

REGULATION NO. 2022-3

**A REGULATION REVISING AND REPLACING REGULATION No. 2019-03 TO
INCLUDE RIGHT-OF-WAY ENCROACHMENT REQUIREMENTS.**

WHEREAS, Summit County Service Area #3 (the “**Service Area**”) is a Utah local district, existing under and by virtue of the provisions of the Service Area Act, Section 17B-2a-901, et seq. of the Utah Code; and

WHEREAS, Section 2-27-1 of the Summit County Code authorizes the Service Area to operate and maintain the roads, trails, an other public rights-of-way located within the Silver Creek Estates Subdivision (the “**Subdivision**”), including snow removal; and

WHEREAS, the Board desires to revise and replace Regulation #2019-03 to include requirements to govern road construction performed by parties other than the Service Area within the rights-of-way that are subject to the Service Area’s jurisdiction; and

WHEREAS, the Board finds that it is in the best interests of the Service Area and its residents to repeal Regulation No. 2019-03, and replace it with the attached, revised regulation, which includes provisions governing encroachments into the rights-of-way for construction and other purposes.

NOW, THEREFORE, be it **RESOLVED** by the Board of Trustees of the Summit County Service Area #3 that effective May 1, 2022:

1. That Regulation 2019-03 and any other related road regulations are repealed in their entirety and replaced with the regulation attached as Exhibit A; and
2. The template road construction agreement attached as Exhibit B is approved; and
3. The Service Area’s staff is directed to prepare, revise, and send any notices, releases, form letters, applications, or other documents the adopted, attached regulation may require.

[execution on following page]

ADOPTED AND APPROVED by majority vote at a duly called meeting of the Board of Trustees of Summit County Service Area #3 on this 19th day of April, 2022.

SUMMIT COUNTY SERVICE AREA NO. 3


Larry Elbert, Chair
Board of Trustees

ATTEST:

Paul Kraus, Board Clerk

VOTING

Trustee Adams voting	Absent
Trustee Carpenter voting	Yea
Trustee Daniells voting	Yea
Trustee Elbert voting	Yea
Trustee Kraus	Yea
Trustee Pao-Borjigin voting	Yea
Trustee Sharp voting	Yea

EXHIBIT A

REGULATION #2022-3

SUMMIT COUNTY SERVICE AREA #3 PUBLIC RIGHTS OF WAY REGULATIONS

Table of Contents

SECTION 1.0 Definitions 1

1.1 Board..... 1

1.2 Construction Activity 1

1.3. County. 1

1.4 Construction Bond 1

1.5 Construction Plan..... 1

1.6 Driveway 1

1.7 Emergency..... 1

1.8. Encroachment(s)..... 1

1.9. Entity..... 1

1.10 Excavation Activity..... 1

1.11 Four-Wheel Drive..... 2

1.12 General Manager..... 2

1.13 Motorist 2

1.14 Notice of Encroachment..... 2

1.15 Property Owner 2

1.16 Right-of-Way..... 2

1.17 Road Construction 2

1.18 Roads Manager.....	2
1.19 Service Area.....	2
1.20 Subdivision.....	2
1.21 Tire Chain.....	2
1.22 Traction Devices.....	2
1.23 Traction Device Equipped.....	2
1.24 Winter Weather Conditions.....	3
SECTION 2.0 Authority.....	3
SECTION 3.0 Waiver.....	3
SECTION 4.0 Rights-of-Way.....	3
4.1 Rights-of-Way Subject to Service Area Jurisdiction.....	3
SECTION 5.0 Encroachments on Rights-of-Way Prohibited.....	3
SECTION 6.0 Emergency Exception.....	4
SECTION 7.0 Encroachment Reporting Procedures.....	4
7.1 Initial Investigation.....	4
7.2 Report to General Manager.....	4
7.3 Notice to Entity Responsible for Encroachment.....	4
7.4 Response to Notice of Encroachment.....	5
7.5 Timely Response.....	5
7.6 Notice of Encroachment Records.....	5
7.7 General Manager’s Duty to Keep Board Informed.....	5
7.8 General Manager’s Duty to Notify Board of Violations.....	5
7.9 Final Decision Maker.....	6

7.10 Written Request to the County	6
7.11 Notice to Entity Responsible for Encroachment.....	6
SECTION 8.0 County Responsibilities for Encroachments	6
SECTION 9.0 Road Construction Application.....	6
9.1 Application Required.....	6
9.2 Review of Application.....	6
9.3 Road Service and Security Deposits and Bonds	7
9.4 Agriculture Rule Buildings.....	7
9.5 Payment of Service Area Costs.....	7
SECTION 10.0 Driveway Construction Application	7
10.1 Application Required.....	7
10.2 Consolidation with Applications Filed under Section 9.0	8
10.3 Fees and Security Deposits	8
10.4 Review of Application.....	8
10.5 Minimum Driveway Width.....	8
10.6 Culverts.....	8
10.7 Refund of Security Deposits and Bonds.....	8
10.8 Compliance	9
10.9 Applicability	9
SECTION 11.0 Excavation Activity Within the Subdivision	10
11.1 Application Required.....	10
11.2 Review of Application.....	10
11.3 Emergency Conditions	10

11.4 Payment.....	10
SECTION 12.0 Road Construction Within the Subdivision	10
12.1 Application Required.....	10
12.2 Review of Application.....	10
12.3 Road Construction Timeline.....	11
12.4 Construction Bond Requirements	12
12.5 Draws on and Release of Construction Bond.....	12
12.6 Warranty Bond	13
12.7 Road Usage Fees	13
12.8 Payment.....	14
SECTION 13.0 Expiration of Applications	14
SECTION 14.0 Liability to Repair Road, Drainage System, and Trail Damage.....	14
14.1 Repairs.....	14
14.2 Approved Contractor	14
14.3 Notice.....	14
14.4 Compliance	14
SECTION 15.0 Vehicle Traction Device Equipment.....	15
15.1 Purpose	15
15.2 Designation	15
15.3 Notification	15
SECTION 16.0 Reimbursement for Motorist Assistance	15
16.1 Reimbursement.....	15
16.2 Notice of Reimbursement	15

16.3 Reimbursement Date	16
16.4 Written Challenge	16
16.5 Written Decision	16
SECTION 17.0 Snow Removal	16
17.1 Snow Storage on Site.....	16
17.2 Prohibition on the Deposit of Snow in the Public Right-of-Way	16
17.3 Property Owners Responsible for Encroachments	17
17.4 Reimbursement for Service Area Costs	17
SECTION 18.0 Water Service Separate and Unrelated	17
SECTION 19.0 Appeals.....	17
SECTION 20.0 Late Fees	17
SECTION 21.0 Savings Clause	17

REGULATION #2022-3

SUMMIT COUNTY SERVICE AREA #3 PUBLIC RIGHTS-OF-WAY REGULATIONS

SECTION 1.0 Definitions.

- 1.1 Board. The Service Area's Board of Trustees.
- 1.2 Construction Activity: Any activity that requires a building permit from the County and involves:
 - 1.2.1.2 The construction of a new building or structure;
 - 1.2.1.3 The demolition or removal of one (1) or more walls of an existing structure; and/or
 - 1.2.1.4 An addition to an existing structure.
- 1.3 County. Summit County, Utah.
- 1.4 Construction Bond. A performance bond to guarantee the performance of a Road Construction project.
- 1.5 Construction Plan. The Road Construction plan, drawings and specifications, including but not limited to plan views, cross-section views, profile views, and typical views showing the existing conditions and the proposed
- 1.6 Driveway. Any private road or other entrance to private property that connects with a public road or right-of-way that is subject to the Service Area's jurisdiction.
- 1.7 Emergency. Any situation requiring immediate or remedial action to protect public safety or health or to prevent injury, the loss of life, or damage to property and the environment.
- 1.8 Encroachment(s). Any structure, driveway, road, parking lot, fixture, excavation, tree, shrub, motor vehicle, trailer, dumpster, debris, gravel, dirt, or any other item or action that intrudes upon, invades, encloses, blocks, or otherwise hinders the public's ability to freely use a right-of-way without the authorization of the Service Area or other applicable authority.
- 1.9 Entity. Any person, firm, public utility, corporation, or any other entity that places an encroachment within a right-of-way.
- 1.10 Excavation Activity. A project that will place, make, enlarge, or change any excavation; re-grade existing contours; or place fill on private property that will require the use of roads or other public rights-of-way that are subject to the Service Area's jurisdiction.

1.11 Four-Wheel Drive. Four-wheel and all-wheel drive automobiles and light trucks mounted M+S (all-season) or 3 peak mountain snowflake (3PMSF) snow tires on all wheels.

1.12 General Manager. The Service Area's general manager.

1.13 Motorist. A resident of the Subdivision or an agent, representative, or sub-contractor of a resident or contractor performing construction services within the Subdivision who is operating a motor vehicle.

1.14 Notice of Encroachment. The form letter the Service Area will send to an entity reasonably believed to be responsible for an encroachment.

1.15 Property Owner. An owner of real property within the Subdivision.

1.16 Right-of-Way. Any public right-of-way subject to the Service Area's jurisdiction, including but not limited to public roads, highways, thoroughfares, parkways, or trails.

1.17 Road Construction. Any activity by a private party that involves any type of construction, excavation, road cut, paving, re-paving, grading, re-grading, widening, or any other modification to a public road or right-of-way subject to the Service Area's jurisdiction.

1.18 Roads Manager. The Service Area's roads manager.

1.19 Service Area. Summit County Service Area #3.

1.20 Subdivision. The Silver Creek Estates Subdivision.

1.21 Tire Chain. Metal chains which consist of two circular metal loops, one on each side of the tire, connected by not less than nine evenly spaced chains across the tire tread and any other traction devices differing from such metal chains in construction, material, or design but capable of providing traction equal to or exceeding that of such metal chains under similar conditions.

1.22 Traction Devices. Devices that improve traction of tires on icy or snowy road by placing high friction objects between the tires and the road. Examples include tire chains, tire studs, and other devices similar in function.

1.23 Traction Device Equipped. A vehicle equipped as follows.

1.23.1 Any size vehicle with traction devices on all drive tires. An exception is allowed in the case of dual tires, where traction devices are required for at least one of the two tires in the dual mounting.

1.23.2 On a vehicle less than 12000 GVW equipped with 3 Peak Mountain Snowflake (3PMSF) snow tires on all wheels will be considered traction device equipped.

1.23.3 Any size vehicle equipped with four-wheel drive and tires having adequate tread.

1.24 Winter Weather Conditions. A road that has accumulated snow, ice, or slush that creates poor driving conditions.

SECTION 2.0 Authority

The Service Area promulgates this Regulation pursuant to Utah Code Ann. § 17B-1-103, Utah Code Ann. § 17B-2a-901, et seq., and Section 2-27-1, et seq. of the Summit County Code, and any other applicable law, ordinance, regulation, or successor statute.

SECTION 3.0 Waiver

Nothing in this regulation will be construed as a waiver by the Service Area to collect or seek reimbursement for damages caused to the roads, trails, or improvements in the Subdivision.

SECTION 4.0 Rights-of-Way

The Service Area will exercise jurisdiction over all rights-of-way subject to its jurisdiction to the extent allowed under the provisions of the Service Area Act, Utah Code Ann. § 17B-2a-901, et seq. or successor statute, all applicable regulations of the County, and any other applicable laws or regulations.

4.1 Rights-of-Way Subject to Service Area Jurisdiction. The rights-of-way subject to the Service Area's jurisdiction include:

4.1.1 All un-built public roads, highways, thoroughfares, parkways, or trails within the Subdivision as platted and approved by the County's Board of Commissioners;

4.1.2 All roads, highways, thoroughfares, parkways, or trails built during and subsequent to the original development of the Subdivision and dedicated to public use, even if they were built in a different location than originally platted and approved by the County Commission; and

4.1.3 All other roads, highways, thoroughfares, parkways, or trails dedicated to public use, including, but not limited to, those dedicated or abandoned to public use pursuant to Utah Code Ann. § 72-5-104 or applicable successor statute.

SECTION 5.0 Unauthorized Encroachments on Rights-of-Way Prohibited

Any and all encroachments on the rights-of-way within the Service Area are prohibited, except as otherwise provided herein.

SECTION 6.0 Emergency Exception

A temporary encroachment on a right-of-way is permissible in an emergency, provided that the entity making the encroachment must remove the encroachment as soon as is reasonably possible and notify the Service Area's Roads Manager at the earliest possible time regarding the encroachment and the emergency that necessitated the encroachment.

SECTION 7.0 Encroachment Reporting Procedures

7.1 Initial Investigation. Upon identifying an encroachment or receiving notice of an encroachment by anyone else, the Roads Manager will investigate the encroachment within a reasonable amount of time.

7.2 Report to General Manager. If the Roads Manager determines that an encroachment exists after performing the investigation, the Roads Manager will report the encroachment to the General Manager.

7.3 Notice to Entity Responsible for Encroachment. Upon receiving notice from the Roads Manager of an encroachment, the General Manager will send a written Notice of Encroachment to the entity believed to be responsible for the encroachment. The General Manager does not need approval from the Board to send the Notice of Encroachment. The Notice of Encroachment must include the following information:

7.3.1 The time and date when the encroachment was identified;

7.3.2 The location of the encroachment;

7.3.3 A description of the encroachment, including photographs where possible;

7.3.4 The entity reasonably believed to be responsible for the encroachment;

7.3.5 An explanation of why the Service Area believes an encroachment exists;

7.3.6 Response options for the entity believed to be responsible for the encroachment as described in Section 7.4 below;

7.3.7 Contact information and instructions for the entity to use in contacting the General Manager regarding the Notice of Encroachment;

7.3.8 A notification that a copy of the Notice of Encroachment has also been sent to the applicable officials with the County's Public Works Department and Attorney's Office; and

7.3.9 An explanation that the Service Area will recommend enforcement procedures from the County, if the entity fails to respond to the Notice of Encroachment

or fails to provide a valid objection to the Notice of Encroachment within the specified time period.

7.4 Response to Notice of Encroachment. An entity that receives a Notice of Encroachment will be given the following options in responding to the Notice of Encroachment:

7.4.1 Remove the encroachment and provide evidence to the General Manager that the encroachment has been removed;

7.4.2 Inform the General Manager of the steps and associated timeline that the entity will take to remove the encroachment; or

7.4.3 Object to the Notice of Encroachment with supporting information and documentation on one or more of the following grounds:

7.4.3.1 The encroachment is justified, either through an emergency or other similar necessity;

7.4.3.2 There is no encroachment;

7.4.3.3 The entity that received the Notice of Encroachment is not responsible for the encroachment; or

7.4.3.4 Any other legal reason that justifies the encroachment.

7.5 Timely Response. The entity that receives the Notice of Encroachment must deliver a written response to the General Manager within 14 days of the date the Notice of Encroachment was sent.

7.6 Notice of Encroachment Records. The General Manager will maintain records of every Notice of Encroachment the General Manager sends to an entity and any responses received to each Notice of Encroachment.

7.7 General Manager's Duty to Keep Board Informed. The Board is not required to be involved in every Notice of Encroachment action, but the General Manager will keep the Board reasonably informed of the General Manager's actions relating to Notices of Encroachments.

7.8 General Manager's Duty to Notify Board of Violations. If the General Manager determines that an entity reasonably believed to be responsible for an encroachment: (1) did not respond to the Notice of Encroachment within 14 days; (2) did not provide satisfactory evidence that the encroachment would be removed or failed to remove the encroachment within the time frame the responsible entity provided to the General Manager; or (3) did not provide a valid objection to the Notice of Encroachment, the General Manager will notify the Board of the responsible entity's violation and provide the Board with the entity's response to the Notice of Encroachment, if any.

7.9 Final Decision Maker. The Board is the final decision maker in determining whether to request enforcement from the County. Upon receiving notification from the General Manager of an encroachment violation, the Board will review the matter and determine whether to request enforcement from the County.

7.10 Written Request to the County. If the Board decides to request enforcement from the County, the Board will direct the General Manager to request enforcement from the County in writing, so that Summit County may thereafter take over the matter.

7.11 Notice to Entity Responsible for Encroachment. At the same time, or within a reasonable amount of time after the General Manager sends the written request for enforcement from the County, the General Manager will send a letter to the entity responsible for the encroachment, informing the responsible entity that the matter has been turned over to the County.

SECTION 8.0 County Responsibilities for Encroachments.

The County owns the roads within the Service Area and is responsible for patrolling the roads and removing encroachments on the roads pursuant to Section 7-6-1, et seq. of the Summit County Code. This regulation does not prohibit the County from patrolling the roads or undertaking enforcement actions within the Service Area separate and apart from the procedures established by this regulation.

SECTION 9.0 Construction Activity Within Subdivision.

9.1 Application Required. A Property Owner who initiates a Construction Activity within the Subdivision will apply for a permit from the Service Area prior to the start of construction. Provided, that the Board may, in its discretion, limit the application of this permit requirement to construction activities that satisfy specific, threshold requirements. All applications submitted pursuant to this Section will include:

9.1.1 The name and contact information of the Property Owner and the person responsible for the Construction Activity;

9.1.2 The address or lot number of the lot upon which improvements are to be constructed;

9.1.3 The projected starting date and construction completion date of the project;

9.1.4 The estimated square footage of the Construction Activity;

9.1.5 The estimated value of the Construction Activity;

9.1.6 A copy of the County building permit.

9.2 Review of Application. The General Manager will review the application for completeness and may deny the application if it is incomplete, if the applicable fees have not been

paid, or if the application does not comply with this Regulation or applicable law. The General Manager will confer with the Roads Manager in reviewing applications submitted under this Section and will notify the Property Owner in writing whether the application has been granted or denied, and, in the case of a denial, will explain the reasons for the denial. Upon approval of an application, the Property Owner and the Service Area will enter into an Encroachment Agreement in a form approved by the Board.

9.3 Road Service Fees and Security Deposits and bonds. The Service Area will collect any fees, security deposits, or bonds adopted by the Board for construction activities when the Property Owner submits an application under this Section. Property Owners may not begin construction until they have paid the applicable fees, security deposits, and bonds and the Service Area has approved their application. Any fees collected pursuant to this Section will be remitted to the Service Area's General Road Maintenance Budget. The Service Area will refund any security deposits or bonds paid under to this Section pursuant to the process set forth in Section 10.7.

9.4 Agricultural Buildings. Agricultural buildings that are not exempt from building permit requirements of Utah Code Ann. § 15A-1-204(11) will be treated the same as any other structure for the purposes of this Regulation.

9.5 Payment of Service Area Costs. As a condition of the Service Area's authorization for a Property Owner to use the public roads and rights-of-way within the Subdivision for a construction project, the Property Owner agrees to reimburse all documented costs and fees incurred by the Service Area in ensuring the Property Owner's compliance with this Regulation, including reasonable attorney's fees incurred in collecting the amount due.

SECTION 10.0 Driveway Construction Within the Subdivision.

All driveways constructed within the Subdivision will be constructed in accordance with the standards and specifications of this Section.

10.1 Application Required. Every Property Owner constructing a driveway that connects to a right-of-way within the Subdivision will apply in writing to the Service Area for permission to construct a driveway prior to commencement of construction. The application will include the following information:

10.1.1 The name and contact information of the Property Owner and person responsible for the Construction Activity;

10.1.2 The address or lot number(s) of the property upon which the driveway is to be constructed;

10.1.3 The projected starting date and construction completion date of the driveway; and

10.1.4 A copy of any applicable County permit.

10.2 Consolidation with Applications Filed under Section 9.0. If a Property Owner is constructing a driveway as a part of a construction project requiring a permit under Section 9.0, the Property Owner will submit one application containing the information required in Sections 9.0 and 10.1, and the Board will process both applications jointly.

10.3 Fees, Security Deposits, and Bonds. The Service Area will collect any fees, deposits, or bonds adopted by the Board for the construction of driveways and culverts when the Property Owner submits an application under this Section. Property Owners constructing a driveway that connects to a right-of-way may not begin construction until after they have paid all applicable fees, security deposits, and/or bonds adopted by the Board. Any fees collected pursuant to this Section will be remitted to the Service Area's General Road Maintenance Budget. The Service Area may adopt different fees, deposits, or bonds for driveways and culverts for single family home construction projects than for all other types of construction projects.

10.4 Review of Application. The General Manager will review the application for completeness and may deny the application if it is incomplete, if any applicable fees, security deposits, and/or bonds have not been paid, or if the application does not comply with this Regulation or applicable law. The General Manager will confer with the Roads Manager in reviewing applications submitted under this Section and will notify the Property Owner in writing whether the application has been granted or denied, and, in the case of a denial, will explain the reasons for the denial. Upon approval of an application, the Property Owner and the Service Area will enter into an Encroachment Agreement in a form approved by the Board.

10.5 Minimum Driveway Width. The minimum driveway width will be twelve (12) feet. All driveways will be constructed in compliance with the standards and specifications which are depicted in the drawing attached as **Addendum A** to this Regulation or as otherwise required by the Roads Manager if the Roads Manager determines in their sole discretion that the standards and specifications cannot be reasonably applied.

10.6 Culverts. All driveways will be constructed using a culvert at each surface drainage feature which will extend two (2) feet on either side of the driveway. Each culvert will have a diameter of not less than eighteen (18) inches, unless written authorization for either a smaller culvert or no culvert is obtained from the Service Area. Each culvert will be aligned in the drainage feature to receive and discharge flows at the appropriate location so as not to block drainage. Each driveway will have a gutter depression parallel to the road drainage not less than two (2) inches above and not more than six (6) inches below the road shoulder elevation to provide drainage from the driveway to the drainage feature.

10.7 Security Deposit and Bond Refund. The Service Area will hold any security deposits or bonds it collects pursuant to this Regulation to ensure the compliance of the Property Owner with the provisions of this Regulation. Any security deposit or bond collected by the Service Area pursuant to this Regulation may be refunded after satisfactory completion of construction and all required repairs, under the following procedure:

10.7.1 The Property Owner notifies the Service Area when construction is completed and requests a refund in writing, identifying the lot number and the Property

Owner's name and address, the reasons supporting the request for refund, the date construction started and ended, and any other pertinent information the Property Owner deems necessary. The Property Owner must submit the refund request to the General Manager within thirty (30) calendar days of the building permit end date.

10.7.2 After receipt of the written request for refund, the Roads Manager will inspect the Construction Activity, driveway, culvert, and related road, trail, and drainage systems and will recommend to the General Manager whether the Service Area should act to approve, reduce or deny the refund.

10.7.3 The General Manager will approve a refund of a security deposit or bond if the driveway and applicable culvert is fully completed in compliance with the requirements outlined herein and if all construction related damage to the roads, trails, and drainage systems have been adequately repaired. If the General Manager denies the request for refund, the General Manager will provide the Property Owner with a written explanation of the reasons for the denial. If the Property Owner's construction project required the Service Area to incur costs repairing damage related to the project, the Service Area will deduct any amounts owing from the security deposit or bond and will provide the Property Owner with an invoice showing the costs the Service Area has incurred. The Property Owner will reimburse the Service Area for any costs in excess of the security deposit or bond within thirty (30) days of the date of the invoice.

10.7.4 If a Property Owner does not request a refund in a timely manner pursuant to Section 10.7.1, the Roads Manager will inspect the Construction Activity, driveway, culvert and related road, trail, and drainage system and will recommend to the General Manager whether the Service Area should act to approve, reduce, or deny the refund. The General Manager will then follow the process in Section 10.7.3 as applicable.

10.8 Compliance. Any Property Owner who constructs a driveway or entrance that is not in compliance with this Section will be responsible for bringing said construction into compliance. Any Property Owner who fails to comply with this Section will be deemed to have granted authority to the Service Area to take whatever action is appropriate, including legal action, repair the road(s), trails, and drainage system(s) and to bring the driveway or entrance construction into compliance with this Section. The Property Owner agrees to pay all costs and fees incurred by the Service Area in enforcement of this Section, including reasonable attorney's fees incurred in collecting the amount due.

10.9 Applicability. This Section will apply to all driveways and culverts within the Service Area; however, driveways that were in existence as of May 1, 2022, will not be required to comply with the standards and specifications of this Section until the Board, in its sole discretion, chooses to upgrade the road and drainage system adjacent to the lot and driveway. Upon written notice by the Service Area to the Property Owner that such road and drainage system improvement will be completed by a specific date and that compliance will be required, the Property Owner will improve or modify the driveway to comply with this Section no later than sixty (60) days from the date of written notice.

SECTION 11.0 Excavation Activity Within the Subdivision.

11.1 Application Required. A Property Owner desiring to perform an Excavation Activity within the Subdivision must apply in writing to the Service Area for permission to perform the excavation activity if the activity requires a permit from the County. The application must include:

11.1.1 The name and contact information of the Property Owner and the person responsible for the Excavation Activity;

11.1.2 The address or lot number(s) of the property upon which Excavation Activity will be performed;

11.1.3 The projected starting date and completion date of the Excavation Activity;

11.1.4 The estimated weight in pounds of the fill or other material that will be transported over rights-of-way subject to the Service Area's jurisdiction within the Subdivision;

11.1.5 A copy of the applicable County permit.

11.2 Review of Application. The General Manager will review the application for completeness and may deny the application if it is incomplete, if any applicable fees, security deposits, or bonds have not been paid, or if the application does not comply with this Regulation or applicable law. The General Manager will confer with the Roads Manager in reviewing applications submitted under this Section and will notify the Property Owner in writing whether the application has been granted or denied, and, in the case of a denial, will explain the reasons for the denial.

11.3 Emergency Conditions. Emergency excavation activities may be made without filing an application under this Section if the reason for the Excavation Activity is to prevent loss of life or damage to property which appears to be imminent if the action is delayed by waiting to secure the applicable permits from the County and to file the application required by this Section.

11.4 Payment. As a condition of the Service Area's authorization for a Property Owner to use the public roads and rights-of-way within the Subdivision for an Excavation Activity, the Property Owner agrees to pay all costs and fees the Service Area may incur in requiring the Property Owner's compliance with this Regulation, including reasonable attorney's fees incurred in collecting the amount due.

SECTION 12.0 Road Construction Within the Subdivision.

12.1 Application Required. Any person desiring to perform any type of Road Construction within the roads and rights-of-way that are subject to the Service Area's jurisdiction must apply in writing to the Service Area for permission to perform the activity. The application must include:

12.1.1 The name and contact information of the applicant and the person responsible for the Road Construction;

12.1.2 The address or lot number(s) of the property upon which the Road Construction will be performed;

12.1.3 The projected starting date and completion date of the Road Construction;

12.1.4 The estimated cost of the Road Construction;

12.1.5 A copy of the Construction Plan;

12.1.6 The types and estimated weight in pounds of construction materials, fill, and other materials that will be transported over rights-of-way subject to the Service Area's jurisdiction within the Subdivision; and

12.1.7 A copy of any applicable County permit.

12.2 Review of Application. Any application for permission to perform the Road Construction within the rights-of-way that are subject to the Service Area's jurisdiction shall be submitted to the Service Area for review and approval no later than sixty (60) days prior to the anticipated commencement of the Road Construction. The General Manager, in consultation with the Roads Manager and any other qualified experts, will review the application for completeness, and may deny the application if it is incomplete, if any applicable fees, security deposits, or bonds have not been paid, or if the application does not comply with this Regulation or applicable law. The General Manager will confer with the Roads Manager in reviewing applications submitted under this Section and will notify the Property Owner in writing whether the application has been granted or denied, and, in the case of a denial, will explain the reasons for the denial. Upon approval of an application, the Property Owner and the Service Area will enter into an Encroachment Agreement in a form approved by the Board.

12.3 Road Construction Timeline. The Road Construction shall proceed in accordance with the following terms:

12.3.1 The Road Construction shall be commenced as soon as reasonably practicable but must begin by the end of June and shall be completed prior to the end of October. No Road Construction shall be performed at any other time, unless permitted by the Service Area, in its sole discretion, upon a showing of extraordinary and compelling circumstances by the Property Owner.

12.3.2 If the Road Construction is not commenced by the end of June, the permit shall expire, and the Property Owner must resubmit an application to begin road construction the following year.

12.3.3 If the Road Construction is timely commenced, but not completed prior to the end of October, the applicant shall pay to the Service Area a lump sum fine of not less than ten percent (10%) of the estimated cost of the Road Construction, plus an additional \$100.00 per day until completion of the Road Construction. Such fines shall be payable from the Property Owner's Construction Bond, as defined in Section 12.4. The applicant will also prepare the right-of-way so that it is passable during the winter months in accordance with any related instructions that the Service Area may provide that are reasonably necessary to preserve the right-of-way and road.

12.4 Construction Bond Required. Upon approval of the application for Road Construction, the Property Owner shall obtain and fund a Construction Bond. The Construction Bond shall meet the following requirements:

12.4.1 Unless otherwise approved by the Service Area, the Construction Bond shall be for an amount as calculated pursuant to the Service Area's fee schedule.

12.4.2 The company that issues the Construction Bond must be licensed to do business in the state of Utah.

12.4.3 The Construction Bond shall include a binding statement that the bond company will pay for completion of the project in accordance with the permit and approved Construction Plan.

12.4.4 The Construction Bond shall be binding on heirs, executors, and assigns. The Service Area may create an approved vendor list of road contractors used by the Service Area. If the Property Owner elects to utilize an approved vendor, the Service Area may, in its sole discretion, discount the amount of the Construction Bond based upon the past performance of the approved vendor.

12.5 Draws on and Release of Construction Bond.

12.5.1 The Service Area may draw from the Construction Bond when any one or more of the following conditions occur:

12.5.1.1 Construction activity ceases for an unreasonable amount of time not due to forces of nature or other crisis not of the contractor's making prior to completion of the Road Construction;

12.5.1.2 The Road Construction is not completed within the permitted time frame;

12.5.1.3 The Property Owner notifies the Service Area that the Road Construction will not be completed in accordance with permit requirements; or

12.5.1.4 The completed Road Construction does not reasonably conform to the permit or Construction Plan.

12.5.2 The Service Area shall notify the Property Owner, contractor and bond agent in writing when any of the conditions for a draw are met. The notification letter will include (a) the permit number and location of the Road Construction; (b) reason for draw; (c) amount and basis of draw amount; and (d) statement that additional draws may be necessary for reasons as stated in the notification letter.

12.5.3 The Service Area may draw an amount of the Construction Bond funds commensurate with the amount of money necessary to cure the deficiency outlined in the notification letter.

12.5.3.1 The Service Area may withdraw the amount necessary for the Service Area to complete the Road Construction in accordance with the Construction Plan.

12.5.3.1.1 The Service Area will determine the funding necessary to finish the Road Construction based on field review, testing reports, and the contractor's bid to complete the Road Construction in accordance with the permit and Construction Plan.

12.5.3.1.2 If the Service Area draws from the Construction Bond amount and completes the construction and the completed Road Construction is in accordance with the permit and the Construction Plan, the Service Area may release the remaining Construction Bond funds with a letter of acceptance.

12.5.3.2 In the case of untimely completion of the Road Construction, the Service Area may withdraw a lump sum fine of ten percent (10%) of the estimated cost of the Road Construction and the additional \$100.00 per day from the Construction Bond until completion of the Road Construction.

12.5.4 The Service Area will fully release the Construction Bond upon Service Area review and acceptance of the Road Construction, including all punch list items.

12.6 Warranty Bond. The Service Area, in its sole discretion, may require a Warranty Bond upon completion and acceptance of the Road Construction. If a warranty bond is required, it must be provided prior to release of the Construction Bond. The amount shall not exceed ten percent (10%) of the Construction Bond amount or the applicant's proven costs of completion. The bond shall be held for one (1) year after the date of acceptance of the Road Construction.

12.7 Road Usage Fees. The Board may, in its discretion, require the payment of fees security deposits, or bonds for usage for Road Construction that requires use of the rights-of-way. Prior to reviewing an application submitted pursuant to this Section, the Service Area will collect any applicable fees adopted by the Board for Road Construction that requires use of rights-of-way subject to the Service Area's jurisdiction. All fees collected pursuant to this Section will be remitted to the Service Area's General Road Maintenance Budget.

12.8 Payment. As a condition of the Service Area's authorization for a Property Owner to use the public roads and rights-of-way within the Subdivision for Road Construction, the Property Owner agrees to pay all costs and fees the Service Area may incur in requiring the Property Owner's compliance with this Regulation, including reasonable attorney's fees incurred in collecting the amount due.

SECTION 13.0 Expiration of Applications.

An application granted under Sections 9.0, 10.0, 11.0, or 12.0 will automatically expire at 11:59 pm on the 540th day following the date the Service Area grants the application. If an application expires, the Service Area will return all applicable deposits, less any costs or expenses the Service Area has incurred pursuant to this Regulation. Once an application has expired, it must be re-filed with all applicable deposits and fees to secure authorization from the Service Area for the applicable project.

SECTION 14.0 Liability to Repair Road, Drainage System, and Trail Damage

14.1 Repairs. Each Property Owner who damages a road, drainage system, trail, or any other public right-of-way or facility subject to the Service Area's jurisdiction will repair the damage at the Property Owner's sole cost and expense. Unless the Service Area directs otherwise, the Property Owner will make the repairs within three days of:

14.1.1 The date damage was incurred; or

14.1.2 The date of completion of a project or activity authorized pursuant to this Regulation if the damage was contemplated and anticipated as part of the authorized project or activity.

14.2 Approved Contractor. All repairs must be performed by a contractor approved by the General Manager after consulting with the Roads Manager.

14.3 Notice. If the Property Owner does not repair the damage caused by the construction activity within three days following the date of the damage or, if applicable, the completion of a project or activity authorized under this Regulation, the Service Area will notify the Property Owner in writing concerning the requirement to complete the repairs.

14.4 Compliance. Any Property Owner who fails to comply with this Section will be deemed to have granted authority to the Service Area to take whatever action is appropriate, including legal action and repairs to the road(s), trails, and drainage system(s). The Property Owner agrees to pay all costs and fees incurred by the Service Area in making any necessary repairs and enforcing this Section, including reasonable attorney's fees incurred in collecting the amount due.

SECTION 15.0 Vehicle Traction Device Equipment

15.1 Purpose. The purpose of this Section is to establish the conditions under which the Service Area will require vehicles to be traction device-equipped to traverse roads or road segments impacted by winter weather. Requiring vehicles to be traction device-equipped when conditions warrant increases the likelihood that drivers safely traverse the road and reduces the likelihood that drivers create a public safety hazard, hamper road maintenance, or cause damage to the improvements and roads in the Subdivision.

15.2 Designation. When winter weather conditions warrant or during specified times of the year, as determined by the Service Area, the Service Area may designate roads or sections of roads where no vehicle will be allowed or permitted unless the vehicle is traction device equipped.

15.3 Notification. The Service Area will notify travelers when vehicles must be traction device-equipped by placing signs or notices on the road or segments of road where vehicles are required to be traction device equipped.

SECTION 16.0 Reimbursement for Motorist Assistance

16.1 Reimbursement. If the Service Area, its personnel or contractors are required to assist a motorist or otherwise take action to make a motorist's vehicle operational, or make repairs to roads caused by the motorist, or both, regardless of whether the motorist complies with this Regulation, the Service Area may, at its discretion, seek reimbursement for any costs associated with assisting the motorist from the motorist if the motorist is a resident of the Service Area or if the motorist is a contractor or agent of a resident or Property Owner within the Service Area. Prior to completing the assistance, the agent or representative of the Service Area will record the following information regarding the assistance provided:

16.1.1 The motorist's name and lot number, if applicable;

16.1.2 The motorist's name and company information;

16.1.3 The motorist's license plate number;

16.1.4 A description of the vehicle;

16.1.5 The date of the incident that required the Service Area to assist the motorist;

16.1.6 A description of the events that took place; and

16.1.7 The name of the agent or representative of the Service Area that provided the services to the motorist.

16.2 Notice of Reimbursement. Within 45 days of assisting the motorist, the Service Area must send a notice to the Property Owner that the motorist was providing services for

informing the Property Owner of the amount of reimbursement the Service Area seeks for its assistance or repairs. The notice of reimbursement must contain information gathered under Section 14.1 and must also include a receipt or receipts, or other information, showing the costs that the Service Area incurred, contact information for the Service Area's General Manager where the Property Owner can send a written response, the deadline for filing a written response, and the deadline for paying the reimbursement.

16.3 Reimbursement Date. If the Property Owner has a security deposit or bond on file with the Service Area, the Service Area will deduct the reimbursement costs from the security deposit or bond. Within 30 days of the date of the notice of reimbursement, or 15 days from the date of the notice of denial from the Service Area's General Manager, the motorist must provide payment to the Service Area.

16.4 Written Challenge. A Property Owner who receives a notice of reimbursement pursuant to this Section may provide the General Manager with written notice disputing the notice of reimbursement. The Property Owner must file the written response with the General Manager within 10 days of the date of the notice of reimbursement. The written notice must state with specificity and provide supporting evidence showing that the Property Owner is not responsible for reimbursing the Service Area based on one of the following reasons:

16.4.1 The motorist was not providing a service for a Property Owner or resident;
or

16.4.2 The motorist was acting beyond the scope of the motorist's work when the motorist required the Service Area's assistance.

16.5 Written Decision. Within 30 days of receiving a written appeal, the General Manager will determine whether an information submitted by a Property Owner pursuant to this Section shows by a preponderance of the evidence that the Property Owner is not responsible for reimbursing the Service Area. The General Manager will inform the Property Owner of the determination in writing and explain the reasons for any denials.

SECTION 17.0 Snow Removal.

17.1 Snow Storage on Site. Property Owners and residents will make arrangements for the storage of accumulated snow on their own premises or property or on the premises of another private property with the permission of that owner. All Property Owners and residents will confine the accumulated snow to their premises or property or to another private premises or property with the other owner's permission.

17.2 Prohibition on the Deposit of Snow in the Public Right-of-Way. Property Owners and residents will not deposit, haul, push, blow, or otherwise deposit snow accumulated on private property within the traveled portion of any public right-of-way in a manner that impedes the reasonable flow of traffic of that right-of-way. The "traveled portion" is the width of any paved or graded street, sidewalk, or trail. Property Owners and residents will not deposit snow in a manner that impedes the reasonable flow of traffic. In determining whether snow deposited in the public

right-of-way impedes the reasonable flow of traffic, the Service Area will look at whether a driver of ordinary skill and experience in snowy climates, driving a typical passenger vehicle with tires reasonably suited for winter road conditions could pass over the area in question without needing to leave the normal lane of travel, getting stuck in deposited snow, or risking damage to their vehicle. The Service Area will also look at the impact to roadside safety and impairments to sight distances in determining impediments to traffic.

17.3 Property Owners Responsible for Encroachments. The public rights-of-way within the Subdivision may be wider than the paved or graded area to allow space for utility services, snow storage, and other public uses. Property Owners who install structures, landscaping, or improvements that encroach within the public right-of-way do so at their own risk and the Service Area will not be responsible for any damage to these improvements that may result from normal snow removal activities. Any damage caused by the placement of structures, landscaping, or improvements within the public right-of-way will be the responsibility of the Property Owner.

17.4 Reimbursement for Service Area Costs. If a Property Owner or resident deposits, hauls, pushes, blows, or otherwise deposits snow within the public right-of-way in any manner that requires the Service Area to incur costs and expenses removing the snow or repairing damage to the public right-of-way caused by the snow, the Property Owner or resident will reimburse the Service Area for its documented costs within 30 days of receiving an itemized invoice from the Service Area.

SECTION 18.0 Water Service Separate and Unrelated.

The Service Area's provision of water service is separate and unrelated to compliance with any other aspect of this Regulation, and compliance with this Regulation will not obligate the Service Area to provide water service.

SECTION 19.0 Appeals.

Any person or entity may appeal any decision rendered by the General Manager or the Roads Manager to the Board or the Board's designated hearing officer by sending a written notice to the chair of the Board within 30 days of the decision that states the basis of the appeal and the relief requested. Any decision by the Board or its designated hearing officer on an appeal or other decision required by this Regulation will constitute the final action of the Service Area on the matter in question.

SECTION 20.0 Late Fees.

The Board may adopt late fees to assist in the payment of monies due the Service Area under this Regulation.

SECTION 21.0 Savings Clause.

If any section, subsection sentence, clause or phrase of this Regulation is for any reason held to be, invalid by a court of law, such determination will not affect the validity of the remaining

portions of this Regulation, which will remain binding and enforceable against the customers of the Service Area.

ADDENDUM 1

Summit County Service Area #3 Roads Standards

Bituminous pavement T-patch

1. GENERAL

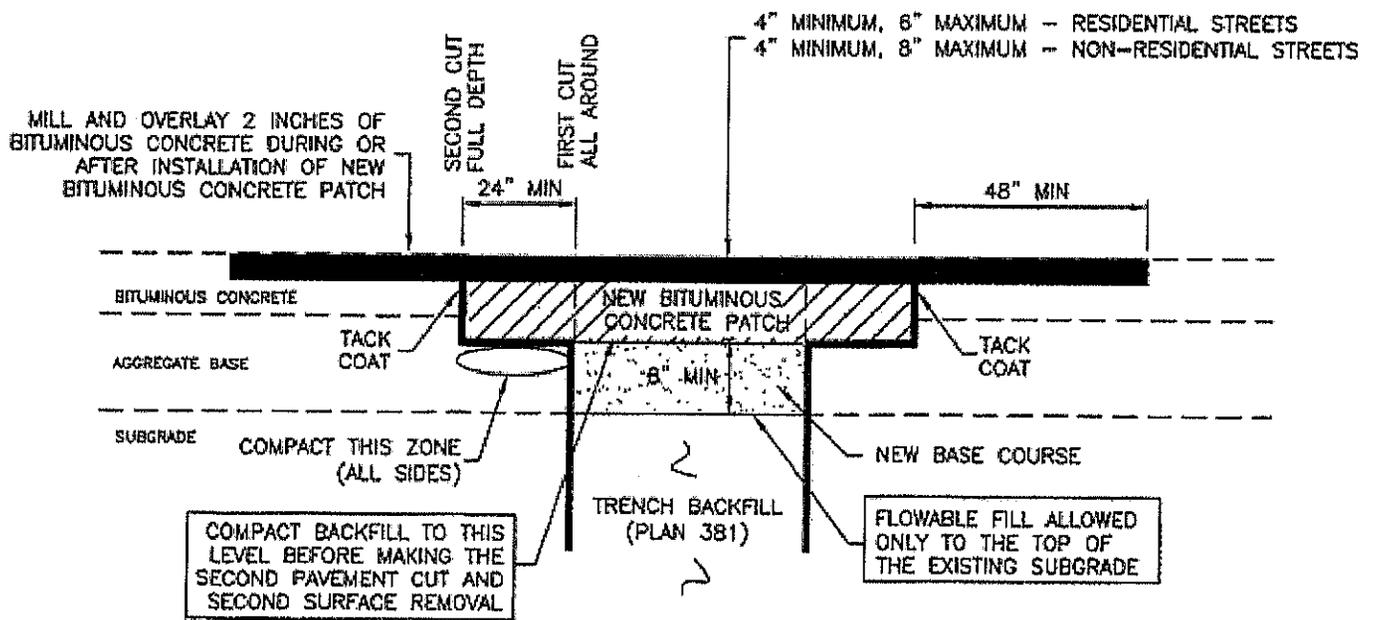
- A. Vertical cuts in bituminous pavement may be done by saw or pavement zipping. If cuts greater than 6 inches are necessary to prevent pavement "break off" consult ENGINEER for directions on handling additional costs.
- B. Repair a T-patch restoration if any of the following conditions occur prior to final payment or at the end of the one year correction period.
 - 1) Pavement surface distortion exceeds 1/4-inch deviation in 10 feet. Repair option - plane off surface distortions. coat planed surface with a cationic or anionic mulsion that complies with APWA Section 32 12 03..
 - 2) Separation appears at a connection to an existing pavement or any Street Fixture. Repair option - blow separation clean and apply joint sealant, Plan 265.
 - 3) Cracks at least 1-foot long and 1/4-inch wide occur more often than 1 in 10 square feet. Repair option - blow clean and apply crack seal, Plan 265.
 - 4) Pavement raveling is greater than 1 square foot per 100 square feet. Repair option - Mill and Inlay, APWA Sections 32 01 16.71 and 32 12 05.

2. PRODUCTS

- A. Base Course: Untreated base course, APWA Section 32 11 23. Do not use gravel as a base course without ENGINEER's permission.
- B. Flowable Fill: Target is 60 psi in 28 days with 90 psi maximum in 28 days, APWA Section 31 05 15. It must flow easily requiring no vibration for consolidation.
- C. Reinforcement. No. 5, galvanized or epoxy coated, deformed, 60 ksi yield grade steel, ASTM A615.
- D. Concrete: Class 4000, APWA Section 03 30 04.
- E. Tack Coat: APWA Section 32 12 13.13.
- F. Bituminous Concrete. APWA Section 32 12 05.
 - 1) Warm Weather Patch: PG64-22-DM-1/2, unless indicated otherwise.
 - 2) Cold Weather Patch: Modified MC-250-FM-1 as indicated in APWA Section 33 05 25.

3. EXECUTION

- A. Base Course Placement: APWA Section 32 05 10. Maximum lift thickness before compaction is 8-inches when using riding equipment or 6-inches when using hand held equipment. Compaction is 95 percent or greater relative to a modified proctor density. APWA Section 31 23 26.
- B. Flowable Fill: Cure to initial set before placing aggregate base or bituminous pavement. Use in excavations that are too narrow to receive compaction equipment.
- C. Tack Coat. Clean all horizontal and vertical surfaces. Apply full coverage all surfaces.
- D. Pavement Placement: Follow APWA Section 32 12 16.13. Unless indicated otherwise, lift thickness is 3-inches minimum after compaction. Compact to 94 percent of ASTM D2041 (Rice density) plus or minus 2 percent.
- E. Bituminous Concrete Substitution: If bituminous concrete is substituted for Portland cement concrete substrate, omit rebar and provide 1.25 inches of bituminous concrete for each 1 inch of Portland cement concrete. Follow paragraph E requirements.
- F. Reinforcement. Required if thickness of existing Portland-cement concrete substrate is 6-inches or greater. Not required if 1) less than 6-inches thick, 2) if existing concrete is deteriorating, 3) if excavation is less than 3 feet square, or 4) if bituminous pavement is substituted for Portland-cement concrete substrate.
- G. Concrete Substrate. Cure to initial set before placing new bituminous concrete patch.



BITUMINOUS CONCRETE RESTORATION

EXHIBIT B

Summit County Service Area #3 Encroachment Agreement

ROAD ENCROACHMENT AGREEMENT
SUMMIT COUNTY SERVICE AREA #3
RIGHT-OF-WAY

This Road Encroachment Agreement (“**Agreement**”) is made and entered into effective the _____ day of _____, _____ by and between SUMMIT COUNTY SERVICE AREA #3, a political subdivision of the State of Utah (the “**Service Area**”) and _____, a [type of entity] (the “**Developer**”). The Service Area and the Developer may be referred to individually as a “**Party**” and collectively as “**Parties**” herein.

RECITALS

WHEREAS, Summit County, Utah created the Service Area to operate and maintain local streets, roads, and rights-of-way within the Silver Creek Estates Subdivision (the “**Subdivision**”) pursuant to Title 2, Chapter 27 of the Summit County Code and Title 17B of the Utah Code; and

WHEREAS, Developer wishes to construct and maintain a roadway, together with ancillary infrastructure improvements (collectively, the “**Road**”), as described in **Exhibit 1**, within the Service Area right-of-way in the Subdivision; and

WHEREAS to construct the Road (the “**Work**”), the Developer requires access and use of a roadway and corresponding right-of-way (the “**Right-of-Way**”) that are subject to the Service Area’s jurisdiction; and

WHEREAS, the Developer has obtained the necessary permits and approvals from Summit County; and

WHEREAS, the Service Area requires access and use of the Right-of-Way to perform road maintenance and other improvements to the Right-of-Way that are required for public safety (“**Right-of-Way Maintenance**”); and

WHEREAS, the winter season in the Service Area when road construction is generally not possible is from November 1 until April 30; and

WHEREAS, the Service Area is willing to authorize the Developer to use and access the Right-of-Way to perform the Work under the terms and conditions set forth in this Agreement; and

WHEREAS, the Developer is willing to perform the Work under the terms and conditions set forth in this Agreement; and

WHEREAS, the Developer and the Service Area desire to enter this Agreement to set forth the terms and conditions under which the Service Area will permit the Developer to perform the Work, as described in “**Exhibit 1.**”

NOW, THEREFORE, in exchange for valuable consideration, including the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

1. AUTHORIZATION TO CONSTRUCT THE WORK

The Service Area authorizes the Developer to perform the Work in accordance with the terms of this Agreement and the plans, specifications, and maps attached as **Exhibit 1**, which a licensed engineer has prepared.

2. TIMELINE FOR COMPLETING THE WORK

The Developer will proceed with reasonable diligence to complete the Work and any associated repairs. The Completion Date for the Work will be October 31, 20____ ("**Completion Date**"), and the Service Area must accept the Work prior to the Completion Date in order to avoid any liquidated damages set forth in Section 2.B, below. No later than the Completion Date, Developer shall remove all personnel and equipment from the Right-of-Way.

A. The Service Area's authorization to use the Site will expire at 5:00 p.m. on October 31, 20 ____, except as the Service Area's roads manager may otherwise authorize in writing in his sole discretion subject to the provisions of Section 8.

B. In addition to any Service Area costs payable under Section 12 of this Agreement, the Developer shall incur and pay liquidated damages of \$1,000 per day for each day after October 31, 20 ____, that the Developer fails to complete the Work and/or remove all personnel and equipment from the Right-of-Way.

3. PLACEMENT OF DIRT AND FILL MATERIAL

Unless the Service Area's roads manager authorizes otherwise, the Developer

A. Will place, store, or otherwise deposit the dirt, fill, and other material associated with the construction of the Work on its property, to the extent that it is reasonable and practicable to do so;

B. Will immediately remove any dirt, fill, or other material that Developer may place in the Right-of-Way.

C. No cleated or metal crawler type equipment will be permitted to operate on any Service Area hard-surfaced street.

4. PROTECTION OF TRAFFIC AND PUBLIC SAFETY DURING CONSTRUCTION

A. To protect public safety, the Developer may close the Right-of-Way to through traffic while it is completing the Work after securing approval from the Service Area's roads manager, which approval the roads manager shall not unreasonably withhold, condition, or delay, provided that the Developer will provide homeowners with 24-hour access to their homes located on the Right-of-Way.

B. Subject to Paragraph 2(A), the Developer will minimize interference with or interruption of roadway traffic, and it will take steps to protect public safety, while constructing the Work. The Developer will comply with such reasonable instructions that the Service Area's roads manager may provide with respect to the handling of traffic, and will at all times maintain such watchmen, flaggers, barricades, lights, signage, plating, dust control, or other measures as may reasonably be required to warn and safeguard the public against injury or damage while the Developer constructs the Work.

C. Notwithstanding the foregoing, the Developer is not obligated to comply with any instructions, or other requirements, from the Service Area that are more stringent than what Summit County, and the Utah Department of Transportation require for the protection of traffic and public safety for any public right-of-way.

5. COORDINATION

A. In consultation with the Service Area's roads manager, the Developer will provide regular communications to inform the public and the residents of the Subdivision of the status of the construction of the Work, including but not limited to detours, anticipated delays, and road closures. Unless the roads manager requests otherwise:

i. The Developer will prepare all communications in its name only; and

ii. The Developer will post all communications at _____
and on Nextdoor.com.

B. Until the Developer completes construction of the Work, the Developer will meet and confer [*daily or weekly – select one*] with the Service Area's roads manager, or his designee, to review the progress of the construction of the Work, provide updates on the schedule of construction, discuss compliance with the terms of this Agreement, coordinate regarding notifications and communications with the public as required in Paragraph 5(A), and to discuss other issues the roads manager deems necessary regarding the Developer's use of the Right-of-Way and any roads or rights-of-way that are subject to the Service Area's jurisdiction. The Parties shall act in good faith to identify a mutually agreeable time and place for each day's meeting. The roads manager may, in his sole discretion, cancel individual meetings if he determines that they are unnecessary.

6. PRESERVATION OF SURVEY MONUMENTS

A. Pursuant to Utah Code Section 17-23-14, if the Developer finds it necessary to disturb a survey monument for any reason, the Developer will notify the Summit County Surveyor and obtain a Monument Preservation Permit prior to disturbing, damaging, moving, removing, covering, resurfacing, roto-milling, or destroying any existing public survey monument(s).

B. New survey monuments, or replacement survey monuments, will be constructed in accordance with the Monument Preservation Permit issued by the Summit County Surveyor's office. Non-compliance will be subject to penalties as provided in Utah Code Sections 17-23-15 and 76-8-415.

C. Pipelines, manholes, and appurtenances will be designed, located, and/or adjusted during construction to prevent interference or conflict with the permanent location of existing Survey Monuments.

7. RESTORATION OF RIGHT-OF-WAY, GRAVEL SURFACES, AND SEWAGE OR DRAINAGE INFRASTRUCTURE

A. As part of the Work, the Developer shall restore any portion of the Right-of-Way, sewage infrastructure, drainage infrastructure, or public utility that is removed, damaged, or otherwise impacted by the Work. The Developer will restore such Right-of-Way, sewage infrastructure, and drainage infrastructure in accordance with the Service Area's written specifications and requirements, subject to the inspection and approval of the Service Area's roads manager.

B. If any gravel surface, gravel shoulders, or gravel surfaced approach streets become damaged or fouled with unsuitable materials, the Developer shall remove such damaged portion of the surfacing and replaced with a new gravel material.

C. The Developer shall properly restore to their original condition any street or highway facilities within the Service Area, such as signs, culverts, etc., disturbed or damaged during the progress of the Work unless the roads manager approves an alternate plan for restoration of the street or highway facilities.

D. Upon completion of the Work, the Developer will be responsible to remove all surplus material from the Right-of-Way, the Road, and adjoining gravel surfaces.

E. If, after the road manager's inspection pursuant to Paragraph 8(A), the Developer fails to restore the Right-of-Way, sewage or drainage infrastructure, or gravel surface in accordance with Service Area's written specifications and requirements, the Service Area may provide written notice to the Developer and the Developer shall have seven (7) days from the receipt of the notice to complete restoration in accordance with the Service Area's written specifications and requirements and the terms of the Agreement.

F. The Developer shall pay to the Service Area any additional or extra costs incurred by the Service Area for public work or public utility work required because of any encroachment within the Right-of-Way.

G. If the Developer receives written notice and fails to restore in accordance with Paragraph 7(A), the Service Area or its agents will have the option of restoring the Right-of-Way, drainage infrastructure, or other surface in accordance with Service Area's written specifications and requirements and at the expense of the Developer for the reasonable costs of such work.

8. SERVICE AREA ACCEPTANCE OF THE WORK

A. The Developer will notify the Service Area when it has completed the Work. Within one business day, the Service Area's roads manager will inspect the Work to verify compliance with the terms of this Agreement and the Service Area's written specifications and requirements.

- i. If the Work is in compliance, the Service Area's roads manager will issue a written acknowledgement of completion and acceptance of those aspects of the Work as constructed that are subject to the Service Area's jurisdiction and are subject to this Agreement.
- ii. If the Work is not in compliance with the terms of this Agreement, the Service Area's roads manager will immediately notify the Developer and provide a description of each defect. The Developer will repair said defects at its sole cost and expense and as soon as reasonably practicable, or as otherwise agreed to by the Service Area's roads manager and the Developer.
- iii. The Service Area's roads manager will not unreasonably withhold, condition, or delay its acceptance of the Work. The Service Area's issuance of a written acknowledgement of completion and acceptance shall not constitute a waiver by the Service Area of any defective work unless the Service Area provides a specific written notice of acceptance of the defective work.
- iv. If the Service Area is unable to approve the Work and issue a written acknowledgement as provided herein, the Parties will meet and confer to negotiate a new agreement to address how any additional repairs, modifications, or other work that may be needed will take place before any such work can occur.

B. Within 30 days of completion of the Work, the Developer shall provide the Service Area with as-built drawings of any new sewer or drainage infrastructure in PDF and either CAD or GIS format. The as-built drawings shall show the distance of the infrastructure from the center line of the Right-of-Way. To the extent allowed under the Government Records Access and Management Act, Utah Code Section 63G-2-101, et seq., the Service Area shall not disclose the information it receives pursuant to this Paragraph 8(B).

9. BONDING

A. The Developer will provide the Service Area with a performance bond (the “**Performance Bond**”) in the sum of _____ and a payment bond in the sum of _____ (the “**Payment Bond**”). Pursuant to Utah Code § 17-27a-604.5, the Performance Bond and the Payment Bond may be in one or more of the following forms:

- i. Cash bond;
- ii. Escrow Agreement; or
- iii. Irrevocable Letter of Credit by a bank authorized to do business in the State of Utah.

B. The Performance Bond and Payment Bond shall be for the purpose of securing completion of the Work and payment of suppliers, subcontractors and other expenses incurred by the Developer in performing the Work. The Performance Bond shall terminate on the date that the Service Area’s roads manager accepts the work pursuant to Paragraph 8 of this Agreement; provided that the Developer shall provide the Service Area with a warranty bond in the amount of _____ for the Warranty Period, as defined in Paragraph 11.

10. INDEMNITY

A. To the fullest extent permitted by law, the Developer will indemnify, defend and hold harmless the Service Area, its officers, agents, and employees from and against all claims, damages, liability, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, to the extent caused by the negligent acts or omissions of the Developer, anyone directly or indirectly employed by the Developer, or anyone for whose acts the Developer is liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by the Service Area, its officers, agents, or employees.

- i. In the event of joint or concurrent negligence, the liability of the Parties shall be allocated on a pro rata basis in accordance with the proportion of their negligence.
- ii. The Developer shall not be obligated to defend, indemnify, or hold the Service Area harmless from the negligence of the Service Area, its officers, agents, or employees.

B. The Developer will, at the Developer’s sole expense, obtain and keep in force during the term of this Agreement and for a period of one (1) year following the expiration of this Agreement a policy of commercial general liability insurance, or the appropriate tail coverage, with coverage amounts that will not be less than those amounts set forth in the certificate of liability insurance issued to the Service Area on _____, which is attached as “**Exhibit 2**”; and

C. The Developer will provide the Service Area with any additional certificates of liability insurance that may be required to fulfill the terms of this Agreement and will notify the Service Area of any applicable changes in its general liability insurance policy.

D. This Agreement shall run with the land, and shall be binding upon the owner, their heirs, executors, administrators, successors and assigns.

11. WARRANTY PERIOD

The Developer will warrant all labor and materials used to complete the Work under this Agreement for a period of one (1) year after the date the Service Area's roads manager accepts the Work pursuant to Paragraph 12 of this Agreement ("**Warranty Period**").

12. REIMBURSEMENT FOR SERVICE AREA COSTS

A. The Service Area will incur fees, costs, and expenses related to coordination with the Developer regarding the Work, inspection of the Work, plan review, and preparation of agreements. The Developer shall pay a lump sum of _____ to reimburse the Service Area for its fees, costs, and expenses ("**Reimbursement Payment**"). The Reimbursement Payment shall fully compensate the Service Area for all reimbursable fees, costs, and expenses that it has incurred, or will incur, related to the Work and this Agreement.

B. The Developer will submit the Reimbursement Payment to the Service Area within thirty (30) days after acceptance of the Work by the Service Area.

C. The Developer shall provide reimbursement in addition to the Reimbursement Payment only if the following conditions are met:

- i. The Developer, its agents, or its contractors act negligently in the management or completion of the Work or fail to complete the Work in a timely manner;
- ii. As a result of Developer's failure to complete the Work, or to complete the Work in a timely manner, the Service Area incurs fees, costs, and expenses related to coordination with the Developer or inspection of the Work in excess _____, including but not limited to any costs that the Service Area incurs in completing the Road Construction that are in excess of _____ and directly attributable to any failure of the Developer to complete its obligations hereunder in a timely manner; and
- iii. The Service Area provides written documentation to the Developer verifying the reasonable additional fees, costs, and expenses that it incurred. The Developer reserves the right to object to fees, costs, and expenses identified by the Service Area. Once the Parties have agreed to the amount of additional fees, costs, and expenses ("**Additional Reimbursement Amount**"), the Developer shall have thirty (30) days to submit payment for the Additional Reimbursement Amount to the Service Area.

13. TERM

The Term of this Agreement will begin on the date that both parties execute this Agreement (the “**Effective Date**”) and will terminate when the Developer: (i) completes the Work as provided herein and (ii) reimburses the Service Area for its expenses as set forth in Section 12. The warranty provisions in Section 11, the indemnity provisions in Section 10, and the warranty bond provision in Section 9 will survive the expiration of this Agreement pursuant to the provisions of each respective paragraph.

14. SUCCESSORS AND ASSIGNS

All covenants and agreements herein contained will be binding upon the Parties hereto, and their permitted successors and assigns, provided that neither Party will assign this Agreement, or any interest therein, without the prior written consent of the other Party.

15. NOTICE

A. Any notice required or otherwise given pursuant to this Agreement, will be: (i) in writing and mailed, certified return receipt requested, postage prepaid; (ii) hand-delivered, or (iii) emailed, with confirmation of receipt to:

Summit County Service Area #3
Attn: General Manager
7215 Silver Creek Road
Park City, UT 84098
gm@scsa3.org

Developer:

[insert contact person, physical address, and email address]

B. The Parties will notify each other in writing within thirty (30) days of any changes in the above contact information.

C. Notice will be deemed to have been given as of the date of issuance.

16. GOVERNMENTAL IMMUNITY ACT

The Parties further understand and agree that the Service Area is a governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, Utah Code Section 63G-7-101 et. seq. and that the Service Area neither waives nor relinquishes any provision or protection of that Act; provided, however, that such immunity shall not reduce the allocation of liability between the Parties set forth in Paragraph 10.

17. AUTHORITY

Each of the Parties represents and warrants that it possesses the authority necessary to enter into this Agreement and that this Agreement has been duly authorized, executed, and constitutes a legal, valid, and binding obligation, enforceable in accordance with its terms.

18. NECESSARY ACTS OF COOPERATION

The Parties agree to do any act or thing necessary to execute any and all documents or instruments required by this Agreement and which are necessary and proper to make effective the provisions of and transaction contemplated by this Agreement. Provided, however, that neither Party will act, or purport to act, on behalf of the other without the express written consent of the other Party.

19. DEFAULT

If either Party believes the other is in default under any provision of this Agreement, it will provide seven (7) days' written notice to the other Party to the address shown in Section 15 outlining said default with specificity before the Party claiming a default may exercise any right or remedy that it may have under this Agreement, at law or in equity, during which time the notified Party will have the right to cure or remedy the alleged default if not disputed.

20. DISPUTE RESOLUTION

In the event of a dispute between the Parties related to this Agreement, the Parties will submit the matter to formal mediation before either Party may initiate any judicial action, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. The Parties will endeavor to reasonably agree upon a mediator and will mediate the dispute in good faith. Each Party will be responsible for their own fees and costs and will split the cost of the mediator between them by dividing the total costs of the mediator by the number of Parties involved. If the Parties do not agree upon a mediator, each Party will name a mediator and those two mediators will name a third mediator. The Parties will be bound to mediate the dispute with the third mediator.

21. APPLICABLE LAW AND VENUE

This Agreement will be construed in accordance with the laws of the State of Utah, and any actions between the Parties arising out of the relationship contemplated by this Agreement will be brought in Summit County, Utah.

22. ATTORNEY'S FEES AND COSTS

In the event litigation is required to enforce any term of this Agreement, the prevailing Party will be entitled to all costs and expenses, including reasonable attorney's fees.

23. LIQUIDATED DAMAGES; EQUITABLE REMEDIES

A. The Service Area may, at its election: (a) forego the right to prove actual damages incurred by the violation of this Agreement and accept, as liquidated damages and as a reasonable estimate of the Service Area's actual damages, the sum of _____ per violation; or (b) seek money damages in the amount of the Service Area's actual damages, as determined at trial or other appropriate legal proceeding.

B. Money damages may not be a sufficient remedy for the breach or threatened breach of the Developer's obligations under this Agreement. Therefore, in addition to other remedies available at law, which are not waived, the Service Area shall be entitled to injunctive relief and other equitable relief as a remedy for such breach and the Developer waives the requirement for posting any security or bond in connection with such injunctive relief.

24. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, that provision will be fully severable and this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never been part of this Agreement and the remaining provisions of this Agreement will remain in full force and not be affected.

25. LEGAL REVIEW

The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter will not be applied to this Agreement.

26. TIME IS OF THE ESSENCE

Time is of the essence with respect to all terms within this Agreement.

27. ENTIRE AGREEMENT AND AMENDMENTS

This written Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and may be amended only by a written agreement properly executed by the parties. No verbal instructions, understandings, etc., nor letters, emails, or other documents signed by one of the parties, will operate as an amendment to this Agreement.

28. INCORPORATION OF EXHIBITS AND RECITALS

All exhibits attached hereto and recitals are incorporated into this Agreement as if fully set forth herein.

29. CAPTIONS

The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of the Agreement, and are not to be considered in interpreting this Agreement.

30. NO THIRD-PARTY BENEFICIARIES

This Agreement does not create, and will not be construed as creating, any rights enforceable by any person who is not a Party to this Agreement or a successor or assign to a Party to this Agreement.

31. COUNTERPARTS

This Agreement may be executed in any number of counterparts, but all such counterparts will be deemed but one original Agreement for all intents and purposes.

SUMMIT COUNTY SERVICE AREA #3

DEVELOPER

By: _____

By: _____

Its: _____

Its: _____