



**Agenda Date:** 09/19/2024

**Agenda Item Number:** 2r

**Subject:**

Consider approval of a Pass Through Funds Agreement to receive funds from the state for the construction of the Air Traffic Control Tower.

**Item at-a-glance:**

Staff Contact: Dustin Warren

Applicant Name: City of St George

Reference Number: N/A

Address/Location:

4508 S Airport Pkwy #1

**Item History (background/project status/public process):**

This agreement is for the funding the City requested through our local legislators in the amount of \$15,000,000 for the design and construction of the air traffic control tower.

**Staff Narrative (need/purpose):**

This is the funding the City requested through our local legislators in the amount of \$15,000,000 for the design and construction of the air traffic control tower. A special thanks, to Senator Don Ipson for securing the funding.

**Name of Legal Dept approver:** Alicia Carlton

**Budget Impact:**

Cost for the agenda item: \$15,000,000

Amount approved in current FY budget for item: \$0

If not approved in current FY budget or exceeds the budgeted amount, please explain funding source:

This funding will be through the state legislation for \$15,000,000

Description of funding source:

State Legislation funding of \$15,000,000

**Recommendation (Include any conditions):**

Staff recommends approval.

## PASS THROUGH FUNDS AGREEMENT

**THIS PASS-THROUGH FUNDS AGREEMENT** (“**Agreement**”) is entered into as of September\_\_\_\_, 2024 between the Utah Department of Transportation, an agency of the State of Utah (“**UDOT**”), and St. George City, Utah, a Utah municipal corporation (“**Local Government**”).

### RECITALS

**WHEREAS**, under H.B. 2, Item no. 57 (the “**Funding Item**”), the Utah State Legislature allocated (for UDOT’s administration) a one-time total of fifteen million dollars (\$15,000,000) (the “**Funds**”) from the General Fund, One-Time Schedule of Programs to the Transportation Fund for the fiscal year 2024-2025 (the “**Fiscal Year**”), intending that the Funds be used for the following purpose (as described in the COBI FY24-25): the St. George Regional Airport Control Tower; and

**WHEREAS** the Local Government desires to perform the work to fulfill the legislative intent for the Funds, and UDOT is willing to pass through the Funds to the Local Government for that purpose; and

**WHEREAS**, Utah Code Section 63J-1-220(2) mandates that UDOT may not provide the Local Government with state pass through funding unless an agreement is executed. In addition, such agreement must require the Local Government to provide a written description and itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and a final written itemized report when all the Funds are spent; and

**WHEREAS**, Utah Code Sections 63J-1-902 and 63J-1-903 require the Local Government to establish and meet performance measures in connection with the Funds to address UDOT’s reporting obligations to the Governor’s Office of Management and Budget and the Office of Legislative Fiscal Analyst.

### AGREEMENT

**THEREFORE**, in consideration of the foregoing recitals (which by this reference are incorporated herein) and the mutual promises set forth herein, the parties hereto agree as follows:

1. Objective and Payment Schedule. The Local Government agrees to use the transferred Funds for the purposes stated in the Funding Item. UDOT will transfer the Funds to the Local Government in the following manner: UDOT will pay the Funds to the Local Government in four quarterly installments during the Fiscal Year. Each installment will total three million, seven hundred fifty dollars (\$3,750,000). UDOT will pay the four installments to the Local Government by making a payment within thirty (30) days of each of the following dates: September 1, 2024, December 1, 2024, March 1, 2025, and June 1, 2025. The total amount of all Funds will be fifteen million dollars (\$15,000,000).

2. Key Activities. The Local Government will use the Funds as described in this Agreement to meet the following performance measures:

a. The Local Government will spend 100% of the Funds by no later than June 2026.

b. The scope of work that the Funds will construct includes: Tower and supporting facilities.

c. The following project objectives are also performance measures for the use of the Funds: The project will provide efficient operations attracting more airline flights and provide more competitive airfare to the users. SGU Airport is surrounded by communities including the Paiute Indian Tribe and Paiute Reservation that fall under the Persistent Poverty Census Tracts. The Airport serves these communities and will benefit the nearly 20% of the airports catchment area that are considered economically disadvantaged.

d. The Local Government will provide to UDOT a written report of the status of the project named in the Funding Item by no later than August 1, 2025, and will provide other reports as stated in this Agreement.

3. Budget and Deliverables. The Local Government will maintain documents that show all projected and actual spending for the activities described herein, including all funding sources and itemized project costs. The Local Government agrees that from time to time the Local Government (and UDOT) may be responsible for submitting reports or responding to inquiries for the Utah State Legislature and the Utah Governor's Office, and to comply with other reporting rules or audit requirements in connection with the Funds. The Local Government will promptly respond to UDOT's reasonable requests for information concerning the Funds. Upon spending all of the Funds, the Local Government will provide UDOT with a final written itemized report detailing where the Funds have been spent and showing all funding sources and total project costs. For all Funds that are not spent during the Fiscal Year, the Local Government will provide a written description and an itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent and will provide the final written itemized report described above upon exhausting the Funds. Reporting requirements are further described in Exhibit A attached hereto and made a part hereof.

4. Limitation. The Local Government agrees that it will only spend the Funds for the purposes and activities that are expressly described this Agreement, and that no additional monies will be provided by UDOT. If the Local Government misapplies any Funds, it shall promptly notify UDOT and remove such expenditure from the budget, so such expenditure is not paid by the Funds. If the Local Government fails to correct any misapplication of the Funds within thirty (30) days of discovering such misapplication, the Local Government agrees that it shall no longer have the right to possess the Funds and that all unspent and misapplied Funds shall at that time be immediately due and payable to UDOT so UDOT can direct them in a manner authorized by law.

**Commented [JH1]:** For Section 2, the local government needs to insert things that UDOT can use as performance measures when reporting to the Governor's Office (some objectives to be accomplished).

**Commented [JH2]:** Insert the date when funds will be spent. This date will also be used as a measure of performance.

**Commented [JH3]:** The Local Government should write a short paragraph for this that explains the major work items involved in the project.

**Commented [JH4]:** This paragraph should explain what the completed project will accomplish / the benefit that the completed project will provide, such as addressing congestion, providing better access, etc.

**Commented [JH5]:** This should be the date when UDOT needs the first status report.

5. UDOT's Role. The Local Government agrees that UDOT is a pass-through administrator only for the Funds and that UDOT does not have any role in the use of the Funds. The Local Government agrees that UDOT shall not be liable for any claim or cost, of any kind whatsoever, in connection with the Funds, and the Local Government hereby releases UDOT from all the same (including, but not limited to, matters involving negligence), regardless of when the same may arise. The Local Government further agrees to indemnify, hold harmless and defend UDOT from any claim or cost, of any kind whatsoever (including, but not limited to, matters involving negligence), in connection with the Funds, except when caused by UDOT's sole negligence or malfeasance. This indemnity obligation shall not be construed to violate Utah's Governmental Immunity Act to the extent that such Act is applicable to a claim or cost. UDOT has all remedies available by law in addition to those stated in this Agreement, and UDOT's remedies are not limited by the terms of this Agreement.

6. Further Assurances. Each party to this Agreement agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of this Agreement, and to provide for a party's compliance with the laws or federal obligations that apply to it if an obligation under this Agreement makes such compliance impossible, and either party may notify the other party of a need for such further acts.

7. Modifications. The failure of either party to insist upon strict compliance with any of the terms and conditions of this Agreement, or failure or delay by either party to exercise any rights or remedies provided in this Agreement or by law, will not release either party from any obligations arising under this Agreement. This Agreement may not be modified except by a written document signed by an authorized individual representing each of the respective parties.

8. Miscellaneous. This Agreement is binding upon and inures to the benefit of the parties, and it does not inure to the benefit of any third party. No party shall assign or transfer any rights, or delegate any duties hereunder, without the other party's prior written consent, and any such attempted assignment, transfer or delegation is void. The parties agree to work cooperatively and in good faith. Before taking any legal action in connection with this Agreement, each party agrees to first advise the other of a dispute and to meet in good faith to resolve it. If any notice is required in connection with this Agreement, each party shall send a written notice to the other party's chief financial officer using a manner that can reasonably assure a timely and accurate delivery. This Agreement does not create any partnership, joint venture, agency or other relationship.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written.

10. Signatures. Each party represents that it has the authority to enter into this Agreement and has signed below by an authorized representative. This Agreement may be signed electronically and in counterparts.

11. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only and are not to be considered in interpreting this Agreement.

12. Notice. Any notice, demand, or report required by under this Agreement will be deemed properly given if such notice or demand is: (a) hand-delivered to the other party, (b) mailed, postage prepaid, and addressed to other party's principal office. The designations of the name and the addresses to which any such notice or demand, as provided below, may be changed from time to time by any party by giving written notice as provided herein:

If to the Local Government:

With a copy to:

St. George City Office  
175 North 200 East  
St. George, Utah 84770

If to the Utah Department of Transportation

UDOT  
4501 South 2700 West  
Box 141510  
Salt Lake Local Government, UT 84114  
Attention: Comptroller

With a copy to:

Assistant Attorney General (UDOT)  
4501 South 2700 West  
Box 148455  
Salt Lake Local Government, UT 84114

[execution on the following page]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

St. George City, Utah, a Utah municipal corporation

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Legal approved as to form:

\_\_\_\_\_

Local Government Recorder (with seal):

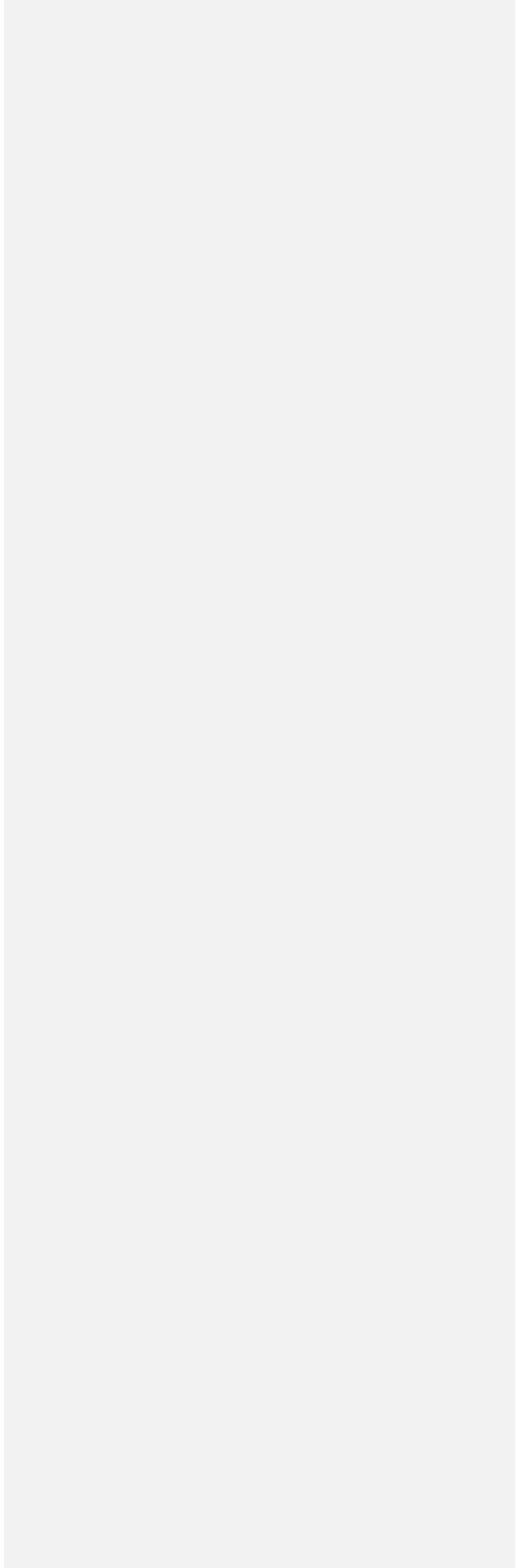
\_\_\_\_\_

UTAH DEPARTMENT OF TRANSPORTATION

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A

1. **Performance Measures.** The Parties agree that Funds will be applied to an approved scope of work for the project described in this Agreement and that the work will meet the performance measures provided by the recipient of the Funds.
2. **Public Funds Compliance.** The recipient of the Funds shall comply with applicable state statutes on the reporting and expenditure of public funds. In particular, Utah Code § 63J-1-220(2)(b) requires recipients to provide UDOT with reports as provided therein and in this Agreement. The recipient of the Funds shall provide regular update reports to UDOT as frequently as UDOT may reasonably direct (but not more frequently than once each quarter). Each year, on the Friday at the end of the last full week of April, the recipient of the Funds will provide an annual report to UDOT that includes, at a minimum, the following (in the order specified):
  - a. An itemized account of amounts spent and the dates when spent (noting any items outside the approved scope of work, if any). The account will include all sources of funding and a statement of all remaining unspent Funds and the intended expenditure of such unspent Funds. This information is used to assess accuracy.
  - b. The projected spending that will be incurred before the applicable fiscal year's end (June 30 of each year).
  - c. The difference between the appropriated amount of Funds and the actual amount used.
  - d. A brief explanation of why the Funds were requested or granted, and how Fund expenditures solved or were expected to solve or ameliorate an issue.
  - e. An assessment of implementation which includes: (i) what month and year the project, program, or bill was fully implemented; (ii) whether the project or program encountered any factors that caused a delay in implementation and an explanation of those factors; and (iii) whether the project or program encountered any factors that caused a change in scope and an explanation of those factors.
  - f. An assessment of performance that includes: (i) how the success of the project or program is being measured, and (ii) how successful the project or program has been according to those metrics.
  - g. Upcoming project milestone dates and the anticipated date of project completion.
3. **Final Report.** Within thirty (30) days after all Funds have been expended, the recipient of the Funds shall submit a Final Report to UDOT. The Final Report must address the following:
  - a. Each topic is outlined in the scope of work.
  - b. The information required under Exhibit A, paragraph 2.
  - c. The date when the project or program was completed.
4. **Certification.** For all information submitted, the recipient of the Funds must certify that it has provided accurate information and used the funds as required by this Agreement.



**Agenda Date:** 09/19/2024

**Agenda Item Number:** 2S

**Subject:**

Consider approval of a Real Property Purchase Agreement for the property at 346 North Main Street.

**Item at-a-glance:**

Staff Contact: Shawn Guzman

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

N/A

**Item History (background/project status/public process):**

Purchase of this property is based on its local historical significance for St. George and Southern Utah. The cost is \$682,000. Funds have been donated to the City for the purchase of the property and necessary renovations to preserve its historical character and development as a historical site.

**Staff Narrative (need/purpose):**

Purchase of this property is based on its local historical significance for St. George and Southern Utah. The cost is 682K. Funds have been donated to the City for the purchase of the property and necessary renovations to preserve its historical character and development as a historical site.

**Name of Legal Dept approver:** Alicia Carlton

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Staff recommends approval.





## **AGREEMENT TO PURCHASE REAL PROPERTY**

The City of St. George, a Utah municipal corporation, (the “City”), and the Carla Fox Trust dated August 4, 2017, (“Seller”), hereby enter this Agreement to Purchase Real Property (“Agreement”) effective this \_\_\_\_\_ day of \_\_\_\_\_, 2024. (the “Effective Date”). City and Seller are also referred to as a “Party” or collectively as the “Parties”.

### **RECITALS**

- A. Seller owns real property located within the City with a situs address of 346 North Main Street, St. George, Utah, and identified as Washington County Tax Parcels SG-1653-A-1-A-1 and SG-1650-B-N-1-A.
- B. The City desires to acquire the Parcels as more fully described in their entirety in **Exhibit A** which is attached hereto (the “Property”).
- C. Seller has expressed her desire to sell and has represented to the City that she is willing and able to transfer the Property to the City free and clear of all liens and encumbrances and free and clear of all personal property.
- D. The Parties have negotiated in good faith the purchase of the Property by the City (the “Purchase”), have identified terms believed to be acceptable to the Parties, and now desire to memorialize the terms in this Agreement as a final written expression of their agreement.

### **TERMS**

In consideration of the foregoing recitals and covenants, obligations, terms, and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Parties agree as follows:

1. Property. Seller agrees to sell and convey to the City by Warranty Deed (**Exhibit B**) the Property as described in **Exhibit A**. The sale and conveyance also includes all of Seller’s right, title and interest in all improvements to the Property (the “Improvements”) and all appurtenances to the Property including, but not limited to Seller’s interest in any and all easements, rights-of-way, water rights, well rights, water shares, ditches or canals, on or adjacent to the Property, and

in any and all easements, rights-of-way, rights, leases, permits, title, privileges, entitlements, and licenses relating to or benefiting the Property unless expressly excluded pursuant to this Agreement (collectively the “Appurtenances”).

2. Consideration. On the terms and conditions stated herein, and in consideration for the sale of the Property:

2.1 Purchase Price. City shall pay Seller the purchase price of six-hundred eighty-two thousand dollars (\$682,000.00) for the Property which sum is considered by the Parties to be the fair market value of the Property (“Purchase Price”).

2.2 Price Adjustment. Any issue or material defect discovered during inspection will be addressed before closing. Depending on the severity of any problem found, the purchase price may or may not be adjusted based on the cost of fixing the problem. Any changes to price must be agreed upon between Buyer and Seller.

3. Escrow and Escrow Agent. The purchase contemplated by this Agreement shall be escrowed (the “Escrow”), closed, and settled at the offices of Eagle Gate Title, 229 E. St. George Blvd, #200, St. George, UT 84770 (“Escrow Agent”). This Agreement together with other written instructions as may be provided by the Parties to the Escrow Agent, shall constitute its escrow instructions to the Escrow Agent.

3.1 Earnest Money. Not more than five (5) business days after the Effective Date, City shall open escrow by the deposit of one-thousand dollars (\$1,000.00) as earnest money (the “Earnest Money”) with Escrow Agent who shall ensure that the Earnest Money is held by Escrow Agent in a federally insured interest-bearing account until closing. All interest earned while on deposit with Escrow Agent shall accrue to the benefit of the City. This deposit is fully refundable within 90 days of deposit if City determines in writing to Seller that it does not wish to proceed with the purchase.

3.2 Title Insurance. Upon deposit of the Earnest Money, Sellers shall cooperate with the City to cause the Escrow Agent to issue a commitment for an ALTA Extended Coverage Owner’s Policy of Title Insurance (the “Title Commitment”) in the full amount of the Purchase Price, issued by Escrow Agent, showing all matters affecting title to the Property, including all exceptions, easements, restrictions, rights-of-way, covenants, reservations and other conditions or encumbrances, together with legible copies of all recorded documents creating such title exceptions (the “Title Documents”). Sellers shall also deliver to the City copies of all written leases, tenancies, occupancy agreements, rental agreements and other similar agreements affecting the Property and a full written description of any such agreements which are not written.

3.3 Closing of Escrow and Closing Conditions. The closing of Escrow shall be subject to City approval of all Closing Conditions (the “Closing Conditions”) which are set forth below. City shall have no obligation to complete the Purchase

unless and until each of the Closing Conditions are met to the satisfaction of the City, as determined by the City in the City's sole and absolute discretion. If the Closing Conditions are accepted by the City, City shall notify Seller and Escrow Agent in writing and shall deposit the amount of the Purchase Price, less the Deposit and all accrued interest, with Escrow Agent. Upon receipt of the City's notice and receipt of the balance of the Purchase Price, Escrow Agent shall promptly proceed to record the Conveyance Documents and post the Purchase Price, less any obligations attributable to Seller, for delivery to Seller.

- 3.3.1 Physical Condition. The City shall approve of the physical condition and circumstances of the Property. To facilitate the City's approval, within 20 calendar days of the Effective Date Seller shall disclose to the City all documents in Seller's possession, or issues of which Seller is aware, affecting the physical condition of the property, including but not limited to patent or latent defects, soils, and the presence of any hazardous materials. Further, Seller hereby grants to the City and the City's agents and consultants a license to enter upon the Property for the purpose of conducting, at the City's sole expense, the City's review of the Property. Seller shall reasonably cooperate with the City in the inspection of the Property; provided however that Seller shall not be required to incur any expenses with regard to the City's inspection. The City shall indemnify, defend, and hold Seller harmless for any expenses or claims resulting from the City's entry onto the Property. The City shall not engage in any testing which will damage the Property in any way without further written consent from Seller.
- 3.3.2 Title. The City shall approve of the condition of title and all encumbrances affecting title to the Property. To facilitate the City's approval, within 20 calendar days of the Effective Date Seller shall disclose to the City all documents in Seller's possession, or issues of which Seller is aware, affecting title to the property, including any security interests, leases, notices of claim, etc. Further, Escrow Agent shall issue to the City a commitment of title insurance showing all encumbrances shown on public records. If the City disproves of the any encumbrances affecting title to the Property which may be removed through the payment of funds, including but not limited to taxes not yet due but appearing as a lien on title to the Property, the City may elect to proceed to complete the Purchase and may, at the City's sole discretion, direct Escrow Agent to pay from the Purchase Price any amounts necessary to secure the release of any such encumbrances.
- 3.3.3 Legislative Approval. The St. George City Council as the legislative and governing body of the City shall approve this Agreement, in the City Council's sole and absolute discretion.

3.3.4 Failure of Closing Conditions. If any Closing Condition is not fulfilled, the City may terminate this Agreement at any time by notifying Seller and Escrow Agent in writing, upon which notice this Agreement shall be null and void and neither Party shall have any further obligation or liability pursuant to this Agreement. Upon termination pursuant to this section, Escrow Agent shall return all documents and funds received from either Party to the submitting Party.

3.3.5 City Obligations. The City shall be responsible for closing costs, it being understood that there will not be any recording fee. The City shall also be responsible for any expenses incurred by the City related to this transaction, attorney's fees for the City's attorney, if any, and any commission to the City's broker, if any.

3.3.6 Seller Obligations. Seller shall be responsible for one-half of the closing costs and shall pay the cost of the owner's policy of title insurance obtained by the City. Seller shall also be responsible for any expenses incurred by Seller related to this transaction, including any attorney's fees for Seller's attorney, if any, any commission to Seller's broker, if any, and the payment of any taxes or fees related to the Property accruing on or before the date Warranty Deed is recorded. Further, Seller hereby consents to the payment from the Purchase Price any and all amounts necessary to obtain releases of any encumbrances or liens affecting title to the Property including taxes not yet due but appearing as a lien on title to the Property.

3.3.7 Settlement Date. Settlement shall take place on or before September 30, 2024.

3.4 Conveyance: Seller shall convey to the City, all rights and title to the Property free and clear of all liens and encumbrances, by delivering a duly executed and notarized Warranty Deed to Escrow Agent.

4. Period for Seller to Remain on Property. Seller will enter into a rental lease agreement under which she will reside on the property for no longer than ten years from the date of conveyance. Seller's occupancy will be limited to Parcel No. SG-1653-A-1-A-1 ("front parcel"). Seller will not be charged rent while living on the front parcel. Seller will not transfer tenancy to any other person(s) or party. Seller will be responsible for her monthly costs while living on the front parcel, to include utilities, phone cable, internet, and yard maintenance for the front parcel. Seller shall obtain personal property insurance. Buyer shall pay property taxes, homeowner's insurance, major repairs and fixes upon purchase, for the duration of Seller's tenancy.

5. Representations and Warranties. Seller hereby represents and warrants to the City as follows:

- 5.1 Authority. Seller has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by all necessary action on behalf of Seller. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, or other similar law relating to or affecting the rights of creditors generally, or by general equitable principles.
- 5.2 No Conflicts. The execution and delivery of this Agreement and the consummation or the compliance herewith of the transaction contemplated hereby will not: (i) result in any breach of any of the terms or conditions of, or constitute a default under, the organizational documents of Seller, or any material contract by which Seller is bound; (ii) result in any violation of any governmental, law, rule, regulation, judgment, writ, decree, injunction or order applicable to the Property; (iii) require notice to or the consent, authorization, approval, or order of any governmental authority, or (iv) result in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or Agreement, except to the extent otherwise disclosed in this Agreement.
- 5.3 Foreign Status. Seller is not a “foreign person” as defined under Section 1445(f) of the Internal Revenue Code.
- 5.4 Legal Proceedings. There are no claims, actions, suits, or proceedings pending or threatened against the Property or Seller that would reasonably be expected to result in the issuance of a writ, judgment, order, or decree restraining, enjoining or otherwise prohibiting or making illegal, the consummation of any of the transactions contemplated by this Agreement.
- 5.5 Condemnation. Other than that provided by the City, Seller has not received written notice of any existing or pending, condemnation or similar proceedings against or involving the Property or any plan, study, or effort to rezone the Property or to widen, modify, regrade, or realign any street or highway that borders the Property.
- 5.6 Patriot Act Compliance. Neither Seller nor its affiliates is in violation of any laws relating to terrorism, money laundering or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) (the “Executive Order”) (collectively, the “Anti-Money Laundering and Anti-Terrorism Laws”). Neither Seller nor its affiliates is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or

narcotics traffickers, including those persons that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller nor its affiliates or any of its brokers or other agents in any capacity in connection with the sale of the Property (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller, nor any person or entity controlling or controlled by Seller, is a country, territory, individual or entity named on any of the lists maintained by the United States Department of Commerce (Denied Persons and Entities), the list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons), and the lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties) (collectively, "Government Lists"), and the monies used by Seller in connection with this Agreement and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

- 5.7 Environmental Condition. Seller has not treated, recycled, stored, disposed of, arranged for, or permitted the disposal of, transported, handled, or released any substance, including Hazardous Materials (as defined below), or operated the Property in violation of Environmental Laws (as defined below) in a manner that would trigger an enforcement action thereunder. "Hazardous Materials" means any gasoline, petroleum, or petroleum products or by-products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, and any other chemicals, materials, wastes, or substances designated, classified, or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law. "Environmental Laws" means any and all federal, state, local, or municipal laws (including common law), rules, orders, regulations, statutes, ordinances, codes, decrees, or other requirements as now or may at any time hereafter be in effect, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, regulating, relating to or imposing liability or standards of conduct concerning pollution or protection of the environment or human health or safety.
- 5.8 Solvency. Seller has not (i) made a general assignment for the benefit of its creditors, (ii) admitted in writing its inability to pay its debts as they mature, (iii) had an attachment, execution or other judicial seizure of any property interest

which remains in effect, or (iv) taken, failed to take, or submitted to any action indicating a general inability to meet its financial obligations as they accrue. There is not pending any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or recomposition of Seller or any of its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking appointment of a receiver, trustee, custodian, or other similar official for any of them or for all or any substantial part of its or their property.

- 5.8 Untrue Statements. To the knowledge of Seller, none of the representations and warranties in this Section contains any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, to make any such representation not misleading in any material respect.

6. Default, Remedies and Termination. It shall constitute an event of default of this Agreement if any Party fails to timely deliver any of its performances at the times indicated under this Agreement. The defaulting Party shall be liable to pay any escrow cancellation charges as a result of an event of default. In no event shall either Party be entitled to recover lost profits or appreciation or other consequential damages as a result of an event of default. Each Party shall be responsible for timely notifying the defaulting Party in writing of the event of default and the non-defaulting Party's election of the remedy provided below:

6.1 Default by Seller. In the event Seller defaults under this Agreement, the City's exclusive remedies shall be to either: (i) terminate this Agreement retaining and recouping all payments made; or (ii) pursue an action for specific performance against Seller.

6.2 Default by the City. In the event City defaults under this Agreement, Seller's exclusive remedy shall be to terminate this Agreement and receive \$1,000.00 as liquidated damages.

7. Interpretation. Captions and headings are used for reference only and must not be used in construing or interpreting this Agreement. All recitals set forth at the beginning of this Agreement are, by this reference, fully incorporated into this Agreement and the facts recited therein shall be deemed conclusive for any purpose. All exhibits referred to in this Agreement are deemed fully incorporated herein, whether or not actually attached. As used herein (i) the singular include the plural (and vice versa) and the masculine or neuter gender include the feminine gender (and vice versa) as the context may require; (ii) locative adverbs such as "herein", "hereto", and "hereunder" refer to this Agreement in its entirety and not to any specific section or paragraph; (iii) the terms "include", "including", and similar terms must be construed as though followed immediately by the phrase "but not limited to;" and (iv) the terms "Party" and "Parties" refer only to a named Party or Parties to this Agreement unless the context requires otherwise. All Parties have jointly participated in the negotiation and drafting of this Agreement upon advice of their own, independent counsel or had the opportunity to do so, and this Agreement must be construed fairly and equally as to all Parties as if drafted jointly by them. If

there is any conflict between the terms of this Agreement and any other related documents, including any exhibits identified herein, the terms of this Agreement shall prevail.

8. Acknowledgement of Public Disclosure Laws. Seller hereby acknowledges that the City is subject to the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor, that pursuant thereto all materials submitted by Seller pursuant to this Agreement may be subject to disclosure as government records, and that the City has no duty or obligation to withhold any such materials from disclosure in any manner.

9. Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the named Parties and to their respective heirs, representatives, successors and permitted assigns. This Agreement is intended for the exclusive benefit of the Parties and permitted assignees and is not intended and shall not be interpreted as conferring any benefit on any third party.

10. Brokers. The Parties acknowledge that there are no brokerage commissions associated with transactions contemplated by this Agreement. In the event any real estate broker claims a right to any commission or fee by virtue of dealing with one of the Parties hereto, then the Party who is alleged to have retained such broker shall and hereby does fully indemnify and hold the other Party harmless from such claim. Such indemnification obligation shall survive any termination or cancellation of this Agreement.

11. Exhibits Incorporated. All Exhibits to this Agreement are expressly incorporated by reference herein as is fully set forth herein.

12. Entire Agreement. The Parties intend that this Agreement is the full and final expression of their agreement and constitutes their entire understanding regarding this subject matter. This Agreement supersedes any previous or contemporaneous negotiations or communications of any kind between the Parties and contains all of the terms agreed upon between the Parties. No Party relied on any other term, warranty, and/or covenant as an inducement to enter this Agreement.

13. Amendment. The Parties shall not amend or modify this Agreement in any way unless in writing signed by the Parties.

14. Further Action. Each Party shall promptly do any act or execute and deliver any document reasonably necessary to comply with their respective obligations under this Agreement in order to carry out the intent of the Parties in consummating this transaction.

15. Time of the Essence. Time is of the essence in each and every term and provision of this Agreement. All references to days herein shall be deemed to refer to calendar days unless otherwise specified. In the event that the final date for performance of any act required by this Agreement falls on a Saturday, Sunday, or legal holiday, such act may be performed on the next day which is not a Saturday, Sunday, or legal holiday.

16. Waiver. Neither the failure of either Party to insist upon the timely or full performance of any of the terms and conditions of this Agreement, nor the waiver of any breach of any of the terms and conditions of this Agreement, shall be construed as thereafter waiving any such terms



and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

17. Severability. If any court of competent jurisdiction declares any portion of this Agreement unenforceable, the Parties shall deem such portion as severed from this Agreement, and shall deem the remaining parts of this Agreement, including without limitation the remaining parts of the paragraph of which the unenforceable portion was a part, in full force and effect as though such unenforceable portion had never been part of this Agreement. The Parties shall replace any such unenforceable portion with an enforceable provision which will achieve, to the extent possible, the purposes of the unenforceable portion.

18. Forum and Law. This Agreement shall be governed by the laws of the state of Utah without respect to any principles of choice of law or conflicts of law. Jurisdiction and venue of any action commenced relating to this Agreement shall be exclusively in courts located in, or with jurisdiction over, Washington County, Utah.

19. Notices, Requests, and Communications. Unless otherwise provided in this Agreement, all notices, requests, and communications required by this Agreement shall be in writing and may be delivered electronically to the individuals provided below or by any of the following means: (a) certified or registered mail, postage prepaid, return receipt requested, in which case the written document shall be deemed delivered upon the earlier of actual receipt or three business days after the postmark date, (b) recognized commercial overnight courier, in which case the written document shall be deemed delivered one business day after acceptance for next business-day delivery by the courier, or (c) personal delivery, in which case the written document shall be deemed delivered when received. The addresses to which the written documents shall be delivered are as follows:

If delivered to the City:           City of St. George  
  Attn: Shane Moore  
  175 E. 200 N.  
  St. George, UT 84770

  with a copy to:           St. George City Attorney  
  175 E. 200 N.  
  St. George, UT 84770  
  Ryan.Dooley@sgcity.org

If delivered to Seller:           The Carla Fox Trust dated August 4,  
  2017  
  346 N. Main St.  
  St. George, UT 84770  
  Attn: Carla Fox, Trustee

Any Party shall deliver notice of change of address in the manner described in this section. Said change in address or individual in this Section shall not constitute an amendment to this Agreement. Rejection or other refusal to accept a notice or the inability to deliver a notice

because of a changed address of which no notice was given will be deemed to constitute receipt of the notice sent.

20. Execution. By executing this Agreement below, the executing individuals acknowledge that (1) they have read this Agreement, (2) they understand its terms, (3) they have had the opportunity to have this Agreement reviewed by independent counsel, (4) they have the full and complete authority to execute this Agreement on their own behalf or on the behalf of any entity which they represent, and (5) they intend to bind themselves or the entity which they represent, if any, to the terms of this Agreement in full. The failure of any executing individual to date their signature will not affect the validity of this Agreement.

21. Counterparts. This Agreement may be signed in counterparts and each such counterpart shall constitute an original document. All such counterparts, taken together, shall constitute one and the same instrument. Any signature on this Agreement transmitted by facsimile, electronically in PDF format, or by other generally accepted means of conveying digital signatures (e.g. DocuSign) shall be deemed an original signature for all purposes and the exchange of copies of this Agreement and of signature pages by any such transmission, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original for all purposes.

IN WITNESS of their intention to be bound by the above terms, the Parties hereby execute this Agreement as follows:

//SIGNATURE PAGE FOLLOWS//

**CITY OF ST. GEORGE**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Michele Randall, Mayor

Attested:

By: \_\_\_\_\_  
Christina Fernandez, City Recorder

Approved:

By: \_\_\_\_\_  
Alicia Carlton, Assistant City Attorney

City Council Approval by Motion on the \_\_\_\_ day of \_\_\_\_\_, 2024 with a favorable vote of \_\_\_\_ vote(s) in favor and \_\_\_\_ vote(s) opposed.

**THE CARLA FOX TRUST DATED AUGUST 4, 2017**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Carla Fox, Trustee

## Exhibit A

### SG-1650-B-N-1 (East Parcel)

Beginning at a point S 89°51'16" E 264.00 feet along the old original block line and N 00°08'44" E 121.67 feet along the East line of Lot 3 from the old original Southwest Corner of Block 6, Plat "D", St. George City Survey, said point is also N 63°22'50" W 360.84 feet from the existing ring and lid monument at the intersection of 300 North and 100 E Streets; and running thence N 00°08'44" E 171.83 feet along the East line of Lot 3 and Lot 6; thence N 89°51'16" W 114.00 feet to the terminus of that boundary line agreement according to the Corrective Boundary Line Agreement on file in the Office of the Washington County Recorder's Office as Doc. No. 20180009352 and running along said boundary line agreement the following (5) courses; thence (1) S 00°08'44" W 63.47 feet to the point of curve of a non-tangent curve to the left, of which the radius point lies S 10°35'20" E, a radial distance of 66.30 feet; thence (2) Westerly along the arc, through a central angle of 21°54'22", a distance of 25.35 feet; thence (3) S 63°08'47" W 10.92 feet; thence (4) S 00°07'16" E 7.22 feet; thence (5) S 89°52'44" W 10.63 feet; thence S 00°08'44" W 108.01 feet to the South side of the existing 15 foot rock wall; thence N 89°45'29" E 22.30 feet to a 3 inch diameter steel pole; thence N 03°18'27" W 11.06 feet to the West corner of an existing block wall; thence N 38°34'52" E 9.19 feet along the existing wall; thence N 89°05'34" E 130.42 feet along the north side of the existing wall, to the POINT OF BEGINNING.

Containing 24,602.28 square feet or 0.5648 acres, more or less.

### Ingress, Egress Easement

Beginning at the intersection of an existing chain link fence and the West line of Block 6, said point being N 00°08'44" E 96.81 feet along the block line from the old original Southwest Corner of Block 6, Plat "D", St. George City Survey; and running thence N 89°17'13" E 102.92 feet along the existing chain link fence to a 3 inch diameter steel pole; thence N 4°52'49" W 2.51 feet to the south side of an existing rock wall; thence N 89°45'29" E 3.57 feet; thence N 00°08'44" E 20.02 feet; thence S 89°58'00" W 106.26 feet; thence S 00°08'44" W 23.76 feet, to the POINT OF BEGINNING, as created by instrument recorded February 21, 1992 as Entry No. 400397, in Book 643, at Page 495-496, Official Washington County records.

### SG-1653-A-1-A-1 (West Parcel)

Beginning at the intersection of the existing chain link fence and the West line of Block 6, said point being N 00°08'44" E 96.81 feet along the block line from the old original Southwest Corner of Block 6, Plat "D", St. George City Survey; said point also being N 76°48'34" W 602.55 feet from the existing ring and lid monument at the intersection of 300 North and 100 East Streets and running thence N 89°17'13" E 102.92 feet along the existing chain link fence to a 3 inch diameter steel pole; thence N 04°52'49" W 2.51 feet to the south side of an existing rock wall; thence N 89°45'29" E 3.57 feet along the said existing rock wall; thence N 00°08'44" E 107.62 feet to the south line of Karl Brooks property, which is also on the line of the boundary line agreement according to the Corrective Boundary Line Agreement on file in the Office of the Washington County Recorder's Office as Doc. No. 20180009352 and running; thence S 89°52'44" W 106.26 feet along the south line of Karl Brooks property, and the line of said boundary line agreement to the West line of said Block 6, and the point of beginning to the boundary line agreement; thence S 00°08'44" W 111.185 feet to the POINT OF BEGINNING.

Containing 11,747.96 square feet or 0.2697 acres, more or less.

**EXHIBIT B**

WHEN RECORDED MAIL DEED TO:

City of St. George  
Attn: City Attorney  
175 E 200 N  
St. George, Utah 84770  
Tax ID.: SG-6-3-2-2001

**WARRANTY DEED**

The Carla Fox Trust dated August 4, 2017, Grantor, hereby quitclaims to CITY OF ST. GEORGE, a municipal corporation of the State of Utah, Grantee, for the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, all of its right, title and interest in the below described tracts of land located in Washington County, Utah:

PROPERTY DESCRIPTION: SEE EXHIBIT A ATTACHED

Washington County Tax Parcel No. SG-1653-A-1-A-1 and Tax Parcel No. SG-1650-B-N-1-A

Together with all improvements and appurtenances, restrictions, and reservations of record and those enforceable in law and equity.

WITNESS the hand of said Grantor this \_\_\_\_ day of \_\_\_\_\_, 2024

Carla Fox Trust dated August 4, 2017

By: \_\_\_\_\_ (Authorized Representative)  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
  ):ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, \_\_\_\_\_ personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed in this instrument and executed the same in my presence on behalf of the Carla Fox Trust dated August 4, 2017, by Carla Fox, Trustee.

Witness my hand and official seal.

SEAL:

\_\_\_\_\_  
NOTARY PUBLIC

Residing in \_\_\_\_\_My Commission Expires: \_\_\_\_\_