDS:** The standards and specifications adopted by this title.

**CUL-DE-SAC:** See definition of Street, Cul-De-Sac.

**EASEMENT:** The quantity of land set aside or over which a liberty, privilege or advantage in land without profit, existing distinct from the ownership of the land, is granted to the public or some particular person or part of the public.

**FINAL PLAT:** A map or chart of a subdivision which has been accurately surveyed, and such survey marked on the ground so that streets, alleys, blocks, lots and other divisions thereof can be identified.

**Comment [S10]:** This entire section was taken out when the land use chart was updated so that all land use definitions can be found in the same place.

**HALF-STREETS:** The portion of a street within a subdivision comprising one-half ( $\frac{1}{2}$ ) the minimum required right of way on which improvements are constructed and in accord with one-half ( $\frac{1}{2}$ ) of an approved typical street cross-section<sup>3</sup>.

**IMPROVED LOT:** A lot which has all of the improvements required by this title.

**IMPROVEMENTS:** Includes roads, streets, curbs, gutters, gradings, landscaping, water and sewer systems, drainage systems and public facilities required by this title.

**LOT:** A parcel or tract of land within a subdivision which is or may be occupied by a building or structure and the accessory buildings, structures or uses customarily incident thereto, including such open spaces as are arranged and designed to be used in connection with the building according to the zone within which the lot is located.

**MASTER STREET PLAN:** The major street plan of the city of Nibley.

**OFFICIAL MAP:** The official map or maps adopted by the city of Nibley pursuant to the zoning and planning enabling legislation.

**OWNER:** Includes the plural as well as the singular, and may mean either a natural person, firm, association, partnership, private corporation, public or quasi-public corporation or any combination thereof.

**PARCEL OF LAND:** A contiguous area of land in the possession or ownership of one person.

**PERSON:** An individual, individuals, tenants in common, joint tenants, a corporation, partnership, firm, limited partnership or association of individuals however styled or designated.

**PLANNING COMMISSION:** The planning commission of the city of Nibley.

**PRELIMINARY PLAT:** A map or plan of a proposed land division or subdivision.

**PROTECTION STRIP:** A strip of land of less than the minimum depth required by the zoning title for a building lot bordering the boundary of a subdivision and a street within the subdivision for the purpose of controlling the access of property owners abutting the subdivision along the street.

**STREET:** A thoroughfare which has been dedicated and accepted by the city council, which the city has acquired by prescriptive right or which the city owns, or offered for dedication on an approved final plat, or a thoroughfare of at least twenty six feet (26') in width which has been abandoned or made public by right of use and which affords access to abutting property, including highways, roads, lanes, avenues and boulevards.

**STREET, COLLECTOR:** A street, existing or proposed, which is the main means of access to the major street system.

**STREET, CUL-DE-SAC:** A minor terminal street provided with a turnaround.

**STREET, MAJOR:** A street, existing or proposed, which serves or is intended to serve as a major traffic way and is designated on the master street plan as a controlled access highway, major street, parkway or other equivalent term to identify those streets comprising the basic structure of the street plan.

**STREET, MARGINAL ACCESS:** A minor street which is parallel to and adjacent to a limited access major street and which provides access to abutting properties and protection from through traffic.

**STREET, MINOR:** A street, existing or proposed, which is supplementary to a collector street and of limited continuity which serves or is intended to serve the local needs of a neighborhood.

**STREET, PRIVATE:** A thoroughfare within a subdivision which has been reserved by dedication unto the subdivider or lot owners to be used as private access to serve the lots platted within the subdivision and complying with the adopted street cross-section standards of the city of Nibley and maintained by the subdivider or other private agency.

**SUBDIVISION:** Any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

**UTILITIES:** Includes culinary water lines, pressure and gravity irrigation lines, sanitary and storm sewer lines, electric power, gas and telephone transmission lines, and other public uses as may be defined by the city of Nibley.

**ZONING TITLE:** The zoning title of the city of Nibley.

## 11-2: DEFINITIONS

For purposes specific to this title, all terms shall have the same definition as provided by §10-9a-103, Utah Code Annotated, 1953, as amended and also in Title 10-1 of the Nibley City Code.

## 11-3: APPROVAL PROCESS

### 11-3-1: COMPLIANCE REQUIRED:

Before dividing any tract of land into a "subdivision" as defined in section 11-2-1 of this title, a subdivider shall follow the procedure outlined in this chapter. Any exception to this must be approved by the Nibley City Planner.

### 11-3-2: STANDARDS AND LOT SIZE

All subdivisions must meet the minimum lot and development standards as outlined in each zone of the Nibley City land use ordinance and within this title.

### 11-3-3: CONCEPT PLAN REVIEW:

Prior to submitting a preliminary plat, a subdivider may submit an initial written "concept plan" to the planning commission. The concept plan shall include a sketch plan of the proposed subdivision in which the proposed subdivision is sufficiently described to enable the planning commission to determine

**Comment [S11]:** In absence of a minor subdivision ordinance (less than 4 lots), there should be some room for combining preliminary and final into one approval- this could be left to staff to decide or it could be up to the Planning Commission- either is fine. State Code 10-9a-605 outlines plat exemption requirements. This tries to accomplish something similar.

**Comment [S12]:** This was added in from the County ordinance so that it is clear there are minimum lot sizes and standards.

whether the proposed subdivision complies with zoning title, master plans, street plans and services. The planning commission shall advise the subdivider of possible problems with the proposed subdivision within thirty (30) days after it receives the ~~concept plan, initial application, including sketch plans.~~ Approval of the concept plan shall not constitute approval of the "preliminary plat". This section is not mandatory and a subdivider may submit a preliminary plat plan in lieu of the concept plan.

**11-3-43: SUBMISSION OF PRELIMINARY PLAT:**

The subdivider shall submit five (5) paper copies and one (1) electronic copy, in a format that is readable, of the proposed preliminary plat to the planning commission at least fourteen (14) days prior to the date of the planning commission meeting at which the preliminary subdivision plan is to be reviewed. The planning commission shall circulate copies of the proposed preliminary plat to all affected departments and to any districts which may be providing special services for comment and review.

The preliminary plat shall conform to the development standards outlined in §11-4-1 of this Title.

**11-3-5: PUBLIC HEARING REQUIRED**

Upon receipt of a subdivision application, the Planning Commission shall hold a public hearing on all preliminary plats, to hear public comment and concern regarding the proposed development.

**11-3-65: NOTIFICATION OF ADJACENT PROPERTY OWNERS:**

Unless waived by the planning commission and city council, written notice of the time, date and place where the planning commission will consider giving preliminary approval to the subdivision shall be given to adjacent property owners within three hundred (300') feet of the proposed subdivision in accordance with section 10-1A-7 of this code. The written notice shall also advise the property owner that he or she has the right to be present and to comment on the proposed subdivision. The applicant shall provide the planning commission with the names of all persons to whom the notice was mailed.

**11-3-74: AUTHORIZATION TO PROCEED:**

Upon approval of the preliminary plat by the planning commission and the city council, ~~copies one copy~~ of the approved preliminary plat with written conditions attached and signed by the chairman of the planning commission and by the mayor shall be retained by the city council ~~delivered to the City and to the subdivider.~~ One copy as described above shall be given to the subdivider. Receipt of the signed copy ~~by the subdivider same~~ shall be authorization for the subdivider to proceed with the preparation of plans and specifications for the improvements required in the final plat.

Prior to the construction of any improvements required by this title, the subdivider shall provide the city engineer with all plans, information and data necessary to install and construct the improvements. This information shall be examined by the city engineer and shall be approved if he determines them to be in accordance with the requirements of city ordinances. ~~Construction of buildings shall not begin until after the final plat has been approved and filed with the county recorder.~~

**11-3-5: NOTIFICATION OF ADJACENT PROPERTY OWNERS:**

~~Unless waived by the planning commission and city council, written notice of the time, date and place~~

**Comment [S13]:** LUDMA only requires one public hearing on subdivisions. I believe that the Planning Commission should be doing the bulk of the work on the subdivision and so should be the body tasked with holding the public hearing. This also puts anyone reviewing this ordinance on notice that a hearing is required.

**Comment [S14]:** State law requires notification...

**Comment [S15]:** Providing the subdivider with the approved minutes containing the conditions is sufficient. A signature isn't required.

**Comment [S16]:** Already said in 11-1-3

~~where the planning commission will consider giving preliminary approval to the subdivision shall be given to adjacent property owners in accordance with section 10-1A-7 of this code. The written notice shall also advise the property owner that he or she has the right to be present and to comment on the proposed subdivision. The applicant shall provide the planning commission with the names of all persons to whom the notice was mailed.~~

**11-3-6: APPROVAL FOR ONE YEAR:**

Approval of the preliminary plat by the planning commission and city council shall be valid for twelve (12) months unless an extension is granted by the planning commission and city council. If the final plat has not been recorded within the twelve (12) month period, the preliminary plat shall again be submitted to the planning commission for reapproval; however, preliminary approval of a large tract shall not be voided if the first section of a final plat is submitted for final approval within one year.

**Comment [S17]:** This information has already been covered previously in this ordinance.

**11-3-7: FORM OF AGREEMENT:**

Prior to any final approval of a subdivision, the subdivider shall enter into an agreement with the city which shall be in substantially the following form:

**Comment [S18]:** This section is redundant. If they don't comply with the provisions of this ordinance, they won't get approval.

**AGREEMENT**

~~—This agreement is made by and between (hereafter "subdivider") and Nibley City Corporation (hereinafter Nibley City).~~

~~—Subdivider hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance. Subdivider hereby acknowledges that he or she has read the Subdivision Ordinance (or that an agent of Subdivider has), and that he or she understands the provisions of the Subdivision Ordinance and that he or she will fully and completely comply with the provisions and requirements therein contained to the best of his or her ability.~~

~~—Dated this day of, 20-~~

~~Subdivider~~

The form of a corporate or partnership signature shall include a provision for a notary in which the subdivider represents that the person signing for the corporation has the authority to execute the agreement for the corporation or partnership.

**11-3-8: SUBMISSION OF FINAL PLAT:**

Within one year after receiving approval of the preliminary plat by the planning commission and city council, the subdivider shall submit the original and three (3) copies of a final plat of the subdivision covering all or part of the approved preliminary plat to the planning commission for approval. When approved by the planning commission, the final plat will be forwarded to the city council for approval.

**11-3-9: RECORDING FINAL PLAT:**

The final plat shall conform to the development standards outlined in 11-4-2.

Once approved, the final plat, bearing all official approvals as required, shall be deposited in the office

of the county recorder for recording at the expense of the subdivider. No lot included in a subdivision shall be sold or exchanged and no offer shall be made to sell or exchange any such lot until the plat is so approved and recorded. (Ord., 6-1992)

Chapter CHAPTER

11-4: STANDARDS OF APPROVAL

11-4-1: PRELIMINARY PLAT:

A. As part of the submittal of the preliminary plat, subdividers shall provide Nibley City with the following information:

1. A list containing the names and mailing addresses of person(s) or other entities who are the owners of record of property located within three hundred feet (300') of any portion of the property proposed for development.
2. A title report, provided by a title company, for the property proposed to be subdivided, dated within thirty (30) days of the submittal of the preliminary plat.

A.B. Description: The preliminary plat shall be drawn to a scale not smaller than one hundred feet to the inch (1" = 100') on standard twenty four inch by thirty six inch (24" x 36") paper and shall include the following information in the title block:

1. The proposed name of the subdivision.
2. The boundaries of the proposed subdivision, including sufficient information to locate the project, and the total acreage of the project, accurately the property shown on the plat.
3. A legal description of the property.
- ~~3.4.~~ The names and addresses of the owner, subdivider if other than owner, and the engineer or surveyor of the subdivision.
- 4.5. Date of preparation.
- ~~5.6.~~ Scale.

B.C. Existing Conditions: The plat shall show:

1. The location of the nearest benchmark and property monuments.
2. All property contiguous to the proposed subdivision under the control of the subdivider, even though if only a portion is being subdivided.
- ~~3. The location, width and names of all existing streets within three hundred feet (300') of the subdivision and of all prior platted streets or other public ways, railroad and utility rights of way, parks, and other public open spaces, permanent buildings and structures, houses or permanent easements and section and corporation lines, within and adjacent to the tract.~~
3. The location, width and names of all existing streets, railroads, open spaces, sewers, water mains, culverts or other utility lines and rights-of-way, and permanent buildings and structures located within the tract and within three hundred feet (300') of the outermost boundary of the subdivision.
4. The location of all wells, proposed, active and abandoned, and of all reservoirs within the tract.
5. Existing sewers, water mains, culverts or other underground facilities within the tract and to a distance of at least one hundred feet (100') beyond the tract boundaries, indicating pipe sizes, grades, manholes and exact location.
6. Existing ditches, canals, natural drainage channels and open waterways and proposed realignments.

Comment [S19]: 2 and 3 are required by our standards and specifications.

- a. Prior to approval of the preliminary plat, the subdivider shall provide the City with documentation that any affected canal company has had the chance to review plans related to the alteration of affected canals, and further, that the canal company understands they have thirty (30) days from the date of notification to bring any concerns to the City.
- 6.7. Identification of known natural features including, but not limited to, wetlands as identified by the US Army Corps of Engineers, areas which would be covered in the event of a 100-year storm event, all water bodies, floodways and drainageways, slopes exceeding twenty percent (20%) and any other natural features as may be required by the Planning Commission or City Council for the subdivision, including the acreage in each required feature.
- 7.8. Boundary lines of adjacent tracts of land, showing ownership where possible.
9. Contour map at vertical intervals of not more than five feet (5') where the slope is greater than ten percent (10%) and not more than two feet (2') where the slope is less than ten percent (10%).
- 8.10. A plan outlining how the subdivider intends to phase construction of the project.

**Comment [S20]:** This gives the canal company an opportunity to review the proposal but doesn't give them the ability to hold the project up for no reason.

**Comment [S21]:** We need to know sensitive lands at the outset of the project.

C.D. Proposed Development Plan: In addition to the above-listed items, the The preliminary plat shall show:

1. The boundary of the proposed subdivision and the acreage included.
- 2.1. The layout of streets, showing location, widths and other dimensions of proposed streets, crosswalks, alleys and easements.
- 3.2. The layout, numbers and typical dimensions of lots.
- 4.3. Parcels of land Open space intended to be dedicated, temporarily reserved for public use or set aside for the private use of property owners in the subdivision.
- 5.4. Building setback lines, including dimensions of said lines where required by the planning commission.
- 6.5. Easements, including dimensions, for water, sewers, drainage, utility lines and other purposes, if as required by the planning commission.
- 7.6. A tentative plan or method by which the subdivider proposes to handle storm water drainage for the subdivision for the subdivision's groundwater, fire hydrant, sewer and stormwater drainage facilities.
8. Proposed off-site and on-site water facilities, sanitary sewers, storm drainage facilities and fire hydrants.
- 9.7. Where the plan submitted covers only a part of the subdivider's tract, the preliminary plan plat shall include a sketch of the prospective future street system which of the unplanned parts. The street system of the part submitted shall be considered in the light of adjustments and connections with of the future street system of the larger area.

D.E. Approval Of Preliminary Plat:

1. Conditions Of Approval: The planning commission shall approve only those preliminary plats which it finds have been developed in accordance with the standards and criteria specified in all ordinances of the city including, but not limited to, the zoning title, this title, major street plan, the master plan and the building codes this title, Title 10 of the Nibley City Code and all other applicable City ordinances.
2. Soil Controls: The planning commission shall determine from the concept plan review or the preliminary plat the possible need for environmental impact analysis, which would take into account the soil, slope, vegetation, drainage and other geological characteristics of the site. If the site requires substantial cutting, clearing, grading or other earth moving operations in

**Comment [S22]:** The changes didn't take out any of the requirements- it just left more room for what an EIS can look at.

construction of structures or roads in the proposed development. The planning commission shall may require the applicant to provide soil erosion and sedimentation control plans and specifications prepared by a registered civil engineer, if the Commission determines that such are warranted.

3. Approval Or Disapproval By Planning Commission: The planning commission shall, within forty five (45) days after the preliminary plat is filed with the planning commission (30 days if concept plan was filed before the preliminary plat), approve the preliminary subdivision plan if it finds that the subdivision complies with the requirements of the City ordinances. The planning commission may conditionally approve a preliminary subdivision plat imposing such conditions as it may require required in order to bring the subdivision plat into compliance with the requirements of the City ordinances of the city. In the event the planning commission disapproves the preliminary plat, it shall do so within forty five (45) days (30 days if concept plan was filed) after the date the subdivider made application for approval and it shall state in writing each reason for the disapproval. All comments and recommendations shall be forwarded to the city council within the prescribed time limit.

**Comment [S23]:** Because we don't have specific standards for a concept plan, I prefer just to leave it at 45 days after prelim plan.

4. Approval Or Disapproval By City Council: The city council shall, within fifteen (15) thirty (30) days after receiving the preliminary plan with recommendations from the planning commission, approve or disapprove the preliminary plan. A representative of the planning commission shall meet with the city council to discuss and clarify the planning commission's position. The final conditions of approval or reasons for disapproval shall be stated in writing to the subdivider.

**Comment [S24]:** There are sometimes more than 15 days between Council meetings.

**Comment [S25]:** The PC had wanted to take this out, but the Mayor asked that it be put back in because he'd like P&Z to take a more active role.

- 4-5. Plats not acted upon within the above time frames shall be deemed to have been approved. A plat shall be deemed to be acted upon if it is approved, denied, approved with conditions, continued for further review or tabled.

**Comment [S26]:** This relieves some of the pressure on the City to approve/deny right away.

#### 11-4-2: FINAL PLAT:

- A. Description: The final plat shall be drawn to a scale not smaller than one hundred feet to the inch (100' = 1") on standard twenty four inch by thirty six inch (24"x36") paper and shall include the following information on the title block:
  1. The proposed name of the subdivision.
  2. The boundaries of the proposed subdivision, including sufficient information to locate the project, and the total acreage of the project.
  3. A legal description of the property.
  4. The names and addresses of the owner, subdivider, if other than owner, and the engineer or surveyor of the subdivision.
  5. Date of preparation.
  6. Scale
  7. The base heading of true north.
- B. The plat shall contain the following information:
  1. Accurate dimensions for each lot, street, alley, easement, areas to be dedicated as open space and other important features. Dimensions shall be shown in feet and hundredths. Lot sizes shall be expressed in acreage.
  2. The street address for each lot. Lots on the north and west sides of the street shall have odd numbers. Lots on the south and east sides of the street shall have even numbers.

3. A description and delineation of other angles, distances, points, monuments, markers, boundaries and other geometries as described in the Nibley City Design Standards and Specifications.
4. Standard signature forms, the wording of which is found in the Nibley City Design Standards and Specifications, for the following:
  - a. Registered land surveyor's certificate of survey, as applicable under Utah law;
  - b. Owner's signature of dedication;
  - c. Notary public acknowledgement;
  - d. City engineer's certificate of approval;
  - e. Utility companies' approval;
  - f. Planning Commission approval;
  - g. City approval, signed by the Mayor;
  - h. City attorney approval;
  - i. County recorder's signature/stamp of approval;
  - j. The following note regarding agricultural uses of property:
    - i. This property is located in the vicinity of property that is used for agricultural purposes. It may be anticipated that such uses and activities may or may not in the future be conducted in this area and such uses are previously existing uses. Agricultural uses and situations must be sound agricultural practices and not bear a direct threat to public health and safety.
  - k. The following note regarding groundwater:
    - i. Areas in Nibley have groundwater problems due to the varying depth of a water table. The City's approval of a building permit or construction plans does not constitute a representation by the City that building at any specified elevation or location would solve subsurface or groundwater problems. In addition, concerns for building elevation and/or grading and drainage are unique to each building site, remains solely with the building permit application, property owner and/or contractor. Nibley City is not responsible for any subsurface or groundwater problems which may occur, nor for such concerns including, but not limited to, building location and/or elevation, site grading and drainage.

C. Additionally, construction plans shall be submitted with the final plat. These plans shall detail the size, design, type and location of all infrastructure improvements proposed for construction as part of the phase, including, but not limited to, streets, sidewalks, curbs, utility pipes and other infrastructure. Construction plans shall be prepared in accordance with the Nibley City Design Standards and Specifications.

**Comment [S27]:** Right now, there is no mention of construction drawings in our subdivision ordinance.

The final plat must be prepared by a licensed engineer or land surveyor on a sheet of approved tracing linen or other approved permanent, reproducible drawing material with waterproof black India ink. The top of the plat shall be either north or east, whichever accommodates the drawing best. The plat shall contain all information required on the preliminary plat except contours and shall comply with the following:

**Comment [S28]:** This section should match the requirements of our standards/specifications.

- A.—Description And Delineation: The final plat shall show:
- 1.—The name of the subdivision, which name must be approved by the planning commission.
  - 2.—A north point, scale of the drawing and the date of preparation.

- 3.— Accurately drawn boundaries, showing the proper bearings and dimensions of all boundary lines of the subdivision, properly tied to public survey monuments. These lines should be slightly heavier than street and lot lines.
- 4.— The names, widths, lengths, bearings and curve data on center lines of proposed streets, alleys and easements; also the boundaries, bearings and dimensions of all portions within the subdivision intended to be dedicated to the use of the public; the lines, dimensions, bearings and numbers of all lots and parts reserved for any reason within the subdivision. All lots are to be numbered consecutively under a definite system. All proposed streets shall be numbered in accordance with and in conformity with the adopted street numbering system. With planning commission approval, streets may be named rather than numbered. The names of such streets shall be approved by the planning commission. Each lot shall show the street address assigned thereto. In the case of corner lots, an address will be assigned for each part of the lot having street frontage.
- 5.— The area of each lot expressed in acres if one acre or more or in square feet if under one acre and the total acreage of the subdivision.

**B.— Standard Forms For The Following:**

- 1.— A licensed land surveyor's certificate of survey.
- 2.— The owner's certificate of dedication.
- 3.— A notary public's acknowledgement.
- 4.— The planning commission's certificate of approval.
- 5.— The board of health's certificate of approval.
- 6.— The city engineer's certificate of approval.
- 7.— The city attorney's certificate of approval.
- 8.— The city council's certificate of approval.
- 9.— One and one-half inch by five inch ( $1\frac{1}{2}'' \times 5''$ ) space in the lower right hand corner of the drawing for the county recorder's use.

**C.— Approval of final plat:**

- 1.— The final plat shall be submitted to the planning commission for final approval. The planning commission shall circulate copies of the final plat to all affected departments and special service districts for comment and review. The city engineer shall approve or disapprove the plat within thirty (30) days after the plat is submitted to the planning commission. If he disapproves, he shall state to the planning commission the reasons for the disapproval. The planning commission shall have forty five (45) days after the plat is submitted to approve or disapprove the plat. If no action is taken within forty five (45) days, the plat shall be deemed to have been approved by the planning commission, except that such approval shall not operate to waive any requirement of this or any other ordinance of the city. At the time of submission of the final plat, the subdivider shall furnish a complete set of construction plans and profiles, prepared by a licensed professional engineer, of all existing and proposed streets within the subdivision to the city engineer with the final plat.
- 2.— If the planning commission disapproves the final plat, it shall so notify the subdivider in writing stating that the plat has been disapproved and the reasons therefor based on the ordinances of the city or the laws of the state. The written notice shall be personally delivered or mailed to the subdivider within ten (10) days after the action by the planning commission.
- 3.— The planning commission may approve a final plat subject to written conditions; provided, that the subdivider agrees in writing to the conditions.

**Comment [S29]:** The plat approval procedure is already covered earlier in the ordinance.

~~4. Following approval by the planning commission and the city engineer, the subdivider shall secure the approval of the city attorney. The final plat shall be taken before the city council which shall approve the plat if it finds that the plat fully complies with the ordinances of the city and the laws of the state or that the plat, together with the conditions to which the subdivider has agreed, fully complies.~~

~~5.1. No plats shall be recorded in the office of the county recorder and no lots included in such plat shall be sold or exchanged unless and until the plat is so approved, signed and accepted.~~

#### 11-4-3: LOT LINE ADJUSTMENTS

An agreement to adjust lot lines between adjoining properties, whether in a subdivision or on unsubdivided parcels of land, may be executed by the owners of record of said properties and recorded upon execution, if the following conditions are met:

- A. No new lot results from the lot line adjustment.
- B. No previously existing lot is eliminated as a result of the adjustment.
- C. If the properties to be adjusted are in a subdivision, the lot sizes, frontages and configurations are consistent with this title and Title 10 of the Nibley City code.
- D. No lot is made undevelopable without a variance or other special consideration.
- E. All property owners directly affected by the lot line adjustment give their consent.
- F. The lot line adjustment does not result in a remnant piece of land that did not exist previously.
- G. The lot line adjustment does not result in the violation of any applicable zoning ordinance.
- H. The lot line adjustment does not substantially alter legal lots that may otherwise need further review by the Planning Commission or City Council in the form of a subdivision amendment.

Provided the above conditions are met, no land use authority approval is required.

#### 11:5 STANDARDS AND INFRASTRUCTURE IMPROVEMENTS

##### 11-5-1: COMPLIANCE REQUIRED:

~~Prior to the approval of the final plat, the following improvements shall be completed and approved by the city engineer. In lieu of actual completion, surety of completion may be provided by one of the means described in section 11-5-20 of this chapter.~~

Prior to the release of the mylar, to the subdivider, for recordation and subsequent issuance of building permits by the City, the following improvements shall be completed by the subdivider and approved by the city engineer or city building inspector. All improvements described in this title shall meet the standards set forth in the Nibley City Design Standards and Specifications.

In lieu of completion of the infrastructure requirements, surety may be provided as described herein.

##### 11-5-2: WATER SUPPLY:

~~It shall be the responsibility of the subdivider to install, at his own expense, water mains, fire hydrants and service laterals to each lot within the subdivision. The subdivider must also install the necessary additional pipeline from the subdivision to the nearest existing city water line in accordance with plans and specifications approved by the city. The water supply system shall meet the specifications given in~~

**Comment [S30]:** The 2013 legislative session passed HB0130501 making these provisions.

standards for design and construction for Nibley, Utah. In addition, the following minimum standards shall apply:

All subdivisions shall be required to connect to the Nibley City culinary water system. Subdividers shall, at their own expense, install water mains, fire hydrants and service laterals to each lot within the subdivision. The subdivider must also install the necessary pipeline from the subdivision to the nearest City water line. In addition, the following minimum standards shall apply:

A. Line Diameter: The minimum diameter of all main water lines serving fire hydrants shall be six inches (6") and the minimum diameter of all other branch or submains shall be two inches (2") or as specified by the city engineer shall be eight inches (8"). If greater than an 8" main water line is required, the City will pay the cost difference between an 8" line and the needed size.

**Comment [S31]:** A-B: This is the size/distance now required by the Int'l. Building Code

B. Fire Hydrant Placement: Fire hydrants shall be placed such that no lot is more than three hundred fifty-four hundred feet (350') (400') from a fire hydrant or as specified by the city engineer.

C. Subdividers shall be required, in all zones, to provide Nibley City with water shares sufficient to serve the culinary needs of the subdivision. The amount required shall be determined by the City Engineer as part of the preliminary plat review.

**Comment [S32]:** We historically have required one share per acre. There may be some areas where this is enough, others it may be too much or even not enough.

B-D. In areas where flood irrigation or pressurized irrigation is available, subdividers may choose to install a secondary water system, in addition to the required hook-on to the Nibley City culinary system. Subdividers shall notify Nibley City of their intent to install a secondary system at the time the preliminary plat is submitted and shall submit plans for the design and operation of the secondary system. The City Engineer shall take the secondary system into account when determining the amount of water shares the subdivider is required to provide.

**Comment [S33]:** We have no current language on secondary systems but do allow them.

#### 11-5-3: SEWAGE DISPOSAL:

~~Individual sewer disposal systems or public disposal~~ Public sanitary sewer facilities shall be provided for each lot in the subdivision. Where a public sanitary sewer is available within three hundred feet (300') of the subdivision at the time of recording the final plat, the subdivider shall connect with such sanitary sewer and provide sewer mains and extend laterals from the main sewer line to each lot in the subdivision prior to the installation of the road base, surfacing, curbs, gutters and sidewalks. All sewer mains and laterals must meet existing specifications and be inspected by the city engineer or city building inspector before backfilling. Prior to the approval of the final plat, the subdivider shall obtain a certificate of approval from the state board of health on the proposed sewage facilities and shall submit said certificate to the planning commission.

**Comment [S34]:** This is a left over sentence from when we were on septic.

#### 11-5-4: STORM DRAINAGE:

A storm drainage system shall be provided and must meet the approval of the city engineer. This system must be independent of any sanitary sewer system. No ditch or canal shall be approved as suitable for use as storm drainage without the written permission of the appropriate ditch or canal company, and/or the affected water users. If permission is obtained, ditches and canals must be adequately improved to handle such water as might reasonably be expected to flow from normal irrigation and spring water, storm runoff water, and any other water expected to reach such ditch or canal.

#### 11-5-5: STREETS:

A. ~~Street Design:~~ Subdividers shall locate streets within the subdivision so that streets will connect with existing streets. Streets shall be located and designed so that the adjoining land shall not be diminished in value. If the adjoining land is zoned for residential use, streets shall be located so that the adjacent land may be efficiently subdivided.

**Comment [S35]:** This may be a good place to decide if we want it specified that streets have to be numbered. Another place for it may be in the preliminary plat specs.

Half streets<sup>1</sup> (completed only to centerline) are allowed only when the city engineer has reviewed the proposed half street design and can attest that public safety issues have been satisfied. ~~A~~ minimum of twenty feet (20') of asphalt shall be required on all half-streets.

**Comment [S36]:** 20' is what Bill suggested. That gets it over the crown of the road.

B. ~~Streets To Conform To Major Street Plan:~~ Major and collector streets shall conform to the major street ~~transportation master~~ plan. Whenever a subdivision is in an area for which a major or collector street plan has not been adopted, major or collector streets shall be provided as required by the ~~planning commission~~ determined by staff and the City engineer.

C. Minimum Street Widths: The minimum street widths shall be:

Road Type	Right Of Way Width	Pavement Width
Arterial	99 feet	66 feet
Collector	80 feet	49 feet
Residential	66 feet	35 feet
Neighborhood	60 feet	29 feet

The neighborhood street may be used in areas that would not generally be considered a through street or a street that would carry significant amounts of traffic other than that generated on that street. A cul-de-sac may be a neighborhood street.

All sidewalks shall be a minimum of five feet (5') in width. Planting strips shall be at least seven feet (7').

In exceptional cases the city council may approve different street cross sections.

**Comment [S37]:** This was a deletion approved by P&Z. After thinking about it though, because of a plat that is before them right now, I think it should stay in.

~~D. Street Standards:~~ All streets shall meet the construction standards for their respective classification as presented in the city standards for design and construction.

**Comment [S38]:** We've already said that all infrastructure has to apply.

E. Curb, Gutter And Sidewalks: The subdivider shall be required to install curb and gutter of the types and to the standards shown in the city standards for design and construction on all new and existing streets within or adjoining the proposed subdivision.

1. Sidewalks may be required by the planning commission, if deemed necessary for public safety.
2. The above requirements may be waived in rural estate and agricultural zones, if it is felt that curb, gutter and sidewalks would detract from the rural setting of the subdivision.

3. The requirement for curb and gutter on existing streets may be waived only if future changes to the street are anticipated that would make the installation of curb and gutter unwise. In such cases, the planning commission may require that the subdivider pay to the city a sum equal to the cost of the improvements not installed to allow sufficient funds to later complete the improvements. Any such proceeds shall be placed in the street capital improvement fund. (Ord., 6-1992)

F. ~~Cul-De-Sacs: Cul-de-sacs (dead end streets designed to be permanently closed to through traffic)~~ shall not exceed one-eighth ( $\frac{1}{8}$ ) mile in length, except in R-E zones where they shall not exceed one-fourth ( $\frac{1}{4}$ ) mile in length. Each cul-de-sac must be terminated by a turnaround with a radius of at least sixty feet (60'). If surface water drainage runs into the turnaround due to the grade of the street, necessary catch basins and drainage easements shall be provided. Where a street is designed to remain only temporarily as a dead end street, an adequate temporary turning area shall be provided at the dead end street. It shall remain and be available to the public so long as the dead end exists.

Comment [S39]: Already defined in Title 10

G. Alleys: Alleys may be required in the rear of business lots, but will not be accepted in residential blocks except under unusual conditions where such alleys are considered necessary by the planning commission.

H. Street Width Requirements For Small Acreage Parcels On Cul-De-Sacs: The following shall serve as street width requirements for development of small acreage parcels using a cul-de-sac as the only access to the development:

1. Private roads are allowed for areas of three (3) lots or less. The cross section of the road shall include: twenty feet (20') of asphalt, two feet (2') of shoulder on each side and four (4) to six feet (6') (each side) for stormwater swale. These roads shall be built to the standards of the Nibley City design standards and specifications and shall include five foot (5') sidewalks where required by city ordinance. ~~Private roads in planned unit developments are exempt from this subsection.~~
2. Developments of four (4) to seven (7) lots shall have a publicly dedicated roadway with a fifty foot (50') cross section as follows: twenty five feet (25') of asphalt, and the following on each side of the road: 2.5 feet of curb and gutter, four feet (4') of planting strip, five foot (5') sidewalk and one foot (1') strip to property line. These roads shall be built to the standards of the Nibley City design standards and specifications.
3. All other developments shall have roadways that conform to this section.

Comment [S40]: We no longer allow PUDs.

I. Gravel Private Roads/Driveways:

1. A gravel private road or driveway may be approved for a single lot access, provided that the following conditions are met by the developer/subdivider:
  - a. Demonstrate how the gravel private road/driveway is an important consideration in the area's streetscape or in the overall project design.
  - b. Demonstrate that the gravel private road/driveway will not cause extensive dust, erosion or sediment problems or demonstrate how these problems will be eliminated. ~~Provide a stormwater pollution prevention plan that will be followed to eliminate these problems.~~ documenting how those problems will be eliminated.
  - c. ~~Maximum slope gradients shall not exceed those set forth in the Nibley City engineering design standards and specifications.~~

Comment [S41]: Already say all infrastructure improvements have to fall within standards/specs

- d. All driveways approved for gravel shall have a driving surface of twenty feet (20') with six inch (6") minimum thickness of crushed gravel base course material and a three foot (3') drainageway on one side.
- e. Provide a turnaround as per the international fire code standards.
- f. Those driveways accessing off of any public road shall be paved for the first fifty feet (50') off said road, or to the house, whichever is less. In areas where the gravel private road accesses the property by crossing an adjoining property, the planning commission and city council may require that the entire portion of the driveway crossing the adjoining property be paved.
- g. Those lots using a gravel private road to access their lot shall be exempted from the standard frontage requirement.
- h. Gravel private roads shall be permitted only for infill development in the R-E zone and ~~not in new subdivisions~~ in lots legally subdivided prior to current zoning/frontage requirements.

11-5-6: BLOCKS:

Blocks shall not be longer than one thousand six hundred feet (1,600'). Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off street parking and delivery facilities. (Ord., 6-1992)

11-5-7: LOT LAYOUT AND DESIGN:

- A. Standards: All lots shown on the subdivision plan shall conform to the minimum requirements of the zoning title for the zone in which the subdivision is located, and to the minimum requirements of the ~~city engineer and state board of health for sewage disposal~~ Nibley City Design Standards & Specifications.
- B. Street Access: All lots shall abut a dedicated street, a public street, a private street or a street which has become a public right of way or right of use. In the event a lot abuts a public right of way created by use, the subdivider shall improve the right of way to the standards required by this title.
- C. Lot Arrangement: The lot arrangement and design shall be based on the following criteria: provide satisfactory and desirable sites for buildings, be properly related to topography, to the character of surrounding developments and to existing requirements, ~~and allow orientation for adequate solar access in the interest of energy conservation.~~
- ~~D. Side Lines: To promote good solar access, side lot lines shall run in a north-south direction where local site conditions and street alignment allow.~~
- E. Lot Remnants: All remnants of lots less than minimum size left over after subdividing a larger tract shall be added to adjacent lots rather than be allowed to remain lot remnants.
- F. Undeveloped Lots: Undeveloped lots ~~must~~ shall be kept free of trash, abandoned automobiles, machinery and other unsanitary, unsightly or unsafe material.
- G. Lot Ownership: Where the land in a subdivision includes two (2) or more parcels in separate ownership and the lot arrangement is such that a property ownership line divides one or more lots,

the land in each lot so divided shall be held in either single or joint ownership before approval of the final plan and such ownership shall be recorded in the office of the county recorder.

#### 11-5-8: RAILROAD:

Where the proposed subdivision contains or is adjacent to a railroad right of way, provision shall be made for either:

- A. A street approximately parallel to and on each side of such right of way; or
- B. A buffer planting strip of trees and/or shrubs at least ten feet (10') in width.
- C. A six foot (6') fence running the length of the property adjacent to the railroad r-o-w.

Any plan for improvement along the railroad right-of-way shall include a description of who will be responsible for maintenance of the improvements.

**Comment [S42]:** We have this in Ashbury Estates. It needs clearly stated who is going to take care of the fence, weeds, etc. around the railroad.

#### 11-5-9: DITCHES AND CANALS:

Open ditches or canals are prohibited within or adjoining a subdivision except along rear or side lot lines or through permanently reserved open space. Existing ditches and canals have primary rights of way. No changes in the courses, nor coverings, nor other changes may be made without written approval from canal and ditch companies, or the affected users. Subdividers may also be required to pipe any ditches and canals on the property. Subdividers shall coordinate any improvements to canals with the affected canal company, as stated herein.

#### 11-5-10: SAFETY FENCES:

Subdividers may be required to install a six foot (6'), nonclimbable chainlink fence, or its equivalent, along railroad rights of way, ditches and canals or streets. They may also be required to install pipe in irrigation ditches and canals.

**Comment [S43]:** Just stated in previous section.

#### 11-5-11: NAMES:

The proposed name of the subdivision and proposed street names shall not duplicate or too closely approximate, phonetically, the names of any other subdivision or street. Street names shall be in accordance with the master street plan.

**Comment [S44]:** Already stated on specs for prelim and final plats

#### 11-5-12: STREET SIGNS:

The subdivider shall furnish and install all necessary street signs. Street signs shall meet the approval of the planning commission.

#### 11-5-13: LANDSCAPING:

The planning commission may require subdividers to provide ground cover where it determines that soil erosion may be a problem, that surface water may flood portions of the city or damage city property, to prevent the growth of noxious weeds which may become a nuisance or fire hazard or endanger the public health and may specify the types of ground cover.

**11-5-134: MONUMENTS:**

Permanent monuments shall be accurately set and established at such points as are necessary to definitely establish all lines of the plat except those outlining individual lots. ~~Monuments shall be of a type approved by the city engineer. All subdivision plats shall be tied to a corner or monument of record, or established land office survey corner.~~

**Comment [S45]:** Already covered by the standards/specs

**11-5-15: STREET LIGHTING:**

~~Streetlights shall be required every five hundred feet (500') throughout the subdivision, at every street intersection and at the back of each cul-de-sac. If it is deemed necessary for the safety and welfare of the residents of the subdivision, the planning commission may require that the subdivider install street lighting.~~

**Comment [S46]:** Int'l Building Code requirement

**11-5-16: PROTECTION STRIPS:**

- A. Where subdivision streets parallel contiguous property of other owners, the subdivider may, upon approval of the city council, retain a protection strip not less than one foot (1') in width between the street and adjacent property. The protection strip shall be subject to the following provisions:
  - 1. An agreement shall be made between the subdivider and the city whereby the subdivider shall deed the protection strip to the city at the end of six (6) years; said deed shall not be recorded until the end of the six (6) year period;
  - 2. The agreement will provide for the reimbursement to the ~~developer-subdivider~~ for the fair cost of land in the protection strip and the street improvements and other infrastructure properly chargeable to the adjacent property owner;
  - 3. The ~~developer-subdivider~~ shall agree to pay the costs associated with the agreement (engineering review, attorney fees, etc).
- B. Time for determining the six (6) year period shall be determined from the time the subdivider receives notice that the improvements of his property are substantially complete and usable.
- C. At the time that the adjacent property is proposed for development, as a condition of approval, the property owner shall pay to the city the full cost of the improvements initially installed by the first subdivider.
- D. Protection strips shall not be permitted at the end of streets.

**11-5-17: NATURAL DRAINAGE AND OTHER EASEMENTS:**

~~The planning commission shall, unless waived for good and sufficient cause, require that easements for drainage through a subdivision and adjoining property be provided by the subdivider and easements of not less than fifteen feet (15') in width for water, sewers, drainage, power lines and other utilities shall be provided in the subdivision.~~

**Comment [S47]:** Moved to plat specs

**11-5-168: UTILITIES:**

All utilities shall be installed underground.

**11-5-19: ENGINEERING AND CONSTRUCTION STANDARDS:**

**Comment [S48]:** Moved to earlier in the ordinance.0

The subdivider is responsible to assure that all improvements of the subdivision shall meet the engineering and construction standards set forth in the standards for design and construction of Nibley, Utah, as approved and adopted by the city engineer and public works director.

**11-5-20: PERFORMANCE SURETY OR BOND OR DEED RECORDING:**

- A. Authority: As outlined in section 11-5-1 of this chapter, the subdivider may in lieu of the actual completion of the improvements listed here, file with the city recorder a surety or cash bond or a deed to property in an amount at least one hundred fifty percent (150%) of the amount of the value of the proposed improvements within the subdivision as may be acceptable to the city council, or a contract entered into between the subdivider and the city, which contract must be approved by action of the city council to assure that adequate guarantees or arrangements have been made to guarantee the installation of the proposed subdivision improvements, and in case of a surety or cash bond in an amount specified by the city council to assure the actual construction of such improvements within a period of two (2) years in a satisfactory manner.
- B. Inspection: Upon completion of the improvements for which a surety, cash bond or deed has been filed, the subdivider shall call for inspection by the city engineer. Inspections shall be made within seven (7) days from the date of the request. If inspection shows that city standards have been met in the completion of such improvements, the surety, bond or deed shall be released within seven (7) days from the time of inspection. If the surety, bond or deed is not released, refusal to release and the reasons therefor shall be given the subdivider in writing within seven (7) days from the time of inspection.

Subdivider shall provide City with surety in the form of a letter of credit in the amount of one hundred ten percent (110%) of the estimated cost of improvements. As portions of the infrastructure improvements are completed and pass inspection, the City shall release portions of the assured funds to the subdivider in an amount equal to the value of the completed/inspected improvements.

However, the subdivider shall not be permitted to record the final plat until the required infrastructure improvements are completed. Upon inspection and satisfactory completion of the improvements referenced herein or which may be required as part of the approval of the subdivision, the City shall retain financial security sufficient to cover ten percent (10%) of the estimated costs of the infrastructure improvements for a period of one (1) year after said improvements have been approved and accepted by the City. Amounts greater than ten percent (10%) may be required, if such amounts are deemed necessary by the City Manager.

**11-5-21: WARRANTY ON IMPROVEMENTS:**

The subdivider shall warrant the improvements of the subdivision against failure due to defects in materials or workmanship for a period of two (2) years one (1) year from the date of acceptance of the improvements by the city. The City shall retain at least ten percent (10%) of the surety bond for the period of the warranty. Amounts more than ten percent (10%) may be required by the City Manager if it is deemed appropriate and necessary.

**Comment [S49]:** I believe this creates a balance between concerns expressed over not wanting to financially cripple developers but having some way to ensure that infrastructure improvements are completed prior to allowing building to go forward.

Developers would still give the City letters of credit and we would still do releases, but not allow them to record the mylar/sell lots until the improvements are in. It puts the burden on them to see the improvements are done in a timely manner.

**ORDINANCE 14-05**

**AN ORDINANCE DESIGNATING AUTHORITY FOR THE ESTABLISHMENT OF TRAFFIC AND PARKING CONTROL DEVICES IN NIBLEY CITY**

WHEREAS, Nibley City uses a variety of traffic and parking control devices ("Devices") to facilitate the orderly and efficient flow of traffic; and

WHEREAS, from time to time, it becomes necessary to place Devices prior to the matter going before the Nibley City Council; and

WHEREAS, the Nibley City Council wishes the Nibley City Public Works Director to have the ability, along with the Council, to determine the placement of such Devices.

NOW THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL LOCATED AT NIBLEY, UTAH, THAT:

1. The attached ordinance, entitled "AN ORDINANCE DESIGNATING AUTHORITY FOR THE ESTABLISHMENT OF TRAFFIC AND PARKING CONTROL DEVICES IN NIBLEY CITY" is hereby adopted, by fact and by reference.
2. All other portions of the previously adopted Plan remain in full force and effect.
3. All ordinances, resolutions and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution or ordinance or part thereof.
4. Should any provision, clause or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply, The valid part of any provision, clause or paragraph of this ordinance shall be given independence from the invalid provisions or applications and to this end the parts, sections and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
5. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
J. Shaun Dustin, Mayor

ATTEST: \_\_\_\_\_  
City Recorder

### **6-1-3 Traffic Control**

- A. Prima Facie Speed; Designated Streets:
  - 1. Streets With Signs: When appropriate street signs giving notice of the maximum permitted speed thereon are erected, the prima facie speed limits designated upon said signs shall apply to the appropriate streets or portions of streets so posted.
  - 2. Streets Not Posted: Unless otherwise provided in this chapter or in any other ordinance of the city, the prima facie speed limits on the streets of the city shall be twenty five (25) miles per hour.
- B. Stop Or Yield Intersections: When appropriate traffic control or regulatory signs are posted at entrances to intersections identifying them as stop or yield entrances, such streets are hereby declared to be stop entrances or yield entrances as designated by said signs.
- C. Designations Posted: The city council shall designate the places at which appropriate traffic control devices or regulatory signs shall be placed relating to maximum speed limits, angle parking, through streets, stop or yield intersections and other regulations governing traffic.
  - 1. The City Council may, by resolution designate placement of traffic control devices or regulatory signs referenced herein to the Public Works Director.
- D. Angle Parking: When appropriate traffic control or regulatory signs are posted permitting angle parking, angle parking shall be permitted on the streets or parts of streets so posted at the angle designated by the sign.
- E. Penalty: Any person violating, causing or permitting violation of any provision of this section shall be guilty and, upon conviction thereof, subject to penalty as provided in the Utah traffic code.

### **6-1-4 Parking Regulations**

- A. Signs; Erection: The city council may authorize or direct any person employed by the city to erect or install any sign or traffic control device required to enforce the provisions of this chapter.
  - 1. The City Council may, by resolution designate placement of traffic control devices or signs referenced herein to the Public Works Director.

RESOLUTION 14-09

A RESOLUTION DELEGATING AUTHORITY FOR PLACEMENT OF TRAFFIC CONTROL DEVICES TO THE  
NIBLEY CITY PUBLIC WORKS DIRECTOR

BE IT RESOLVED BY THE CITY COUNCIL OF NIBLEY CITY, STATE OF UTAH, AS FOLLOWS:

1. The ability to determine the location and construction of traffic and parking control devices is hereby designated to the Nibley City Public Works Director.
2. These signs include, but are not limited to:
  - a. Stop signs
  - b. Speed limit signs
  - c. No parking zones
  - d. Angled parking areas
3. The City Council shall retain the authority to direct the Public Works Director to place such traffic and parking control devices as the Council may deem necessary for the orderly and efficient flow of traffic and parking in Nibley City.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
J. Shaun Dustin, Mayor

ATTEST

\_\_\_\_\_  
City Recorder

**OPERATING AGREEMENT  
(NIBLEY BLACKSMITH FORK CANAL)**

**THIS OPERATING AGREEMENT** (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between Nibley Blacksmith Fork Irrigation Company, a Utah nonprofit mutual water company (“NBFI”) and Nibley City, a Utah municipal corporation (the “City”). The foregoing are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. NBFI owns an existing irrigation canal system, together with associated canal rights-of-way, real property and improvements thereon known as the Nibley Blacksmith Fork Canal (the “Canal”).

B. The City provides for storm drainage and flood water management and control services for properties located within its corporate limits as part of its ongoing storm drainage and flood water control programs; and in connection therewith, the City has historically utilized the Canal for the discharge of storm drainage and flood waters as a government activity and in the promotion of the health, safety and general welfare of the citizens of the City with respect to the management and control of storm drainage and flood water within its corporate limits; and has formally determined that the continued use of the Canal is the most economically feasible method to manage storm drainage and storm water runoff within its jurisdiction.

C. This Agreement is consistent with and executed pursuant to the requirements of § 73-1-7 and § 73-1-9, Utah Code Annotated, 1953, as amended, which provide for the joint use of, and mandated joint contribution by and among the users of a canal system for all reasonable expenses in maintaining, operating and controlling the same.

D. The Parties desire to enter into a written agreement to confirm the authority of the City to discharge storm drainage and flood waters into the Canal consistent with the historic practice and agreement of the Parties and to facilitate the purposes otherwise set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Definitions. The following defined terms as used herein shall have the meanings set forth below:

(a) “Storm Drainage and Flood Waters” (collectively “Storm Water”). Either or both terms as used in this Agreement are hereby defined to mean waters originating as runoff from storms of any intensity, runoff from all municipal uses of water, groundwater and all other waters which are collected and channeled through pipelines, open channels, ditches, paving, gutters, and any and all other artificial means of conveyance, or which are otherwise discharged into the Canal through the Storm Water Inlet Structures described and provided for in Section 3(a), herein. This contemplates, but is not limited to, Storm Water runoff into the Canal from

private property, subdivision development, industrial development, commercial and recreational development and public rights-of-way.

(b) "Current Discharge." The amount of Storm Water that has, prior to this Agreement, been discharged into the Canal.

(c) "Pollutant." Any pollutant, as defined in the Utah Water Quality Act, Title 19, Chapter 4, Utah Code Annotated, 1953, as amended, and all implementing regulations, for which a UPDES permit would be required to be obtained in the event of regulation by the State Department of Environmental Quality, including, without limitation, pollutants associated with industrial activity, or pollutants which contain any pesticides, herbicides, soil conditioners, fertilizers, oil, grease, or any toxic or hazardous pollutants.

(d) "Current Design Standards." Cache Valley Storm Water Design Standards, of November 2010, as amended and as approved by the City.

## Section 2. Administration of this Agreement.

(a) This Agreement shall be administered on behalf of the City by the City Manager, who shall be the designated representative through whom all contacts should be made and notices provided as pertaining to the City for all purposes with respect to this Agreement. The manager's contact information is as follows:

David Zook  
Nibley City Manager  
455 West 3200 South  
Nibley, UT 84321

(b) This Agreement shall be administered on behalf of NBF I through its duly elected president, who shall be the designated representative through whom all contacts should be made and notices provided as pertaining to NBF I, according to the provisions of this Agreement. The designated representative for NBF I as of the date hereof, until further notice, is as follows:

Paul Leishman  
2401 South Hwy 89  
College Ward, Utah 84339

## Section 3. Storm Water Inlet and Outlet Structures.

(a) Description of Storm Water Inlet and Outlet Structures on the Canal.

(i) Exhibit A hereto lists and identifies the inlet structures ("Inlet Structures"), through which Storm Water is authorized to be discharged by the City into the Canal.

(ii) Exhibit B hereto lists and identifies the Storm Water outlet structures, including spillways, pipelines and flood gates ("Outlet Structures"), from which the Parties may turn water out of the Canal in the event of a flood or other emergency.

(b) Continued Use of the Canal for Storm Water. The Parties hereby agree that the Canal shall continued to be used to carry Storm Water that enters the Canal through the Inlet Structures listed in Exhibit A hereto, and through such additional Inlet Structures as may be approved using the procedures set forth in Section 4(b) herein; including the right to use associated properties, rights-of-way, easements, and/or other access that may be appurtenant to the Canal for use in operating and maintaining the Canal.

(c) Construction, Maintenance and Replacement. The City hereby agrees that it shall, at its sole cost and expense, construct, maintain, and replace or cause to be constructed, maintained and replaced, the Storm Water Inlet Structures and Outlet Structures listed in Exhibits A & B respectively, and such additional Inlet Structures and Outlet Structures as may be approved pursuant to the procedures set forth in Section 4(b) of this Agreement.

(d) Conditions to the Use of the Canal for Storm Water Discharge and Conveyance.

(i) The rights of the Parties under this Agreement are strictly conditioned on compliance by the Parties with the terms and conditions of this Agreement. The right to convey Storm Water in the Canal extends to all times of the year, and is not affected by the fact that during the irrigation season NBFI is operating the Canal for the transportation and delivery of irrigation water to NBFI shareholders under NBFI's water rights, subject to subsection (d)(iii) of this Section.

(ii) The use of the Canal by the City extends only so far as the Canal exists in its present state, and only to the extent of such rights as NBFI shall have in the Canal.

(iii) At all times, the conveyance of irrigation water under water rights owned by NBFI shall have first priority in terms of the use and capacity of the Canal.

(iv) In evaluating the capacity of the Canal as part of the City's Storm Water management program, the capacity shall be measured at the most restrictive location on the Canal.

Section 4. Authorization for New Inlet Structures and Outlet Structures. No new or additional Storm Water Inlet Structures and Outlet Structures and no increases in the flow of such inlets or outlets beyond the Current Discharge shall be created or maintained except in conformance with the following procedure:

(a) The City and/or a developer may at any time contact NBFI to evaluate the potential for new Inlet Structures and Outlet Structures, or the potential for an increase in the capacity of any existing Inlet Structure or Outlet Structure.

(b) The City and/or developer shall provide a written request to NBFI for each additional Storm Water Inlet Structure or Outlet Structure, and for increases in flow beyond the Current Discharge or any previously approved increase for existing Inlet Structures or Outlet Structures. The request shall be accompanied by the following:

(i) Drawings in both digital and printed copy showing the location, size, and design specifications of each Inlet Structure or Outlet Structure proposed to be added or increased.

(ii) Drawings showing the drainage area to be served by the Inlet Structure.

(iii) Expected occurrences that will cause Storm Water inflow into the Canal, including an estimate of the time of year during which maximum inflows are expected, subject to subsection 4(b)(iv) below.

(iv) An estimate of the maximum inflow to be expected from the area to be served by the Inlet Structure (with the understanding that the maximum flow may not exceed the flow allowed by Current Design Standards). This rate is determined by completing a hydrologic analysis based on soil types to determine the runoff rates prior to development for development sites greater than 1 acre, or by assuming a historical runoff rate of 0.1 cfs per acre for sites smaller than 1 acre.

(v) Written disclosure of whether the Storm Water discharge to the Canal is expected to contain any Pollutant regulated under the Utah Clean Water Act and implementing regulations thereto.

(vi) Certification that the City and/or developer have complied and will comply with all applicable requirements of the Utah Water Quality Act and associated regulations.

(vii) Any additional documentation or information reasonably requested by NBF

(c) Any objections of any kind by NBF to a new proposed Inlet Structure, Outlet Structure, or the enlargement of either, shall be given by written notice within sixty (60) days after receipt by NBF of the written request for the same from the City and/or developer. It is understood and agreed that NBF shall have the right to refuse such approval only if, as demonstrated by empirical data:

(i) in the case of a new Inlet Structure or the enlargement of an existing Inlet Structure, water inflow into the Canal from such inlet will exceed the Current Discharge into the Canal from the drainage area to be served by such inlet;

(ii) the inflows are found by any City-County Health Department or other State, County or federal agency to be physically harmful to animals, crops of any kind, or any other beneficial use of the water; or

(iii) the proposed Inlet Structure or Outlet Structure will diminish the ability to utilize all of the water to which NBF is entitled under its water rights, hinder water deliveries, or alter, damage or obstruct, diversion structures, measuring devices, or regulating headgates on the Canal.

(d) If NBF does not provide written objections within sixty (60) days after receipt of the City's and/or developer's written request, NBF shall be deemed to have approved the additional Inlet Structure, Outlet Structure, or increase in capacity of either.

(e) If the request for additional Inlet Structures, Outlet Structures or increase in capacity of an inlet or outlet is not agreed to, NBF shall work with the City and/or developer in

an attempt to reach an equitable resolution in order to provide for the same.

(f) If the additional Inlet Structure, Outlet Structure or increase in flow is formally approved or deemed approved as provided herein, the City shall allow commencement of construction or modification only after a written addendum to Exhibit A or Exhibit B to this Agreement, as the case may be, has been agreed-to, signed by the City and/or developer and NBFi and attached to this Agreement. Neither the City and/or developer or NBFi may refuse to sign an addendum to Exhibit A or B that has been approved pursuant to this Agreement.

Section 5. Pollutants. The City shall not knowingly cause or allow to be introduced into the Canal any Pollutant or other material that will result in any violation of applicable local, state or federal laws or regulations, or which cause or inflict damage to any NBFi shareholder or other user who receives a distribution of water from the Canal system.

Section 6. Rights of Entry. The Parties agree that officers, employees and agents of the City, as authorized and supervised by the City, shall have the non-exclusive right to enter upon the Canal, with the prior written approval of NBFi, to operate equipment for the dredging or cleaning of the Canal, for maintaining, repairing and/or replacing existing Inlet Structures and Outlet Structures, and/or for the purpose of installing Inlet Structures and Outlet Structures in conformance with the requirements of Section 4 of this Agreement, except as provided in Section 7.

Section 7. Emergency Operation of Spillways and Flood Gates. The Parties agree that the City shall have a set of keys to all spillway and flood gates on the Canal, and shall have authority to open, close, and otherwise regulate these spillways, flood gates and other critical relief points, for the purpose of turning water out of the Canal in times of flood and other emergency conditions. The City's right hereunder shall only be exercised in the event the designated representative or duly designated superintendent or other authorized representative of NBFi is not available. Except in times of flood, the City shall not open spillways or flood control gates without the specific consent of NBFi. The City and NBFi shall maintain lists of authorized representatives with 24-hour telephone contact numbers for use by each Party. The City and each City representative must be appropriately instructed as to policies and procedures related to the turn-out of water from the Canal under flood control and other emergency conditions.

Section 8. Improvements to the Canal.

(a) In the exercise of the rights and powers described in the foregoing Sections, the Parties agree that the City shall not do any damage to, interfere with or otherwise impair NBFi's ability to operate, control and regulate the Canal in conformance with its main purpose of conveying irrigation water to NBFi shareholders; and in the entry and performance of any work pursuant to this Agreement, the City shall, at its own cost, repair and restore all NBFi property to the condition existing before entry and the performance of work thereon by the City, subject to alterations, improvements and other changes allowed pursuant to Sections 4, 8 and as may be otherwise approved pursuant to the provisions of this Agreement.

(b) Any work resulting in the alteration of the Canal in any way shall only be performed in conformance with and expressly subject to plans and specifications, if necessary, agreed to in writing by the City and NBFi and in compliance with provisions set forth in this Section 8. The City agrees that in performing any work to widen or deepen the Canal, in no event shall such width or depth exceed the original depth and width of such Canal unless expressly agreed to in writing by NBFi in its sole discretion. NBFi agrees that the City shall have the right, pursuant to its work in deepening, widening and improving the Canal, to temporarily place any

excavation materials on the Canal banks, and the City agrees to promptly dispose of the same at its sole cost.

(c) Other than for emergency repairs, or routine maintenance authorized in writing by NBFI, the City agrees to perform any such work on a Canal only during the non-irrigation season or at such other time as NBFI may, in its sole discretion, agree subject to its ability to turn irrigation water out of the Canal so as to facilitate such maintenance and repair.

(d) It is the intent of the Parties hereto that whenever exercising these rights and powers, the City and NBFI will work together and keep each other informed of any action which one Party may take which would materially affect the interests of the other Party with respect to the rights and duties set forth herein. Without limiting the generality of the foregoing, the City agrees to provide not less than thirty (30) days written notice to NBFI of any proposed relocation, piping, retaining wall, bridge construction, culvert installation or other work that may affect the Canal, and NBFI's approval of any such work shall be governed by the notice and approval procedures set forth in Section 4 above.

(e) In furtherance of the intent of this Agreement, the City shall require, as a condition to development approval, that infrastructure (such as fencing or other improvements) be installed by the developer as part of a land development project, when reasonably determined to be necessary, so as to protect children and others from the inherent hazards of canal operations and to assure that the cost of such protections are borne by the land developer or the City, and not NBFI and its shareholders.

Section 9. Enforcement. The City agrees to use its police, zoning and permitting powers to reasonably ensure that no discharges are allowed into the Canal except pursuant to written authorization from NBFI and the City and/or in strict compliance with this Agreement. In addition:

(a) the City shall notify NBFI immediately upon discovery of an unauthorized discharge into a Canal;

(b) the City, NBFI, and all persons who might discharge water into the Canal pursuant to authority from the City and/or NBFI, shall be required to comply with all federal, state, or local environmental laws, regulations, and requirements relating to such discharge;

(c) the City, at its sole cost and expense shall take such actions as are reasonably necessary to abate any unauthorized or non-complying discharges within City limits, which actions shall include, without limitation, the creation and enforcement of ordinances (1) prohibiting such non-complying discharge, and (2) requiring the developers of any land within City boundaries to include with their plans and specifications a storm water detention plan that provides for all storm water to be retained at the site of such development, except as may be otherwise approved by the City and NBFI; and NBFI, at its sole cost and expense shall take such actions as are reasonably necessary to abate any unauthorized or non-complying discharge from shareholder-owned real property, which actions shall include, without limitation, the adoption and enforcement of bylaws and regulations prohibiting such non-complying discharge;

(d) as a condition to the approval of any land development that proposes any piping of the Canal, the construction of bridges or retaining walls, the installation of culverts, or any other action which may in any way affect the Canal, the City shall require that the land developer's plans and specifications therefore be delivered to NBFI, and that NBFI consent to the same, in writing, prior to the approval of such land development by the City, which consent

or the basis for denying such consent shall be given by NBF I within sixty (60) days after NBF I's receipt of the request for approval; and

(e) the City agrees that it shall require a minimum 15-foot setback from the Canal, measured from the top inside bank of the Canal, or the toe of the Canal, whichever is greater, in connection with the approval of any future residential or commercial development along the Canal and shall cooperate in limiting to the extent possible, the planting and/or placement of trees, shrubs fences, and other obstacles within the access right-of-way/easement established along the Canal by NBF I for maintenance, repair and other access uses necessary to the proper use and maintenance of the Canal. The Parties agree to cooperate in determining whether or not such setback is necessary along both sides of the Canal and take appropriate action in accordance with the determination of the Parties.

(f) the City agrees that it shall require a ten-foot (10') setback from both sides of the centerline of any portion of the Canal that has been or was piped in connection with the approval of any prior or future residential or commercial development adjacent to such a pipeline, provided the City is advised of the existence of any such pipeline, and shall cooperate in the limitation of any planting or placement of trees, shrubs, fences, etc. as stated in the next immediately preceding subparagraph (e).

#### Section 10. Costs.

(a) Compensation Due NBF I. As consideration for the utilization of the Canal for the discharge and conveyance of Storm Water on a year-round basis as provided herein, the Parties agree as follows:

(i) The City agrees to pay or require to be paid (e.g. by a developer) one hundred percent (100%) of all construction, maintenance and repair costs related to all existing and future improvements and structures used exclusively for Storm Water management, and for all existing and future improvements and structures (i) required by city ordinance or (ii) constructed by the City or for the City's benefit, including, without limitation, those identified on Exhibit C hereto, and all liability insurance costs required to be provided pursuant to Section 13(b) herein.

(ii) NBF I agrees to pay one hundred percent (100%) of all construction, maintenance and repair costs related to all existing and future improvements and structures used exclusively for the distribution of irrigation water, and for all existing and future improvements and structures (i) required by NBF I's governing instruments or resolutions or (ii) constructed by NBF I or for NBF I's benefit, including, without limitation, those identified on Exhibit C hereto, and all liability insurance costs required to be provided pursuant to Section 13(b) herein.

(iii) The City and NBF I each agree to share all other maintenance and repair costs associated with the Canal in conformance with the following:

(A) Maintenance and repair costs shall be based on the entire length of the Canal, located within the corporate limits of the City, from the point Storm Water is first discharged into the Canal by the City or a City-approved discharge point.

(B) The maintenance and repair costs contemplated by this Section 10(a) include work done annually to clean the Canal and dispose of silt, debris, weeds, moss, garbage and like foreign matter; to strengthen the banks against erosion, normal wear and tear due to the traffic of vehicles and from the surface water which is caused by snow or rainfall or other sources being conducted into the Canal, by improvements performed by the City, and strengthening the banks at known weak points where overflow might occur and where potential

hazards might exist; and the repair of breaks in the banks of the Canal.

(C) Maintenance and repair costs as contemplated by this Section 10(a) do not include placing concrete linings in the Canal, piping installed by NBFBI for its benefit or by the City or its developers for the City's benefit (the costs of which, in each case, shall be borne by NBFBI and the City or its developers, respectively), constructing bridges, irrigation dams, headgates or other diversions therein, the costs of which shall be borne as set forth in Section 10(a)(i) or 10(a)(ii) above, or as otherwise agreed upon by the Parties prior to commencement of such work.

(D) It is agreed that the maintenance costs shall include all operational costs including employees salaries, directors fees, and overhead when directly applicable to the cleaning, operation, maintenance and repair of the Canal.

(E) With respect to the maintenance and repair costs contemplated by this Section 10 (a)(iii), beginning May 15, 2014, the City shall pay to NBFBI the amount of Three Thousand Five Hundred Dollars (\$3,500.00) per year, on or before May 15 of such year. On or before March 1, 2017, and every third anniversary thereafter, the parties shall review NBFBI's maintenance and repair expenses together, and shall negotiate in good faith any necessary adjustments to the payment contemplated hereby.

(b) Methods of Payment. Compensation to be paid pursuant to the requirements of Section 10(a) may be paid by one or a combination of the following methods, subject to the provisions of Section 10(c):

(i) Cash;

(ii) Work in-kind by City personnel and equipment, subject to the prior written agreement of NBFBI, as to the work to be performed, and the credit due the City, and subject to on-going, direct supervision by the City; and/or

(iii) Reimbursement to NBFBI for work performed by independent contractors; provided, however, that all expenditures for work to be performed by independent contractors that is expected to be paid by the City shall be first approved in writing, by the City prior to beginning the work. If the work to be performed is estimated to exceed \$10,000, NBFBI shall be required to obtain proposals from three qualified contractors (if three proposals can reasonably be obtained,) to perform the work, and such work shall be authorized pursuant to a purchase order issued by NBFBI.

(c) Payment.

(i) Except as otherwise set forth herein, invoices for compensation due hereunder shall be submitted by NBFBI to the City on a semi-annual basis, on or about April 1 and October 1 of each year. Each invoice from NBFBI shall show actual cleanup, maintenance and repair charges for all work performed during the previous billing period for which compensation is due.

(ii) Except as otherwise set forth herein, payment due under each invoice shall be made by the City within thirty (30) days of the date of the invoice. Any amounts payable under this Agreement and not paid within ten (10) days of the due date, meaning within forty (40) days of the date of the invoice, (including, without limitation, amounts payable under Section 12 below) shall bear interest at the rate of one percent (1%) per month, compounded

monthly.

(iii) In the event payment is not made by the City when due as provided herein, NBFi shall have the right to terminate this Agreement upon fifteen (15) days' prior written notice to the City, provided that within said fifteen (15) days, the City fails to pay the full amount due and owing, plus accrued interest, to NBFi. The provisions of Section 15(b) shall apply in the event of such termination.

(iv) In the alternative, the City may within said fifteen (15) day period, or earlier, make a written request to appear before NBFi's board of directors to present evidence and/or otherwise show cause why this Agreement should not be terminated as to the City for its failure to pay. NBFi's board of directors shall convene a special meeting of the board to hear the City's presentation, within fifteen (15) days of the receipt of the notice requesting a hearing. At the hearing, the City shall present such testimony or other evidence as it deems expedient, concerning the issue before the board of directors. A decision shall be rendered by the board of directors within ten (10) days of the conclusion of the hearing. The board of directors shall have the authority, within its sole discretion, to enforce payment of the full principle amount due, plus accrued interest, or for good cause modify the amount due and require payment within such period as shall established by the board of directors. In the event the board of directors enforces payment, and the City fails to pay within the period directed, this Agreement shall thereupon terminate as to the City. The City shall have the right to seek judicial review of the decision of the board of directors before the First District Court of the State of Utah, or at the agreement of NBFi and the City, pursue binding arbitration with regard to said issue(s).

(d) Records. It is agreed that NBFi will keep complete records of all expenses for said costs as defined below and that NBFi's books and records thereof will be open to inspection and audit by the City, at the sole expense of the City, at the end of each year to determine whether said costs are reasonable. It is agreed that only the books and records of NBFi pertaining to maintenance and repair costs pertaining to the use of the Canal for Storm Water discharge and conveyance will be subject to review and inspection pursuant to the terms of this Section. These maintenance costs are subject to review annually by the Parties as set forth in Section 14 below.

#### Section 11. Title.

(a) It is agreed that title to the Canal and appurtenances thereto belonging to the NBFi shall be and remain vested in NBFi. Notwithstanding the foregoing, the City acknowledges and agrees that NBFi makes no representations or warranties regarding its ownership of, or access rights relating to, the Canal; that the easements and/or rights of way claimed by NBFi may not be recorded or otherwise evidenced by written conveyance or other writing, and may instead be based upon prescriptive, equitable or some other legal basis not yet determined by a court; that legal challenges may be made to NBFi's rights in or relating to the Canal; and that NBFi does not owe to the City any obligation to defend or establish any such rights, or indemnify, defend or otherwise assist the City in connection with any disputes relating to such easements or rights of way.

(b) It is agreed that title to all Storm Water Inlet Structures and Outlet Structures installed by the City shall be and remain vested in the City, subject to the supervision and control of the City, as provided in this Agreement.

#### Section 12. Cleaning and Maintenance.

(a) Canal. Except as otherwise set forth herein, the primary responsibility for maintenance of the Canal shall be that of NBFi. Annual cleaning and maintenance of the Canal

shall be performed in conformance with the following:

(i) The City shall meet with NBFBI after November 1 and before November 15 of each year, or as otherwise mutually agreed, for the purpose of jointly patrolling and inspecting the Canal and concurrently determining what debris or sand removal, weed control, repair and other maintenance work is required, and which work will be performed by the City at its sole expense with its own equipment and employees on an agreed upon schedule, but in no event later than April 1 of the following year. The Parties shall agree in writing what work is to be performed by each Party, with costs estimates included. NBFBI may elect to drain the Canal at some other time during the year in which case the patrol and maintenance activity will be completed as mutually agreed upon by the Parties at the time the Canal is patrolled.

(ii) Subject to the provisions of Section 12(b) below, any maintenance deficiencies in the Canal system shall be corrected by NBFBI, and NBFBI shall be compensated in conformance with the provisions of Section 10. If NBFBI desires to have the City do other work on the Canal solely for NBFBI's benefit, the City may agree to provide employees and equipment of the City to do the work requested, which shall be paid by NBFBI at cost, as billed by the City, with payment to be made within thirty (30) days of date of the invoice, subject to the same payment provisions as outlined in Section 10(c), above.

(b) Storm Water Inlet Structures and Outlet Structures; Operation and Use. All Storm Water Inlet Structures and Outlet Structures shall be maintained solely by the City in whom title is vested, and the City shall operate the spillways or other relief outlets on said facilities to control Storm Water in the Canal as necessary. Notwithstanding the foregoing, NBFBI may use any of said Storm Water Inlet Structures and Outlet Structures in controlling the flow of its irrigation water in the Canal as it sees fit, subject to the supervision and direction of the City, if necessary and the rights of the City in the use of said facilities for Storm Water control as provided herein.

(c) Trash Racks. The City shall, at its sole cost and expense, pursuant to site access requirements and design specifications provided by NBFBI, copies of which are attached hereto as Exhibit D, as the same may be modified and updated by NBFBI from time to time, install, or require developers to install, in connection with City-approved development plans, trash racks and inlet grates on all Inlet Structures so as to prevent clogging of the headgates, screens and pipelines situated within the Canal. NBFBI shall monitor the trash racks and inlet grates throughout the irrigation season and provide cleaning and maintenance as required, with the City to participate in the costs associated with the obligations of this subsection as provided in Section 10(a)(iii)(E).

### Section 13. Indemnification Agreement; Liability Insurance.

#### (a) Indemnification.

(i) Of NBFBI. The City, to the fullest extent allowed by law and without limiting the effect and application of the Utah Governmental Immunities Act, UCA 63G-7-101 through 904, shall indemnify, save harmless, and defend NBFBI, its officers, directors, employees, agents, representatives and independent contractors, from and against any and all losses, expenses, costs (including, without limitation, reasonable attorneys' fees), claims, actions, demands, damages, and liabilities imposed or claimed to be imposed upon NBFBI, its officers, directors, employees, agents, representatives and independent contractors, for bodily injuries,

including death, or for damage to property, real or personal, sustained by any person, including without limitation third parties, which result from, arise out of or are otherwise attributable, in any way, to the discharge into, conveyance in, and/or discharge of Storm Water from the Canal, for with the City is liable.

(ii) Of the City. NBFI, to the fullest extent allowed by law, shall indemnify, save harmless, and defend the City, its officers, directors, employees, agents, representatives and independent contractors, from and against any and all losses, expenses, costs (including, without limitation, reasonable attorneys' fees), claims, actions, demands, damages, and liabilities imposed or claimed to be imposed upon the City, its officers, directors, employees, agents, representatives and independent contractors, for bodily injuries, including death, or for damage to property, real or personal, sustained by any person, including without limitation third parties, which result from, arise out of or are otherwise attributable, in any way, to the diversion into, conveyance in, and/or distribution of irrigation water from the Canal, for which NBFI is liable.

(b) Liability Insurance. In addition to the foregoing provisions regarding indemnification, (i) the City shall provide and maintain a one million-dollar (\$1,000,000.00) policy of liability insurance naming NBFI as an additional insured, to cover its indemnity obligations hereunder, including covering all Losses or other liability resulting from or otherwise attributable, in any way, to the discharge into, conveyance in or discharge of the City's Storm Water from the Canal; and (ii) NBFI shall provide and maintain a one million-dollar (\$1,000,000.00) policy of liability insurance naming the City as an additional insured, to cover its indemnity obligations hereunder, including covering all Losses or other liability resulting from or otherwise attributable, in any way, to NBFI's irrigation water diverted into, conveyed in, and/or distributed from the Canal.

Section 14. Annual Review. The Parties hereto further agree that Storm Water control conditions change annually and that the expanding growth of the City through the construction of new subdivisions and other public works will have an impact on the terms and conditions set forth herein. Because of these considerations, the Parties hereto agree to review this Agreement annually and amend the same, as necessary, upon mutual written agreement of the Parties.

Section 15. Term of Agreement; Termination.

(a) Term. The Parties agree that this Agreement shall continue in full force and effect perpetually from year to year, unless and until the City provides its own Storm Water control facilities and/or the City otherwise no longer desires to use the Canal for the discharge and conveyance of Storm Water; in which event, this Agreement, upon 365 days prior written notice to NBFI by the City, shall be terminated.

(b) Termination: Notwithstanding the foregoing, this Agreement shall be terminated under the following circumstances:

(i) Expiration or termination pursuant to the provisions of Section 15(a),  
herein;

(ii) Termination pursuant to the provisions of Section 10(c)(iii) and (iv),  
herein.

(A) During the 365-day period provided for in Section 15(a)

above, the City and NBFI shall negotiate in good faith in an attempt to reach a mutually acceptable agreement regarding the status of the City's Inlet Structures, Outlet Structures, rights-of-way and other Storm Water infrastructure that is acceptable to all Parties.

(B) If an acceptable agreement is not reached within the notification period, the City shall, as agreed upon by NBFI and the City, terminate requests for new inlet and outlet structures, and shall eliminate discharge of Storm Water from existing Storm Water Inlet Structures and any other infrastructure belonging to and controlled by the City, to the extent possible and except for emergency situations, and any right granted pursuant to this Agreement to discharge Storm Water into the Canal and/or otherwise utilize the Canal to manage or control Storm Water shall be terminated effective as of the end of the notice period, to the extent possible and except for emergency situations.

Section 16. Compliance With Law. Should any federal, State or local law or regulation be enacted concerning the discharge, handling, treatment or otherwise regarding Storm Water which are applicable to the rights and obligations of the Parties under this Agreement, the City agrees that it shall, at its sole expense, comply with the requirements thereof, with respect to Storm Water attributable to City Storm Water sources and conveyances, and shall, to the extent permitted by law, hold NBFI harmless from and against any loss, cost or expenses in connection therewith or resulting therefrom. NBFI shall have the same obligations with respect to Storm Water attributable to NBFI Storm Water sources and conveyances and shall, to the extent permitted by law, hold the City harmless from and against any loss, cost or expenses in connection therewith or resulting therefrom.

Section 17. Miscellaneous.

(a) This Agreement is binding upon the Parties hereto, their respective assigns and successors, and supersedes all earlier agreements between the Parties pertaining to the same subject matter.

(b) This Agreement sets forth the entire understanding, intent and agreement of the Parties hereto with respect to the subject matter contained herein, and there are no other representations or warranties either written or oral which shall be binding on the Parties hereto except those contained herein. Any modifications of this Agreement must be in writing and signed by all Parties.

(c) The rights, duties, licenses, and benefits contained in this Agreement shall apply only to the Parties. The Parties to this Agreement do not intend that there shall be any third party beneficiaries to this Agreement. The rights granted in this Agreement shall not be assigned to any other person or entity without the specific written approval of the Parties.

(d) In the event any legal action, negotiations, or other enforcement action is instituted by any Party to enforce this Agreement against another Party, the prevailing Party shall be entitled to reimbursement of all reasonable attorneys' fees, costs, and expenses, whether enforcement is by judgment or is obtained through alternative dispute resolution if ordered by a jurisdictional court or arbitrator.

(e) The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof.

(f) Any and all notices shall be in writing and shall be validly given or made to the other Party if served either personally, by electronic transmission, or by deposit in the United

States mail. If such notice is served personally or by electronic transmission, service shall be conclusively deemed given at the time such personal service or electronic transmission is confirmed. If such notice is served by mail, such notice shall be sent postage prepaid, by certified mail, return receipt requested, and shall be conclusively deemed given two business days after the deposit thereof in the United States mail addressed to the designated representative of the Party to whom such notice is given as identified in Section 2 herein. Any Party hereto may change its address for the purpose of receiving notices as herein provided by serving written notice given in the manner aforesaid.

(g) If any provision of this Agreement is held to be void or unenforceable, in whole or in part: (i) such holding shall not affect the validity and enforceability of the remainder of this Agreement, including any other provision, paragraph or subparagraph, and (ii) the Parties agree to attempt in good faith to reform such void or unenforceable provision to the extent necessary to render such provision enforceable and to carry out its original intent.

(h) This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

(i) The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

(j) By the execution and delivery of this Agreement, each Party, through the date of this Agreement, for itself, its employees, representatives, volunteers, officers and officials, expressly releases, indemnifies and holds harmless, waives and discharges the other Party, its employees, representatives, volunteers, officers and officials, from all liability, claims, suits, damages, costs and fees, that may have arisen out of or have resulted from the Parties' use of NBF's Canal and related facilities, such as the inlet and outlet structures, for receipt and conveyance of Storm Water and any other activities involving the Parties that are the subject of this Agreement.

(k) Each Party shall be responsible for its own attorney's fees and costs incurred for the preparation of this Agreement and all negotiations and other work involved herewith.

(l) The lawsuit currently pending in the First Judicial District Court in and for Cache County, Utah, as Case No. 0801402744 MI before Judge Thomas Willmore will be dismissed with prejudice within a reasonable time after the execution and delivery of this Agreement by duly authorized representatives of the Parties; and the Parties shall cooperate in

the preparation, execution and filing with the Court of the paperwork necessary to accomplish such dismissal.

**IN WITNESS WHEREOF**, the Parties have subscribed their names hereon and caused this Agreement to be duly executed as of the date first set forth above.

**NIBLEY BLACKSMITH FORK IRRIGATION COMPANY**, a Utah nonprofit corporation

By: \_\_\_\_\_  
President

ATTEST:  
  
\_\_\_\_\_  
Secretary

**NIBLEY CITY**,  
a Utah municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Recorder

**EXHIBIT A**

**(Authorized Inlet Structures)**

**[See attached map]**

**EXHIBIT B**

**(Authorized Outlet Structures)**

**[See attached map]**

**EXHIBIT C**

**(Stormwater and Irrigation Improvements and Structures)**

**"City" = Improvements and structures for which City is solely responsible in accordance with Section 10(a)(i).**

**"NBFI" = Improvements and structures for which NBFI is solely responsible in accordance with Section 10(a)(ii).**

[See attached map]

**EXHIBIT D**

**(Access Requirements and Design Specifications for Trash Racks and Inlet Grates)**

[Insert]