

ALPINE CITY COUNCIL AGENDA

SUBJECT: Approval of Lambert Park Conservation Easement and Management Plan

FOR CONSIDERATION ON: 25 July 2023

PETITIONER: Councilman Greg Gordon

ACTION REQUESTED BY PETITIONER: Review and consider approval of the Lambert Park Conservation Easement and Management Plan.

BACKGROUND INFORMATION:

Our city attorney, Steve Doxey, has been working on a final draft of the Lambert Park Conservation Plan and Management Plan. The plan is at a point where the city council should review it and determine if it is acceptable. If the plan is found acceptable, it can be presented to Utah County for their consideration. If the city council discussion determines that modifications need to be made, Mr. Doxey can modify the document prior to it being sent to Utah County. City council feedback will be critical in creating a document that will meet the objective of the City.

STAFF RECOMMENDATION:

Review and consider approval of the Lambert Park Conservation Easement and Management Plan.

SAMPLE MOTION TO APPROVE:

I move to approve the Lambert Park Conservation Easement and Management Plan.

SAMPLE MOTION TO APPROVE WITH CONDITIONS:

I move to approve the Lambert Park Conservation Easement and Management Plan with the following conditions:

- (insert finding)

SAMPLE MOTION TO TABLE/DENY:

I move to table/deny approve the Lambert Park Conservation Easement and Management Plan based on the following:

- (insert finding)

WHEN RECORDED, RETURN TO:

DRAFT July 19, 2023

Utah County Attorney
100 East Center Street, Suite 2100
Provo, Utah 84606

LAMBERT PARK DEED OF TEMPORARY CONSERVATION EASEMENT

THIS DEED OF TEMPORARY CONSERVATION EASEMENT (“*Easement*”) is made and granted as of [REDACTED], 2023, (the “*Effective Date*”) by ALPINE CITY (“*Grantor*”), having an address of 20 North Main Street, Alpine, Utah 84004, to UTAH COUNTY (“*Grantee*”), having an address of 100 East Center Street, Provo, Utah 84606, to be held and enforced for the benefit of the public in accordance with the terms and for the purposes set forth in this Easement.

RECITALS:

A. Grantor owns five parcels of real property, located in Alpine City, State of Utah, commonly known as Lambert Park, as described in the legal description attached as **Exhibit A** and as depicted in the property map attached as **Exhibit B** (collectively, the “*Property*”).

B. The Property provides a significant public benefit, both to residents of Alpine City and to others who use the Property, including residents of Utah County living outside of Alpine City.

C. Grantor has the right, as owner of the Property, to protect, preserve, and maintain the Property predominantly in a natural, scenic, and open condition, and for recreational, agricultural, cultural, historical, and educational use to benefit the public, including the residents of Alpine City (collectively, the “*Public Purposes*”).

D. The Utah Land Conservation Easement Act, *Utah Code Ann.* § 57-18-1 *et seq.* (the “*Conservation Easement Act*”), authorizes Grantor to grant this Easement to further the Public Purposes. Grantor finds that it is in the best interest of the health, safety, and welfare of the residents of Alpine City to do so. Grantor’s city council (the “*City Council*”) has duly adopted a resolution approving and authorizing Grantor’s conveyance, execution, and recordation of this Easement.

E. Under Section 57-18-3 of the Conservation Easement Act, Grantee, as a governmental entity, is qualified to acquire and hold a conservation easement to help Grantor achieve the Public Purposes.

F. Grantee’s legislative body has duly adopted a resolution approving Grantee’s acceptance, execution, and recordation of this Easement.

G. This Easement constitutes a public charitable trust to be held and enforced by Grantee for the benefit of the public, including the residents of Alpine City. The parties

acknowledge that Grantor is also entitled to enforce this Easement under the Conservation Easement Act.

H. Grantor finds that Grantee's agreement to hold and enforce this Easement to advance the Public Purposes constitutes adequate consideration for the grant of this Easement.

I. The parties desire that this Easement be construed to further the Public Purposes.

J. The Parties are authorized to enter into this Easement under the Conservation Easement Act and the Interlocal Cooperation Act, *Utah Code Ann.* § 11-13-101, *et seq.* (the "***Interlocal Cooperation Act***").

NOW, THEREFORE, for valuable consideration, including the mutual covenants set forth below, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. GRANT OF TEMPORARY CONSERVATION EASEMENT. Grantor hereby grants and conveys to Grantee and its successors in interest a TEMPORARY CONSERVATION EASEMENT under the Conservation Easement Act, to be held and enforced for the benefit of the public, including the residents of Alpine City, in accordance with the terms of this Easement. This Easement is granted over and across the entire Property to advance the Public Purposes. Any mortgage, lien or other encumbrance against the Property, other than an encumbrance of record existing on the Effective Date or an encumbrance determined by an appropriate court to have been in existence on the Effective Date, shall be subordinate to all rights granted under this Easement.

2. PUBLIC PURPOSES.

A. Exclusive Use. During the term of this Easement, the Property shall be used exclusively for the Public Purposes. The parties agree that the Public Purposes include the protection, preservation, and maintenance of the Property predominantly in a natural, scenic, and open condition, and for recreational, agricultural, cultural, historical, and educational use for the public benefit. The Public Purposes also allow for the construction and maintenance of critical infrastructure, including public utilities, as well as improvement of the Property, for the public benefit in accordance with this Easement.

B. Lawful Existing Uses. Grantor, its successors, and assigns shall be permitted to use, maintain, and preserve the Property in substantially the manner in which it has been used, maintained, and preserved historically. All lawful uses of the Property as of the Effective Date are hereby permitted and declared to be consistent with the Public Purposes, subject to any restriction imposed by Grantor in accordance with this Easement.

C. Moyle Drive Extension. The parties acknowledge that an unpaved extension of Moyle Drive crosses the Property to the terminus of Box Elder Way (the "***Moyle Drive Extension***"). The Moyle Drive Extension may be used only for maintenance and emergency purposes and shall be maintained in an unpaved condition substantially as it exists on the Effective Date, except as otherwise provided in this Easement or by order of a court of competent jurisdiction.

D. Future Uses. Future uses and enhancements of the Property shall be permitted if (i) they would be consistent with and have no material adverse impact on the Public Purposes, and (ii) they are specifically allowed under the Management Plan (as defined below).

3. PROHIBITED ACTIVITIES ON PROPERTY. Subject to lawful existing uses of the Property, this Easement prohibits any activity on the Property that has or would have a material adverse impact on the Public Purposes. This Easement specifically prohibits the following:

A. Development Activities. Residential, commercial, or industrial development of any portion of the Property is prohibited. This includes actual or *de facto* subdivision of any portion of the Property and any construction on the Property, other than as specifically permitted in this Easement for the Public Purposes. Grantor may not approve any such development during the term of this Easement, except by prior written consent of the parties in accordance with this Easement and only if consistent with the Public Purposes.

B. Transfer of Development Rights. Proffer or dedication of any portion of the Property as open space in or as part of any residential, commercial, or industrial development is prohibited. Proffer or dedication of any portion of the Property for the purpose of fulfilling density requirements to obtain approvals for any zoning, subdivision, site plan, or building permit is prohibited. Transfer of any development rights that have been encumbered or extinguished by this Easement to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise, is prohibited.

4. TERM OF EASEMENT. This Easement will remain in effect for a term of ten (10) years after the Effective Date (the “*Initial Term*”). This Easement will automatically renew for up to five renewal terms of eight (8) years each (each, a “*Renewal Term*”) unless Grantor, upon the vote of at least eighty percent (80%) of the members of the City Council after a public hearing, or Grantee, by unanimous vote of its governing body after a public hearing, gives written notice of its intent not to renew this Easement. Such notice must be given at least one (1) year prior to expiration of the Initial Term or any applicable Renewal Term. Upon the expiration or sooner termination of this Easement, the rights and obligations of the parties, except for any rights or obligations which expressly or by their context survive this Easement (such as indemnity rights and obligations), will cease and the Property will no longer be encumbered by this Easement.

5. RIGHTS AND OBLIGATIONS OF GRANTOR.

A. Maintenance and Management. Grantor expressly reserves and retains all rights associated with the ownership of the Property, subject to any restrictions imposed under this Easement. Grantor retains the right and responsibility to maintain and manage the Property for the Public Purposes. Subject to the terms of this Easement and the Management Plan (as defined below), Grantor’s exclusive authority over the Property includes the following:

(1) Water Resources. Grantor owns or is authorized to use and maintain water resources and water-related infrastructure, including springs, water tanks, water storage ponds, ditches, and pipelines, as part of Grantor’s public responsibility as a municipality. Grantor may develop, add to, enhance, install, maintain, repair, relocate, and replace such existing water resources and infrastructure. The parties acknowledge that this Easement does not impair any

existing rights of Alpine Irrigation Company, its successors, or assigns to use and maintain its existing water resources and infrastructure on the Property, or any rights or obligations of Grantor with respect to such resources and infrastructure.

(2) *Public Access, Trails, and Trailheads.* Grantor has the right to identify, maintain, reroute, relocate, improve, and construct recreational and educational trails and trailhead parking areas on the Property for the benefit of the public, including to provide access for those with disabilities. Grantor may temporarily or permanently close trails as necessary for public safety, maintenance, trail restoration, or otherwise, consistent with the Public Purposes.

(3) *Fire Suppression.* Grantor retains the right to remove brush and vegetation and take other measures as necessary to minimize the risk of wildfire, or to suppress wildfires, on or adjacent to the Property. Grantor reserves the right to restrict target shooting, hunting, or any firearm discharge or fireworks on the Property.

(4) *Utilities.* Notwithstanding any provision of this Easement to the contrary, Grantor may maintain, improve, repair, replace or relocate existing utilities, including the existing cell tower, as long as the Property is restored, as much as reasonably practicable, to its original undisturbed nature. Grantor may allow for co-location on the existing cell tower, but no new cell towers will be permitted on the Property unless otherwise provided in the Management Plan (as defined below). Grantor reserves the right to install, construct, maintain, repair, and replace new underground utilities as long as the Property is restored, as much as reasonably practicable, to its original undisturbed nature.

(5) *Park Facilities and Public Gathering Areas.* Grantor retains the right to construct and improve existing park facilities, bathroom facilities, emergency aid facilities, landscaping, picnic areas, pavilions, boweries, and gathering areas on the Property. Grantor may install other park improvements, such as bridges, boardwalks, culverts, and separated street crossings, for the public use and enjoyment so long as they are consistent with the Public Purposes.

(6) *Fencing.* Grantor may construct new fencing, replace existing fencing, and install gates for the purpose of defining Property boundaries, delineating specific uses, or restricting unauthorized access across the Property consistent with the Public Purposes.

(7) *Roads.* Grantor may maintain and allow the use of existing maintenance roads (including the road to the existing cell tower), emergency access roads, the rodeo grounds road, and other roads on the Property (paved or unpaved) consistent with their historical maintenance and use. Except as otherwise provided in this Easement, Grantor may construct new roads only as necessary to provide access to trailhead parking areas or to maintain critical infrastructure consistent with the Public Purposes. Grantor may reroute or improve the portion of Box Elder Drive that crosses the Property and may improve the portion of Grove Drive that crosses the Property as reasonably necessary to maintain or enhance public safety. Grantor retains the right to adopt and enforce policies prohibiting or restricting motorized vehicles in designated areas of the Property.

(8) *Rodeo Grounds.* Grantor reserves the right to use and maintain the portion of the Property known as the “rodeo grounds” and associated roads and parking areas for public events.

(9) **Signs.** Grantor may place signs on the Property, except for commercial, political, or other off-premise signs or billboards, as long as the signs do not materially interfere with the Public Purposes.

(10) **Public Safety.** Grantor retains the right to conduct and restrict activities on the Property as reasonably necessary to preserve the public health, safety, and welfare, including for purposes of fire suppression and prevention; flood control and prevention; response to avalanche, earth movement, and other circumstances beyond Grantor’s control; and preventing similar threats or injury to persons or property. Grantor may adopt and enforce rules regulating hours of use or activities on the Property, including rules governing the interaction among pedestrian, equestrian, bicycle, and other uses, in order to promote public safety.

B. Management Plan. The parties acknowledge that Grantor has adopted a Lambert Park Management Plan for the ongoing maintenance and management of the Property (the “**Management Plan**”). The Management Plan provides for the adoption and enforcement of rules and regulations for the use of the Property and provides plans for the maintenance of and improvements to the Property. Any amendment or other modification of the Management Plan will be permitted only if it is consistent with the Public Purposes and receives the affirmative vote of at least eighty percent (80%) of the members of the City Council. Notwithstanding the foregoing, the unanimous vote of all members of the City Council is required for any amendment or modification that would allow the addition of a paved vehicle roadway, pavement of an existing unpaved vehicle roadway, the addition or expansion of a paved parking area, or the disposition of any parcel of land within the Property.

C. Indemnity. Grantor will defend, indemnify, and hold harmless Grantee, its elected and appointed officials, employees, agents, and volunteers (collectively, the “**Grantee Parties**”) from and against any claim, demand, damage, liability, loss, or cost (including reasonable attorney fees) (collectively, “**Claim**”) to the extent arising out of or resulting from (i) the acts or omissions of Grantor, its elected and appointed officials, employees, agents, and volunteers (collectively, the “**Grantor Parties**”) related to this Easement or the Property; (ii) Grantee’s enforcement of any breach, or threatened breach, of this Easement; (iii) the presence or release of any toxic or hazardous material or substance on the Property, except to the extent the presence or release was directly caused by Grantee; or (iv) any Claim made by a third party related to this Easement or the Property. Grantee will be entitled to select counsel and control the defense and settlement of the Claim.

D. Summary of Voting and Public Hearing Requirements. Grantor will comply with the voting and public hearing requirements of this Easement, which are summarized below:

Action	Vote of City Council	Public Hearing
Amendment/Waiver of Easement Provision	80%	Yes
Non-renewal of Easement	80%	Yes
Amendment of Management Plan	80%	Yes
Amendment of Management Plan Allowing Paved Roadway, Additional		

Parking, or Disposition of Property

100%

Yes

E. Administrative Fee. In consideration of Grantee’s agreement to hold and enforce this Easement, Grantor will pay Grantee an administrative fee of FIVE THOUSAND AND NO/100 DOLLARS (**\$5,000.00**) upon execution of this Easement.

F. Enforcement Reserve. Grantor will deposit FIVE THOUSAND AND NO/100 DOLLARS (**\$5,000.00**) with Grantee upon the commencement of each Renewal Term, if any. Such deposits, if any, will be used as a reserve (the “**Enforcement Reserve**”) against Grantee’s costs of enforcing this Easement. Grantee may draw upon the Enforcement Reserve as necessary to reimburse Grantee’s costs of enforcement in the event of a breach or threatened breach of this Easement. Upon the expiration or sooner termination of this Easement, Grantee will return to Grantor any unused balance of the Enforcement Reserve.

6. RIGHTS AND OBLIGATIONS OF GRANTEE.

A. Enforcement. Grantee shall have the right and responsibility to enforce this Easement through appropriate legal proceedings in the event of a default or threatened default by Grantor or any act of a third party that has or would have a material adverse impact on the Public Purposes.

B. Inspection. Grantee shall have the right to enter upon the Property at reasonable times and in a reasonable manner to monitor Grantor’s compliance with and otherwise enforce the terms of this Easement. In the case of an emergency, as determined by Grantee, Grantee shall notify Grantor prior to entering onto the Property, if possible, or as soon thereafter as is reasonably practical.

C. Indemnity. Grantee will indemnify and hold harmless Grantor Parties from and against any Claim to the extent arising out of or resulting from Grantee’s unwarranted enforcement of any violation, or threatened violation, of this Easement, as determined by a court of competent jurisdiction. Grantor will be entitled to select counsel and control the defense and settlement of any such Claim.

D. Voting and Public Hearing Requirements. Any amendment to, waiver of, or consent given under this Easement that would have a material adverse impact on the Public Purposes will require a public hearing and the concurring vote of a majority of the members of Grantee’s governing body. Any notice of non-renewal of this Easement will require a public hearing and the unanimous vote of Grantee’s governing body.

7. DEFAULT. Either party will be in default if the party substantially fails to perform its obligations under this Easement and, after sixty (60) days’ written notice from the non-defaulting party of such failure, the party has not cured the failure; or, if the failure is not capable of being cured within such time, has not commenced to cure the failure within such time and diligently completed the cure within a reasonable time thereafter, as determined by non-defaulting party.

8. REMEDIES. In the event of either party’s default, the other party may pursue any remedy allowed under this Easement, at law, or in equity. In the event of a threatened default by Grantor or the act of a third party that has or would have a material adverse impact on the Public Purposes, Grantee will be specifically entitled to pursue temporary, preliminary, and permanent

injunctive relief to prevent the default and restore the Property, as much as reasonably practicable, to its original condition. The parties' respective remedies under this Easement, at law, or in equity are cumulative.

9. SUPERIORITY OF EASEMENT AND RESTRICTION ON TRANSFER. Any conveyance, lease, mortgage, trust deed, lien, judgment, encumbrance, or other interest executed or entered against the Property after the Effective Date (collectively, an "***Encumbrance***") shall be subordinate to this Easement and shall not entitle the holder of the Encumbrance to violate the terms of this Easement or otherwise create a material adverse impact on the Public Purposes. Further, any such Encumbrance (other than a valid judgment of a court of competent jurisdiction) shall be prohibited without the consent of Grantor, which consent shall not be unreasonably withheld.

10. EXTINGUISHMENT. This Easement may be extinguished in whole or in part (whether through release, termination, eminent domain, abandonment, swap, exchange, reconfiguration, or otherwise) only (A) through a judicial proceeding in a court of competent jurisdiction, and (B) upon a finding by the court that a subsequent unexpected change in conditions has made impossible or impractical the continued use of the Property (or the portion thereof to be removed from this Easement) for conservation purposes. Any removal of land from this Easement constitutes an extinguishment regardless of how such removal might be characterized. In the event of an extinguishment of this Easement, the Easement shall revert to Grantor.

11. MERGER. The Parties intend that this Easement will not merge even in the event Grantee becomes the fee title owner of the Property. No merger of interest shall diminish Grantee's duty to uphold the public trust conveyed by this Easement.

12. AMENDMENT. This Easement may be amended only by mutual written consent after a public hearing before Grantor's City Council and a public hearing before Grantee's governing body. No amendment will be valid except upon the concurring vote of eighty percent (80%) of the members of Grantor's City Council and a majority of Grantee's governing body.

13. GOVERNMENTAL IMMUNITY. Grantor and Grantee are governmental entities under the Governmental Immunity Act of Utah, *Utah Code Ann.* § 63G-7-101, *et seq.* (the "***Governmental Immunity Act***"). Consistent with the Governmental Immunity Act, each party will be responsible for the wrongful or negligent acts or omissions of its own elected or appointed officials, employees, agents, and volunteers. Neither party waives any defense or any limit of liability available under the Governmental Immunity Act. Each party will notify the other party within thirty (30) days after receiving a notice of claim under the Governmental Immunity Act for which either party may have an obligation to defend, indemnify, and hold harmless the other party. If a party is served with a summons or complaint for which the other party may have an obligation to defend, indemnify, and hold harmless, it will notify the other party at least fourteen (14) days before a response to the summons or complaint is due.

14. MISCELLANEOUS PROVISIONS.

A. Assignment. Neither party will assign any rights or delegate any obligations under this Agreement without the other party's prior written consent, which will not be

unreasonably withheld. Notwithstanding the foregoing, as a condition of Grantor's consent, (i) the transferee must be qualified to hold a conservation easement under Utah law; and (ii) the transferee must agree in writing to be bound by and carry out the obligations of Grantee under this Easement.

B. Covenants Run with the Land. The covenants contained in this Easement touch and concern real property and run with the land. This Easement will be binding upon the parties' respective successors, permitted assigns, agents, and legal representatives. Either party may record this Easement.

C. Severability. The provisions of this Easement are severable, and the invalidity or unenforceability of any provision of this Easement will not affect the validity or enforceability of the remaining provisions.

d. Captions. The section and paragraph headings contained in this Easement are for the purpose of reference only and will not limit or otherwise affect the construction of any provision of this Easement.

e. Entire Agreement; Modification; Waiver. This Easement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties in that regard. Subject to other provisions of this Easement, no modification of this Easement will be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Easement must be in writing and must be signed by the party waiving the provision.

f. No Third-Party Beneficiaries. This Easement is made for the exclusive benefit of the parties and their respective heirs, successors, and assigns. No other person or entity, including residents of Grantor and Grantee, will have any interest under this Easement or be classified as a third-party beneficiary. Neither party will be liable to any claimant for any obligation of the other party under this Easement or otherwise.

g. Time of Essence. Time is of the essence in the performance of all obligations under this Easement.

h. Governing Law. THIS EASEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, EXCEPT AS SUCH LAWS MAY BE PREEMPTED OR SUPERSEDED BY THE LAWS OF THE UNITED STATES. THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF THE COURTS OF THE STATE OF UTAH, OR THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF UTAH, AS THE CASE MAY BE, WITH VENUE IN UTAH COUNTY OR, FOR FEDERAL COURT, SALT LAKE CITY, UTAH, AS THE SOLE FORUM FOR ANY LITIGATION ARISING OUT OF THIS EASEMENT.

i. No Partnership. The transactions contemplated under this Easement do not constitute a partnership, joint venture or other association between the parties.

j. Notice. All notices required under this Easement must be in writing and will be deemed to have been sufficiently given or served when presented personally or when deposited

in the United States Mail, by registered or certified mail or by email with a “read receipt” tracking option, addressed as follows:

TO GRANTOR: Alpine City
Attention: City Administrator
20 North Main Street
Alpine, Utah 84004
Email: ssorensen@alpinecity.org

TO GRANTEE: Utah County
Attn: County Attorney, Civil Division Chief
100 East Center Street
Provo, Utah 84606
Email: [REDACTED]

Either party may designate a different address by written notice to the other party. Any notice given under this Easement will be deemed given as of the date delivered or mailed.

k. No Separate Legal Entity. No separate legal entity is created by this Easement.

l. Interlocal Cooperation Act Compliance. Each party represents and warrants that it has submitted this Easement to its authorized attorney for review and approval as to form, and has otherwise complied with the Interlocal Cooperation Act in connection with the execution of this Easement. A duly executed original or counterpart of this Easement will be filed with the keeper of records of each party in accordance with the Interlocal Cooperation Act.

m. Warranty of Authority. The persons signing this Easement on behalf of a party hereby warrant that they have the requisite authority to execute this Easement on the party’s behalf, and the party has agreed to be and is bound hereby.

n. Exhibits. All exhibits to this Easement are incorporated in this Easement by reference.

o. Counterparts. This Easement may be executed in any number of counterparts, each of which will be deemed an original, and all which constitute one instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Easement as of the Effective Date.

GRANTOR:

ALPINE CITY

Carla Merrill, *Mayor*

ATTEST:

Bonnie Cooper, *City Recorder*

STATE OF UTAH)
 : ss
County of Utah)

The foregoing instrument was acknowledged before me on _____, 2023, by Carla Merrill and Bonnie Cooper in their capacity as Alpine City Mayor and Alpine City Recorder, respectively.

Notary Public

APPROVED AS TO FORM AND LEGALITY:

BENNETT TUELLER JOHNSON & DEERE

Stephen B. Doxey
Alpine City Attorney

GRANTEE:

UTAH COUNTY

Amelia Powers Gardner, *Chair, Utah County
Commission*

ATTEST:

Aaron R. Davidson, *Utah County Clerk*

STATE OF UTAH)
 : ss
County of Utah)

The foregoing instrument was acknowledged before me on _____, 2023, by Amelia Powers Gardner and Aaron R. Davidson in their capacity as Chair of the Utah County Commission and Utah County Clerk, respectively.

Notary Public

APPROVED AS TO FORM AND LEGALITY:

Utah County Attorney

_____, _____

DRAFT July 21, 2023

**ALPINE CITY
LAMBERT PARK MANAGEMENT PLAN**

THIS LAMBERT PARK MANAGEMENT PLAN (“*Plan*”) is made and adopted as of _____, 2023, (the “*Effective Date*”) by ALPINE CITY (the “*City*”) for the ongoing maintenance and management of the City property commonly known as LAMBERT PARK, a map of which is attached as **Exhibit A** (the “*Park*”).

The Park is an invaluable asset of the City that provides significant public benefit, both to residents of the City and to others who use the Park. As owner of the Park, the City has the right and responsibility to manage the Park, including the right to protect, preserve, and maintain the Park predominantly in a natural, scenic, and open condition, and for recreational, agricultural, cultural, historical, and educational use to benefit the public (collectively, the “*Public Purposes*”).

The City finds that it is in the best interest of the health, safety, and welfare of the City and its residents to adopt this Plan for the management and maintenance of the Park. The City also intends to grant a conservation easement to Utah County under the Utah Land Conservation Easement Act, *Utah Code Ann. § 57-18-1 et seq.*, in substantially the form of the attached **Exhibit B** (the “*Conservation Easement*”), to preserve the Park exclusively for the Public Purposes. The Conservation Easement refers to and recognizes this Plan and contains restrictions on the amendment or modification of the Plan.

NOW, THEREFORE, the City, through its city council, hereby adopts the following Plan for the Park:

1. APPLICABILITY. This Plan applies and is intended to be enforced over, under, and across the entire Park to advance the Public Purposes.

2. PUBLIC PURPOSES.

A. Exclusive Use. The Park shall be used exclusively for the Public Purposes. The Public Purposes include the protection, preservation, and maintenance of the Park predominantly in a natural, scenic, and open condition, and for recreational, agricultural, cultural, historical, and educational use for the public benefit. The Public Purposes allow the City and its agents to construct and maintain critical infrastructure, including public utilities, as well as improvements to the Park, for the public benefit in accordance with this Plan.

B. Lawful Existing Uses. The City intends to use, maintain, and preserve the Park in substantially the manner in which it has been used, maintained, and preserved historically. All lawful uses of the Park as of the Effective Date are hereby permitted and declared to be consistent with the Public Purposes, subject to any restriction imposed by the City in accordance with this Plan or the Conservation Easement.

C. Future Uses. Future uses and enhancements of the Park are permitted if (i) they would have no material adverse impact on the Public Purposes, and (ii) they are specifically allowed under this Plan, as amended.

3. PROHIBITED ACTIVITIES IN PARK. Subject to lawful existing uses of the Park, this Plan prohibits any activity in the Park that has or would have a material adverse impact on the Public Purposes. This Plan and the Conservation Easement specifically prohibit the following:

A. Development Activities. Residential, commercial, or industrial development of any portion of the Park is prohibited. This includes actual or *de facto* subdivision of any portion of the Park and any construction in the Park, other than as specifically permitted in this Plan for the Public Purposes.

B. Transfer of Development Rights. Proffer or dedication of any portion of the Park as open space in or as part of any residential, commercial, or industrial development is prohibited. Proffer or dedication of any portion of the Park for the purpose of fulfilling density requirements to obtain approvals for any zoning, subdivision, site plan, or building permit is prohibited. Transfer of any development rights that have been encumbered or extinguished by the Conservation Easement to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise, is prohibited.

4. TERM. Unless sooner terminated in accordance with the Conservation Easement, this Plan will remain in effect during the entire term of the Conservation Easement.

5. MAINTENANCE AND MANAGEMENT OF THE PARK. The City expressly reserves and may exercise all rights associated with the ownership of the Park, subject to any restrictions imposed under the Conservation Easement, including the following:

A. Water Resources. The City owns or is authorized to use and maintain water resources and water-related infrastructure in the Park, including springs, water tanks, water storage ponds, ditches, and pipelines, as part of the City's public responsibility as a municipality. The City may develop, add to, enhance, install, maintain, repair, relocate, and replace such water resources and infrastructure as the City determines. The City may also exercise its rights and responsibilities with respect to the water resources and infrastructure of Alpine Irrigation Company located in the Park.

B. Public Access, Trails, and Trailheads. The City may identify, maintain, reroute, relocate, improve, and construct recreational and educational trails and trailhead parking areas in the Park for the benefit of the public, including to provide access for those with disabilities. The City may temporarily or permanently close trails as necessary for public safety, maintenance, trail restoration, or otherwise, consistent with the Public Purposes. A map of the current trails located within the Park, including portions of the Bonneville Shoreline Trail, is attached to this Plan as **Exhibit C**, which may be replaced without otherwise amending this Plan as trail modifications are approved.

C. Fire Suppression. The City may remove brush and vegetation and take other measures as necessary to minimize the risk of wildfire, or to suppress wildfires, in or adjacent to the Park.

D. Utilities. The City may maintain, improve, repair, replace or relocate existing utilities, including the existing cell tower, as long as the Park is restored, as much as reasonably practicable, to its original undisturbed nature. The City may allow for co-location on the existing cell tower, but no new cell towers will be permitted in the Park unless otherwise provided in this Plan. The City may install, construct, maintain, repair, and replace new underground utilities as long as the Park is restored, as much as reasonably practicable, to its original undisturbed nature.

E. Park Facilities and Public Gathering Areas. The City may construct and improve park

facilities, bathroom facilities, emergency aid facilities, landscaping, picnic areas, pavilions, boweries, and gathering areas in the Park. The City may install other park improvements, such as bridges, boardwalks, culverts, and separated street crossings, for the public use and enjoyment.

F. Fences. The City may construct new fencing, replace existing fencing, and install gates for the purpose of defining Park boundaries, delineating specific uses, or restricting unauthorized access to or across the Park.

G. Roads.

(1) Generally. The City may maintain and allow the use of existing maintenance roads (including the road to the existing cell tower), emergency access roads, the rodeo grounds road, and other roads in the Park (paved or unpaved) consistent with their historical maintenance and use. The City may construct new roads only as necessary to provide access to trailhead parking areas or to maintain critical infrastructure consistent with the Public Purposes. The City may reroute or improve the portion of Box Elder Drive that crosses the Park and may improve the portion of Grove Drive that crosses the Park as reasonably necessary to maintain or enhance public safety.

(2) Moyle Drive Extension. An unpaved extension of Moyle Drive crosses the Park to the terminus of Box Elder Way (the “*Moyle Drive Extension*”). The Moyle Drive Extension may be used only for maintenance and emergency purposes and shall be maintained in an unpaved condition substantially as it exists on the Effective Date, except as otherwise provided in this Plan and the Conservation Easement.

(3) Motor Vehicle Use. The City may adopt and enforce policies, consistent with this Plan, prohibiting or restricting motorized vehicles in designated areas of the Park.

H. Rodeo Grounds. The City may use and maintain the portion of the Park known as the “rodeo grounds” and associated roads and parking areas for public events.

I. Signs. The City may place signs in the Park, except for commercial, political, or other off-premise signs or billboards, as long as the signs are consistent with the Public Purposes.

J. Public Safety. The City may conduct and restrict activities in the Park as reasonably necessary to preserve the public health, safety, and welfare, including for purposes of fire suppression and prevention; flood control and prevention; response to avalanche, earth movement, and other circumstances beyond the City’s control; and preventing similar threats or injury to persons or to the Park. The City may adopt and enforce rules regulating hours of use or activities in the Park, including rules requiring permits for any overnight after-hours activity and rules governing the interaction among pedestrian, equestrian, bicycle, and other uses, in order to promote public safety. Any such rules may be appended to this Plan as an exhibit, but failure to so append the rules will not invalidate them. Certain rules in effect as of the Effective Date are attached as **Exhibit D**, which may be replaced without otherwise amending this Plan as rules are adopted or modified. Any amendments to the rules that are inconsistent with this Plan will not be incorporated into this Plan, except by the formal amendment process provided herein.

6. EXISTING ORDINANCES AND PLANS INCORPORATED IN PLAN. This Plan acknowledges and incorporates by reference all current provisions of the Alpine City Municipal Code (the “*Code*”), Alpine City General Plan (the “*General Plan*”), and master plans (the “*Master Plans*”) applicable to the Park as a whole or certain areas within the Park. The portion of the General Plan

applicable to the Park and the Master Plan for the rodeo grounds are attached to this Plan as **Exhibit E**. Any amendments to the Code, General Plan, or Master Plans that are inconsistent with this Plan will not be incorporated into this Plan, except by the formal amendment process provided herein.

7. ENFORCEMENT. In the event any person violates this Plan or any rules or regulations adopted pursuant to this plan, the City may pursue any remedy allowed under this Plan, at law, or in equity. Specifically, the City will be entitled to pursue temporary, preliminary, and permanent injunctive relief to prevent the violation of this Plan or any such rule or regulation, and may issue warnings or citations or otherwise pursue criminal remedies for any violation. The City’s remedies under this Plan, at law, or in equity are cumulative.

8. AMENDMENT. This Plan may be amended or modified only after a public hearing and upon the concurrence of at least eighty percent (**80%**) of the members of the City Council. Notwithstanding the foregoing, the unanimous vote of all members of the City Council is required for any amendment or modification that would allow the addition of a paved vehicle roadway, pavement of an existing unpaved vehicle roadway, the addition of a paved parking area, or the disposition of any parcel of land within the Park.

9. GOVERNMENTAL IMMUNITY. The City is a governmental entity under the Governmental Immunity Act of Utah, *Utah Code Ann. § 63G-7-101, et seq.* (the “**Governmental Immunity Act**”). Nothing in this Plan waives any defense or any limit of liability available to the City under the Governmental Immunity Act.

10. MISCELLANEOUS PROVISIONS.

a. Severability. The provisions of this Plan are severable, and the invalidity or unenforceability of any provision of this Plan will not affect the validity or enforceability of the remaining provisions.

b. No Third-Party Beneficiaries. This Plan is made for the exclusive benefit of the City and its successors, and assigns. No other person or entity, including residents of the City, will have any enforceable interest under this Plan or be classified as a third-party beneficiary. The City will not be liable to any third-party claimant for any obligation of the City under this Plan.

c. Exhibits. All exhibits to this Plan are incorporated in this Plan by reference.

ADOPTED by the City Council of Alpine City _____, 2023.

EXHIBIT A

Map of the Park

EXHIBIT B

Form of Conservation Easement

EXHIBIT C

Trail Map

EXHIBIT D

Park Rules

The following rules apply to the use of Lambert Park:

1. **Hours of Operation.** The Park is open from dawn until dusk. Exceptions are by written City permission only, and include City-sponsored events and overnight camping in the Bowery area by permit only.
2. **Firearms and Fireworks.** Target shooting, hunting, firearm discharge, and fireworks within the Park are prohibited.
3. **Fires.** No fires are allowed in the Park, except in designated fire pits near the Bowery. The City may further restrict fires as necessary.
4. **Motor Vehicles.** No motorized vehicles are allowed in the Park, except for emergency situations, maintenance operations, and City-permitted events, and as otherwise expressly provided in this Plan. Members of the public with a disability or other special needs may use a motor vehicle on the Moyle Drive Extension for access to the poppy fields if they first obtain a permit from the City.
5. **Electric Bikes.** Class 1 Electric Bikes that are pedal-assist only and have a maximum assisted speed of 20 mph are permitted in the Park. Other types of electric bikes or other motorized vehicles are not permitted, except as expressly provided in this Plan.
6. **Trail Conditions.** No trail in the Park may be used when the trail is wet or muddy.
7. **Races.** No organized races of any type are permitted in the Park, except for City-organized or City-sanctioned races.
8. **Group Rides.** Groups of cyclists are limited to eight (8) riders in close proximity to one another.

EXHIBIT E

Excerpt of General Plan and Master Plan for the Rodeo Grounds