

Contract Review and Approval

Contract Title/Description: Consulting Agreement for Creation of a Master Plan for land.

Contractor/Vendor: Forest City
Contract Begin Date: October 26, 2012
Contract End Date: April 26, 2012
Account Number: 2100-140-43010
Available Budget: \$350,000
Contract Price: not to exceed \$350,000

Approved as to:

Content: [Signature] 12/6/12
Owner / Project Manager (Date)
Form: [Signature] 12/6/12
City Attorney / Assistant City Attorney (Date)
Budget: [Signature] 12/8/12
Finance Officer (Date)

Service Group Authorization:

Department Director: [Signature] 12/6/12
Name/Signature (Date)
ACM: [Signature] 1/2/13
Name/Signature (Date)

Original Received:

City Recorder: [Signature] 1-2-2013
Name/Signature (Date)

Contract Number: 2012-0159

Item 10-7 Retain 5 Years

CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is effective this 26th day of October, 2012, by and between The City of South Jordan, Utah (the "Client") and Forest City Real Estate Services, LLC (the "Consultant"). Client and Consultant are jointly referred to as the "Parties".

WITNESSETH:

WHEREAS, Client wishes to retain the services of Consultant for the purpose of providing general consulting services related to the creation of a master plan for land located in South Jordan, UT and as further identified on Exhibits A & B attached hereto (hereinafter the "Property")and

WHEREAS, Consultant has the professional skill and ability to provide such services to Client.

NOW, THEREFORE the Parties agree as follows:

1. RETENTION

Client does hereby retain Consultant for the purpose of assisting Client with the creation of a master plan and related work product on the Property (hereinafter the "Services"). Consultant does hereby accept the terms and conditions hereinafter set forth.

2. SCOPE OF WORK

Consultant's Scope of Work shall be set forth in one or more task orders (each, a "Task Order") entered into between Client and Consultant which shall be appended to this Agreement. Each Task Order shall describe in detail the Consultant's Scope of Work for a specific task, and shall set forth Consultant's fee for the Task Order as well as Consultant's estimate of charges and reimbursable, out-of-pocket expenses required to complete the Task Order.

Consultant agrees to perform the Services set forth in this Agreement, work in partnership with the Client and its stakeholders, and provide its professional skill and judgment in furthering the goals and objectives of the Client for each Task Order undertaken by Consultant. Consultant shall perform the Services with reasonable diligence and expediency consistent with sound professional practices.

3. TERM

The term of this Agreement shall commence on the date first set forth in the Preamble, above, and shall terminate either (i) at midnight on April 1, 2013, or (ii) at such time as Consultant completes the work outlined in all Task Orders mutually agreed upon by the

Parties, whichever occurs later, unless (i) extended pursuant to a written agreement signed by both Client and Consultant, or (ii) otherwise terminated as set forth herein.

4. WORK PERFORMED BY SUB-CONSULTANTS:

Client acknowledges that Consultant may, with the approval of the Client, engage sub-consultants or recommend that Client engage certain sub-consultants, to assist and to provide certain technical assistance during the completion of a Task Order. Unless otherwise agreed to in writing by Client, all costs and expenses of such technical assistance shall be the sole responsibility of Consultant. Prior to the date of this Agreement Consultant has performed services together with Prodigy Capital Consulting Group ("PCCG") for the benefit of Client under a single billing and contract. It is the intent of the Parties, and Consultant acknowledges and agrees, that (i) PCCG will continue to work with Consultant for the benefit of Client and (ii) that any costs or expenses incurred from work, services, or assistance provided by PCCG are included as part of the compensation paid to Consultant by Client for Consultant's Services.

4. COMPENSATION

For services performed under this Agreement, Client shall pay Consultant as follows:

Consultant shall invoice Client on a monthly basis for the Consultant's and any sub-consultant's work and accompanying direct expenses as set forth in the Task Order. Consultant's out-of-pocket expenses shall be billed based on actual cost incurred. The Client shall pay Consultant as set forth in Paragraph 6, below.

6. INVOICING

The monthly invoice shall be paid by Client to Consultant at the address set forth below. Payments by Client to Consultant for amounts due and payable shall be made within thirty (30) days of Client's receipt of (i) Consultant's invoice and (ii) verification from Consultant of Services for which payment is sought.

Forest City Real Estate Services
Terminal Tower
50 Public Square, Suite 1000-B
Cleveland, OH 44113

Should Client prefer to remit payment of Consultant's invoice by wire, Consultant shall provide wiring instruction to Client at Client's request.

7. COMPLIANCE WITH APPLICABLE LAWS

Consultant agrees that all services performed hereunder shall be in accordance with applicable laws, regulations, restrictions and requirements of all governmental and quasi-governmental authorities, public authorities, and other agencies and organizations having jurisdiction over its services in accordance with the applicable industry standard of care.

This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance, but without regard to its conflict of laws rules. Client and Consultant hereby irrevocably consent to the jurisdiction of the courts in the State of Utah for all purposes in connection with any action or proceeding which arises from or relates to this Agreement.

8. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports, and other documentation including duplication of same prepared by Consultant in the performance of the Services (Work Products) shall become the property of Client upon termination of the consulting services pursuant to this Agreement and upon payment in full of all compensation then due Consultant.

9. BREACH

If the Consultant breaches any of the terms, conditions or covenants in the Agreement, then Client may, upon ten (10) days written notice to Consultant and failure of Consultant to cure the breach within such ten (10) day period, and without prejudice to any other remedy it may have, (1) provide any such labor and materials as are necessary to remedy such deficiency and deduct the cost thereof from any money due or thereafter becoming due to the Consultant and/or (2) it may terminate the Agreement for cause by providing Consultant ten (10) days written notice.

10. NEGLIGENCE AND HOLD HARMLESS

Client acknowledges that it shall defend, indemnify and hold Consultant, its officers, and employees, harmless from all claims, lawsuits, demands, judgments or liability including, but not limited to general liability, automobile and professional errors and omissions liability, arising out of, directly or indirectly, the negligence of Client, its officials, officers, and employees, arising from this Agreement.

Consultant shall defend, indemnify and hold the City, its elected Officials, officers, and employees, harmless from all claims, lawsuits, demands, judgments or liability including, but not limited to general liability, automobile and professional errors and omissions liability, arising out of, directly or indirectly, the negligent performance, or any negligent omission of the Consultant in performing the Services and arising from this Agreement.

11. INSURANCE

Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry:

- (1) Workers compensation insurance adequate to protect Consultant from claims under workers compensation acts.
- (2) Professional errors and omissions insurance in the amount of \$2,000,000, and
- (3) General personal injury and property damage liability insurance and automobile liability insurance with liability limits of not less than \$2,000,000 each claimant and \$2,000,000 each occurrence for the injury or death of person or persons and property damage.

All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of Utah. Consultant shall provide City with copies of certificates for all policies with an endorsement that they are not subject to cancellation without thirty (30) days prior written notice to City and the City, its officers and employees, shall be named as additional insured on General and Automobile liability policies only.

12. CONSULTANT SUBCONTRACTORS

Client recognizes and agrees that Consultant may choose, at its own expense, to subcontract some portion of the services provided herein. In the event Consultant desires to do so, Consultant shall provide written notice to Client with the name and qualifications of the sub-consultant and Client agrees not to unreasonably withhold its consent to such sub-consulting arrangement. Unless Client and Consultant have agreed in writing before the performance of extra services, no liability on the part of Client and no right to claim compensation for such extra services or expenses by Consultant or any sub-consultant shall exist as to Client. In addition, Consultant may recommend to Client that it engage separately and in its own name, sub-consultants to provide other services provided for herein to further the purposes of the Project.

13. RELATIONSHIP OF THE PARTIES

Consultant shall at all times be an independent contractor and have sole responsibility for and control over all means, methods, techniques, sequences and procedures for coordinating and scheduling its services to achieve the requirements of this Agreement and any Task Orders executed hereunder.

14. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure

continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

15. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release to Client from all claims and liabilities for compensation to Consultant for anything done, finished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the Client's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check.

However, approval or payment by the Client shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, subcontractors, agents, and Consultants for the accuracy and competency of the information provided and/or work responsibility or liability by the Client for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents, and Consultants.

16. POINT OF CONTACT AND NOTICE

Consultant agrees to provide a single point of contact to the Client to facilitate communication and at all times to allocate sufficient professional staff and other resources as required to perform the Consultant's services hereunder.

All notices relating to the Services or to this Agreement shall be sent to the Parties at the addresses stated below, by registered or certified mail or nationally recognized overnight courier. Either party hereto may specify in writing to the other party a different address for the giving of notices.

Notices to Client:	South Jordan City 1600 West Towne Center Drive South Jordan, UT 84095 Attn: Brian A. Preece
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With a copy to: South Jordan City
1600 West Towne Center Drive
South Jordan, UT 84095
Attn: I. Robert Wall
City Attorney

Notices to Consultant: Forest City Real Estate Services, LLC
50 Public Square, Suite 1140
Cleveland, OH 44113-2201
Attn: Emerick Corsi / Eric J. Louttit

With a copy to: Forest City Enterprises, Inc.
50 Public Square, Suite 1360
Cleveland, OH 44113-2201
Attn: General Counsel

17. ASSIGNMENT

Neither Client nor Consultant shall assign or transfer this Agreement or any interest herein without the written consent of the other party.

18. TERMINATION

Either party may terminate this Agreement for its convenience upon 10 days prior written notice. A final summary bill will be prepared and all amounts due shall be paid within 30 days. All Work Products completed up to that time shall be forwarded to Client concurrent with payment of the final summary bill.

19. ENTIRE AGREEMENT BETWEEN THE PARTIES

This is a fully integrated Agreement that supersedes and replaces all prior agreements between the Parties relating to the Services, whether written or oral, and this Agreement, complete with any Exhibits, Task Orders, etc., represents the complete agreement of the Parties. No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing and signed by the Parties, and specifying with particularity the nature and extent of such waiver, modification or amendment. The signing of such writings in any instance or instances shall in no event be construed to be a general waiver, abandonment, modification or amendment of any of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such writing or writings.

20. AUTHORIZATION

Each person executing this Agreement represents and warrants that he has the authority to bind the party for whom he is signing.

21. CONSTRUCITON OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders and vice versa.

(Remainder of page left intentionally blank)

This Agreement shall be effective as of the date of the Agreement, but the terms and conditions hereunder shall apply to any work performed by Consultant on any Task Order prior to the date of such Agreement.

Accepted and Agreed:

Forest City Real Estate Services, LLC

By: _____
Emerick J. Corsi, President

State of _____)
 :ss
County of _____)

On the _____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____ of _____, a limited liability company, by authority of its members or its articles of organization, and he/she acknowledged to me that said limited liability company executed the same.

By: _____
Notary Public

Accepted and Agreed:

The City of South Jordan, Utah

By: 

Name: John H. Geilman

Title: City Manager

Exhibit A

Consultant's Task Order #1 Services

Under this Task Order #1, Consultant shall provide master planning services to Client as set forth below and/or as otherwise agreed to by the Parties in the Kick-Off Meeting described in Paragraph "I." below.

PROPOSED SOUTH JORDAN SCOPE

A successful redevelopment for the proposed FrontRunner Commuter Station, Mulligan's and all areas defined in Exhibit B herein, should include immediate and long-term opportunities for the City of South Jordan community at large.

To embark on this process, the assembled Forest City Team has made recommendations to become the "Master Development Consultant" for the City of South Jordan. Once the following scope is agreed upon, we will start this engagement. A summary of the steps that will be completed under this agreement are as follows:

I. Kick-Off Meeting & Stakeholder Outreach

- Conduct kick-off meeting with City of South Jordan to refine goals and objectives.
- Meet with key stakeholders to identify community goals and objectives.

II. Site Area Evaluation

- Review relevant reports and studies (e.g. transportation studies, land use plans, appraisals, market and traffic studies, etc).
- Take into consideration the proposed transportation study being contemplated by UTA concerning the Sandy and South Jordan planning areas.
- Identify potential strategies that address short and long term transportation and circulation needs for the property.
- Identify legal restrictions/encumbrances on the subject sites.
- Understand existing on-site and off-site infrastructure and improvements.
- Evaluate surrounding land uses and possible opportunities for expansion beyond the subject area.

III. Market Analysis

- Identify key market drivers and potential users.
- Provide insight relative to the retail potential for the sites (e.g. merchandising mix, co-tenancies, etc).
- Establish range of potential market rents by use type (e.g. office, multi-family, retail, open space, etc).
- Project absorption rates by use type (e.g. office, multi-family, retail, open space, etc).

IV. Master Land Use & Development Assessment

- Explore land use scenarios and strategies informed by South Jordan's strategic economic development and planning objectives and current market conditions.
- Identify potential merchandising mixes with a focus on destination retail opportunities.
- Consider linkages and synergistic opportunities surrounding land uses and adjacent sites.
- Identify opportunities to incorporate sustainable design elements (e.g. green space, public gathering areas, etc).

V. Financial Feasibility & Scenario Analysis

- Cost estimates (e.g. predevelopment/soft costs, site work, infrastructure, building costs, etc).
- Possible financing structures (e.g. land sales, ground-leasing and other financing scenarios, etc).
- Public-Private financial considerations.
- Pro forma inputs (e.g. expenses, operating and common area costs, etc).

VI. Strategy & Implementation Plan (for each scenario and development parcel)

- Explore various project phasing strategies.
- Assist City Staff in developing overall vision and implementable economic development strategy and marketing plan.

Deliverables

Forest City is the City of South Jordan shall discuss and prioritize the deliverables at the initial "kick-off" meeting as referenced above in section I.

Collaboration

During our work pursuant to this Task Order #1, we will meet regularly with the Client, the various landowners within the Project area, and all appropriate stakeholders to ensure that all expectations are met and course corrections can be made as work proceeds.

Contract Duration

Based on the scope of work outlined in this letter, we anticipate the Task Order #1 Services will require six (6) months to complete, which tasks and duration can be modified or extended upon mutual agreement of the parties.

Fee

While it is difficult to be precise as the final scope of work has not been agreed upon, we have calculated our professional fees based on the work plan included herein. Consultant's fee for the above scope will be a Lump Sum Fee of \$300,000. The Lump Sum Fee shall be invoiced to Client on a monthly basis in equal installments of \$50,000.00 per month.

Reimbursable expenses as approved by Client, such as travel, lodging, meals, third party consultants etc., are not included as part of the Lump Sum Fee and shall be invoiced separately. Preapproved reimbursable expenses for the month shall be included on the monthly invoice for the Lump Sum Fee and payment of the invoice is expected within thirty (30) days of receipt of the invoice. Total reimbursable expenses for travel, lodging, and meals shall not exceed 10% of the fees due under this contract in any given month; unless approved by Client. All other reimbursable expenses shall be negotiated and agreed upon by the City in writing before any activities regarding same shall commence by the Consultant.

Third Party Consultants

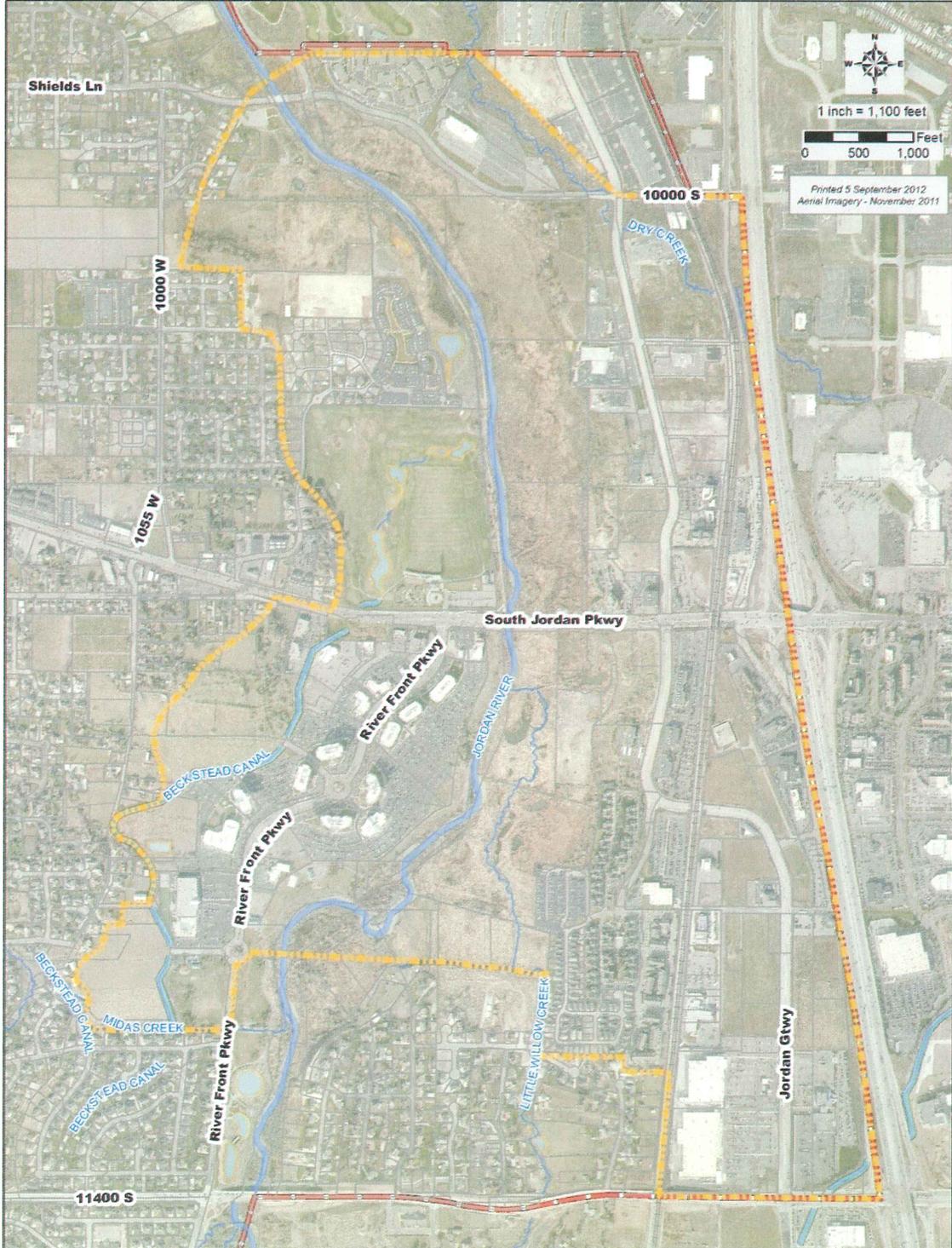
At the instruction and approval of the Client, Forest City shall engage third party consultants, as necessary. Fees and costs incurred by third party consultants shall be billed separately from those of the Consultant. Per the Agreement to which this Task Order is appended, PCCG is not considered a third party consultant for which fees and costs shall be billed separately from those of Consultant. The Work Products and Services provided by PCCG are part of the Work Products and Services of Consultant. Fees and costs for such incurred by PCCG are the responsibility of Consultant unless otherwise agreed to in writing by Client.

Future Phases of Work

At the completion of the Services, Consultant is available to discuss additional services.

Exhibit B

Site Area Map



First Addendum to Consultant's Task Order #1 Services
("First Addendum")

1. On October 3, 2012, the City of South Jordan, Utah (the "Client") and Forest City Real Estate Services, LLC (the "Consultant") entered into an agreement for consulting services entitled CONSULTING AGREEMENT ("Agreement").
2. In the Agreement the Client and the Consultant are referred to as the Parties. Pursuant to the Agreement, the Parties agreed that Consultant's scope of work would be set forth in one or more task orders (each, a "Task Order"). *Consultant's Task Order #1 Services* ("Task Order #1") is included in the Agreement as Exhibit A.
3. The first step in Task Order #1 identified as *Item I. Kick-Off Meeting & Stakeholder Outreach*, anticipates the Parties hold a kick-off meeting to refine goals and objectives. The kick-off meeting was held by the Parties on October 26, 2012 in the South Jordan City Hall. During that meeting specific initial tasks and deliverables ("Tasks & Deliverables") to be accomplished by the Consultant were identified and agreed to by the Parties and include the following:

Duration: 75 Days commencing November 5, 2012.

Specific Tasks & Deliverables:

Circulation Loop Study

❖ Tasks:

- Review proposed transportation study being contemplated by UTA concerning the Sandy and South Jordan planning areas.
- Identify strategies to address short and long-term transportation and circulation needs for the property, in addition to identifying legal restrictions/encumbrances on the subject sites.
- Study existing on-site/off-site infrastructure and improvements, evaluate surrounding land uses and identify possible opportunities for the subject area.

❖ Deliverables:

- Technical memorandum defining proposed transportation routes and possible alternatives, crucial connectivity points, route highlights and overall advantages.
- Conceptual Transportation Exhibit documenting proposed transportation routes and possible alternatives, crucial connectivity points and route highlights.

Mulligan's Site Analysis

❖ Tasks

- Identify key market drivers and potential users, provide insight relative to the retail potential for the subject sites, and establish a range of potential market rents by use type and project absorption rates by use type (e.g. office, multi-family, retail, open space, etc.).
- Investigate land use scenarios and development strategies informed by South Jordan's strategic economic development and planning objectives and as dictated by current market conditions.
- Determine viable merchandising mixes, with a focus on destination retail opportunities, with consideration to prospective synergistic opportunities and linkages to surrounding land uses and adjacent sites.

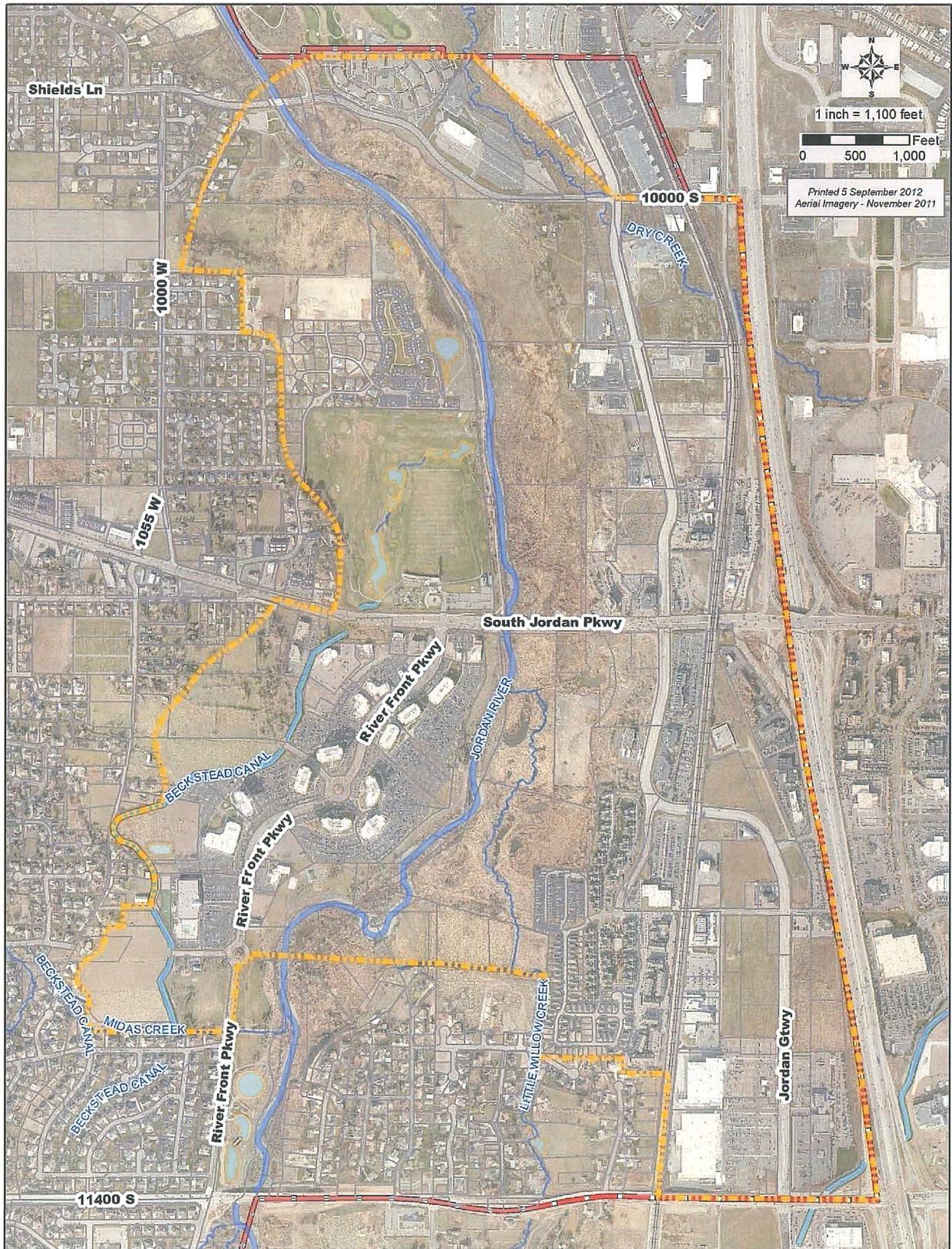
❖ Deliverables:

- Technical memorandum defining land uses, open space, setbacks, connectivity, density, etc.
- Conceptual land use plan documenting land uses, open space, setbacks, connectivity, density, etc.

4. The aerial photograph on page “-3-” depicts the approximate location of the study area upon which the Tasks & Deliverable are focused. The study area is outlined on the aerial photograph with a yellow/orange line.

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Aerial of Study Area



First Addendum to Consultant's Task Order #1 Services Accepted and Agreed:

"Consultant"

Forest City Real Estate Services, LLC

By: 
Eric Louffit, Senior Vice President

State of Ohio)
:ss
County of Cuyahoga)

On the 30th day of November, 2012, personally appeared before me ERIC LOUFFIT, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the Senior Vice President of Forest City Real Estate Services, LLC, a limited liability company, by authority of its members or its articles of organization, and he/she acknowledged to me that said limited liability company executed the same.

By: 
my Commission expires
December 1, 2013

Notary Public

"City"

The City of South Jordan, Utah

By: 
Name: JOHN H. GEILMANN
Title: City manager