CENTERVILLE CITY

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Incorporated in 1915

interofficei
MEMORANDUM

to:	Mayor Russell City Council
cc:	Department Heads Planning Commission
from:	Steve Thacker, City Manager *S. Thacker*
subject:	City Manager's Summary of August 6, 2013 Council Meeting
date:	August 2, 2013

There will be no work session prior to the regular meeting at 7:00 p.m. To create the agenda and supporting documents for this meeting, staff used for the first time the NovusAgenda meeting management program. All of the meeting documents are available to the City Council on line by going to http://centervilleboard.novusreview.com/login.aspx. The meeting documents (other than confidential documents) are also available to the public by going to http://centervillepublic.novusreview.com. The City Council, as well as the public, can view staff reports and supporting documents on line in advance and during the meeting. A link to the public portal for each meeting will be available on the City's website. The business for the August 6 Council meeting is summarized below.

E.1. __Minutes Review and Acceptance__ – The minutes to be approved are enclosed.

E.2 __Summary Action Calendar__

a. **CDBG Grant Contracts** – Over the past two years the City has been awarded two grants of $50,000 each to be used for the Riviera Townhomes street and drainage improvements project. A majority of the Riviera Townhomes residents qualify as low to moderate income—thereby making this project eligible for CDBG funding. The total project budget is $160,000, including $100,000 in grant funds, $30,000 from the Homeowners Association, and $30,000 from the City's Redevelopment Agency. These two grant contracts are agreements between Centerville City and Davis County governing the use of the grant funds.

b. **Award bid for CBDG Project** – Bids were opened earlier this week for the Riviera Townhomes project. The low bid submitted by Kilgore Contracting ($133,673.60) was considerably below the Engineer's Estimate of $171,478. This should allow the full scope of improvements anticipated in the bid to be completed within the $160,000 budget mentioned above, including engineering costs.

c. **Award bid for Portable Light Tower** – The current Water Fund Budget includes $13,000 designated for a portable light tower to illuminate the work area during night-time emergencies (repairing waterline breaks, etc.)

d. **Renew Drainage Maintenance Contract** – Two years ago, after soliciting bids, the City awarded a drainage maintenance contract with Twin "D" with the option to renew for two consecutive years at the same unit prices. That option was exercised last year and staff would like to exercise the option again this year. Staff is satisfied with Twin "D" services.

e. **Renew Street Sweeping Contract** – Last year, after soliciting bids, the City awarded a street sweeping contact to Jacketta with the option to renew for two consecutive years at the same unit prices. Staff is satisfied with Jacketta's services and would like to exercise that option this year.

E.3. **Public Hearing – Culinary Water Impact Fee** – Water impact fees are collected from new development to help pay for the capital facilities that serve new growth. The City's current culinary water impact fee ($1,200 for a ¾ inch connection) was adopted in the mid 1990s. State law requires that impact fees be based on an impact fee facilities plan and analysis that justify the fee amounts. A culinary water impact fee facilities plan and analysis were prepared earlier this year by the firm of Lewis Young Robertson & Burningham with assistance from City staff. That Plan and Analysis were reviewed with the City Council at their July 16 meeting. The Council directed staff to proceed with notice of a public hearing for the August 6 meeting. The Plan and Analysis have been available on the City's website, as well as at City Hall and the local library. The current impact fee of $1,200 for a ¾ inch connection would increase to $2,027 and the impact fees for larger connections would increase proportionately based on the same multiplier formula that has been used in the past. See the staff report for more details. Per State law, the effective date of the revised fees would be at least 90 days after adoption.

E.4. **Public Hearing – Woods Park Subdivision – Final Plat** – This is a 29-lot subdivision at the southeast corner of Lund Lane and the Frontage Road. The Planning Commission recommends approval of the final subdivision plat. Drainage infrastructure has been the most critical infrastructure issue for this subdivision. Staff will update the Council on the status of this issue at the meeting.

E.5. **Woods Park Assignment and Assumption Agreement** – This is related to Item #4 on the agenda. The parties owning the Woods Park Subdivision intend to sell this property and its associated development rights to another party to develop. Therefore, the developer's obligations as set forth in an earlier Development Agreement must be assumed by the new owners of the property, which will be Henry Walker Land of Utah, LLC.

E.6. **Public Hearing – Zoning Code Text Amendment** – In the past year the City Council approved amendments to the City Code pertaining to the enforcement of Code violations. Those amendments however, did not affect to the Zoning Code, which requires such amendments first be reviewed by the Planning Commission. The Planning Commission recently reviewed these recommended changes to the Zoning Code and recommends approval to the City Council. These changes are similar to those approved earlier by the City Council for other sections of the City Code.

E.7. **Fee Schedule Amendments – Civil Penalties** – This is related to Item #6 on the agenda. Some of the revisions to the Zoning Code recommended in Item #6 require a revision to the City's Fee Schedule. For example, the civil penalty amount for a Zoning Code violation would increase from $120 to $150 and there would be higher amounts for recurring violations in a 12-month period.

E.8. **10-Wheel Dump Truck for Public Works** – The current budget funds a number of equipment purchases for various City departments. One of those is a 10-wheel dump truck for Public Works. The budget assumes, however, that this purchase, which is an unusually large expenditure would be accomplished via a five-year lease purchase. The advantages of using this approach are summarized in the Staff Report. However, in the meeting staff will address in more depth the operational and financial benefits of using this approach at this time. The cost of this truck—including snowplowing equipment (both front plow and wing plow)—is about $215,000.

E.9. **Park Pavilion Reservation Policies and Application Forms** – Last year the City Council approved revised fees for reserving park pavilions. At that time City staff also mentioned the need for adoption of additional policies governing park use by these groups. However, those policy recommendations were not ready for Council action at that time. Staff is now prepared to make those recommendations, which pertain to use of parks by large groups, commercial activity in the park, and use of inflatables, etc. The basic reservation fees for park pavilion use are not being changed.

E.10. **Reconsideration of Approval of UTA Trail License Agreement** – At their July 16 meeting the City Council approved a Trail License Agreement with Utah Transit Authority allowing the use of the D&RGW Railroad corridor as a pedestrian pathway and trail system. That agreement, however, contains a provision which shifts to the City the risk for claims from trail users relating to preexisting environmental conditions. When the Council approved this agreement at the July 16 meeting, approval was conditioned upon assurance of the City's risk insurer, URMMA, that these kinds of claims would be covered by URMMA. Since that meeting, URMMA has not been able to give City staff the assurance that such claims would be covered. Therefore, staff are bringing back this matter for reconsideration by the City Council. Staff still recommend the Council approve the agreement because we believe the significant public benefit to be derived from this trail outweighs the very low risk assumed by the City. I recommend the Council reapprove the Agreement without the earlier condition in the motion.

E.11. **Mayor's Report** – This item allows the Mayor to report on any matters of interest.

E.12. **City Manager's Report** – I will take some time to update the City Council on the Parrish and Main Intersection Project next year as well as the UDOT I-15 express lane project through Centerville, which is also scheduled for next year. I will also review some of the issues discussed recently by the Legislative Policy Committee of the Utah League of Cities and Towns, one of which is Item #13 on the agenda.

E.13. **Miscellaneous Business** – The Utah League of Cities and Towns Legislative Policy Committee unanimously recommends that Utah municipal officials promote support for the Marketplace Fairness Act, Federal legislation pending now in the US House of Representatives. Background information from the League staff is attached to the staff report. I am seeking the Council's direction whether to draft a letter of support to be signed by the Mayor and/or City Council as requested by the Legislative Policy Committee.

E.14. **Closed meeting** – At this time I do not know of a need for a closed meeting, but the agenda allows for that possibility.

E.15. **Appointments to Boards and Commissions** – Mayor Russell may recommend appointments to City boards or commissions.

9:00 **Adjourn to RDA meeting** – The following business will be addressed in the RDA meeting following the regular Council meeting:

Minutes – The minutes to be approved for the July 16, 2013 RDA meeting are enclosed.

Barnard Creek Community Development Area – This is an agreement between the Centerville Redevelopment Agency and Davis County that would allow for a portion of County property taxes collected in the future within the Barnard Creek Community Development Project Area to be remitted to the Redevelopment Agency for purposes identified in the CDA Plan and Budget. The County Commission has asked the City's RDA Board to approve this first before it is considered by them.

Riviera CDBG Project – As mentioned above under the City Council's regular meeting, CDBG grant funding has been received for street and drainage improvements for the Riviera Townhomes. In addition to $100,000 in grant funding, the project budget includes $30,000 from the Homeowners Association and $30,000 from the City's RDA—hence for the need for the RDA Board to authorize this funding from tax increment revenues. State law allows a portion of RDA tax increment revenues to be used for low moderate income housing improvements.

Potential Agenda Items for August 20 regular City Council Meeting (subject to change):

- Public hearing – Subdivision Ordinance Text Amendment for flag lots
- Fee schedule amendments for water impact fees
- Consider ordinance prohibiting the feeding of deer in Centerville
- Police vehicle purchase
- Chapel Ridge Cove Amended Plat

mlm

CENTERVILLE CITY COUNCIL AGENDA

NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY COUNCIL WILL HOLD ITS REGULAR PUBLIC MEETING AT 7:00 P.M. ON TUESDAY, AUGUST 6, 2013 AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Meetings of the City Council of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Blaine Lutz, Centerville Finance Director, at 295-3477, giving at least 24 hours notice prior to the meeting.

A notebook containing supporting materials for the business agenda items is available for public inspection and review at City Hall and will be available for review at the meeting. Upon request, a citizen may obtain (without charge) the City Manager's memo summarizing the agenda business, **or may read this memo on the City's website: www.centervilleut.net.**

Tentative Time: - The times shown below are tentative and are subject to change during the meeting.

7:00 **A. ROLL CALL**

B. PLEDGE OF ALLEGIANCE

C. PRAYER OR THOUGHT
Loren Pankratz, The Bridge Community

7:05 **D. OPEN SESSION (This item allows for the public to comment on any subject of municipal concern, including agenda items that are not scheduled for a public hearing. Citizens are encouraged to limit their comments to two (2) minutes per person. Citizens may request a time to speak during Open Session by calling the City Recorder's office at 295-3477, or may make such request at the beginning of Open Session.) Please state your name and city of residence.**

City Manager Summary Memo

E. **BUSINESS**

7:10 1. Minutes Review and Acceptance
Review and acceptance of July 16, 2013 work session; July 16, 2013 meeting minutes

(OVER)

7:10	2.	<u>Summary Action Calendar</u> a. Approve CDBG Grant contract b. Bid award for CDBG project (Riviera Townhomes street and drainage improvements) c. Consider bid to Cate for the purchase of a portable light tower in the amount of $12,930 d. Consider renewing Drainage Maintenance Contract with Twin "D" in the amount of $103,410 for 2013-2014 e. Consider renewing Street Sweeping Contract with Jacketta in the amount of $42,840 for 2013-2014
7:10	3.	<u>Public hearing - Culinary Water Impact Fee</u> Consider Culinary Water Impact Fee Facilities Plan, Culinary Water Impact Fee Analysis and Revised Culinary Water Impact Fee Enactment updating and amending Culinary Water Impact Fees - Consider Ordinance No. 2013-10
7:20	4.	<u>Public hearing - Woods Park Subdivision – Final Plat</u> Consider Final Plat for the Woods Park Subdivision - 690 West 2400 North. Alan Prince Development, Applicant
7:35	5.	<u>Woods Park Assignment and Assumption Agreement</u> Consider Assignment and Assumption Agreement between the City and various parties for the Woods Park Development governing property located at 690 West 2400 North (Alan Prince, Prince Development, Applicant)
7:40	6.	<u>Public Hearing – Zoning Code Text Amendment</u> Zoning Code Text Amendment to Chapter 12-23, Enforcement - Regarding Remedies, Penalties and Procedures for the Enforcement of the Zoning Code - Consider Ordinance No. 2013-11
7:55	7.	<u>Fee Schedule Amendments – Civil Penalties</u> Consider Resolution No. 2013-19 Amending the Centerville City Fee Schedule Regarding Civil Penalties for Zoning Code Violations
8:00	8.	<u>10-Wheel Dump Truck for Public Works</u> a. Consider Resolution No. 2013-20 approving a 5-year Lease Purchase Agreement with Zions First National Bank for financing of equipment in the amount of $215,813 b. Consider approval of purchase of cab and chassis and equipment from Rush Truck Center and Legacy Equipment in the amount of $215,813
8:10	9.	<u>Park Pavilion Reservation Policies and Application Forms</u> Consider Resolution No. 2013-11 adopting Park Pavilion Reservation Policies and Application Forms
8:30	10.	<u>Reconsideration of Approval of UTA Trail License Agreement</u> Reconsideration of approval of UTA Trail License Agreement between the City and UTA for the use and maintenance of a pedestrian pathway and trail system within the DRGW Corridor

8:35 11. Mayor's Report

8:40 12. City Manager's Report
- a. Parrish & Main Intersection Project update
- b. I-15 express lane project
- c. ULCT Legislative Policy Committee issues

8:55 13. Miscellaneous Business
- a. Letter of support for Market Place Fairness Act legislation

9:00 14. Closed meeting, if necessary, for reasons allowed by state law , including, but not limited to, the provisions of Section 52-4-205 of the Utah Open and Public Meetings Act, and for attorney-client matters that are privileged pursuant to *Utah Code Ann.* § 78B-1-137, as amended

9:00 15. Possible action following closed meeting, including appointments to boards and committees

9:00 ADJOURN to RDA meeting

F. ADJOURNMENT

Items of Interest

Marsha L. Morrow, MMC
Centerville City Recorder

PRELIMINARY DRAFT

Minutes of the Centerville City Council **work session** held Tuesday, July 16, 2013 at 5:38 p.m. in the Centerville City Council Chambers, 250 North Main Street, Centerville, Utah.

MEMBERS PRESENT

Mayor	Ronald G. Russell
Council Members	John T. Higginson Sherri Lyn Lindstrom Lawrence Wright
MEMBERS ABSENT	Justin Y. Allen Ken S. Averett
STAFF PRESENT	Steve Thacker, City Manager Blaine Lutz, Finance Director/Assistant City Manager Lisa Romney, City Attorney Neal Worsley, Centerville Police Chief Albert Sebright, Intern Katie Rust, Recording Secretary

REVIEW AND DISCUSSION OF PEDESTRIAN CROSSING DATA COLLECTED BY CITY STAFF

City Manager Thacker introduced Albert Sebright, a student who has been working as an unpaid intern with the City. Mr. Sebright has collected crosswalk data at selected locations, conducted a garbage can audit throughout the city, and has been helping the Whitaker Museum Board with management of electronic files. Mr. Thacker presented the data collected at fourteen crosswalks and explained enhancements recommended by staff for two of the locations. In addition, a crossing guard may be warranted at 2025 North and 400 West during school crossing times. A traffic engineer could be hired to further analyze the intersection. Additional signage is recommended at the intersection of Chase Lane and 400 West, as well as at Bellano and 400 West. At Chase Lane and 400 West Chief Worsley would like to try a sign that is currently used near the State Capitol building and in downtown Salt Lake City that is low to the ground and states "State law yield to pedestrian within crosswalk."

At Bellano and 400 West Chief Worsley recommends a taller sign with a white background that states "yield here to pedestrians," with an arrow pointing to the crosswalk. The possibility of moving the crosswalk a half-block north on 400 West to provide safer crossing for pedestrians was discussed. However, staff expressed the concern that pedestrians might continue to cross at the intersection of Bellano and 400 West rather than walk the extra half-block to the crosswalk. Chief Worsley suggested that where the City uses crossing flags they be a color other than bright orange, since orange is the color used for water sports, and the city tends to "lose" many of its orange flags. The Council and Mayor indicated approval for the suggested sign additions at the two intersections. Councilwoman Lindstrom stated she feels the crosswalk at the intersection of Bellano and 400 West should remain where it is until residents have been involved in the discussion process.

TRAINING ON NOVUSAGENDA MANAGEMENT PROGRAM

Blaine Lutz demonstrated how to use the NovusAgenda management program that staff and the Council will be testing during meetings in August. The cost of using NovusAgenda is $400 per month, which is an expense that staff feels will be offset by the savings in staff time and supply costs.

ADJOURNMENT

The work session was adjourned at 6:52 p.m.

Marsha L. Morrow, City Recorder

Date Approved

Katie Rust, Recording Secretary

PRELIMINARY DRAFT

Minutes of the Centerville **City Council** meeting held Tuesday, July 16, 2013 at 7:02 p.m. in the Centerville City Hall Council Chambers, 250 North Main Street, Centerville, Utah.

MEMBERS PRESENT

Council Members	Ronald G. Russell, Mayor Ken S. Averett John T. Higginson Sherri Lyn Lindstrom Lawrence Wright
MEMBER ABSENT	Justin Y. Allen
STAFF PRESENT	Steve Thacker, City Manager Blaine Lutz, Finance Director/Assistant City Manager Lisa Romney, City Attorney Cory Snyder, Community Development Director Katie Rust, Recording Secretary
VISITORS	Fred Philpot, Lewis Young Robertson Burningham (LYRB) Interested citizens (see attached sign-in sheet)

PLEDGE OF ALLEGIANCE

PRAYER OR THOUGHT Councilman John Higginson

OPEN SESSION

No one wished to comment.

MINUTES REVIEW AND APPROVAL

The minutes of the Tuesday, July 2, 2013 Council meeting were reviewed. Councilwoman Lindstrom requested an addition, and made a **motion** to accept the minutes as amended. Councilman Higginson seconded the motion, which passed by unanimous vote (4-0).

SUMMARY ACTION CALENDAR

a. Approve Assignment and Assumption Agreement for Legacy Crossing Lot 4
b. Award bids for MTC Lot 2 waterline to Ferguson Enterprises in the amount of $14,906 for materials (with tax) and to Kilgore Contracting in the amount of $42,769 for labor

Councilman Wright made a **motion** to approve both Summary Action Calendar items. Councilman Averett seconded the motion, which passed by unanimous vote (4-0).

PUBLIC HEARING – CHITOSE JOHNSON SUBDIVISION FINAL PLAT (REDIVISION OF LOT 2 BANGERTER SUBDIVISION) – 200 EAST 1200 SOUTH

Cory Snyder, Community Development Director, explained the proposed redivision of Lot 2 of the Bangerter Subdivision at 200 East and 1200 South. The Planning Commission recommends the Council approve the final subdivision plat and plans. The right-of-way is defined on the plat in a manner that would allow extension of the right-of-way in the future to accommodate a cul-de-sac if the owners decide to further subdivide the land.

At 7:09 p.m. Mayor Russell opened a public hearing. Seeing that no one wished to comment, the Mayor closed the public hearing.

Steve Thacker, City Manager, asked who will be responsible for the maintenance of the paved, temporary turn-around that will not be constructed to City street standards. Mr. Snyder responded that maintenance responsibility could be included on a plat note. Ron Marshall, a representative of the owners, stated the owners intend to take care of the turn-around as any responsible owner would.

Councilman Averett made a **motion** to approve the final subdivision plat and plans for Lot #2 of the Bangerter Subdivision, located at 200 East 1200 South, with the recognition that the non-standard public road turn-around area will not be installed or maintained by the City, but will be installed and maintained by the property owners until such time that the access point becomes a legal street improved to City standards and is extended further into the project area, and including the conditions and findings of the Planning Commission. Councilman Wright seconded the motion, which passed by unanimous vote (4-0).

Conditions:

1. The street right-of-way shall be dedicated the entire distance (215 feet), not just the first 125 feet that is shown.
2. The subdivision shall install the full set of public street improvements the first 125 feet. However, the hammerhead shall be constructed in accordance with the City & Fire Code Requirements for an all-weather access.
3. There is up to 15 feet of excess private land with associated utility easements on each side of the right-of-way (i.e., the first 125 feet of road). The plans shall be corrected to address how this will be maintained (e.g. landscaping) and a plat note shall disclose that all maintenance will be the responsibility of the applicable lot owner (no remnant parcel is to be created).
4. All required utility provider sheets shall be received by the City staff.
5. City Engineer shall determine sufficiency of easement for Lot #2 along front lot line.
6. The applicant shall provide the correct address for the new lots, as deemed acceptable by the Zoning Administrator.

Findings:

a. The Planning Commission finds that the subdivision for two lots is consistent with the goals of the Centerville City General Plan concerning development within Neighborhood 1, Southeast Centerville known as Extreme South Main Street Area [Section 12-480-2.d].
b. The Planning Commission finds that the property is currently zoned Residential-Medium (R-M) and that the subdivision, with the directives, could meet the applicable development standards found in Chapter 12-32 of the Zoning Ordinance in regard to layout and proper street frontage.
c. The Planning Commission finds, with the directives, that the requirements for subdividing will be addressed and satisfied [Title 15-Subdivisions].

APPROVE UTA RAIL CORRIDOR USE AGREEMENT FOR D&RGW TRAIL

For the benefit of the audience, Steve Thacker, City Manager, explained the history of the Denver and Rio Grande Western Trail (D&RGW Trail), which has been largely funded with Federal funds, with a small match required from each city along the length of the trail. Construction of the Centerville portion is set to begin in September of 2013. The project requires an agreement between Centerville and UTA assigning maintenance of the trail to the city, similar to the maintenance agreement for the Legacy Parkway trail. Councilman Averett asked if volunteer groups can help with the maintenance of the trails, and if a sponsor program has been considered. Mr. Thacker responded that there is a steady stream of groups that volunteer to help within the city. The Trails Committee has discussed the possibility of an "adopt a trail" program, but has not considered it necessary. Denise Cox, a member of the Trails Committee, added that citizens have been careful to keep the trails clean. Councilman Wright asked about the environmental liability portion of the agreement. Lisa Romney, City Attorney, responded that UTA is mandating these changes be in the contract. She suggested staff contact the City's insurance carrier to ensure that the environmental liability clauses and indemnification obligations can be covered under the City's insurance. Councilman Wright suggested the city have the D&RGW trail area tested for contamination in the absence of information regarding past spills. Mr. Thacker stated that a portion of the existing Legacy Parkway trail in Centerville is already on the D&RGW corridor, and no environmental liability issues have come up. Ms. Romney has discussed the matter with UTA and was not informed of any known spill that occurred in the Centerville portion. Mr. Thacker added that testing would most likely be very expensive. Railroad beds have been converted to trails throughout the country. Councilman Averett stated that any incident would require prolonged exposure, and he feels the risk is negligible. Mr. Thacker agreed the risk is low.

Councilwoman Lindstrom made a **motion** to approve the Trail License Agreement between UTA and Centerville City for the use and maintenance of the public pathway and trail system within the D&RGW Corridor, subject to the review and approval of the City's insurance company regarding the environmental liability clauses and coverage. Councilman Averett seconded the motion, which passed by unanimous vote (4-0).

RDA MEETING

At 7:40 p.m. Councilman Wright made a **motion** to move to a meeting of the Centerville Redevelopment Agency. Councilwoman Lindstrom seconded the motion, which passed by unanimous vote (4-0). In attendance were: Ronald G. Russell, Chair; John T. Higginson, Vice-Chair; Directors Averett, Lindstrom, and Wright; Steve Thacker, RDA Executive Director; Blaine Lutz, Finance Director; Lisa Romney, City Attorney; and Katie Rust, Recording Secretary.

The Council returned to regular meeting at 8:15 p.m.

CONSIDERATION OF ORDINANCE NO. 2013-09 AND RESOLUTION NO. 2013-18

The RDA approved the Barnard Creek Community Development Project Area Plan and Interlocal Cooperation Agreement in its meeting. Councilman Higginson made a **motion** to adopt Ordinance No. 2013-09 as approved by the RDA, approving the Barnard Creek Community Development Area Plan. Councilman Wright seconded the motion, which passed by unanimous vote (4-0).

Councilman Higginson made a **motion** to adopt Resolution No. 2013-18 approving an Interlocal Cooperation Agreement between the Redevelopment Agency of Centerville City and Centerville City for the collection and remittance of incremental property taxes collected from property within the Barnard Creek Community Development Area. Councilman Wright seconded the motion, which passed by unanimous vote (4-0).

REVIEW CULINARY WATER IMPACT FEE FACILITIES PLAN/ANALYSIS

Fred Philpot with LYRB explained the process and methods involved in developing impact fees. He presented data regarding current and future culinary water capacity in Centerville. The City has not increased its water impact fee since the mid-1990's when it was set at $1,200 for a ¾ inch connection. It is recommended the Culinary Water Impact Fee be increased to $2,027 to meet the needs of new development. Councilman Wright asked if the analysis could be made available to the public prior to the planned public hearing. A statement on the next water bill will refer citizens to the City website for access to the Analysis.

MAYOR'S REPORT

- The Fire District has hired a new Fire Chief, Jeff Bassett. Mayor Russell expressed confidence in Chief Bassett's level of experience and abilities.
- Mayor Russell commented on the success of the recent 4th of July celebration.

CITY MANAGER'S REPORT

- An RDA/ACB meeting will be held on August 20, prior to the regular Council meeting.
- The Council approved including an insert regarding elections in the upcoming utility bill.
- Mr. Thacker provided the Council with an information sheet prepared by the Public Works Director regarding the safety of City pump houses.
- Mr. Thacker distributed copies of the agenda used at the recent candidate orientation meeting.
- Due to research completed and submitted by Management Assistant Jacob Smith, the population census estimate used for Centerville for 2012 has increased to 16,203. This number will be used in the distribution of sales tax income.

MISCELLANEOUS BUSINESS

Councilwoman Lindstrom made a **motion** to approve the appointment of the poll workers listed in the staff report and authorize Davis County to appoint additional poll workers that may be needed in case of an emergency. Councilman Higginson seconded the motion, which passed by unanimous vote (4-0).

CLOSED MEETING

At 9:10 p.m. Councilman Wright made a **motion** to move into a closed meeting to discuss the competency of an individual. Councilwoman Lindstrom seconded the motion, which passed by unanimous vote (4-0). In attendance were: Ronald G. Russell, Mayor; and Council members Averett, Higginson, Lindstrom, and Wright. The Council returned to open session at 9:32 p.m., at which time Blaine Lutz and Katie Rust returned to the Council chambers.

CITY MANAGER COMPENSATION

Councilman Wright made a **motion** to approve a $500 bonus for City Manager Thacker. The motion was not seconded. Mayor Russell stated that a different action had been discussed in the closed meeting. Councilwoman Lindstrom made a **motion** to approve a 1.5% salary increase and a one-time bonus of $500 for City Manager Thacker. Councilman Averett seconded Councilwoman Lindstrom's motion, which passed by majority vote (3-1), with Councilman Wright dissenting.

ADJOURNMENT

At 9:35 p.m. Councilwoman Lindstrom made a **motion** to adjourn the Council meeting. The motion was seconded by Councilman Higginson and passed by unanimous vote (4-0).

Marsha L. Morrow, City Recorder

Date Approved

Katie Rust, Recording Secretary

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 2.

Short Title: Summary Action

Initiated By: Staff

Scheduled Time: 7:10

SUBJECT

a. Approve CDBG Grant Contracts for Riviera Townhomes Street and Drainage Improvements
b. Award Bid for CDBG Project (Riviera Townhomes street and drainage improvements) to Kilgore Contracting in the amount of $133,673.60
c. Award Bid to Cate for the purchase of a portable light tower in the amount of $12,930
d. Renew Drainage Maintenance Contract with Twin "D" in the estimated amount of $103,410 for 2013-2014
e. Renew Street Sweeping Contract with Jacketta in the estimated amount of $42,840 for 2013-2014

RECOMMENDATION

a. Approve two CDBG agreements for Riviera Townhomes Street and Drainage Improvements, 2012-2014 and 2013-2015, and authorize the Mayor to sign the agreements.
b. Award bid to Kilgore Contracting in the amount of $133,673.60 for Riviera project, conditioned upon the RDA Board approving the use of $30,000 of tax increment revenue for this project (see the RDA agenda) and the receipt of $30,000 from the Riviera Homeowners Association.
c. Award bid to Cate for a portable light tower in the amount of $12,930
d. Renew Drainage System Maintenance contract with Twin "D" in the estimated amount of $103,410 for FY 2013-2014 at same unit prices.
e. Renew Street Sweeping Services contract to Jacketta Sweeping Services in the amount of $42,840 at same unit prices.

BACKGROUND

a. Centerville has received two grants through the CDBG program for grant years 2012-2014 and 2013-2015 for street and drainage improvements for the Riviera Townhomes. Each of the grants are for $50,000 for a total of $100,000. The proposed total project budget--including engineering and construction--would be $160,000, consisting of $100,000 in grant funds, $30,000 from the homeowners association and $30,000 from the Centerville Redevelopment Agency (see RDA meeting agenda). These two agreements--one for each grant award of $50,000, are between Centerville City and Davis County.

b. Four bids were received for the Riviera Townhomes project. Staff is pleased with the very good bid pricing that was received and recommends the award to Kilgore Contracting in the amount of $133,673.60 (see attached bid tabulation). The funding for this project will be provided from CDBG funds in the amount of $100,000, the Centerville City RDA and Riviera Townhomes Homeowners Association. The improvements would be constructed in September and October.

c. The FY 2014 Water Fund budget includes $13,000 for the purchase of a portable light tower. This will be used for emergency work at night. Staff recommends the approval of the bid to Cate, the low bidder of the 4 bids received (see attached tabulation).

d. The bid for this project was awarded two years ago with the condition that it could be renewed for two consecutive years at the same unit prices if the City was satisfied with their work. The City has been very satisfied with their work and Twin "D" committed to holding their unit prices (see attached email).

e. The City has contracted with Jacketta for street sweeping for several years and is satisfied with their work. Jacketta was awarded the bid again last year, with the City reserving the option to renew it for two consecutive years at the same unit price. City staff is satisfied with Jacketta's services. Using the same unit price and estimated sweeping time as last year, the total estimated budget impact would be $42,840. The City's budget includes $40,000 for street sweeping: $20,000 in the General Fund (Streets Budget) and $20,000 in the Drainage Utility Fund. According to Blaine Lutz, Finance Director, the Streets Budget and Drainage Utility Budget should be able to cover the overage (if any) with savings on other budget line items.

ATTACHMENTS:

Name:	Description:
Contract_2012-2014.pdf	2012-2014 Agreement
Riviera_Townhomes_CDBG_-_Recommended_NOA.pdf	Engineer Recommendation for Riviera Townhomes
Riviera_Townhomes_CDBG_-_Bid_Tab.pdf	Riviera Townhomes Bid Tabulation
Bid_Awards.pdf	Light Tower bid tabulation
Bid_Spec_DIPP_L8.pdf	Light Tower Bid Specification
Centerville_2013-14_DC_Construction_Agreement.pdf	2013-2014 Agreement

COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT
CENTERVILLE CITY

CONTRACT PARTIES: This Agreement is made by and between **DAVIS COUNTY**, a body corporate and politic of the state of Utah, hereinafter "County," and **CENTERVILLE CITY**, a municipal corporation of the state of Utah, hereinafter "Subgrantee," and is dated the date that the County Clerk/Auditor attests the applicable County signature (which date shall be the recordation date).

WHEREAS, the parties are desirous of entering into an agreement pursuant to the regulations of the U.S. Department of Housing and Urban Development', hereafter (HUD), Community Development Block Grant, 24 CFR Part 570, hereinafter "CDBG"; and

WHEREAS, the parties are desirous of providing certain grant monies to Subgrantee for qualified activities under the CDBG program to benefit low- and moderate-income residents of County;

NOW, THEREFORE, in consideration of the mutual promises and considerations set forth below, the parties agree to the following:

TERMS

1. PURPOSE: The purpose of this Agreement is to provide funding for improvements to a private drive located in the Riviera Townhomes to improve stormwater drainage, constructed or provided by Subgrantee that meets the CDBG national objective of benefitting low- and moderate-income persons.

2. CONTRACT TERM: The term of this Agreement shall run from July 1, 2012, to June 30, 2014. All work performed by Subgrantee under this Agreement shall be performed within the dates of this term in order to be reimbursable by County. All costs which are incurred on the project by Subgrantee after the effective date of this Agreement and which have been determined by County to be appropriate and allowable costs of the project shall be eligible for reimbursement and payment hereunder. Subgrantee may request in writing that the term be extended by amendment to this Agreement.

3. SCOPE OF SERVICES: Subgrantee shall perform, or cause to be performed, all work required for the project described generally in Paragraph 1 above and, in that performance, Subgrantee shall provide all personnel staffing and contracting, and provide all services and furnish all related real and personal property required. The project shall be performed in a manner satisfactory to County and in accordance with the provisions as set forth in Exhibit "A," which is attached hereto and by this reference incorporated herein, and Subgrantee shall report to County accomplishments on a quarterly basis.

4. BUDGET:

A. County shall provide an amount not to exceed fifty thousand dollars ($50,000.00) for work as contemplated by the terms of this Agreement. The basis for said compensation is set forth in Exhibit "B," which is attached hereto and by this reference incorporated herein. All proposed changes in the total amount of the budget under this Agreement that would increase or decrease the total amount of funding specified in Exhibit "B", or result in a change of scope, location or beneficiaries of the project shall be submitted to County for prior approval and must be formally authorized by a written amendment to this Agreement.

B. Subgrantee must make a concerted good-faith effort to expend the total amount specified in Exhibit "B" within the contract term noted in paragraph 2 above. Subgrantee's costs and expenditures, however, shall not exceed the total funding amount. County shall not be liable for or reimburse Subgrantee for any extra costs or overruns on the project, or any additional funding in excess of the total amount stated above without prior written amendment of the Agreement.

C. In the event the full funding amount to be paid or reimbursed hereunder by County is not expended by Subgrantee for project costs as specified in Exhibit "A" by the end of the contract term, as that period may have been extended or otherwise changed, Subgrantee shall refund, release or transfer any unexpended amount back to County within 30 days. Any project funds held by County at the end of the contract term or refunded, released or transferred to County shall be reallocated by County. Subgrantee shall be eligible to apply for these funds but shall have no greater claim or priority than any other applicant.

D. In the event that congressional action, HUD rules and regulations, or other lawful directive modifies or reduces the funds and/or services obligated under this Agreement, Subgrantee shall, upon notice from County, immediately modify or reduce the scope of work, or cease expenditures hereunder.

5. NOTICES: Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

COUNTY: Greg Johnson
Grant Program Coordinator
61 South Main Street, Room 304
PO Box 618
Farmington, UT 84025

SUBGRANTEE: Blaine Lutz, Assistant City Manager
Centerville City
250 North Main
Centerville, Utah, 84014

6. GENERAL CONDITIONS:

A. GENERAL COMPLIANCE: Subgrantee agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including Subpart K of these regulations, except that (1) Subgrantee does not assume County's environmental responsibilities described in 24 CFR 570.604 and (2) Subgrantee does not assume County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Subgrantee also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Subgrantee further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. INDEPENDENT CONTRACTOR: The relationship of County and Subgrantee under this Agreement shall be that of an independent contractor status. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between County and Subgrantee of employer and employee, partners or joint venturers.

The parties agree that Subgrantee's obligations under this Agreement are solely to County. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement.

C. INDEMNIFICATION: Both parties are governmental entities under the Governmental Immunity Act, Section 63G-7-101 *et seq.*, Utah Code Ann. (2008), therefore, consistent with the terms of the Act, the parties agree that each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Act and all other applicable law.

D. INSURANCE: During the term of this Agreement, including all renewal or additional terms, Subgrantee shall, at its sole cost and expense, maintain either:

A self-insurance program pursuant to Section 63G-7-801 of the Governmental Immunity Act, Utah Code Ann. (2008), with coverage up to the limits stated at Section 63G-7-604;

—OR—

Must secure and maintain the following minimum insurance coverage:

1) GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES:

   a. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to County.

   b. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

      (i) Currently rated A- or better by A.M. Best Company;

—OR—

(ii) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570), as amended.*

c. Subgrantee shall furnish certificates of insurance, acceptable to County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

d. In the event any work is subcontracted, Subgrantee shall require its subcontractor, at no cost to County, to secure and maintain all minimum insurance coverages required of the Subgrantee hereunder.

e. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Subgrantee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to County.

f. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to County in a manner approved by the Davis County Attorney.

g. In the event Subgrantee fails to maintain and keep in force any insurance policies as required herein, County shall have the right at its sole discretion to obtain such coverage and reduce payments to Subgrantee for the costs of said insurance.

2) <u>REQUIRED INSURANCE POLICIES</u>: Subgrantee agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

a. Workers' compensation and employer's liability insurance sufficient to cover all of Subgrantee's employees unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, Subgrantee shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law. (County is not to be an additional insured under Subgrantee's workers compensation insurance.)

b. Commercial general liability insurance with County endorsed to the policy, in the minimum amount of $1,000,000 per occurrence with a $2,000,000 general policy aggregate and $2,000,000 products completed operations policy aggregate. The policy shall protect County, Subgrantee, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Subgrantee's operations under this Agreement, whether performed by Subgrantee itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

c. If Subgrantee shall operate a motor vehicle in connection with any services funded by this Agreement, commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with County as an additional insured, in the minimum amount of $1,000,000 per occurrence.

E. BOND REQUIREMENTS: If the project(s) involves construction or rehabilitation costing $25,000 or more, Subgrantee shall ensure that contractors furnish, at the contractors' expense, a separate performance bond and a labor and materials bond, each for an amount not less than 100% of the contract price, or such other assurances as approved in writing by County. The bonds shall be issued by a qualified corporate surety licensed to transact business in Utah. If at any time during performance of the work, the surety on the bonds shall be disqualified from doing business in Utah, or shall become insolvent or otherwise impaired, contractors shall furnish bonds from an alternate surety acceptable to County and Subgrantee. The bonds shall remain in effect until completion of the project(s) including completion of all warranty and guaranty work and shall be delivered to County prior to the commencement of any work. The contractors shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or amendment to this Agreement.

F. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS: Subgrantee, its representatives, subcontractors, successors, and assigns, shall administer this Agreement in compliance with all applicable federal, Utah State, and Davis County laws, ordinances, and regulations, or their successors or replacements, including but not limited to workers' compensation insurance and the federal regulations or their successors or replacements which are incorporated herein by reference.

G. LIMITED ENGLISH PROFICIENCY: Subgrantee shall prepare, maintain, and implement a Language Assistance Plan to ensure meaningful access to its programs and activities by limited English proficient persons in compliance with the Department of Housing and Urban Development "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice" in the Federal Register on January 22, 2007.

H. AMENDMENTS: Either of the parties may request amendments to any of the provisions of this Agreement at any time during the period of performance but no amendment shall be made or performed until it has been mutually agreed to by the parties. All amendments shall be authorized by a duly executed modification of this Agreement prior to any work being done, except that, extensions of time amendments may be authorized and given by County as provided below.

1) County may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the purpose, the scope of services, the location, or beneficiaries of the project(s) to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both County and Subgrantee.

2) All adjustments or extensions of time proposed for the performance of this Agreement shall be requested in writing by Subgrantee and be submitted to County for processing. All such requests must be received prior to the termination date set forth in this Agreement or in any subsequent valid amendments or extensions to the Agreement

in force at the time of the request. Upon approval, County shall add the signed, written endorsement to Subgrantee's letter of request granting the adjustment or extension and that letter shall be numbered and identified as a duly authorized written amendment of this Agreement.

I. TERMINATION: Either party may terminate this Agreement for convenience at any time, as set forth at 24 CFR Section 85.44, by giving thirty-(30)-days written notice to the other party of such termination. Partial terminations of the project(s) may only be undertaken with the prior approval of County. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Subgrantee under this Agreement shall, at the option of County, become the property of County, and Subgrantee shall be entitled to receive just and equitable compensations for any satisfactory work completed on such documents or materials prior to the termination.

County may also suspend or terminate this Agreement, in whole or in part, in accordance with the provisions of 24 CFR Section 85.43, if Subgrantee materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and County may declare Subgrantee ineligible for any further participation in County's contracts, in addition to other remedies as provided by law.

J. PERFORMANCE MEASUREMENTS: Subgrantee shall comply with all reporting requirements established by the federal government for HUD to ensure County has access to the data necessary to meet the standards of the Government Performance and Results Act (GPRA) of 1993 that holds all federal agencies accountable for establishing goals and objectives and measuring achievements. Subgrantee shall meet this requirement through the submission of quarterly performance and/or progress reports to County as outlined in Paragraph 7(C)(6) of this Agreement.

K. INFORMATION: County and HUD shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, materials, or other information prepared under or in conjunction with this Agreement.

L. GRANTOR RECOGNITION: Subgrantee shall insure recognition of the role of HUD funds in providing services through this Agreement. All activities, facilities and items funded under this Agreement shall be prominently labeled as HUD being the funding source. In addition Subgrantee shall reference the HUD support provided herein in all publications made possible with funds made available under this Agreement.

7. ADMINISTRATIVE REQUIREMENTS:

A. FINANCIAL MANAGEMENT:

1) UNIFORM ADMINISTRATIVE REQUIREMENTS: Subgrantee and its agencies or instrumentalities, and subgrantees shall comply with the applicable uniform administrative requirements set forth at 24 CFR Section 570.502(a), and with the policies, guidelines, and requirements of OMB Circulars A-87 and A-133.

2) OTHER REQUIREMENTS: Subgrantee shall comply with the program requirements set forth at 24 CFR Section 570.600 - .603 and Section 570.605 - .614. Subgrantee shall **not** be required to assume the environmental responsibilities described at 24 CFR Section 570.604 or the review process under 24 CFR Part 52.

3) FINANCIAL MANAGEMENT: Subgrantee agrees to comply with the financial and program management standards set forth at 24 CFR Part 85 and specified in 24 CFR Section 570.502(a) and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

4) COST PRINCIPLES: Subgrantee, as specified in 24 CFR Section 570.502(a), shall administer its program in conformance with OMB Circular A-87, "Cost Principles for State, Local, or Indian Tribal Governments." These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. DOCUMENTATION AND RECORD KEEPING:

1) RECORDS TO BE MAINTAINED: Subgrantee shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets the needs of low- and moderate-income persons, or low- and moderate-income areas;
c. Appropriate records detailing activities as identified in the Scope of Services (Exhibit A);
d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
f. Financial records as required by 24 CFR 570.502 and 24 CFR 84.21–28; and
g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2) RETENTION: Subgrantee shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, or if there are claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3) CLIENT DATA: Subgrantee shall maintain records demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.

4) DISCLOSURE: Subgrantee understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of County's or Subgrantee's responsibilities with respect to services provided under this contract, is prohibited by the applicable State or Federal law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5) CLOSE-OUTS: Subgrantee's obligation to County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subgrantee has control over CDBG funds, including program income.

6) AUDITS AND INSPECTIONS: All Subgrantee records with respect to any matters covered by this Agreement shall be made available to County, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subgrantee within 30 days after receipt by Subgrantee. Failure of Subgrantee to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subgrantee shall, no later than 180 days after the end of Subgrantee's fiscal year, provide County with a copy of it's most recent financial audit. Said audit shall be prepared by an independent auditor in compliance with guidelines for financial and compliance audits of federally assisted programs as contained in OMB Circular A-133.

C. REPORTING AND PAYMENT PROCEDURES:

1) PROGRAM INCOME: Program income received by Subgrantee is to be returned to County or retained by Subgrantee in accordance with provisions enumerated in 24 CFR Section 570.503 and 570.504(c). Where program income is to be retained by Subgrantee, the activities that will be undertaken with program income shall be the same as those specified in Exhibit "A"–Scope of Services of the Agreement and all provisions of the written Agreement shall apply to the specified activities. When Subgrantee retains program income, transfer of grant funds by County to Subgrantee shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (ii) of 24 CFR 570.504. Any program income on hand when the Agreement expires, or received after the Agreement's expiration, shall be paid to County as required by 24 CFR Section 570.503(b)(8).

a. Subgrantee shall meet the requirements set forth in 24 CFR 570.504(c). At the end of the program year, County requires remittance of all interest earned on program income balances (including investments thereof) held by Subgrantee as required by the provisions at 570.500(b).

b. Subgrantee must track all interest earned on program income balances. The total amount of interest earned must be reported to County as of June 30 of each year. Funds must be maintained in a separate account in the event return of said funds must be remitted to HUD as per 570.504(b)(2)(iii). Subgrantee is liable for any funds required to be remitted to HUD under 570.504(b)(2)(iii).

2) BILLINGS: Subgrantee shall submit a billing to County not more often than monthly. Each billing shall include documentation of all expenses to be reimbursed by County (i.e., employee time sheets showing hourly distribution of time spent according to activities outlined in Exhibit "A," vouchers, invoices, and receipts). Additionally, verification that disbursements have been made must be provided (i.e., canceled checks

or bank statements). Subgrantees will have thirty (30) days from the expiration date of this Agreement to submit a final billing for reimbursement. No billings received after July 31, 2014 will be processed.

3) METHODS OF DISBURSEMENT:

a. Subgrantee may request disbursement from County of that part of the funding amount stated in Exhibit "B" either on the basis of a lump sum reimbursement of the project costs upon completion, or on the basis of periodic reimbursement payments during the course of the project as the funds for that project are expended.

b. A request by Subgrantee for either a lump sum or for periodic reimbursement payments on a project shall be in a form and content as prescribed by County and shall be submitted to County for review and a determination of eligibility for payment. Upon approval by County, the request shall be submitted to the appropriate County offices and divisions for processing and payment. Requests for periodic payments shall be supported and documented as required by County on the basis of costs actually incurred by Subgrantee on the project during the period for which payment is requested.

c. Prepayment of the funds stated in Exhibit "B" or a partial advance of funds to Subgrantee for a project may be made by County if the nature of the project or unusual circumstances justify such request. Any prepayment or advance payment made hereunder must be justified in writing by Subgrantee and must be pre-approved and authorized by County. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subgrantee and are not to exceed actual cash requirements. Payments will be adjusted by County in accordance with advance fund and program income balances available in Subgrantee accounts. In addition, County reserves the right to liquidate funds available under this Agreement for costs incurred by County on behalf of Subgrantee.

d. Expenditures under this Agreement, whether or not prepaid, determined by County or HUD to be ineligible for reimbursement or which are inadequately documented will, upon written request, be immediately refunded to County by Subgrantee.

e. No requests for reimbursement or other payments under this Agreement due to cost overruns of any kind on the project shall be approved, allowed or paid by County unless the amount requested has been approved by a written amendment and authorized in accordance with the amendment provisions of this Agreement.

4) INELIGIBLE EXPENSES: Subgrantee expenditures under this Agreement determined to be ineligible for reimbursement because they were not authorized by the terms and conditions of the Agreement, or because they are not eligible under CDBG regulations, or that are inadequately documented, and for which payment has been made to Subgrantee shall be immediately refunded to County. Subgrantee further agrees that County shall have the right to withhold any or all subsequent payments under this Agreement to Subgrantee until the recovery of overpayments or ineligible payments is made. If Subgrantee fails to timely reimburse County for ineligible

expenses, Subgrantee shall be liable for County's attorney's fees and costs associated with County's actions to collect said reimbursements.

5) PUBLIC INFORMATION: Except as identified in writing and expressly approved by County, Subgrantee agrees that the original application, Agreement and related sales orders, invoices, and other expense documentation will be public documents and may be available for public distribution in accordance with the Utah State Government Records Access and Management Act.

6) REPORTS: Subgrantee shall submit to County performance/progress reports with each request for disbursement on forms acceptable to County. Subgrantee shall also maintain records and submit four quarterly reports plus an annual report. The quarterly reports shall be due to County no later than October 31, 2012, January 31, 2013, April 30, 2013, and July 31, 2013, October 31, 2013, January 31, 2014, April 30, 2014, and July 31, 2014. In addition to the quarterly reports, the annual report shall also be due no later than July 31, 2013, and July 31, 2014. These reports shall include data on performance measurements, income and racial origin, the location of households assisted, on-site inspections made to determine compliance with housing codes and any other pertinent information as required under this Agreement. County, at its discretion, may withhold payments if Subgrantee does not submit its quarterly performance reports on time.

D. PROCUREMENT:

Subgrantee shall procure all materials, property or services in accordance with Procurement Standards set forth in 24 CFR 85.36. In the event the procurement standards of Subgrantee are more restrictive than the above cited regulations, the more restrictive standards and requirements will apply.

E. USE AND REVERSION OF ASSETS:

As provided in 24 CFR 570.503(b)(7), upon the expiration or termination of this Agreement, Subgrantee shall release to County any unexpended CDBG funds provided under this Agreement, all program income in its possession which it has not returned to County, and any amounts receivable attributable to the use of CDBG funds provided under this Agreement. Any real property in the control of Subgrantee that was acquired or improved with CDBG funds provided under this Agreement shall be managed in compliance with County's policy regarding the use of CDBG-assisted real property, as follows:

1) ACQUIRED WITH CDBG FUNDS: All real property acquired by Subgrantee in whole or in part with CDBG funds must be used for a period of fifteen (15) years following the expiration or termination of this Agreement to meet the national objective of benefitting low and moderate income persons.

2) IMPROVED WITH CDBG FUNDS: All property improved in whole or part with CDBG funds must be used to benefit low and moderate income persons in accordance with the following timetable:

a. All properties receiving improvement funds between $12,500 and $99,999 must be used for eligible activities for five (5) years;

b. All properties receiving improvement funds between $100,000 and $199,999 must be used for eligible activities for ten (10) years; and

c. All properties receiving improvement funds of $200,000 or more must be used for eligible activities for fifteen (15) years.

The threshold amounts set forth above are cumulative, based on the total CDBG funding provided to Subgrantee under this Agreement for acquisition or improvement of real property, plus any previous or subsequent CDBG funding provided by County to acquire or improve said real property. If Subgrantee is a participating municipality within the urban county CDBG program, the five-year period begins after the municipality has ended its participation in the program, or is no longer considered by HUD to be part of the urban county; otherwise the use periods set forth above do not commence until closeout of the final Agreement under which Subgrantee receives such acquisition or improvement funds.

3) <u>CHANGE OF USE</u>: If Subgrantee desires to change the use of real property covered by this policy during the applicable period noted above, it must do the following:

a. Provide affected citizens with reasonable notice of any proposed change in use and an opportunity to comment; and

b. Ensure that the new use meets a CDBG national objective, or reimburse County's CDBG program in the amount of the current fair market value of the property, less any portion of the value attributable to expenditure of non-CDBG funds for acquisition of, and improvements to, the property.

8. <u>RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT</u>: Subgrantee agrees to comply with: 1) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); 2) the requirement of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under Section 104(d) of the HCD Act; and 3) the requirements in 24 CFR 570.606(d) governing optional relocation policies. Subgrantee shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. Subgrantee also agrees to comply with applicable local ordinances, resolutions and policies concerning the displacement of persons from their residences.

9. <u>REPRESENTATION REGARDING ETHICAL STANDARDS FOR COUNTY OFFICERS AND EMPLOYEES AND FORMER COUNTY OFFICERS AND EMPLOYEES</u>: Subgrantee represents that it has not: (1) provided an illegal gift or payoff to a County officer or employee or former County officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Utah Code Annotated (UCA), or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a County officer or employee or former County officer or employee to breach any of the ethical standards set forth Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Utah Code Annotated (UCA).

10. PERSONNEL AND PARTICIPANT CONDITIONS:

A. CIVIL RIGHTS:

1) COMPLIANCE: Subgrantee agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section109 of Title I of the Housing and Community Development Act of 1974 as amended (HCDA), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2) FAIR HOUSING: Subgrantee agrees to comply with 24 CFR 570.601, Public Law 88-353 and Public Law 90-284; affirmatively furthering fair housing; and Executive Order 11063.

3) LIMITED ENGLISH PROFICIENT PERSONS: Subgrantee agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1, including Title VI prohibition against national origin discrimination affecting limited English proficient persons.

4) NONDISCRIMINATION: Subgrantee agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section109 of the HCDA are still applicable.

5) LAND COVENANTS: This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, Subgrantee shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Subgrantee, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

6) SECTION 504: Subgrantee agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended and implementing regulations when published for effect [24 CFR Part 8], which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program.

B. AFFIRMATIVE ACTION: Subgrantee agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

1) WOMEN- AND MINORITY-OWNED BUSINESSES (W/MBE): Subgrantee will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement.

2) ACCESS TO RECORDS: Subgrantee shall maintain thorough records of all business transactions and shall give County and HUD, through any authorized representatives, access to and the right to examine all records, books, papers or documents to all Subgrantee operations funded in whole or in part under this Agreement for a period of four (4) years following the termination of this Agreement.

3) EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (EEO/AA) STATEMENT: Subgrantee will, in all solicitations or advertisements for employees placed by or on behalf of Subgrantee, state that it is an Equal Opportunity or Affirmative Action employer.

4) SUBCONTRACT PROVISIONS: Subgrantee will include the provisions of Paragraph 10, Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subgrantees or subcontractors.

C. EMPLOYMENT RESTRICTIONS:

1) PROHIBITED ACTIVITY: Subgrantee is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2) LABOR STANDARDS: Subgrantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subgrantee agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subgrantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to County for review upon request.

Subgrantee agrees to comply with the labor standards requirements as set forth in Section 110(a) of the Act (40 U.S.C. 327 et seq.) and HUD regulations issued to implement such requirements at 24 CFR Part 570.603 for non volunteer labor and 24 CFR Part 70 for volunteer labor. Subgrantee agrees to comply with the requirements of 24 CFR 570.609 regarding the prohibition of use of debarred, suspended or ineligible contractors or Subgrantees in any contract.

3) SECTION 3 CLAUSE: Subgrantee agrees to comply with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement. Subgrantee certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements. Subgrantee further agrees to comply with the following Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701).

Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project areas, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

Subgrantee further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located, where feasible.

D. CONDUCT:

1) NON-ASSIGNABILITY: Subgrantee shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement without written consent of County thereto.

2) SUBCONTRACTS:

a. Approvals: Subgrantee shall not enter into any agreements with any agency or individual in the performance of this Agreement without the consent of County prior to the execution of such agreement.

b. Monitoring: Subgrantee will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content: Subgrantee shall cause all provisions of this Agreement in its entirety to be included in and made part of any subcontract executed in the performance of this Agreement.

d Selection Process: Subgrantee shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to County along with documentation concerning the selection process.

e. Debarment and Suspension: No subcontract shall be made to parties on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" as set forth at 24 CFR Part 24.

3) HATCH ACT: Subgrantee agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

4) CONFLICT OF INTEREST: Subgrantee shall establish safeguards to prohibit its employees, board members, advisors and agents from using positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other

ties. Subgrantee shall disclose to County any conflict of interest or potential conflict of interest described above, immediately upon discovery of such. In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of County or Subgrantee and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

Subgrantee agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. Subgrantee shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of Subgrantee shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of County, Subgrantee, or any designated public agency.

5) <u>LOBBYING</u>: No CDBG funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed [24 CFR Part 87].

6) <u>RELIGIOUS ACTIVITIES</u>: Subgrantee agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

7) <u>DRUG-FREE WORKPLACE</u>: Pursuant to the Drug-Free Workplace Act of 1988, 42 U.S.C. Section 701, Subgrantee certifies that it will provide a drug-free workplace in accordance with the Act and with rules found at 24 CFR Part 24, Subpart F.

8) <u>EXCESSIVE FORCE</u>: Subgrantee agrees that it has adopted and is enforcing a policy prohibiting the use of excessive force by law-enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and a policy of enforcing applicable State and local laws against physically barring

entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

11. ENVIRONMENTAL CONDITIONS:

A. Subgrantee agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- Subgrantee agrees to comply with the laws, authorities under the National Environmental Policy Act of 1969 (NEPA) and each provision of law designated in the 24 C.F.R. 58.5.

B. ENERGY EFFICIENCY STANDARDS: Subgrantee agrees to comply insofar as they apply with the mandatory energy efficiency standards and policies in state energy conservation plan issued in compliance with the Energy Policy and Conservation Act [Pub. L. 94-163] [24 CFR 85-36(i)(13). See also 24 CFR Part 39].

C. FLOOD DISASTER PROTECTION: In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Subgrantee shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. LEAD-BASED PAINT: Subgrantee agrees to comply insofar as they apply with the lead-based paint requirements of 24 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act [42 USC 4821-4846.]. Subgrantee shall comply with said regulations implemented at 24 CFR 570.608.

E. HISTORIC PRESERVATION: Subgrantee agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

12. SEVERABILITY: If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

13. WAIVER: County's failure to act with respect to a breach by Subgrantee does not waive its right to act with respect to subsequent or similar breaches. The failure of County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

14. ENTIRE AGREEMENT: This Agreement embodies the entire agreement between County and Subgrantee for the scope of services and its terms and conditions. No verbal agreements

or conversations with any officer, agent or employee of County prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon County.

15. REDUCTION IN ADMINISTRATIVE COMPENSATION: In the remote event that HUD should, for any reason, reduce or eliminate County's funding under the CDBG Agreement, County reserves the right to renegotiate the amount of compensation due Subgrantee for the activities funded as provided herein, or to terminate this Agreement at County's discretion. Further, County reserves the right to reduce the amount of the grant allocation hereunder or to terminate this Agreement at County's discretion when County's fiscal monitoring indicates Subgrantee's rate of expenditure will result in unspent funds at the end of the program year.

16. SETOFF: Notwithstanding any provision appearing to the contrary, Subgrantee shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Subgrantee. County may withhold payment of compensation to Subgrantee for the purpose of setoff until such time as the exact amount of damage incurred by County that would be due from Subgrantee is determined and paid. Such damages may include HUD's disqualification of activities funded because of Subgrantee's failure to properly administer the same.

17. NO THIRD PARTY BENEFICIARIES: Subgrantee's obligations are solely to County and HUD and County's obligations are solely to Subgrantee and HUD. This Agreement shall confer no third party rights whatsoever other than those between the parties hereto and HUD.

18. SUCCESSORS: Subgrantee covenants that the provisions of this Agreement shall be binding upon heirs, successors, sub-contractors, representatives, and agents.

19. AMBIGUITY: Any ambiguity in this Agreement shall be construed in favor of County.

20. ENFORCEMENT OF THE AGREEMENT: In accordance with 24 CFR 85.43, suspension or termination of this Agreement may occur if Subgrantee materially fails to comply with any of the terms of this Agreement. County may require Subgrantee to repay funds disbursed to Subgrantee if it is determined Subgrantee has breached the provisions of this Agreement. County may permit the Agreement to be terminated for convenience in accordance with 24 CFR 85.44.

21. GOVERNING LAW: This Agreement shall be enforced in and governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the parties are signing this Agreement as of the date stated in the introductory clause.

DAVIS COUNTY, UTAH:

BY: ______________________________

John Petroff, Jr., Chair
Board of Davis County Commissioners

CENTERVILLE CITY

Exhibit "A" – Scope of Work

Purpose and Nature of Work
Subgrantee is a municipal corporation that will construct storm water drainage improvements to a private driveway located in the Riviera Townhomes, located at 820 South Main Street, Centerville, that houses low- and moderate-income residents, to maintain the limited number of affordable housing units within the City.

Tasks
Subgrantee will use the CDBG funds it receives, as outlined in Exhibit "B" Budget, for expenses related to construction of storm water drainage improvements, to include mobilization, excavation, installation of drainpipes and associated materials, backfilling, grading and installation of concrete surface .

Level of Services
Subgrantee anticipates benefitting 56 persons located in County with the funds it receives from County.

Performance Schedule
Construction activities will be performed within the terms of this Agreement: July 1, 2012 to June 30, 2014.

The construction activities address the following national objective of the CDBG program: activities benefitting low- and moderate-income persons [24 CFR 570.208(a)].

The eligible activity for these programs is public facilities and improvements [24 CFR 570.201(c)].

Exhibit "B" – Budget

Davis County will contribute an amount not to exceed $50,000.00 from its 2012-13 Community Development Block Grant allocation as follows:

Riviera Townhomes Drainage Project Davis County portion	$ 50,000.00
TOTAL	$50,000.00

DATE: ______________________________

ATTEST:

BY: ______________________________
Steve S. Rawlings
Davis County Clerk/Auditor

Approved as to Form
Davis County Attorney's Office
Date: ____________________
By: ____________________

CENTERVILLE CITY

BY: ______________________________
Ronald G. Russell
Mayor

DUNS Number: 13-892-9950

STATE OF UTAH)
: ss
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this ________day of __________, 2013, by Ronald G. Russell, the Mayor of Centerville City, a Utah municipal corporation.

____
NOTARY REPUBLIC, Residing in
Davis County, Utah

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development
Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

From:	kevin campbell
To:	Steve Thacker
Cc:	Blaine Lutz; Marsha Morrow; matt robertson; gayle@toponce.com
Subject:	Riviera Townhomes CDBG - Recommended NOA
Date:	Wednesday, July 31, 2013 12:47:08 PM
Attachments:	Riviera Townhomes CDBG - NOA.pdf Riviera Townhomes CDBG - Bid Tab.pdf

Steve -

We received four bids for the above referenced project yesterday morning. There were two other plan holders that did not submit bids. Three of the four bids submitted are considered "competitive bids". The bids received are as follows:

1.	Kilgore Contracting	$ 133,673.60
2.	Miller Paving	$ 154,245.17
3.	Bowen Const.	$ 170,683.40
4.	Beck Const.	$ 283,988.50
	Engineer Estimate	$ 171,478.00

It is recommended that the project be awarded to Kilgore Contracting in the amount of $ 133,673.60. Kilgore has completed several projects for the City over the past 5 years or so and they are a qualified and competent Contractor for this type of work.

If there are adequate funds remaining after Kilgore completes the work in this contract, Riviera Townhomes will likely want to use the funds for additional improvements to their roads and / or drainage systems. It is my recommendation that we complete the work in this contract before funds are committed to possible additional work items.

Let me know if additional info is needed at this time.

Kevin

Kevin L. Campbell, P.E.
ESI Engineering, Inc
3500 S. Main St.
SLC, Ut 84115
801.263.1752

BID Tabulation

Riviera Townhomes CDBG - Project #12-049

Centerville City

Bid Opening - July 30, 2013 9:00 am

				Kilgore Contracting		Miller Paving Inc.		Bowen Construction Co.		Beck Construction & Excavation Inc.		Engineers Estimate	
Item No.	Description	Amounts	Units	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
	New Subdrain and Street Rebuild on 820 South												
1	Remove and haul away concrete (roadway - 6" thick, curb & gutter and sidewalk) including saw-cut as necessary	150	CY	$58.01	$8,701.50	$27.24	$4,086.00	$74.50	$11,175.00	$64.20	$9,630.00	$50.00	$7,500.00
2	Remove and haul away existing material under concrete (approx. 17" thick)	400	CY	$22.53	$9,012.00	$25.36	$10,144.00	$23.90	$9,560.00	$40.00	$16,000.00	$15.00	$6,000.00
3	Compact sub-grade and place stabilization fabric	850	SY	$3.27	$2,779.50	$4.05	$3,442.50	$2.26	$1,921.00	$14.50	$12,325.00	$2.00	$1,700.00
4	Import granular fill (12" thick) including compaction	550	TN	$16.77	$9,223.50	$19.04	$10,472.00	$18.75	$10,312.50	$40.00	$22,000.00	$20.00	$11,000.00
5	Import untreated base course (8" thick) including compaction	375	TN	$24.58	$9,217.50	$19.23	$7,211.25	$23.00	$8,625.00	$45.00	$16,875.00	$20.00	$7,500.00
6	New asphalt (3" thick)	150	TN	$68.97	$10,345.50	$78.27	$11,740.50	$77.40	$11,610.00	$130.00	$19,500.00	$90.00	$13,500.00
7	New 2' wide curb and gutter	155	LF	$16.80	$2,604.00	$22.00	$3,410.00	$23.00	$3,565.00	$20.00	$3,100.00	$20.00	$3,100.00
8	Replace 18" wide curb and gutter	50	LF	$21.00	$1,050.00	$20.00	$1,000.00	$41.00	$2,050.00	$20.00	$1,000.00	$20.00	$1,000.00
9	Replace 30" wide curb and gutter	30	LF	$21.00	$630.00	$24.00	$720.00	$45.00	$1,350.00	$30.00	$900.00	$25.00	$750.00
10	Replace sidewalk (6" thick)	96	SF	$5.25	$504.00	$5.75	$552.00	$10.80	$1,036.80	$7.00	$672.00	$5.00	$480.00
11	Replace drive approach (7" thick)	98	SF	$6.30	$617.40	$9.00	$882.00	$12.70	$1,244.60	$8.00	$784.00	$6.00	$588.00
12	8" perforated SDR-35 PVC subdrain	330	LF	$20.05	$6,616.50	$31.36	$10,348.80	$26.50	$8,745.00	$65.00	$21,450.00	$30.00	$9,900.00
13	8" solid SDR-35 PVC storm drain	26	LF	$21.14	$549.64	$29.12	$757.12	$93.00	$2,418.00	$50.00	$1,300.00	$30.00	$780.00
14	Geo-textile drainage fabric for sub-drain	3,000	SF	$0.13	$390.00	$0.2016	$604.80	$0.38	$1,140.00	$3.00	$9,000.00	$2.00	$6,000.00
15	Import gravel for sub-drain and storm drain	200	TN	$11.73	$2,346.00	$19.04	$3,808.00	$20.00	$4,000.00	$45.00	$9,000.00	$20.00	$4,000.00
16	4' subdrain manhole	1	EA	$1,752.35	$1,752.35	$2,688.00	$2,688.00	$2,280.00	$2,280.00	$2,500.00	$2,500.00	$3,000.00	$3,000.00
17	5' manhole on existing 24" RCP storm drain (pour-in-place base required)	1	EA	$2,089.25	$2,089.25	$3,920.00	$3,920.00	$2,980.00	$2,980.00	$3,800.00	$3,800.00	$3,500.00	$3,500.00
18	Inlet box with frame and grate	2	EA	$1,402.82	$2,805.64	$1,988.00	$3,976.00	$1,550.00	$3,100.00	$2,550.00	$5,100.00	$2,000.00	$4,000.00
19	Excavate and haul away native material for sub-drain and storm drain	225	CY	$11.24	$2,529.00	$25.36	$5,706.00	$14.00	$3,150.00	$40.00	$9,000.00	$10.00	$2,250.00
20	Import granular fill including compaction for subdrain trench	200	TN	$11.18	$2,236.00	$19.04	$3,808.00	$19.00	$3,800.00	$45.00	$9,000.00	$20.00	$4,000.00
21	Raise manhole lid to grade with concrete collar	1	EA	$342.88	$342.88	$448.00	$448.00	$850.00	$850.00	$500.00	$500.00	$500.00	$500.00

Item No.	Description	Amounts	Units	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
22	Lower existing water valve box to grade with concrete collar at existing fire hydrant	1	EA	$576.53	$576.53	$280.00	$280.00	$640.00	$640.00	$500.00	$500.00	$350.00	$350.00
23	Remove abandoned inlet box and plug abandoned pipes with concrete	1	Lump Sum	$850.00	$850.00	$224.00	$224.00	$1,130.00	$1,130.00	$1,500.00	$1,500.00	$500.00	$500.00
24	Remove existing chain link fence with posts (35 LF)	1	Lump Sum	$125.00	$125.00	$70.00	$70.00	$380.00	$380.00	$500.00	$500.00	$500.00	$500.00
25	Repair landscaping as needed	1	Lump Sum	$1,260.00	$1,260.00	$1,438.00	$1,438.00	$1,200.00	$1,200.00	$500.00	$500.00	$500.00	$500.00
26	Pothole existing utility as per Engineer	3	EA	$550.00	$1,650.00	$350.00	$1,050.00	$270.00	$810.00	$500.00	$1,500.00	$350.00	$1,050.00
27	Mobilization and traffic control	1	Lump Sum	$525.00	$525.00	$1,800.00	$1,800.00	$11,000.00	$11,000.00	$3,000.00	$3,000.00	$9,000.00	$9,000.00
	Rebuild Parking Areas on 820 South												
28	Remove and haul away concrete (parking - 5" thick, waterway, curb and gutter) including saw-cut as necessary	50	CY	$70.00	$3,500.00	$27.24	$1,362.00	$77.00	$3,850.00	$55.00	$2,750.00	$50.00	$2,500.00
29	Remove and haul away existing material under concrete (approx. 6" thick)	50	CY	$24.00	$1,200.00	$25.36	$1,268.00	$25.00	$1,250.00	$40.00	$2,000.00	$15.00	$750.00
30	Compact sub-grade and place stabilization fabric	290	SY	$3.25	$942.50	$4.05	$1,174.50	$2.50	$725.00	$14.50	$4,205.00	$2.00	$580.00
31	Import untreated base course (8" thick) including compaction	130	TN	$31.00	$4,030.00	$19.23	$2,499.90	$23.00	$2,990.00	$45.00	$5,850.00	$20.00	$2,600.00
32	New asphalt (3" thick) in parking areas	55	TN	$93.00	$5,115.00	$78.27	$4,304.85	$100.00	$5,500.00	$150.00	$8,250.00	$90.00	$4,950.00
33	Replace 18" wide curb and gutter	15	LF	$21.00	$315.00	$20.00	$300.00	$45.00	$675.00	$35.00	$525.00	$20.00	$300.00
34	Replace 2' wide concrete waterway	60	SF	$13.00	$780.00	$9.50	$570.00	$20.00	$1,200.00	$15.00	$900.00	$15.00	$900.00
35	Mobilization	1	Lump Sum	$525.00	$525.00	$500.00	$500.00	$1,600.00	$1,600.00	$2,000.00	$2,000.00	$1,000.00	$1,000.00
	Concrete Rebuild in Garage Area												
36	Remove and haul away concrete (approx. 6" thick) including saw-cut as necessary	90	CY	$66.00	$5,940.00	$27.24	$2,451.60	$68.00	$6,120.00	$59.00	$5,310.00	$50.00	$4,500.00
37	Remove and haul away existing material under concrete (approx. 8" thick)	120	CY	$25.00	$3,000.00	$25.36	$3,043.20	$27.00	$3,240.00	$40.00	$4,800.00	$15.00	$1,800.00
38	Compact sub-grade and place stabilization fabric	525	SY	$4.50	$2,362.50	$4.05	$2,126.25	$2.50	$1,312.50	$14.50	$7,612.50	$2.00	$1,050.00
39	Import untreated base course (8" thick) including compaction	230	TN	$31.00	$7,130.00	$19.23	$4,422.90	$23.00	$5,290.00	$45.00	$10,350.00	$20.00	$4,600.00
40	New 6" thick reinforced concrete slab including saw-cutting and joint sealing	4,700	SF	$3.50	$16,450.00	$7.25	$34,075.00	$5.34	$25,098.00	$10.00	$47,000.00	$8.00	$37,600.00
41	Replace 6" wide curb wall	20	LF	$26.50	$530.00	$18.00	$360.00	$63.00	$1,260.00	$25.00	$500.00	$20.00	$400.00
42	Mobilization	1	Lump Sum	$524.91	$524.91	$1,200.00	$1,200.00	$500.00	$500.00	$1,000.00	$1,000.00	$5,000.00	$5,000.00
	Total (Items 1-42)			**$133,673.60**		**$154,245.17**		**$170,683.40**		**$283,988.50**		**$171,478.00**	

DAVIS COUNTY UTAH
COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT
CENTERVILLE CITY
2013-14 PROGRAM YEAR

CONTRACT PARTIES: This Agreement is made by and between **DAVIS COUNTY**, a body corporate and politic of the state of Utah, hereinafter "County," and **CENTERVILLE CITY**, a municipal corporation of the state of Utah, hereinafter "Subgrantee," and is dated the date that the County Clerk/Auditor attests the applicable County signature (which date shall be the recordation date).

WHEREAS, the parties are desirous of entering into an agreement pursuant to the regulations of the U.S. Department of Housing and Urban Development', hereafter (HUD), Community Development Block Grant, 24 CFR Part 570, hereinafter "CDBG"; and

WHEREAS, the parties are desirous of providing certain grant monies to Subgrantee for qualified activities under the CDBG program to benefit low- and moderate-income residents of County;

NOW, THEREFORE, in consideration of the mutual promises and considerations set forth below, the parties agree to the following:

TERMS

1. PURPOSE: The purpose of this Agreement is to provide funding for improvements to a private drive located at the Riviera Townhomes to improve stormwater drainage, constructed or provided by Subgrantee that meets the CDBG national objective of benefitting low- and moderate-income persons.

2. CONTRACT TERM: The term of this Agreement shall run from July 1, 2013, to June 30, 2014. All work performed by Subgrantee under this Agreement must be performed within the dates of this term to be reimbursable by County. All costs which are incurred on the project by Subgrantee after the effective date of this Agreement and which have been determined by County to be appropriate and allowable costs of the project shall be eligible for reimbursement and payment hereunder. Subgrantee may request in writing that the term be extended by amendment to this Agreement.

3. SCOPE OF SERVICES: Subgrantee shall perform, or cause to be performed, all work required for the project described generally in Paragraph 1 above and, in that performance, Subgrantee shall provide all personnel staffing and contracting, and provide all services and furnish all related real and personal property required. The project shall be performed in a manner satisfactory to County and in accordance with the provisions as set forth in Exhibit "A," which is attached hereto and by this reference incorporated herein, and Subgrantee shall report to County accomplishments on a quarterly basis.

4. BUDGET:

A. County shall provide an amount not to exceed fifty thousand dollars ($50,000.00) for work as contemplated by the terms of this Agreement. The basis for said compensation is set forth in Exhibit "B," which is attached hereto and by this reference incorporated herein. All proposed changes in the total amount of the budget under this Agreement that would increase or decrease the total amount of funding specified in Exhibit "B", or result in a change of scope, location or beneficiaries of the project shall be submitted to County for prior approval and must be formally authorized by a written amendment to this Agreement.

B. Subgrantee must make a concerted good-faith effort to expend the total amount specified in Exhibit "B" within the contract term noted in paragraph 2 above. Subgrantee's costs and expenditures, however, shall not exceed the total funding amount. County shall not be liable for or reimburse Subgrantee for any extra costs or overruns on the project, or any additional funding in excess of the total amount stated above without prior written amendment of the Agreement.

C. In the event the full funding amount to be paid or reimbursed hereunder by County is not expended by Subgrantee for project costs as specified in Exhibit "A" by the end of the contract term, as that period may have been extended or otherwise changed, Subgrantee shall refund, release or transfer any unexpended amount back to County within 30 days. Any project funds held by County at the end of the contract term or refunded, released or transferred to County will be reallocated by County. Subgrantee shall be eligible to apply for these funds but shall have no greater claim or priority than any other applicant.

D. In the event that congressional action, HUD rules and regulations, or other lawful directive modifies or reduces the funds and/or services obligated under this Agreement, Subgrantee shall, upon notice from County, immediately modify or reduce the scope of work, or cease expenditures hereunder.

5. NOTICES: Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or electronic mail. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

COUNTY: Greg Johnson
Grant Program Coordinator
61 South Main Street, Room 304
PO Box 618
Farmington, UT 84025

SUBGRANTEE: Blaine Lutz, Assistant City Manager
Centerville City
250 North Main
Centerville, Utah, 84014

6. GENERAL CONDITIONS:

A. GENERAL COMPLIANCE: Subgrantee agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including Subpart K of these regulations, except that (1) Subgrantee does not assume County's environmental responsibilities described in 24 CFR 570.604 and (2) Subgrantee does not assume County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Subgrantee also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Subgrantee further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. <u>INDEPENDENT CONTRACTOR</u>: The relationship of County and Subgrantee under this Agreement shall be that of an independent contractor status. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between County and Subgrantee of employer and employee, partners or joint venturers.

The parties agree that Subgrantee's obligations under this Agreement are solely to County. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement.

C. <u>INDEMNIFICATION</u>: Both parties are governmental entities under the Governmental Immunity Act, Section 63G-7-101 *et seq.*, Utah Code Ann. As amended. Therefore, consistent with the terms of the Act, the parties agree that each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Act and all other applicable law.

D. <u>INSURANCE</u>: During the term of this Agreement, including all renewal or additional terms, Subgrantee shall, at its sole cost and expense, maintain either:

A self-insurance program pursuant to Section 63G-7-801 of the Governmental Immunity Act, Utah Code Ann. as amended, with coverage up to the limits stated at Section 63G-7-604;

—OR—

Must secure and maintain the following minimum insurance coverage:

1) <u>GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES</u>:

   a. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to County.

   b. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

      (i) Currently rated A- or better by A.M. Best Company;

—OR—

(ii) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570), as amended.*

c. Subgrantee shall furnish certificates of insurance, acceptable to County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

d. In the event any work is subcontracted, Subgrantee shall require its subcontractor, at no cost to County, to secure and maintain all minimum insurance coverages required of the Subgrantee hereunder.

e. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Subgrantee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to County.

f. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to County in a manner approved by the Davis County Attorney.

g. In the event Subgrantee fails to maintain and keep in force any insurance policies as required herein, County shall have the right at its sole discretion to immediately terminate the Agreement or obtain such coverage and reduce payments to Subgrantee for the costs of said insurance.

2) <u>REQUIRED INSURANCE POLICIES</u>: Subgrantee agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

a. Workers' compensation and employer's liability insurance sufficient to cover all of Subgrantee's employees unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, Subgrantee shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law. (County is not to be an additional insured under Subgrantee's workers compensation insurance.)

b. Commercial general liability insurance with County endorsed to the policy, in the minimum amount of $2,000,000 per occurrence with a $2,000,000 general policy aggregate and $2,000,000 products completed operations policy aggregate. The policy shall protect County, Subgrantee, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Subgrantee's operations under this Agreement, whether performed by Subgrantee itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

c. If Subgrantee shall operate a motor vehicle in connection with any services funded by this Agreement, commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with County as an additional insured, in the minimum amount of $1,000,000 per occurrence.

E. BOND REQUIREMENTS: If the project(s) involves construction or rehabilitation costing $25,000 or more, Subgrantee shall ensure that contractors furnish, at the contractors' expense, a separate performance bond and a labor and materials bond, each for an amount not less than 100% of the contract price, or such other assurances as approved in writing by County. The bonds shall be issued by a qualified corporate surety licensed to transact business in Utah. If at any time during performance of the work, the surety on the bonds shall be disqualified from doing business in Utah, or shall become insolvent or otherwise impaired, contractors shall furnish bonds from an alternate surety acceptable to County and Subgrantee. The bonds shall remain in effect until completion of the project(s) including completion of all warranty and guaranty work and shall be delivered to County prior to the commencement of any work. The contractors shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or amendment to this Agreement.

F. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS: Subgrantee, its representatives, subcontractors, successors and assigns, shall administer this Agreement in compliance with all applicable Federal, Utah State, and Davis County laws, ordinances, and regulations, including but not limited to workers' compensation insurance and the federal regulations that are incorporated herein by reference.

G. LIMITED ENGLISH PROFICIENCY: Subgrantee shall prepare, maintain, and implement a Language Assistance Plan to ensure meaningful access to its programs and activities by limited English proficient persons in compliance with the Department of Housing and Urban Development "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice" in the Federal Register on January 22, 2007.

H. AMENDMENTS: Either of the parties may request amendments to any of the provisions of this Agreement at any time during the period of performance but no amendment shall be made or performed until it has been mutually agreed to by the parties. All amendments shall be authorized by a duly executed modification of this Agreement prior to any work being done, except that, extensions of time amendments may be authorized and given by County as provided below.

1) County may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the purpose, the scope of services, the location, or beneficiaries of the project(s) to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both County and Subgrantee.

2) All adjustments or extensions of time proposed for the performance of this Agreement shall be requested in writing by Subgrantee and be submitted to County for processing. All such requests must be received prior to the termination date set forth in

this Agreement or in any subsequent valid amendments or extensions to the Agreement in force at the time of the request. Upon approval, County shall add the signed, written endorsement to Subgrantee's letter of request granting the adjustment or extension and that letter shall be numbered and identified as a duly authorized written amendment of this Agreement.

I. TERMINATION: Either party may terminate this Agreement for convenience at any time, as set forth at 24 CFR Section 85.44, by giving thirty (30) days written notice to the other party of such termination. Partial terminations of the project(s) may only be undertaken with the prior approval of County. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Subgrantee under this Agreement shall, at the option of County, become the property of County, and Subgrantee shall be entitled to receive just and equitable compensations for any satisfactory work completed on such documents or materials prior to the termination.

County may also suspend or terminate this Agreement, in whole or in part, in accordance with the provisions of 24 CFR Section 85.43, if Subgrantee materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and County may declare Subgrantee ineligible for any further participation in County's contracts, in addition to other remedies as provided by law.

J. PERFORMANCE MEASUREMENTS: Subgrantee shall comply with all reporting requirements established by the federal government for HUD to ensure County has access to the data necessary to meet the standards of the Government Performance and Results Act (GPRA) of 1993 that holds all federal agencies accountable for establishing goals and objectives and measuring achievements. Subgrantee shall meet this requirement through the submission of quarterly performance and/or progress reports to County as outlined in Paragraph 7(C)(6) of this Agreement.

K. INFORMATION: County and HUD shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, materials, or other information prepared under or in conjunction with this Agreement.

L. GRANTOR RECOGNITION: Subgrantee shall insure recognition of the role of HUD funds in providing services through this Agreement. All activities, facilities and items funded under this Agreement shall be prominently labeled as HUD being the funding source. In addition Subgrantee shall reference the HUD support provided herein in all publications made possible with funds made available under this Agreement.

7. ADMINISTRATIVE REQUIREMENTS:

A. FINANCIAL MANAGEMENT:

1) UNIFORM ADMINISTRATIVE REQUIREMENTS: Subgrantee and its agencies or instrumentalities, and subgrantees shall comply with the applicable uniform administrative requirements set forth at 24 CFR Section 570.502(a), and with the policies, guidelines, and requirements of OMB Circulars A-87 and A-133.

2) OTHER REQUIREMENTS: Subgrantee shall comply with the program requirements set forth at 24 CFR Section 570.600 - .603 and Section 570.605 - .614. Subgrantee shall **not** be required to assume the environmental responsibilities described at 24 CFR Section 570.604 or the review process under 24 CFR Part 52.

3) FINANCIAL MANAGEMENT: Subgrantee agrees to comply with the financial and program management standards set forth at 24 CFR Part 85 and specified in 24 CFR Section 570.502(a) and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

4) COST PRINCIPLES: Subgrantee, as specified in 24 CFR Section 570.502(a), shall administer its program in conformance with OMB Circular A-87, "Cost Principles for State, Local, or Indian Tribal Governments." These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. DOCUMENTATION AND RECORD KEEPING:

1) RECORDS TO BE MAINTAINED: Subgrantee shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets the needs of low- and moderate-income persons, or low- and moderate-income areas;
c. Appropriate records detailing activities as identified in the Scope of Services (Exhibit A);
d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
f. Financial records as required by 24 CFR 570.502 and 24 CFR 84.21–28; and
g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2) RETENTION: Subgrantee shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, or if there are claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3) CLIENT DATA: Subgrantee shall maintain records demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County personnel or their designees for review upon request.

4) DISCLOSURE: Subgrantee understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of County's or Subgrantee's responsibilities with respect to services provided under this contract, is prohibited by applicable State or Federal law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5) CLOSE-OUTS: Subgrantee's obligation to County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subgrantee has control over CDBG funds, including program income.

6) AUDITS AND INSPECTIONS: All Subgrantee records with respect to any matters covered by this Agreement shall be made available to County, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subgrantee within 30 days after receipt by Subgrantee. Failure of Subgrantee to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subgrantee shall, no later than 180 days after the end of Subgrantee's fiscal year, provide County with a copy of it's most recent financial audit. Said audit shall be prepared by an independent auditor in compliance with guidelines for financial and compliance audits of federally assisted programs as contained in OMB Circular A-133.

C. REPORTING AND PAYMENT PROCEDURES:

1) PROGRAM INCOME: Program income received by Subgrantee is to be returned to County or retained by Subgrantee in accordance with provisions enumerated in 24 CFR Section 570.503 and 570.504(c). Where program income is to be retained by Subgrantee, the activities that will be undertaken with program income shall be the same as those specified in Exhibit "A" – Scope of Services of the Agreement and all provisions of the written Agreement shall apply to the specified activities. When Subgrantee retains program income, transfer of grant funds by County to Subgrantee shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (ii) of 24 CFR 570.504. Any program income on hand when the Agreement expires, or received after the Agreement's expiration, shall be paid to County as required by 24 CFR Section 570.503(b)(8).

a. Subgrantee shall meet the requirements set forth in 24 CFR 570.504(c). At the end of the program year, County requires remittance of all interest earned on program income balances (including investments thereof) held by Subgrantee as required by the provisions at 570.500(b).

b. Subgrantee must track all interest earned on program income balances. The total amount of interest earned must be reported to County as of June 30 of each year. Funds must be maintained in a separate account in the event return of said funds must be remitted to HUD as per 570.504(b)(2)(iii). Subgrantee is liable for any funds required to be remitted under 570.504(b)(2)(iii).

2) BILLINGS: Subgrantee shall submit a billing to County not more often than monthly. Each billing shall include documentation of all expenses to be reimbursed by County (i.e., employee time sheets showing hourly distribution of time spent according to activities outlined in Exhibit "A," vouchers, invoices, and receipts). Additionally, verification that disbursements have been made must be provided (i.e., canceled checks or bank statements). Subgrantees will have thirty (30) days from the expiration date of

this Agreement to submit a final billing for reimbursement. No billings received after June 30, 2014 will be processed.

3) METHODS OF DISBURSEMENT:

a. Subgrantee may request disbursement from County of that part of the funding amount stated in Exhibit "B" either on the basis of a lump sum reimbursement of the project costs upon completion, or on the basis of periodic reimbursement payments during the course of the project as the funds for that project are expended.

b. A request by Subgrantee for either a lump sum or for periodic reimbursement payments on a project shall be in a form and content as prescribed by County and shall be submitted to County for review and a determination of eligibility for payment. Upon approval by County, the request shall be submitted to the appropriate County offices and divisions for processing and payment. Requests for periodic payments shall be supported and documented as required by County on the basis of costs actually incurred by Subgrantee on the project during the period for which payment is requested.

c. Prepayment of the funds stated in Exhibit "B" or a partial advance of funds to Subgrantee for a project may be made by County if the nature of the project or unusual circumstances justify such request. Any prepayment or advance payment made hereunder must be justified in writing by Subgrantee and must be pre-approved and authorized by County. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subgrantee and are not to exceed actual cash requirements. Payments will be adjusted by County in accordance with advance fund and program income balances available in Subgrantee accounts. In addition, County reserves the right to liquidate funds available under this Agreement for costs incurred by County on behalf of Subgrantee.

d. Expenditures under this Agreement, whether or not prepaid, determined by County or HUD to be ineligible for reimbursement or which are inadequately documented will, upon written request, be immediately refunded to County by Subgrantee.

e. No requests for reimbursement or other payments under this Agreement due to cost overruns of any kind on the project shall be approved, allowed or paid by County unless the amount requested has been approved by a written amendment and authorized in accordance with the amendment provisions of this Agreement.

4) INELIGIBLE EXPENSES: Subgrantee expenditures under this Agreement determined to be ineligible for reimbursement because they were not authorized by the terms and conditions of the Agreement, or because they are not eligible under CDBG regulations, or that are inadequately documented, and for which payment has been made to Subgrantee shall be immediately refunded to County. Subgrantee further agrees that County shall have the right to withhold any or all subsequent payments under this Agreement to Subgrantee until the recovery of overpayments or ineligible payments is made. If Subgrantee fails to timely reimburse County for ineligible

expenses, Subgrantee shall be liable for County's attorney's fees and costs associated with County's actions to collect said reimbursements.

5) PUBLIC INFORMATION: Except as identified in writing and expressly approved by County, Subgrantee agrees that the original application, Agreement and related sales orders, invoices, and other expense documentation will be public documents and may be available for public distribution in accordance with the Utah State Government Records Access and Management Act.

6) REPORTS: Subgrantee shall submit to County performance/progress reports with each request for disbursement on forms acceptable to County. Subgrantee shall also maintain records and submit four quarterly reports plus an annual report. The quarterly reports shall be due to County no later than October 31, 2013, January 31, 2014, April 30, 2014, and July 31, 2014. In addition to the quarterly reports, the annual report shall also be due no later than July 31, 2014. These reports shall include data on performance measurements, income and racial origin, the location of households assisted, on-site inspections made to determine compliance with housing codes and any other pertinent information as required under this Agreement. County, at its discretion, may withhold payments if Subgrantee does not submit its quarterly performance reports on time.

D. PROCUREMENT:

Subgrantee shall procure all materials, property or services in accordance with Procurement Standards set forth in 24 CFR 85.36. In the event the procurement standards of Subgrantee are more restrictive than the above cited regulations, the more restrictive standards and requirements will apply.

E. USE AND REVERSION OF ASSETS:

As provided in 24 CFR 570.503(b)(7), upon the expiration or termination of this Agreement, Subgrantee shall release to County any unexpended CDBG funds provided under this Agreement, all program income in its possession which it has not returned to County, and any amounts receivable attributable to the use of CDBG funds provided under this Agreement. Any real property in the control of Subgrantee that was acquired or improved with CDBG funds provided under this Agreement shall be managed in compliance with County's policy regarding the use of CDBG-assisted real property, as follows:

1) ACQUIRED WITH CDBG FUNDS: All real property acquired by Subgrantee in whole or in part with CDBG funds must be used for a period of fifteen (15) years following the expiration or termination of this Agreement to meet the national objective of benefitting low and moderate income persons.

2) IMPROVED WITH CDBG FUNDS: All property improved in whole or part with CDBG funds must be used to benefit low and moderate income persons in accordance with the following timetable:

a. All properties receiving improvement funds between $12,500 and $99,999 must be used for eligible activities for five (5) years;

b. All properties receiving improvement funds between $100,000 and $199,999 must be used for eligible activities for ten (10) years; and

c. All properties receiving improvement funds of $200,000 or more must be used for eligible activities for fifteen (15) years.

The threshold amounts set forth above are cumulative, based on the total CDBG funding provided to Subgrantee under this Agreement for acquisition or improvement of real property, plus any previous or subsequent CDBG funding provided by County to acquire or improve said real property. If Subgrantee is a participating municipality within the urban county CDBG program, the five-year period begins after the municipality has ended its participation in the program, or is no longer considered by HUD to be part of the urban county; otherwise the use periods set forth above do not commence until closeout of the final Agreement under which Subgrantee receives such acquisition or improvement funds.

3) CHANGE OF USE: If Subgrantee desires to change the use of real property covered by this policy during the applicable period noted above, it must do the following:

a. Provide affected citizens with reasonable notice of any proposed change in use and an opportunity to comment; and

b. Ensure that the new use meets a CDBG national objective, or reimburse County's CDBG program in the amount of the current fair market value of the property, less any portion of the value attributable to expenditure of non-CDBG funds for acquisition of, and improvements to, the property.

8. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT: Subgrantee agrees to comply with: 1) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); 2) the requirement of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under Section 104(d) of the HCD Act; and 3) the requirements in 24 CFR 570.606(d) governing optional relocation policies. Subgrantee shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. Subgrantee also agrees to comply with applicable local ordinances, resolutions and policies concerning the displacement of persons from their residences.

9. REPRESENTATION REGARDING ETHICAL STANDARDS FOR COUNTY OFFICERS AND EMPLOYEES AND FORMER COUNTY OFFICERS AND EMPLOYEES: Subgrantee represents that it has not: (1) provided an illegal gift or payoff to a County officer or employee or former County officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Utah Code Annotated (UCA), or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a County officer or employee or former County officer or employee to breach any of the ethical standards set forth Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Utah Code Annotated (UCA).

10. PERSONNEL AND PARTICIPANT CONDITIONS:

A. CIVIL RIGHTS:

1) COMPLIANCE: Subgrantee agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section109 of Title I of the Housing and Community Development Act of 1974 as amended (HCDA), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2) FAIR HOUSING: Subgrantee agrees to comply with 24 CFR 570.601, Public Law 88-353 and Public Law 90-284; affirmatively furthering fair housing; and Executive Order 11063.

3) LIMITED ENGLISH PROFICIENT PERSONS: Subgrantee agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1, including Title VI prohibition against national origin discrimination affecting limited English proficient persons.

4) NONDISCRIMINATION: Subgrantee agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section109 of the HCDA are still applicable.

5) LAND COVENANTS: This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, Subgrantee shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Subgrantee, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

6) SECTION 504: Subgrantee agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended and implementing regulations when published for effect [24 CFR Part 8], which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program.

B. AFFIRMATIVE ACTION: Subgrantee agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

1) WOMEN- AND MINORITY-OWNED BUSINESSES (W/MBE): Subgrantee will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement.

2) ACCESS TO RECORDS: Subgrantee shall maintain thorough records of all business transactions and shall give County and HUD, through any authorized representatives, access to and the right to examine all records, books, papers or documents to all Subgrantee operations funded in whole or in part under this Agreement for a period of four (4) years following the termination of this Agreement.

3) EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (EEO/AA) STATEMENT: Subgrantee will, in all solicitations or advertisements for employees placed by or on behalf of Subgrantee, state that it is an Equal Opportunity or Affirmative Action employer.

4) SUBCONTRACT PROVISIONS: Subgrantee will include the provisions of Paragraph 10, Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subgrantees or subcontractors.

C. EMPLOYMENT RESTRICTIONS:

1) PROHIBITED ACTIVITY: Subgrantee is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2) LABOR STANDARDS: Subgrantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subgrantee agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subgrantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to County for review upon request.

Subgrantee agrees to comply with the labor standards requirements as set forth in Section 110(a) of the Act (40 U.S.C. 327 et seq.) and HUD regulations issued to implement such requirements at 24 CFR Part 570.603 for non volunteer labor and 24 CFR Part 70 for volunteer labor. Subgrantee agrees to comply with the requirements of 24 CFR 570.609 regarding the prohibition of use of debarred, suspended or ineligible contractors or Subgrantees in any contract.

3) SECTION 3 CLAUSE: Subgrantee agrees to comply with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement. Subgrantee certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements. Subgrantee further agrees to comply with the following Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701).

Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project areas, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

Subgrantee further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located, where feasible.

D. CONDUCT:

1) NON-ASSIGNABILITY: Subgrantee shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement without written consent of County thereto.

2) SUBCONTRACTS:

a. Approvals: Subgrantee shall not enter into any agreements with any agency or individual in the performance of this Agreement without the consent of County prior to the execution of such agreement.

b. Monitoring: Subgrantee will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content: Subgrantee shall cause all provisions of this Agreement in its entirety to be included in and made part of any subcontract executed in the performance of this Agreement.

d Selection Process: Subgrantee shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to County along with documentation concerning the selection process.

e. Debarment and Suspension: No subcontract shall be made to parties on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" as set forth at 24 CFR Part 24.

3) HATCH ACT: Subgrantee agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

4) CONFLICT OF INTEREST: Subgrantee shall establish safeguards to prohibit its employees, board members, advisors and agents from using positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other

ties. Subgrantee shall disclose to County any conflict of interest or potential conflict of interest described above, immediately upon discovery of such. In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of County or Subgrantee and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

Subgrantee agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. Subgrantee shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of Subgrantee shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of County, Subgrantee, or any designated public agency.

5) <u>LOBBYING</u>: No CDBG funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed [24 CFR Part 87].

6) <u>RELIGIOUS ACTIVITIES</u>: Subgrantee agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

7) <u>DRUG-FREE WORKPLACE</u>: Pursuant to the Drug-Free Workplace Act of 1988, 42 U.S.C. Section 701, Subgrantee certifies that it will provide a drug-free workplace in accordance with the Act and with rules found at 24 CFR Part 24, Subpart F.

8) <u>EXCESSIVE FORCE</u>: Subgrantee agrees that it has adopted and is enforcing a policy prohibiting the use of excessive force by law-enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and a policy of enforcing applicable State and local laws against physically barring

entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

11. ENVIRONMENTAL CONDITIONS:

A. Subgrantee agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- Subgrantee agrees to comply with the laws, authorities under the National Environmental Policy Act of 1969 (NEPA) and each provision of law designated in the 24 C.F.R. 58.5.

B. ENERGY EFFICIENCY STANDARDS: Subgrantee agrees to comply insofar as they apply with the mandatory energy efficiency standards and policies in state energy conservation plan issued in compliance with the Energy Policy and Conservation Act [Pub. L. 94-163] [24 CFR 85-36(i)(13). See also 24 CFR Part 39].

C. FLOOD DISASTER PROTECTION: In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Subgrantee shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. LEAD-BASED PAINT: Subgrantee agrees to comply insofar as they apply with the lead-based paint requirements of 24 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act [42 USC 4821-4846.]. Subgrantee shall comply with said regulations implemented at 24 CFR 570.608.

E. HISTORIC PRESERVATION: Subgrantee agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

12. SEVERABILITY: If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

13. WAIVER: County's failure to act with respect to a breach by Subgrantee does not waive its right to act with respect to subsequent or similar breaches. The failure of County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

14. ENTIRE AGREEMENT: This Agreement embodies the entire agreement between County and Subgrantee for the scope of services and its terms and conditions. No verbal agreements

or conversations with any officer, agent or employee of County prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon County.

15. REDUCTION IN ADMINISTRATIVE COMPENSATION: In the remote event that HUD should, for any reason, reduce or eliminate County's funding under the CDBG Agreement, County reserves the right to renegotiate the amount of compensation due Subgrantee for the activities funded as provided herein, or to terminate this Agreement at County's discretion. Further, County reserves the right to reduce the amount of the grant allocation hereunder or to terminate this Agreement at County's discretion when County's fiscal monitoring indicates Subgrantee's rate of expenditure will result in unspent funds at the end of the program year.

16. SETOFF: Notwithstanding any provision appearing to the contrary, Subgrantee shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Subgrantee. County may withhold payment of compensation to Subgrantee for the purpose of setoff until such time as the exact amount of damage incurred by County that would be due from Subgrantee is determined and paid. Such damages may include HUD's disqualification of activities funded because of Subgrantee's failure to properly administer the same.

17. NO THIRD PARTY BENEFICIARIES: Subgrantee's obligations are solely to County and HUD and County's obligations are solely to Subgrantee and HUD. This Agreement shall confer no third party rights whatsoever other than those between the parties hereto and HUD.

18. SUCCESSORS: Subgrantee covenants that the provisions of this Agreement shall be binding upon heirs, successors, sub-contractors, representatives, and agents.

19. AMBIGUITY: Any ambiguity in this Agreement shall be construed in favor of County.

20. ENFORCEMENT OF THE AGREEMENT: In accordance with 24 CFR 85.43, suspension or termination of this Agreement may occur if Subgrantee materially fails to comply with any of the terms of this Agreement. County may require Subgrantee to repay funds disbursed to Subgrantee if it is determined Subgrantee has breached the provisions of this Agreement. County may permit the Agreement to be terminated for convenience in accordance with 24 CFR 85.44.

21. GOVERNING LAW: This Agreement shall be enforced in and governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the parties are signing this Agreement as of the date stated in the introductory clause.

DAVIS COUNTY, UTAH:

BY: ________________________________

John Petroff, Jr., Chair
Board of Davis County Commissioners

DATE: ______________________________

ATTEST:

BY: ________________________________
Steve S. Rawlings
Davis County Clerk/Auditor

Approved as to Form
Davis County Attorney's Office
Date:______________________
By:_______________________

CENTERVILLE CITY

BY:________________________________
Ronald G. Russell
Mayor

DUNS Number: 13-892-9950

STATE OF UTAH)
: ss
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this ________day of _________, 2013, by Ronald G. Russell, the Mayor of Centerville City, a Utah municipal corporation.

____
NOTARY REPUBLIC, Residing in
Davis County, Utah

CENTERVILLE CITY

Exhibit "A" – Scope of Work

Purpose and Nature of Work
Subgrantee is a municipal corporation that will construct storm water drainage improvements to a private driveway located at the Riviera Townhomes, located at 820 South Main Street, Centerville that houses low- and moderate-income persons, to maintain the limited number of affordable housing units in the City.

Tasks
Subgrantee will use the CDBG funds it receives, as outlined in Exhibit "B" Budget, for specific construction expenses related to surface drainage improvements, to include, mobilization, excavation, installation of drain structures and associated fixtures, backfilling, grading and installation of concrete surfaces.

Level of Services
Subgrantee anticipates benefitting 56 persons located in County with the funds it receives from County.

Performance Schedule
Construction activities will be performed within the terms of this Agreement: July 1, 2013 to June 30, 2014.

The construction activities address the following national objective of the CDBG program: activities benefitting low- and moderate-income persons [24 CFR 570.208(a)].

The eligible activity for these programs is public facilities and improvements [24 CFR 570.201(c)].

Exhibit "B" – Budget

Davis County will contribute an amount not to exceed $50,000.00 from its 2013-2014 Community Development Block Grant allocation as follows:

Riviera Townhomes Drainage Project	
Davis County portion	$ 50,000.00
TOTAL	$50,000.00

Bids for Budeted Light Tower

BID RESULTS FOR PORTABLE LIGHT TOWER
July 31, 2013

1.	Cate	$12,930.00
2.	Water Movers	$13,161.67
3.	Grainger	$13,587.00
4.	Baldors	$13,985.00

We have reviewed the bid for the Light Trailer from Cate for 12,930.00
We recommend awarding this bid to
Cate and find they meet all of the specifications.

Respectfully submitted,

Michael Carlson
Water Department Supervisor

MC/sd

BID SPECIFICATIONS: L8

MANUFACTURER **MODEL**	**Doosan Infracore Portable Power** **L8**
ENGINE	
Make	KUBOTA
Model	D-1105
Cooling	WATER
BHP @ Rated Speed	13.6 69 CID
RPM	1800
Fuel Consumption (gallons per hour)	DIESEL .44 GPH @ 4KW
Fuel Capacity (gal/l)	27 / 102
Runtime Hours	52 HOURS @ 4 KW
Engine Oil Capacity with filter (US Quarts/Liters)	6.0 / 5.7
Coolant Capacity (US Gallons/Liters)	0.73 / 2.75
Altitude Limits (ft /m)	12942 /3944 @ 4.4 KW 5304 /1617 @ 6.6 KW
GENERATOR	
Type	Single bearing/Brushless
Output (kW)	8
Frequency (Hz)	60
Suitable for Lights	4 MAX
Voltages	120 & 240
Receptacles	(2) 15 amp; 120 V with GFCI (1) 30 amp; 240 V
DIMENSIONS – TRAVEL POSITION	
Overall Length (in/mm) Tower lowered	182 / 4623
Overall Width (in/mm)	79 / 2007
Track Width (in/mm)	64 / 1626
Overall Height (in/mm) Tower lowered	89 / 2261
Tire Size (in)	13"
Shipping Weight (lb/kg) no fuel	2000/ 909
Working Weight (lb/kg) with fuel	2242 / 1019

1/12

FEATURES

ENGINE FEATURES

- The electrical system is 12 volts.
- The cooling system is water cooled.
- Two stage, heavy duty, dry type air cleaner with replaceable element located inside unit.

BID SPECIFICATIONS: L8

PACKAGE FEATURES

- Ambient operating temperature range -10 to 125 degrees F (-23 to 52 degrees C).
- Rated to 65 mph (104 Km/h) wind speeds with tower fully extended.
- Internal /interior lamp storage capability (4 lamps).
- Three point mounting of engine/generator.
- Lockable side doors with no-rust aluminum hinges and pneumatic lift springs
- Three leveling jacks and leveling bubble.
- Heavy-duty running gear with 13" tires.
- Detachable drawbar with retractable screw jack and 3" pintle eye adjustable height hitch.
- Trailer and two tail lights for running, brake, and turn signals; plus 4-wire cable, side marker lights, reflectors, and license plate light to comply with US DOT/Federal MVSS 49CFR571.
- Removable resilient polyethylene fenders.
- Single point, external lifting bail and fork lift slots.
- Engine mounted pusher fan (cool box).

TOWER FEATURES

- Three section galvanized telescoping tower. 360 degree rotation. 12 to 30 foot lamp heights.
- Dual (2)1500 lb manual winch design.
- Pinlock in folded and extended positions.
- Automatic locking feature prevents telescoping in the down position. This patented design ensures all tower sections are secure when the tower is locked in the down or travel position.
- The power cord automatically folds into a metal sleeve when the floodlights are lowered.

FLOODLIGHT FEATURES

- Four 1000W metal halide lamps.
- Glass lens for thermal and impact shock resistance.
- Anodized aluminum reflector inside a cast aluminum housing.
- Lamp end supports to prevent damage from shock and vibration.

GENERATOR FEATURES

- Output 8 kW @ 60 Hz
- Single phase, Brushless, synchronous.
- Single bearing, Continuous duty rated, Class H insulation.
- Available receptacles (2) Duplex 15 amp/120V and (1) 30 amp/240V.

ELECTRICAL SYSTEM

- Individual plug-in ballasts for easy replacement.
- Ballasts are circuit breaker protected.
- Retracting lamp power cord reduces the chance of damage.
- Weather resistant floodlight connections.

INSTRUMENTS AND CONTROLS

- Weather resistant.
- Single motion starting.
- Individual lamp switches.
- Hour meter.

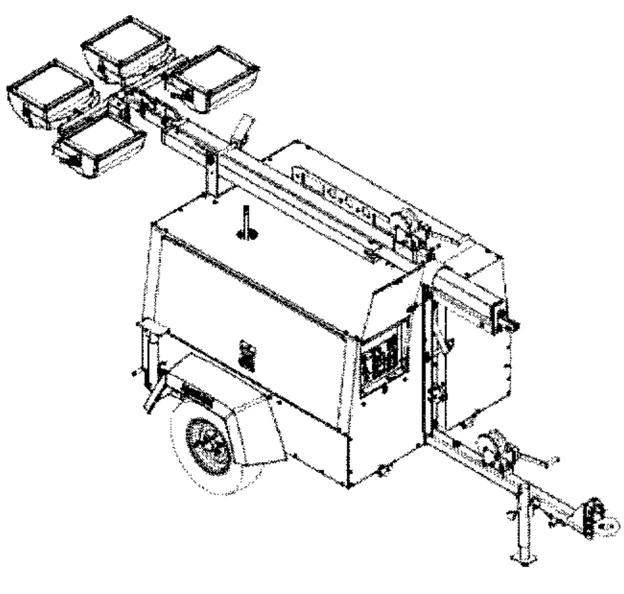
BID SPECIFICATIONS: L8

SAFETY FEATURES

- Fan guard.
- GFCI protection on 120V outlets.
- Front and rear reflectors.
- Automatic safety shutdowns; low oil pressure & high coolant temp.
- Towing safety chains with safety hooks and four point shipping tiedowns.
- Operating and maintenance manuals.
- Operating and safety decals.

OPTIONAL EQUIPMENT--FACTORY INSTALLED

- Four 1000W high-pressure sodium lamps.
- Four 1000W tungsten halogen lamps.
- 6-Lamps – two extra lamps, ballasts, extended mounting cross bar – for larger lighting coverage area
- Internal lamp storage for shipment.
- Belly pan for debris infiltration reduction.
- 1000 CCA battery.
- Battery/engine heater – "cold weather start"
- Clear bowl fuel/water separator.
- Low fuel level shutdown.
- Fuel tank drain
- Dual (2) electric tower winches.
- 2" or 2-5/16" ball coupler with vertical hitch height adjustment 19" to 23".
- Electric and EZ lube running gear.
- 15" tires/wheel assembly.
- 13" spare tire/wheel assembly.
- Interior light for nighttime visibility.
- Special paint - lead free only (requires DuPont paint number for Centari® or Imron®)



BID SPECIFICATIONS: L8

SPECIFICATIONS WITH COMMON OPTIONS

*** indicates factory installed option in text below**

TYPE:
Self-contained, fully enclosed, diesel engine driven, heavy duty portable light tower mounted on a two-wheel trailer with a minimum rated generator capacity of 8 kW. The unit shall be supplied with two electric winches* operated telescoping tower and four 1000 watt metal halide lamps.

ENGINE:
The diesel engine shall be industrial water-cooled three cylinders, with a rating of no less than 13.6 SAE brake horsepower, at 1800 rpm. The engine shall have a 12-volt electrical system and the battery shall have a minimum rating of 1000* cold cranking amps in accordance with SAE J537 specifications for 30-second test. A dedicated heavy duty, two stage, dry type air cleaner with replaceable element, shall be used to filter intake air. The fuel system shall include a no-rust polyethylene fuel tank with minimum capacity of 27 gallons, a clear bowl fuel/water separator*, and a replaceable fuel filter.

GENERATOR:
The generator shall be a brushless design with a rated output of not less than 8 kW, 120/240 volts, 60 hertz, single phase, alternating current, at 1800 rpm input speed. The generator shall be a single bearing design.

COOLING SYSTEM:
The light tower unit shall be able to operate in temperatures up to 125 degrees F (with 4 lights). The engine heat exchanger shall be a finned tube type cooler. The cooling air fan shall be engine mounted, drawing cool air through the light tower unit before entering the heat exchanger to maintain internal package temperatures of no more than 20 degrees above that of the ambient. The radiator fill shall be easily accessible for routine maintenance.

TRAILER:
The trailer shall be a two-wheel design using heavy-duty leaf spring running gear with 15" tires* with a track width of no less than 64". The trailer shall be of welded steel construction and include a replaceable, bolt-on drawbar, safety chains with hooks, four point shipping tiedowns, screw jack, 3" adjustable height pintle eye hitch, resilient polyethylene bolt-on fenders, reflectors, side marker lights, towing lights and lighted license plate mounting. Trailer and lighting to comply with US DOT/Federal MVSS 49CFR571. An external, single point, lifting bail and fork lift slots capable of lifting the complete unit shall also be included. The axle shall have a maximum rating of 3500 lbs.

ENCLOSURE:
Sheet metal housing shall fully enclose the light tower unit providing weather and vandal protection for all components. The enclosure shall provide internal lamp mounting* for transporting and storage of four lamp fixtures. Access for routine maintenance and lamp storage shall be provided through large side doors. These doors shall be lockable and equipped with no-rust aluminum hinges. The enclosure shall have an interior light* to aid in nighttime operation and trouble shooting.

STABILIZING JACKS:
The light tower unit shall be equipped with three screw jacks for stabilizing and leveling the unit. The jacks shall rotate from the horizontal transporting position to the vertical jacking position and lock in place with spring loaded latching pins. The outriggers shall extend from the frame, lock in the extended and extracted positions, and provide a minimum distance between jacks of nine feet. The light tower unit

BID SPECIFICATIONS: L8

must be able to withstand winds of 65 mph from any direction, while the four lights are elevated to thirty feet with no damage or loss of stability.

TOWER:
The tower shall telescope to position the lamps from twelve to thirty feet above ground level and retract to fold over the top of the unit for transporting. Automatic locking ensures all tower sections are secure when the tower is in the down or travel position. The tower shall be constructed of heavy gauge galvanized steel. The tower shall be erected by way of two 12 volt electric winches* incorporating high quality rust resistant aircraft cable. It shall also have full 360 degree rotation and shall have locking pins in both the extended and travel positions. The power cord shall automatically fold into a metal sleeve when the floodlights are lowered.

FLOODLIGHTS:
The floodlights shall have an anodized aluminum reflector inside cast aluminum housing. Each lamp shall be equipped with an end support to prevent damage from vibration and shock, and each floodlight assembly shall have a glass lens for thermal and impact shock resistance. The lenses shall be equipped with a silicone gasket for dust and moisture protection. The lights shall have a 6x7-beam spread as defined by the National Electric Manufacturers Association (NEMA).

BALLAST SYSTEM:
There shall be one ballast for each light. The ballasts shall be plug-in type, for easy replacement, and enclosed in an easily accessible sheet metal housing.

INSTRUMENTS & CONTROLS:
The instruments and controls shall be clearly labeled in the unit for easy access and protected with a lockable door. Engine starting shall be achieved by using a single motion rotary start switch. The instrument panel shall have an hour meter and convenience receptacles with ground fault protection.

SAFETY FEATURES:
The light tower shall incorporate the following features to ensure operator safety and to protect the equipment:

- Fan guards meeting OSHA recommendations,
- Reflectors on all sides for nighttime visibility,
- Ground fault circuit interrupt (GFCI) receptacles,
- Operation and maintenance manuals,
- Operation and safety decals in accordance with ANSI Z535.4-1996.
- Automatic safety shutdown devices in case of low engine oil pressure and high engine coolant temp
- Unit to be certified by independent lab to comply with ETL/CSA standards.

WARRANTY:
Portable Power, through its distributors, warrants to the initial user that each portable light tower manufactured by it, will be free of defects in material and workmanship for a period of the earlier of twelve (12) months from shipment to or the accumulation of 2,000 hours of service by the initial user.

*Factory installed option.

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 3.

Short Title: Public Hearing - Culinary Water Impact Fee

Initiated By: Staff

Scheduled Time: 7:10

SUBJECT

Consider Culinary Water Impact Fee Facilities Plan, Culinary Water Impact Fee Analysis, and Culinary Water Impact Fee Enactment updating and amending Culinary Water Impact Fees

RECOMMENDATION

Hold public hearing regarding the Culinary Water Impact Fee Facilities Plan, Culinary Water Impact Fee Analysis, and Culinary Water Impact Fee Enactment. Approve Ordinance No. 2013-10.

BACKGROUND

Updating the City's water impact fee was recommended in 2011 by the City's consultants when they prepared a Capital Facilities Finance Plan and User Rate Analysis for the culinary water system. The 2011 report recommended a 3-step increase in the monthly water rate to fund the increased cost of operations and maintenance and to fund, in part, the cost of capital projects. Water Revenue Bonds were issued in 2012 to finance these projects. However, the 2011 report also recommended a review of the City's water impact fee to determine whether a fair share of funding was being collected from new growth to pay for these facilities. That review was done in 2013 and is the subject of this agenda item.

As required by state law, the enactment or revision of an impact fee must be based on an Impact Fee Facilities Plan and Analysis. The City hired the firm of Lewis Young Robertson Burningham (LYRB) to prepare this plan and analysis. Their report was reviewed by the City Council at their July 16 meeting and a public hearing was set for August 6. This hearing has been noticed as required in state law and the Plan/Analysis report has been available at City Hall, the local public library and on the City's website. The Plan/Analysis report is Exhibit B to the attached Ordinance. Also attached is a comparison of water impact fees for a number of Utah cities, comparing the impact fee for a 3/4 inch residential connection.

The recommendation is to increase Centerville's water impact fee for a 3/4 inch connection from the current $1200 to $2027. The current fee has not changed since the mid-1990's. As shown in the attached comparison, this new fee would still be in the lower half of the fees shown for other public water systems.

The attached Ordinance No. 2013-10 would also approve higher impact fees for larger connections--i.e. 1 inch, 1 1/2 inch, 2 inches, etc. The amounts shown for these larger connections are determined using the same multiplier that is used in the current water impact fee structure. For example, a 1-inch meter can provide 2 1/2 times as much water as a 3/4 inch connection. Therefore, the revised impact fee for a 1 inch meter would be 2.5 times the impact fee for a 3/4 inch meter, or $5068, and so forth as shown in the table on page 7 or the Ordinance. Randy Randall, Public Works Director, will be at the meeting to explain, if desired, why this rationale has been used for determining the impact fees for larger connections.

ATTACHMENTS:

Name:	Description:
Culinary_Water_Impact_Fees-ena.pdf	Culinary Water IMpact Fees-ena
Culinary_Water_Impact_Fee_Service_Area.pdf	Exhibit A - Culinary Water Impact Fee Service Area
Centerville_Culinary_Water_Combined_IFFP___IFA_(Final).pdf	Exhibit B - Culinary Water Impact Fee Facility Plan and Analysis
Comparative_Fees.pdf	Culinary Water Fee Comparison

ORDINANCE NO. 2013-10

AN ORDINANCE ADOPTING AN AMENDED AND UPDATED CULINARY WATER IMPACT FEE FACILITIES PLAN AND A CULINARY WATER IMPACT FEE ANALYSIS; ADOPTING AMENDED AND UPDATED CULINARY WATER IMPACT FEES; ADOPTING CERTAIN POLICIES RELATED TO CULINARY WATER IMPACT FEES; AND ESTABLISHING A SERVICE AREA FOR PURPOSES OF THE CULINARY WATER IMPACT FEES.

WHEREAS, Centerville City (the *"City"*) is a political subdivision of the State of Utah, authorized and organized under applicable provisions of Utah law; and

WHEREAS, the City has legal authority, pursuant to Title 11, Chapter 36a of the Utah Code Annotated, as amended (*"Impact Fees Act"* or *"Act"*), to impose development impact fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to new development activity; and

WHEREAS, the City has previously enacted and imposed impact fees for culinary water facilities, known and referred to as the Water Development Fees, as more particularly set forth in Section III of the Centerville City Consolidated Fee Schedule; and

WHEREAS, the City desires to update and amend such fees to be referred to hereafter as "Culinary Water Impact Fees" in accordance with applicable provisions of the Impact Fees Act in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner as more particularly provided herein; and

WHEREAS, the City properly noticed its intent to prepare the Culinary Water Impact Fee Facilites Plan and the Culinary Water Impact Fee Analysis as required by law and the City has, through its consultants, completed the Culinary Water Impact Fee Facilities Plan and Impact Fee Analysis in accordance with applicable provisions of the Impact Fees Act, which Culinary Water Impact Fee Facilities Plan and Impact Fee Analysis are more particularly described and adopted herein; and

WHEREAS, the City has provided the required notice and held a public hearing before the City Council regarding the proposed Culinary Water Impact Fees, Culinary Water Impact Fee Facilities Plan and Culinary Water Impact Fee Analysis in accordance with applicable provisions of the Impact Fees Act; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CENTERVILLE CITY, STATE OF UTAH, AS FOLLOWS:

SECTION I
ORDINANCE REPEALED

The provisions of Ordinance No. 97-21 specifically adopting and amending Water Development Fees are hereby repealed and superceded by the provisions of this Ordinance to the extent they relate to Culinary Water Impact Fees. To the extent any provisions of Title 15, Chapter 8, are in conflict with the provisions of this Ordinance regarding Cuilinary Water Impact Fees, the provisions of this Ordinance shall govern. This Ordinance may be referred to and cited as the "Culinary Water Impact Fees Ordinance."

SECTION II
PURPOSE

This Culinary Water Impact Fees Ordinance establishes the City's Culinary Water Impact Fees policies and procedures and is promulgated pursuant to Title 11, Chapter 36a, Part 4, Enactment of Impact Fees, and other requirements of the Impact Fees Act. This Ordinance amends and adopts Culinary Water Impact Fees for culinary water facilities within the City Service Area as defined herein, provides a schedule of Culinary Water Impact Fees for development activity, and sets forth direction for challenging, modifying and appealing Culinary Water Impact Fees. This Ordinance does not replace, supercede, or modify any ordinance regarding impact fees unrelated to culinary water facilities and improvements.

SECTION III
DEFINITIONS

Words and phrases that are defined in the Impact Fees Act shall have the same definition in this Culinary Water Impact Fees Ordinance. The following words and phrases are defined as follows:

1. *"City"* means a political subdivision of the State of Utah and is referred to herein as the City of Centerville, Utah.

2. *"Development Activity"* means, except as otherwise provided in the Impact Fees Act, any construction or expansion of a building, structure or use, any change in use of a building or structure, or any changes in the use of land within the Service Area that creates additional demand and need for public facilities related to culinary water.

3. *"Development Approval"* means any written authorization from the City that authorizes the commencement of development activity.

4. *"Impact Fee"* means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. "Impact fee" does not include a tax, special assessment, building permit fee, hookup fee, fee for project improvements, or other reasonable permit or application fee.

5. *"Impact Fee Analysis"* means the written analysis of each impact fee required by Section 11-36a-303 of the Impact Fees Act.

6. *"Impact Fee Facilities Plan"* means the plan required by Section 11-36a-301 of the Impact Fees Act.

7. *"Project Improvements"* means site improvements and facilities that are: planned and designed to provide service for development resulting from a Development Activity; necessary for the use and convenience of the occupants or users of development resulting from a Development Activity; and not identified or reimbursed as a system improvement. "Project Improvements" does not mean system improvements as more particularly defined herein.

8. *"Proportionate Share"* means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

9. *"Public Facilities"* means impact fee facilities as defined in the Impact Fees Act that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity. For purposes of this Ordinance, and as defined in the Impact Fees Act, impact fee facilities include "water rights and water supply, treatment, storage, and distribution facilities" of the City for the Service Area.

10. *"Service Area"* means a geographic area designated by the City on the basis of sound planning or engineering principles in which a public facility, or a defined set of public facilities, provides service within the area. The Service Area for purposes of this Ordinance is more particularly described in Section V.

11. *"System Improvements"* means existing public facilities that are: identified in the impact fee analysis under Section 11-36a-304 of the Impact Fees Act; and designed to provide services to service areas within the community at large and future public facilities identified in the impact fee analysis under Section 11-36a-304 that are intended to provide service to service areas within the community at large. "System improvements" do not include project improvements as defined herein.

SECTION IV
STATUTORY AUTHORITY AND RESTRICTIONS

1. *Impact Fees Act Authority.* The City is authorized to impose impact fees subject to and in accordance with applicable provisions of the Impact Fees Act. An impact fee is defined as a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. Impact fees may only be established for public facilities as defined in Section 11-36a-102 that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision. Public facilities for which impact fees may be imposed includes public facilities for culinary water.

2. *Impact Fees Act Restrictions*. Pursuant to Section 11-36a-202 of the Impact Fees Act, the City may not impose an impact fee to: (1) cure deficiencies in public facilities serving existing development; (2) raise the established level of service of a public facility serving existing development; (3) recoup more than the local political subdivision's costs actually incurred for excess capacity in an existing system improvement; or (4) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement.

SECTION V
SERVICE AREA

The Impact Fees Act requires the City to establish one or more service areas within which the City will calculate and impose a particular impact fee. The service area within which the proposed Culinary Water Impact Fees will be imposed includes all of the area within the corporate limits and jurisdictional boundaries of the City. The Service Area is more particularly described and set forth in **Exhibit A,** attached hereto and incorporated herein by this reference.

SECTION VI
IMPACT FEE FACILITIES PLAN

1. *Impact Fee Facilities Plan Required.* Pursuant to Section 11-36a-301 of the Impact Fees Act, before imposing or amending an impact fee, the City is required to prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new development activity. The impact fee facilities plan shall identify the demands placed upon existing public facilities by new development activity and the proposed means by which the City will meet those demands.

2. *Culinary Water Impact Fee Facilities Plan.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-302 of the Impact Fees Act and has caused to be prepared a Culinary Water Impact Fee Facilities Plan ("IFFP"), as more particularly set forth in **Exhibit B,** attached hereto and incorporated herein by this reference. The Culinary Water IFFP has been prepared based on reasonable growth assumptions for the City and general demand characteristics of current and future users of Culinary Water facilities. The Culinary Water IFFP identifies the impact on system improvements created by development activity and estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity. As shown in the Culinary Water IFFP, the City has considered all revenue sources to finance the impacts on system improvements, including grants, bonds, interfund loans, impact fees, and anticipated or accepted dedications of system improvements. The Culinary Water IFFP establishes that impact fees are necessary to maintain a proposed level of service that complies with applicable provisions of Section 11-36a-302 of the Impact Fees Act.

3. *Plan Certificiation.* The Culinary Water IFFP includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the plan certifying that the Culinary Water IFFP complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Culinary Water IFFP and Culinary Water IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Culinary Water IFFP and Culinary Water IFA, together with the summary and this Ordinance, in the Centerville Branch of the Davis County Public Library and the City Recorder's Office at Centerville City Hall at least ten (10) days before the public hearing.

5. *Adoption of Culinary Water Impact Fee Facilities Plan.* The Culinary Water IFFP as set forth in **Exhibit B,** is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

SECTION VII
WRITTEN IMPACT FEE ANALYSIS

1. *Written Impact Fee Analysis Required.* Pursuant to Section 11-36a-303 of the Impact Fees Act, each local political subdivision intending to impose an impact fee shall prepare a written analysis of each impact fee to be imposed and a summary of the impact fee analysis designed to be understood by a lay person. The impact fee analysis shall identify the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated development activity; identify the anticipated impact on system improvements required by the anticipated development activity to maintain the established level of service for each public facility; demonstrate how the anticipated impacts are reasonably related to the anticipated development activity; estimate the proportionate share of the costs for existing capacity that will be recouped and the costs of impacts on system improvements that are reasonably related to the new development activity; and identify how the impact fee is calculated.

2. *Culinary Water Impact Fee Analysis.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-304 of the Impact Fees Act, including the proportionate share analysis required therein, and has caused to be prepared a Culinary Water Impact Fee Analysis ("IFA"), as more particularly set forth in **Exhibit B,** attached hereto and incorporated herein by this reference. The Culinary Water IFA identifies the impacts upon public facilities required by the development activity and demonstrates how those impacts on system improvements are reasonably related to the development activity, estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to the development activity, and identify how the Culinary Water Impact Fees are calculated.

3. *Analysis Certificiation.* The Culinary Water IFA includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the analysis certifying that the Culinary Water IFA complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Culinary Water IFFP and Culinary Water IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Culinary Water IFFP and Culinary Water IFA, together with the summary and this Ordinance, in Centerville Branch of the Davis County Public Library and the City Recorder's Office at Centerville City Hall at least ten (10) days before the public hearing.

5. *Adoption of Culinary Water Impact Fee Analysis.* The Culinary Water IFA as set forth in **Exhibit B,** is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

SECTION VIII
CALCULATION OF IMPACT FEES

1. *Impact Fee Calculations.* Pursuant to Section 11-36a-305, in calculating an impact fee, the City may include: the construction contract price; the cost of aquiring land, improvements, materials, and fixtures; the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and debt service charges if the City might use impact fees as a revenue stream to pay principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements. In calculating the proposed Culinary Water Impact Fees, the City has based such amounts calculated on realistic estimates and the assumptions underlying such estimates are more particularly disclosed in the Culinary Water IFA set forth in **Exhibit B.**

2. *Previously Incurred Costs.* To the extent that new growth and development will be served by previously constructed improvements, the City's Culinary Water Impact Fees may include public facility costs and outstanding bond costs related to the Culinary Water improvements previously incurred by the City. These costs may include all projects included in the Culinary Water IFFP which are under construction or completed but have not been utilized to their capacity, as evidenced by outstanding debt obligations. Any future debt obligations determined to be necessitated by growth activity will also be included to offset the costs of future capital projects.

SECTION IX
IMPACT FEE SCHEDULE AND FORMULA

1. *Impact Fee Schedule or Formula Required.* Pursuant to Section 11-36a-402 of the Impact Fees Act, the City is required to provide a schedule of impact fees for each type of development activity that specifies the amount of the impact fee to be imposed for each type of system improvement or the formula that the City will use to calculate each impact fee.

2. *Maximum Culinary Water Impact Fee Schedule.* Based on the Culinary Water IFA, the maximum Culinary Water Impact Fees which the City may impose on development activity within the defined Service Area for Culinary Water facilities is set forth in the following schedule:

Maximum Culinary Water Impact Fee Schedule

METER SIZE (INCHES)	ERC MULTIPLIER	IMPACT FEE PER METER SIZE	EXISTING IMPACT FEE	% CHANGE
3/4	1.00	$2,027	$1,200	69%
1	2.50	$5,068	$3,000	69%
1 1/2	6.00	$12,162	$7,200	69%
2	10.00	$20,270	$12,000	69%
3	22.50	$45,608	$27,000	69%
4	62.50	$126,688	$75,000	69%

3. *Rates Established by Resolution.* The City Council, by this Ordinance, approves the maximum Culinary Water Impact Fees in accordance with the Culinary Water IFA set forth in **Exhibit B.** The City reserves the right to establish the Culinary Water Impact Fees as established in this Ordinance by Rate Resolution or Resolution amending the Consolidated Fee Schedule. In no event will the Culinary Water Impact Fees established by Resolution exceed the maximum supportable Culinary Water Impact Fee Schedule as set forth herein.

SECTION X
ADJUSTMENTS AND CREDITS

1. *Adjustments.* In accordance with Section 11-36a-402 of the Impact Fees Act, the City may adjust the Culinary Water Impact Fees at the time the fee is charged to respond to unusual circumstances in specific cases, to address development activity by the State or school district, or to ensure that impact fees are imposed fairly. The Culinary Water Impact Fees may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The Culinary Water Impact Fees assessed to a particular development may also be adjusted should the developer supply sufficient written information, studies and/or data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.

2. *Developer Credits.* In accordance with Section 11-36a-402 of the Impact Fees Act, a developer may be allowed a credit against Culinary Water Impact Fees or proportionate reimbursement of Culinary Water Impact Fees if the developer dedicates land for a system improvement, builds and dedicates some or all of a system improvement; or dedicates a public facility that the City and the developer agree will reduce the need for a system improvement; *provided* that the system improvement is: (i) identified in the City's Culinary Water IFFP; and (ii) is required by the City as a condition of approving the development activity. To the extent required in Section 11-36a-402, the City shall provide a credit against Culinary Water Impact Fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities are system improvements, as defined herein and included in the Culinary Water IFFP; or are dedicated to the public and offset the need for an identified system improvement.

3. *Waiver for "Public Purpose".* The City Council may, on a project by project basis, authorize exceptions or adjustments to the Culinary Water Impact Fees for those projects the City Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include affordable housing and other development activities with broad public purposes. The City Council may elect to waive or adjust Culinary Water Impact Fees for such projects. Applications for exceptions are to be filed with the City at the time the applicant first requests the extension of service to the applicant's development or property.

SECTION XI
NOTICE AND HEARING

1. *Notice.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Culinary Water IFFP and Culinary Water IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Culinary Water IFFP and Culinary Water IFA, together with the summary and this Ordinance, in Centerville Branch of the Davis County Public Library and the City Recorder's Office at Centerville City Hall at least ten (10) days before the public hearing. Notice has also been provided in accordance with applicable provisions of *Utah Code Ann.* § 10-9a-205.

2. *Hearing.* The City Council held a public hearing regarding the Culinary Water IFFP, the Culinary Water IFA, and this Culinary Water Impact Fee Ordinance, on August 6, 2013, and a copy of the Ordinance was available in its substantially final form at the Centerville Branch of the Davis County Public Library and the City Recorder's Office in the Centerville City Hall at least ten (10) days before the date of the hearing, all in conformity with the requirements of *Utah Code Ann.* § 10-9a-205 and applicable noticing provisions of the Impact Fees Act.

SECTION XII
IMPACT FEE ACCOUNTING AND EXPENDITURES

1. *Impact Fees Accounting.* Pursuant to Section 11-36a-601 of the Impact Fees Act, the City will establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected, deposit a receipt for an impact fee in the appropriate ledger account established herein, and retain the interest earned on each fund or ledger account in the fund or ledger account.

2. *Reporting.* At the end of each fiscal year, the City shall prepare a report on each fund or ledger account showing the source and expenditures as required by law. Annually, the City shall produce and transmit to the State Auditor a certified report in accordance with Section 11-36a-601 in a format developed by the State Auditor.

3. *Impact Fee Expenditures.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may expend Culinary Water Impact Fees only for a system improvement: (i) identified in the Culinary Water IFFP; and (ii) for the specific public facility type for which the fee was collected. Impact fees will be expended on a First-In First-Out basis.

4. *Time of Expenditure.* Except as otherwise provided by law, the City shall expend or encumber Culinary Water Impact Fees for a permissible use within six (6) years of their receipt. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

5. *Extension of Time.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may hold the impact fees for longer than six (6) years if it identifies in writing: (i) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and (ii) an absolute date by which the fees will be expended.

6. *Refunds.* Pursuant to Section 11-36a-603 of the Impact Fees Act, the City shall refund any Culinary Water Impact Fees paid by a developer, plus interest earned, when: (i) the developer does not proceed with the development activity and files a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted. An impact that would preclude a developer from a refund from the City may include any impact reasonably identified by the City, including, but not limited to, the City having sized facilities and/or paid for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

7. *Other Impact Fees.* To the extent allowed by law, the City Council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, at the discretion of the City Council, include but not be limited to reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the City's system.

8. *Additional Fees and Costs.* The Culinary Water Impact Fees authorized herein are separate from and in addition to user fees and other charges lawfully imposed by the City and other fees and costs that may not be included as itemized component parts of the Culinary Water Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.

9. *Fees Effective at Time of Payment.* Unless otherwise provided in the City's Consolidated Fee Schedule, the City will collect the Culinary Water Impact Fees at the time of building permit issuance. The fees will be calculated by the City. Unless the City is otherwise bound by a contractual requirement, the Culinary Water Impact Fees shall be determined from the fee schedule in effect at the time of payment.

10. *Imposition of Additional Fee or Refund after Development.* Should any developer undertake development activities such that the ultimate density or other impact of the development activity is not revealed to the City, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the Culinary Water Impact Fee is not initially charged against all units or the total density within the development, the City shall be entitled to charge an additional Culinary Water Impact Fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid.

SECTION XIII
CHALLENGES TO IMPACT FEES

1. *Request for Information.* Pursuant to Section 11-36a-701, a person or entity required to pay a Culinary Water Impact Fee who believes the the impact fee does not meet the requirements of law may file a written request for information with the City Manager. As required by law, the City Manager shall, within two (2) weeks after the receipt of the request for information provide the person or entity with the Culinary Water IFFP, the Culinary Water IFA, and any other relevant information relating to the Culinary Water Impact Fee.

2. *Advisory Opinion.* A potentially aggrieved person may request an advisory opinion from a neutral third party regarding compliance of the Culinary Water Impact Fees with the Impact Fees Act by filing such request with the Office of the Property Rights Ombudsman in accordance with the procedures and provisions of Title 13, Chapter 43, known as the Property Rights Ombudsman Act. The aggrieved party requesting an advisory opinion is not required to exhaust the admininstrative appeals procedures set forth in Subsection 4 before requesting an advisory opinion.

3. *Appeal.* A person or entity that has paid Culinary Water Impact Fees under the provisions of this Ordinance may challenge such impact fees pursuant to the provisions set forth in Title 11, Chapter 36a, Part 7 of the Impact Fees Act regarding Challenges.

a. *Grounds for Challenge.* Pursuant to Section 11-36a-701, a person or entity that has paid Culinary Water Impact Fees under the provisions of this Ordinance may challenge: (1) the impact fees; (2) whether the City complied with the notice requirements of the Impact Fees Act with respect to the imposition of the impact fees; and/or (3) whether the City complied with other procedural requirements of the Impact Fees Act for imposing the impact fee.

b. *Sole Remedy*. The sole remedy for challenging the notice requirements is the equitable remedy of requiring the City to correct the defective notice and repeat the process. The sole remedy for challenging the impact fee is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated. Reasonable attorneys fees may be awarted to the substantially prevailing party to the extent provided in the Impact Fees Act.

c. *Initiation*. A challenge to an impact fee is initiated by filing:

i. An appeal to the City Council pursuant to the admininstrative a appeal procedures set forth herein;

ii. A request for arbitration as provided in Section 11-36a-705 of the Impact Fees Act; or

iii. An action in district court.

d. *Time Restrictions*. The time for filing a challenge to the impact fees shall be filed in accordance with the time limitations set forth in Section 11-36a-702, depending upon the type of challenge. The deadline to file an action in district court is tolled from the date that a challenge is filed using the admininstrative procedures set forth in Subsection 4 until thirty (30) days on which a final decision is rendered in the administrative appeals procedure.

4. *Administrative Appeal Procedure*. The City hereby adopts an administrative appeal procedure to consider and decide challenges to the Culinary Water Impact Fees. Any person or entity that has paid a Culinary Water Impact Fee pursuant to this Ordinance may challenge or appeal the impact fee by filing written notice of administrative appeal with the City Manager within thirty (30) days after the day on which the person or entity paid the impact fee. The notice of appeal shall set forth the grounds for the appeal and shall include any applicable filing fees as set forth in the City's Consolidated Fee Schedule. Upon receiving the written notice of appeal, the City Council shall set a hearing date to consider the merits of the challenge or appeal. The person or entity challenging or appealing the fee may appear at the hearing and present any written or oral evidence deemed relevant to the challenge or appeal. Representatives of the City may also appear and present evidence to support the imposition of the fee. The City Council shall hold a hearing and make a decision within thirty (30) days after the date the challenge or appeal is filed.

5. *Mediation*. In addition to the methods of challenging an impact fee as provided herein, a specified public agency may require the City to participate in mediation of any applicable impact fee in accordance with the provisions of Section 11-36a-704 of the Impact Fees

Act. A written request for mediation must be filed in accodance with Section 11-36a-704 no later than thirty (30) days after the day on which the impact fee is paid.

6. *Declaratory Judgment Action*. Pursuant to Section 11-36a-701, a person or entity residing in or owning property within the Service Area, or an organization, association, or a corporation representing the interests of persons or entities owning property within the Service Area, are deemed to have standing to file a declaratory judgment action challenging the validity of an impact fee.

SECTION XIV
MISCELLANEOUS

1. *Severability*. If any section, subsection, paragraph, clause or phrase of this Culinary Water Impact Fee Ordinance shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose, the provisions of this Culinary Water Impact Fee Ordinance are declared to be severable.

2. *Interpretation*. This Culinary Water Impact Fee Ordinance has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Ordinance shall not be affected by such division or by any heading contained herein.

3. *Other Impact Fees Not Repealed*. Except as otherwise specifically provided herein, this Culinary Water Impact Fee Ordinance shall not repeal, modify or affect any impact fee of the City in existence as of the effective date of this Ordinance.

SECTION XV
EFFECTIVE DATE

In accordance with the provisions of *Utah Code Ann.* § 11-36a-401, this ordinance and the impact fees adopted herein or pursuant hereto shall not take effect until ninety (90) days after the day on which the ordinance is approved.

[Signature Page to Follow]

PASSED AND APPROVED this _____ day of August, 2013.

CENTERVILLE CITY COUNCIL

By: ________________________________
Mayor Ronald G. Russell

[SEAL]

VOTING:

Council Member Allen	Yea ___	Nay ___
Council Member Averett	Yea ___	Nay ___
Council Member Higginson	Yea ___	Nay ___
Council Member Lindstrom	Yea ___	Nay ___
Council Member Wright	Yea ___	Nay ___

ATTEST:

By__________________________________
Marsha L. Morrow, City Recorder

DEPOSITED in the office of the City Recorder this _____ day of ______________, 2013.

RECORDED this _____ day of ________________, 2013.

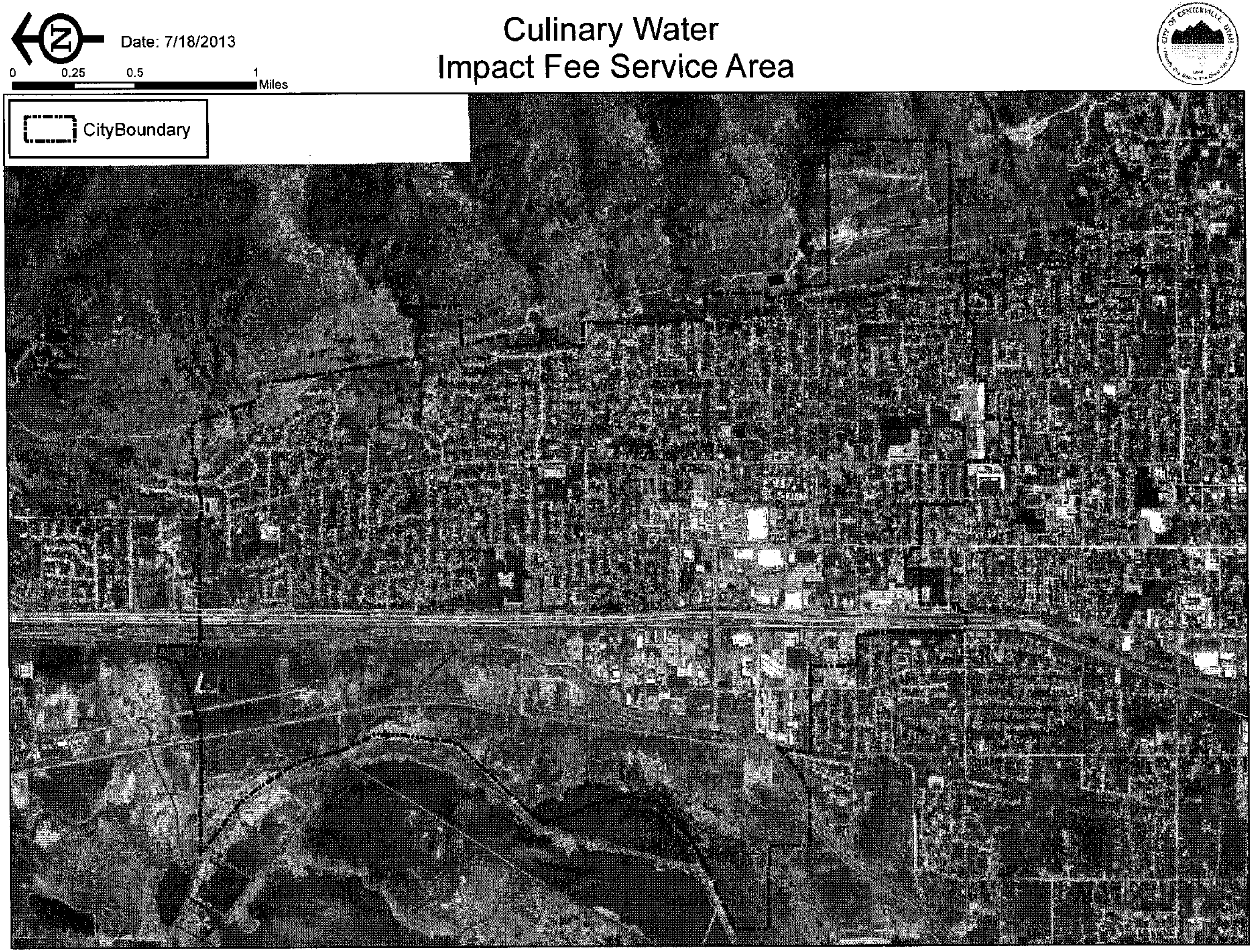
EXHIBIT A

CULINARY WATER IMPACT FEE SERVICE AREA

EXHIBIT B

CULINARY WATER IMPACT FEE FACILITIES PLAN AND CULINARY WATER IMPACT FEE ANALYSIS

Culinary Water
Impact Fee Service Area



CENTERVILLE CITY

CULINARY WATER IMPACT FEE FACILITIES PLAN (IFFP) AND IMPACT FEE ANALYSIS (IFA)

LEWIS YOUNG
ROBERTSON & BURNINGHAM, INC.
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IMPACT FEE CERTIFICATION

IFFP Certification

Lewis Young Robertson & Burningham, Inc. and Centerville City jointly certify that the Impact Fee Facilities Plan ("IFFP") prepared for culinary water services:

1. includes only the costs of public facilities that are:
   a. allowed under the Impact Fees Act; and
   b. actually incurred; or
   c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
   a. costs of operation and maintenance of public facilities;
   b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
   c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and
3. complies in each and every relevant respect with the Impact Fees Act.

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.
CENTERVILLE CITY

IFA Certification

Lewis Young Robertson & Burningham, Inc. certifies that the Impact Fee Analysis ("IFA") prepared for culinary water services:

1. includes only the costs of public facilities that are:
   a. allowed under the Impact Fees Act; and
   b. actually incurred; or
   c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
   a. costs of operation and maintenance of public facilities;
   b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
   c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;
   d. offsets costs with grants or other alternate sources of payment; and
3. complies in each and every relevant respect with the Impact Fees Act.

Lewis Young Robertson & Burningham, Inc. makes this certification with the following caveats:

1. All of the recommendations for implementation of the IFFP made in the IFFP documents or in the IFA documents are followed by City Staff and elected officials.
2. If all or a portion of the IFFP or IFA are modified or amended, this certification is no longer valid.
3. All information provided to LYRB is assumed to be correct, complete, and accurate. This includes information provided by the City as well as outside sources.

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.

DEFINITIONS

The following acronyms are used in this document and expanded below:

ERC: Equivalent Residential Connection

GPM: Gallons per Minute

IFA: Impact Fee Analysis

IFFP: Impact Fee Facilities Plan

LOS: Level of Service

LYRB: Lewis Young Robertson and Burningham, Inc.

SECTION 1: EXECUTIVE SUMMARY

The purpose of the Culinary Water Impact Fee Facilities Plan ("IFFP"), with supporting Impact Fee Analysis ("IFA"), is to fulfill the requirements established in Utah Code Title 11 Chapter 36a, the "Impact Fees Act," and help Centerville City (the "City") plan necessary capital improvements for future growth. This document will address the future culinary water infrastructure needed to serve the City through the next six years, as well as the appropriate impact fees the City may charge to new growth to maintain the level of service ("LOS"). The Centerville City Culinary Water System Master Plan Update 2010, along with updated information from the City, provides much of the information utilized in the analysis for the purposes of calculating impact fees.

- **Impact Fee Service Area:** The service area for culinary water impact fees includes all areas within the City. This document identifies capital projects that will help to maintain the same level of service enjoyed by existing residents into the future.

- **Demand Analysis:** The demand units utilized in this analysis are based on typical usage patterns measured in gallons per minute (GPM) and equivalent residential connections (ERCs) generated from residential and commercial land-use types. As residential and commercial growth occurs within the City, additional ERCs will be generated. The culinary water capital improvements identified in this study are based on maintaining the current level of service.

- **Level of Service:** The existing and proposed level of service for the source component is approximately 0.50 GPM per ERC. The City has chosen to adopt a lower level of service than currently exists for the storage component. The proposed level of service is 540 gallons per ERC, or the state standard. The distribution level of service is based on hydraulic modeling shown in the Master Plan.

- **Excess Capacity:** The source component has no excess capacity at the existing LOS of 0.50 GPM per ERC and therefore a buy-in component for future growth will not be contemplated in this analysis. The buy-in cost to growth calculated for storage is approximately $385,547. The buy-in cost to growth calculated for the distribution component is approximately $890,507.

- **Capital Facilities Analysis:** Due to the lack of excess capacity for the source component, the City will be constructing the Chase Lane Well at a cost of approximately $1,030,000. The Chase Lane Well will add 800 GPM, which will serve 1,593 ERCs at the 0.50 GPM LOS.

- **Outstanding Debt:** In 2012 the City issued $4.2 million in bonds, a portion of which will be used for future improvements to the water system, including the Chase Lane Well source improvements. The total interest amount associated with the Series 2012 bonds is approximately $979,088. Interest cost associated the bonded indebtedness is an eligible cost that can be paid with impact fees. The proportional interest cost assignable to new growth is $239,877.

- **Funding of Future Facilities:** This analysis assumes future growth related facilities will be funded through a combination of utility revenues, previously issued debt proceeds, and impact fee revenues.

PROPOSED CULINARY WATER IMPACT FEE

The culinary water impact fees proposed in this analysis will be assessed within all areas of the City. The tables below illustrate the appropriate buy-in component related to storage and distribution and the fee associated with projects occurring within the next six years related to the source. The impact fee calculations also include debt related expenses. The proportionate share analysis determines the proportionate cost assignable to new development based on the amount of excess capacity that will serve future growth within the individual components and based on the proposed capital projects and the estimated ERCs served by the proposed projects.

TABLE 1.1: IMPACT FEE PER ERC

	TOTAL COST TO CITY	% TO GROWTH	COST TO GROWTH	ERCS SERVED	FEE PER ERC
Excess Capacity (Buy-In Component)					
Storage	$2,965,747	13.0%	$385,547	1,046	$369
Distribution (Total Minus Dev Contributions)	$7,546,670	11.8%	$890,507	1,046	$851
Cost to Future Growth					
Source	$1,030,000	100.0%	$1,030,000	1,593	$646
Outstanding Debt (Interest)	$979,088	24.5%	$239,877	1,593	$151
Other					
Professional Expense	$10,040	100.0%	$10,040	1,046	$10
Total	**$12,531,545**		**$2,555,971**		**$2,027**

COST TO NEW GROWTH CALCULATIONS:

Excess Capacity Storage: Estimated ERCs in the planning horizon are anticipated to be 1,046. Using a level of service of 540 gallons per ERC, approximately 564,840 gallons would be required in the planning horizon, or 13 percent of the current storage capacity of 4,330,000. This same 13 percent is applied to the total cost of existing storage improvements to calculate the cost of growth included in the impact fee.

Excess Capacity Distribution: The distribution system is anticipated to serve through buildout or approximately 8,883 ERCs. The ERCs anticipated in the planning horizon (1,046) make up 11.8 percent of the total buildout projection. This percentage is applied to the total cost of existing distribution improvements to calculate the cost of growth included in the impact fee.

Cost to Future Growth Source: 100 percent of the costs for source are considered growth related. However, the future source improvements are anticipated to serve more ERCs than projected within the planning horizon. Future source improvements will serve approximately 1,593 ERCs, thus the total cost to growth is spread over this amount.

Cost to Future Growth Debt: The future cost to growth for source improvements makes up 24.5 percent of the total par amount for the Series 2012 bonds. This same percentage is applied to the interest cost for the Series 2012 bonds and is included in the impact fee.

Other: 100% of the cost to update the IFFP and IFA in the planning horizon (through 2019) is attributed to growth.

TABLE 1.2: IMPACT FEE PER METER SIZE

METER SIZE (INCHES)	ERC MULTIPLIER	IMPACT FEE PER METER SIZE	EXISTING IMPACT FEE	% CHANGE
3/4	1.00	$2,027	$1,200	69%
1	2.50	$5,068	$3,000	69%
1 1/2	6.00	$12,162	$7,200	69%
2	10.00	$20,270	$12,000	69%
3	22.50	$45,608	$27,000	69%
4	62.50	$126,688	$75,000	69%

Source: ERC Multipliers provided by Centerville City

NON-STANDARD CULINARY WATER IMPACT FEES

The City reserves the right under the Impact Fees Act to assess an adjusted fee that more closely matches the true impact that the land use will have upon public facilities.[1] This adjustment could result in a lower impact fee if the City determines that a particular user may create a different impact than what is standard for its land use. To determine the impact fee for a non-standard use, the City should use the following formula:

FORMULA FOR NON-STANDARD WATER IMPACT FEES:

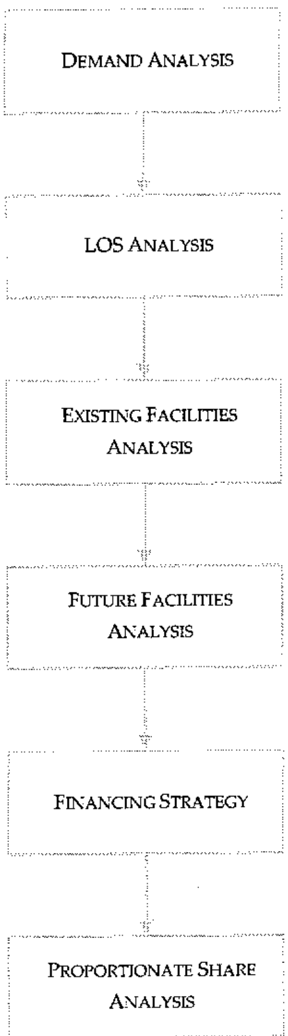
Estimated Usage (GPM) / 0.50 (GPM) * $2,027 = Impact Fee

[1] 11-36a-402(1)(c)
[2] 11-36a-302(2)

SECTION 2: GENERAL IMPACT FEE METHODOLOGY

The purpose of this study is to fulfill the requirements of the Impact Fees Act regarding the establishment of an IFFP and IFA. The IFFP is designed to identify the demands placed upon the City's existing facilities by future development and evaluate how these demands will be met by the City. The IFFP is also intended to outline the improvements which are intended to be funded by impact fees. The IFA is designed to proportionately allocate the cost of the new facilities and any excess capacity to new development, while ensuring that all methods of financing are considered. Each component must consider the historic level of service provided to existing development and ensure that impact fees are not used to raise that level of service. The following elements are important considerations when completing an IFFP and IFA.

FIGURE 2.1: IMPACT FEE METHODOLOGY



DEMAND ANALYSIS

The demand analysis serves as the foundation for the IFFP. This element focuses on a specific demand unit related to each public service – the existing demand on public facilities and the future demand as a result of new development that will impact public facilities.

LEVEL OF SERVICE ANALYSIS

The demand placed upon existing public facilities by existing development is known as the existing "Level of Service" ("LOS"). Through the inventory of existing facilities, combined with the growth assumptions, this analysis identifies the level of service which is provided to a community's existing residents and ensures that future facilities maintain these standards. Any excess capacity identified within existing facilities can be apportioned to new development. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.

EXISTING FACILITY INVENTORY

In order to quantify the demands placed upon existing public facilities by new development activity, the Impact Fee Facilities Plan provides an inventory of the City's existing **system** facilities. To the extent possible, the inventory valuation should consist of the following information:

- Original construction cost of each facility;
- Estimated date of completion of each future facility;
- Estimated useful life of each facility; and,

The inventory of existing facilities is important to properly determine the excess capacity of existing facilities and the utilization of excess capacity by new development.

FUTURE CAPITAL FACILITIES ANALYSIS

The demand analysis, existing facility inventory and LOS analysis allow for the development of a list of capital projects necessary to serve new growth and to maintain the existing system. This list includes any excess capacity of existing facilities as well as future **system improvements** necessary to maintain the level of service. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.

FINANCING STRATEGY – CONSIDERATION OF ALL REVENUE SOURCES

This analysis must also include a consideration of all revenue sources, including impact fees, future debt costs, alternative funding sources and the dedication of system improvements, which may be used to finance system improvements.[2] In conjunction with this revenue analysis, there must be a determination that impact fees are necessary to achieve an equitable allocation of the costs of the new facilities between the new and existing users.[3]

PROPORTIONATE SHARE ANALYSIS

The written impact fee analysis is required under the Impact Fees Act and must identify the impacts placed on the facilities by development activity and how these impacts are reasonably related to the new development. The written impact fee analysis must include a proportionate share analysis, clearly detailing each cost component and the methodology used to calculate each impact fee. A local political subdivision or private entity may only impose impact fees on development activities when its plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future (UCA 11-36a-302).

[2] 11-36a-302(2)
[3] 11-36a-302(3)

SECTION 3: OVERVIEW OF SERVICE AREA, DEMAND, AND LOS

SERVICE AREAS

Utah Code requires the impact fee enactment to establish one or more service areas within which impact fees will be imposed.[4] The impact fees identified in this document will be assessed to a single, city-wide service area. It is anticipated that the growth projected over the next six years and through build-out, will impact the City's existing services. Culinary water infrastructure will need to be expanded in order to maintain the existing level of service. Impact fees have become an ideal mechanism for funding growth-related infrastructure. This analysis is designed to accurately assess the true impact of a particular user upon the City's infrastructure and prevent existing users from subsidizing new growth. This analysis also ensures that new growth isn't paying for existing system deficiencies.

TABLE 3.1: CITY-WIDE ERC GROWTH PROJECTIONS

YEAR	ERC EST.
2013	6,911
2014	7,075
2015	7,243
2016	7,416
2017	7,592
2018	7,772
2019	7,957
Growth from 2013-2019	1,046

Source: Centerville City Culinary Water System Master Plan Update, April 2010, pg. 14

DEMAND UNITS

As shown in Table 3.1, the growth in ERCs is expected to reach 7,957 units by 2019, based on a growth rate of approximately 2.38 percent. This represents an increase of 1,046 ERCs from 2013. The City anticipates 1,972 additional ERCs from 2013 to buildout.[5]

LEVEL OF SERVICE STANDARDS

Impact fees cannot be used to finance an increase in the level of service to current or future users of capital improvements. Therefore, it is important to identify the existing and proposed culinary water level of service to ensure that the new capacities of projects financed through impact fees do not exceed the established standard.

SOURCE

The existing and proposed LOS for the source component is approximately 0.50 GPM per ERC as shown in table 3.2. This is based on the total existing source production of 4,150 GPM, less 680 GPM for emergency back-up and outdoor irrigation. The net source supply (3,470 GPM) is then divided by the number of ERCs in 2013 to calculate the GPM per ERC.

TABLE 3.2: SOURCE LEVEL OF SERVICE (LOS)

ASSET NAME	LOCATION	GALLONS PER MINUTE (GPM)	GPM PER ERC
Rick's Creek	Main Street	900	0.13
Carrington	50 East 1420 North	850	0.12
City Hall	100 East 300 North	800	0.12
Church	200 South 200 East	900	0.13
Lyons	50 East Center Street	400	0.06
Weber Basin Source		300	0.04
Total Source Supply		**4,150**	**0.60**
Less Required Emergency Back-up & Outdoor Irrigation		(680)	
Total Source Supply (Less Required State Emergency Back-up & Outdoor Irrigation)		**3,470**	**0.50**

Source: Centerville City Culinary Water System Master Plan Update, April 2010, page 7, figure 2 for Wells and page 14 for Emergency Back-up and Outdoor Irrigation Requirements. Production based on 8 hours per day for 365 days

[4] UC 11-36a-402(a)

[5] Buildout ERCs were calculated based on existing land use data provided by the City.

STORAGE

The existing level of service for the storage component is approximately 627 gallons per ERC as shown in table 3.3. This is based on the total existing storage capacity of 5,500,000 gallons less 1,170,000 gallons for fire storage and emergency. The net storage (4,330,000 gallons) is then divided by the number of ERCs in 2013 to calculate the gallons per ERC. While the existing level of service for storage is approximately 627 gallons per ERC, the City may choose to adopt a lower proposed level of service for the calculation of the impact fees. The City has chosen to adopt the state required level of service for storage of 540 gallons per ERC.[6]

TABLE 3.3: STORAGE LEVEL OF SERVICE (LOS)

ASSET NAME	LOCATION	GALLON CAPACITY	GALLONS PER ERC
Island View	950 East 200 South	1,000,000	145
1st South	700 East 100 South	1,500,000	217
Parrish Lane	700 East	1,000,000	145
Green Steel	700 East 1100 North	500,000	72
Rolling Hills	400 East 1975 North	500,000	72
Ricks Creek	450 East 1500 North	1,000,000	145
Total Storage Capacity		**5,500,000**	**796**
Less Required Emergency & Fire Storage		(1,170,000)	
Total Storage Capacity (Less Required State Emergency & Fire Storage)		**4,330,000**	**627**
Adopted LOS			**540**

Source: Centerville City Culinary Water System Master Plan Update, April 2010, page 5, figure 1 for Reservoirs and page 16 for Emergency and Fire Storage.

DISTRIBUTION

The 2010 Centerville City Culinary Water System Master Plan does not outline any future growth related priority distribution improvements. As stated in the Master Plan, the System has been modeled using the EPANET computer program developed by the National Risk Management Research Laboratory. The model was calibrated at various locations with different flows and with average daily demand to verify static pressures. The calibration runs were done within 1 to 5 psi for dynamic results and the static calibration was done within 1 psi.[7] Based on this analysis, the system has sufficient capacity to handle new development activity through 2019.

[6] Centerville City Culinary Water System Master Plan, April 2010, page 16, table 4.

[7] Centerville City Culinary Water System Master Plan, April 2010, page 10

SECTION 4: EXISTING FACILITIES INVENTORY

EXISTING SYSTEM VALUE

Based on information provided by the City, the existing system is valued as shown below. These values represent amounts that can be included in any excess capacity calculations and exclude other revenue sources such as grants, donations or developer contributions.

TABLE 4.1: EXISTING SYSTEM VALUE

PROJECT	TOTAL COST	CONTRIBUTIONS	CITY PAID
Source	$2,074,697	$50,543	$2,024,154
Storage	$2,965,747	-	$2,965,747
Distribution	$12,203,563	$4,656,893	$7,546,670

EXCESS CAPACITY

The intent of the equity buy-in component is to recover the costs of the unused capacity in existing infrastructure from new development. This section addresses any excess capacity within the culinary water system.

SOURCE

Based on the existing level of service of 0.50 GPM per ERC, there is no excess capacity within the existing system. Currently demand and capacity are equal at 3,470 GPM, serving approximately 6,911 ERCs. However, in order to maintain that same level of service of 0.50 GPM per ERC in the future, the City will need to expand the capacity of the source component. An additional 525 GPM of source capacity will need to be added to serve the 1,046 new ERCs projected through 2019.

TABLE 4.2: ILLUSTRATION OF EXCESS CAPACITY OF SOURCE COMPONENT

SOURCE	VOLUME (GPM)	ERCS SERVED
Existing Source Capacity	3,470	6,911
Current Source Demand (2013)	3,470	6,911
Excess Capacity	**0**	**0**
	ERCs in Planning Horizon	**1,046**
	Difference	**(1,046)**
	New Source Needed (GPM) at 0.50 GPM/ERC	**525**

STORAGE

A comparison of existing storage capacity relative to the future storage requirements per ERC illustrates excess capacity within the system. The total capacity of the existing storage system is 4,330,000 Gallons. However, the City's current demand for storage is only 3,731,940 gallons, leaving an excess capacity of 598,060 gallons. ERCs are expected to grow by 1,046 through the six-year planning horizon (2013-2019) resulting in a need for an additional 564,840 gallons. This equates to 13 percent of the total capacity within the storage system, leaving approximately one percent or 33,220 gallons available for growth after 2019.

TABLE 4.3: ILLUSTRATION OF EXCESS CAPACITY AND NEW STORAGE REQUIREMENTS

TANK	GALLONS	ERCS SERVED	% OF TOTAL CAPACITY
Existing Storage Capacity	4,330,000	8,019	100.0%
Current Storage Demand (2013)	3,731,940	6,911	86.2%
Excess Capacity	598,060	1,108	13.8%
Future Demand (2013-2019)	564,840	1,046	13.0%
Difference	33,220	62	0.8%

Note: Based on a LOS of 540 gallons/ERC.

The total value of the existing storage facilities (based on the City's depreciation schedule) is $2,965,747. The future demand over the six-year planning horizon will utilize 13 percent of the total capacity of the existing system. Thus, the total buy-in cost to growth for storage is $385,547. Table 4.4 displays this buy-in calculation.

TABLE 4.4: DETERMINATION OF VALUE OF EXISTING STORAGE FACILITIES RELATED TO NEW GROWTH

	COSTS TO CITY	
Total Value of Existing Facilities	**$2,965,747**	Based on existing depreciation schedules less developer improvements and other contributions
Percent Excess Capacity Utilized for Demand 2013-2019	13.0%	See Table 4.3: New ERC Growth through 2019 (1,046) / Total Storage Capacity in ERCs (8,019)
Buy-in Cost to Growth	**$385,547**	

DISTRIBUTION

Based on the analysis provided in the Master Plan, the system has sufficient capacity to handle new development activity through 2019. As a result, the impact fee analysis includes a buy-in component for existing distribution improvements. The buy-in is calculated by apportioning a percentage of the existing distribution costs to new development through buildout as shown in the table below.

TABLE 4.5: DETERMINATION OF VALUE OF EXISTING DISTRIBUTION FACILITIES RELATED TO NEW GROWTH

YEAR	
New ERC's from 2013-2019	1,046
Total ERC Capacity	8,883
Percent Buy-In to New Growth	**11.8%**
Existing Value of Distribution Improvements (less developer improvements and other contributions)	$7,546,670
Value to New Growth (11.8%)	**$890,507**

MANNER OF FINANCING EXISTING PUBLIC FACILITIES

The City has funded its existing capital infrastructure through a combination of different revenue sources, including general utility fund revenues, the issuance of debt, and grant monies. This analysis has removed all funding that has come from federal grants and donations from non-resident citizens to ensure that none of those infrastructure items are included in the level of service.

The City has one piece of outstanding debt related to the system's capacity: the 2012 Water Revenue and Refunding Bonds. This outstanding debt was issued for the purpose of improving the existing system, while at the same time increasing capacity within the system.

2012 WATER REVENUE AND REFUNDING BONDS

In 2012, the City issued $4,210,000 in Water Revenue and Refunding Bonds. An estimated $1,656,000 of the total bond amount was used to pay off the 2002A and 2003 bonds previously issued by the City. Of the remaining $2.5 million of the 2012 bonds, $1,030,000 will be used for growth related improvements. This equates to 24.5% of the total bond amount.

The principal and interest payments for the 2012 bonds are shown in the table below. The total interest cost for the 2012 bonds by year 2031 will be $979,088. Since interest costs are an eligible cost that can be paid for with impact fees, the cost to new growth is $239,877, or 24.5% of the total interest costs of the bonds.

TABLE 4.6: ILLUSTRATION OF OUTSTANDING DEBT & INTEREST COSTS

2012 WATER REVENUE & REFUNDING BONDS, SERIES 2012			
YEAR	PRINCIPAL	COUPON	INTEREST
2012	335,000.00	2.00%	59,100.10

2012 Water Revenue & Refunding Bonds, Series 2012			
Year	Principal	Coupon	Interest
2013	355,000.00	2.00%	109,562.50
2014	365,000.00	2.00%	102,462.50
2015	405,000.00	4.00%	95,162.50
2016	425,000.00	2.50%	78,962.50
2017	185,000.00	2.25%	68,337.50
2018	265,000.00	2.50%	64,175.00
2019	285,000.00	2.50%	57,550.00
2020	305,000.00	2.50%	50,425.00
2021	100,000.00	2.50%	42,800.00
2022	100,000.00	2.50%	40,300.00
2023	105,000.00	3.00%	37,800.00
2024	110,000.00	3.00%	34,650.00
2025	110,000.00	3.00%	31,350.00
2026	115,000.00	3.00%	28,050.00
2027	120,000.00	3.00%	24,600.00
2028	120,000.00	4.00%	21,000.00
2029	130,000.00	4.00%	16,200.00
2030	135,000.00	4.00%	11,000.00
2031	140,000.00	4.00%	5,600.00
Totals:	**$4,210,000**		**$979,087.60**

SECTION 5: CAPITAL FACILITY ANALYSIS

The estimated costs attributed to new growth were analyzed based on existing development versus future development patterns, as well as through an analysis of flow data. From this analysis, a portion of future development costs were attributed to new growth and included in this impact fee analysis as shown in table 5.1. Capital projects related to curing existing deficiencies were not included in the calculation of the impact fees. The costs of projects related to curing existing deficiencies cannot be funded through impact fees.

Total future project costs equate to $1,030,000, as shown in the table below. These projects meet the future source needs related to new growth and are all growth related improvements. The future projects will add 800 GPM in additional source capacity, which will serve 1,593 ERCs based on the LOS of 0.50 GPM/ERC. The planning horizon only anticipated 1,046 ERCs, thus the new source improvements will serve growth beyond the planning horizon of 2019.

TABLE 5.1: ILLUSTRATION OF CAPITAL IMPROVEMENTS

PROJECT	GPM	ERCS SERVED	NEW ERC'S (2013-2019)	% TO GROWTH	TOTAL COST	TOTAL COST TO CITY	COST TO GROWTH
Chase Lane Well							
Chase Lane Well Drill & Engineering	800	1,593	1,046	100%	$425,000	$425,000	
Chase Lane Well Pump House	800	1,593	1,046	100%	$450,000	$450,000	
Chase Lane Well Property	800	1,593	1,046	100%	$70,000	$70,000	
Transmission Line	800	1,593	1,046	100%	$85,000	$85,000	
Total Source:	**800**	**1,593**	**1,046**	**100%**	**$1,030,000**	**$1,030,000**	**$1,030,000**

The City has determined the projects included in this Impact Fee Facilities Plan using capital project and engineering data, planning analysis and other information. The City has provided all future capital project data including project descriptions and estimated project costs. The accuracy and correctness of this plan is contingent upon the accuracy of the data and assumptions. Any deviations or changes in the assumptions due to changes in the economy or other relevant information used by the City for this study may cause this plan to be inaccurate and require modifications.

SYSTEM VS. PROJECT IMPROVEMENTS

System improvements are defined as existing and future public facilities designed to provide services to service areas within the community at large.[8] Project improvements are improvements and facilities that are planned and designed to provide service for a specific development (resulting from a development activity) and considered necessary for the use and convenience of the occupants or users of that development.[9] To the extent possible, this analysis only includes the costs of system improvements related to new growth within the proportionate share analysis.

FUNDING OF FUTURE FACILITIES

The IFFP must also include a consideration of all revenue sources, including impact fees and the dedication of system improvements, which may be used to finance system improvements.[10] In conjunction with this revenue analysis, there must be a determination that impact fees are necessary to achieve an equitable allocation of the costs of the new facilities between the new and existing users.[11]

[8] UC 11-36a-102(20)
[9] UC 11-36a102(13)
[10] 11-36a-302(2)
[11] 11-36a-302(3)

In considering the funding of future facilities, the City has determined the portion of future projects that will be funded by impact fees as growth-related, system improvements. Impact fees are an appropriate funding and repayment mechanism of the growth-related improvements. Where applicable, impact fees will offset the cost of future facilities. However, impact fees cannot be used to fund non-qualified expenses (i.e. to cure existing deficiencies, to raise the level of service, to recoup more than the actual cost of system improvements, or to fund overhead). Other revenues such as utility rate revenues, property taxes, sales tax revenues, grants, or loans can be used to fund these types of expenditures, as described below.

UTILITY RATE REVENUES

Utility rate revenues serve as the primary funding mechanism within enterprise funds. Rates are established to ensure appropriate coverage of all operations and maintenance expenses, debt service coverage, and capital project needs. Impact fee revenues are generally considered non-operating revenues and help offset future capital costs.

PROPERTY TAX REVENUES

Property tax revenues are not specifically identified in this analysis as a funding source for growth-related capital projects, but inter-fund loans can be made from the general fund which would ultimately include some property tax revenues. Inter-fund loans would be repaid once sufficient impact fee revenues have been collected. The City does not currently assess interest on money borrowed from the general fund; however, the City may adopt a policy to do so.

GRANTS, DONATIONS AND DEVELOPER CONTRIBUTIONS

Grants, donations or developer contributions are not currently contemplated in this IFFP. However, the impact fees should be adjusted if grant monies are received. New development may be entitled to a reimbursement for any grants or donations received by the City for growth related projects, or for developer funded IFFP projects.

IMPACT FEE REVENUES

Impact fees have become an ideal mechanism for funding growth-related infrastructure. Impact fees are charged to ensure that new growth pays its proportionate share of the costs for the development of public infrastructure. Impact fee revenues can also be attributed to the future expansion of public infrastructure if the revenues are used to maintain an existing level of service. Increases to an existing level of service cannot be funded with impact fee revenues. Analysis is required to accurately assess the true impact of a particular user upon the City infrastructure and to prevent existing users from subsidizing new growth.

DEBT FINANCING

In the event the City has not amassed sufficient impact fees to pay for the construction of time sensitive or urgent capital projects needed to accommodate new growth, the City must look to revenue sources other than impact fees for funding. The Impact Fees Act allows for the costs related to the financing of future capital projects to be legally included in the impact fee. This allows the City to finance and quickly construct infrastructure for new development and reimburse itself later from impact fee revenues for the costs of principal and interest.

PROPOSED CREDITS OWED TO DEVELOPMENT

The Impact Fees Act requires a local political subdivision or private entity to ensure that the impact fee enactment allows a developer, including a school district or a charter school, to receive a credit against or proportionate reimbursement of an impact fee if the developer: (a) dedicates land for a system improvement; (b) builds and dedicates some or all of a system improvement; or (c) dedicates a public facility that the local political subdivision or private entity and the developer agree will reduce the need for a system improvement.[12]

The facilities must be considered system improvements or be dedicated to the public, and offset the need for an improvement identified in the IFFP.

[12] 11-36a-402

EQUITY OF IMPACT FEES

Impact fees are intended to recover the costs of capital infrastructure that relate to future growth. The impact fee calculations are structured for impact fees to fund 100 percent of the growth-related facilities identified in the proportionate share analysis as presented in the impact fee analysis. Even so, there may be years that impact fee revenues cannot cover the annual growth-related expenses. In those years, other revenues such as general fund revenues will be used to make up any annual deficits. Any borrowed funds are to be repaid in their entirety through impact fees.

NECESSITY OF IMPACT FEES

An entity may only impose impact fees on development activity if the entity's plan for financing system improvements establishes that impact fees are necessary to achieve parity between existing and new development. This analysis has identified the improvements to public facilities and the funding mechanisms to complete the suggested improvements. Impact fees are identified as a necessary funding mechanism to help offset the costs of new capital improvements related to new growth. In addition, alternative funding mechanisms are identified to help offset the cost of future capital improvements.

SECTION 6: CULINARY WATER IMPACT FEE CALCULATION

The calculation of impact fees relies upon the information contained in this analysis. Impact fees are calculated based on many variables centered on proportionality and level of service. The City currently provides culinary water to its residents and businesses. As a result of new growth, the culinary system is in need of expansion to perpetuate the level of service that the City has historically maintained. The Centerville City Culinary Water System Master Plan Update 2010 outlines the recommended capital projects that will maintain the established level of service.

PROPOSED CULINARY WATER IMPACT FEE

PLAN BASED (FEE BASED ON DEFINED CIP)

Impact fees can be calculated based on a defined set of costs specified for future development. The improvements are identified in a capital plan as growth related projects. The total project costs are divided by the total demand units the projects are designed to serve. Under this methodology, it is important to identify the existing level of service and determine any excess capacity in existing facilities that could serve new growth. Impact fees are then calculated based on many variables centered on proportionality share and level of service.

CULINARY WATER IMPACT FEE CALCULATION

The culinary water impact fees proposed in this analysis will be assessed within all areas of the City. The tables below illustrate the appropriate buy-in component, the fee associated with projects occurring in the next six years and the applicable costs related to the conveyance of new water sources. The impact fee calculations also include any debt related expense. The proportionate share analysis determines the proportionate cost assignable to new development based on the proposed capital projects and the estimated ERC demand served by the proposed projects, in this case, the ERCs over the next six years.

TABLE 6.1: CALCULATION OF PROPORTIONATE IMPACT FEE

	TOTAL COST TO CITY	% TO GROWTH	COST TO GROWTH	ERCS SERVED	FEE PER ERC
Excess Capacity (Buy-In Component)					
Storage	$2,965,747	13.0%	$385,547	1,046	$369
Distribution (Total Minus Dev Contributions)	$7,546,670	11.8%	$890,507	1,046	$851
Cost to Future Growth					
Source	$1,030,000	100.0%	$1,030,000	1,593	$646
Outstanding Debt (Interest)	$979,088	24.5%	$239,877	1,593	$151
Other					
Professional Expense	$10,040	100.0%	$10,040	1,046	$10
Total	**$12,531,545**		**$2,555,971**		**$2,027**

COST TO NEW GROWTH CALCULATIONS:

Excess Capacity Storage: Estimated ERCs in the planning horizon are anticipated to be 1,046. Using a level of service of 540 gallons per ERC, approximately 564,840 gallons would be required within the planning horizon. This makes approximately 13 percent of the current storage capacity of 4,330,000. This same 13 percent is applied to the total cost of existing storage improvements to calculate the cost of growth included in the impact fee.

Excess Capacity Distribution: The distribution system is anticipated to serve through buildout or approximately 8,883 ERCs. The ERCs anticipated in the planning horizon (1,046) make up 11.8 percent of the total buildout projection. This percentage is applied to the total cost of existing distribution improvements to calculate the cost of growth included in the impact fee.

Cost to Future Growth Source: 100 percent of the costs for source are considered growth related. However, the future source improvements are anticipated to serve more ERCs than projected within the planning horizon. Future source improvements will serve approximately 1,593 ERCs, thus the total cost to growth is spread over this amount.

Cost to Future Growth Debt: The future cost to growth for source improvements makes up 24.5 percent of the total par amount for the Series 2012 bonds. This same percentage is applied to the interest cost for the Series 2012 bonds and is included in the impact fee.

Other: 100% of the cost to update the IFFP and IFA in the planning horizon (through 2019) is attributed to growth.

A total of $2.56 million is identified as the necessary buy-in and future capital cost to maintain the level of service for new development activity. The professional expense includes the current cost to update the IFFP and IFA. The costs to growth for the excess capacity, the professional expense, the costs for future projects and outstanding interest are apportioned based on the ERCs anticipated to be served by these facilities. The total fee per ERC is estimated at **$2,027**. The impact fee per meter size is illustrated in the Table 6.2.

TABLE 6.2: IMPACT FEE PER METER SIZE

METER SIZE (INCHES)	ERC MULTIPLIER	IMPACT FEE PER METER SIZE	EXISTING IMPACT FEE	% CHANGE
3/4	1.00	$2,027	$1,200	69%
1	2.50	$5,068	$3,000	69%
1 1/2	6.00	$12,162	$7,200	69%
2	10.00	$20,270	$12,000	69%
3	22.50	$45,608	$27,000	69%
4	62.50	$126,688	$75,000	69%

Source: ERC Multipliers provided by Centerville City

NON-STANDARD CULINARY WATER IMPACT FEES

The City reserves the right under the Impact Fees Act[13] to assess an adjusted fee that more closely matches the true impact that the land use will have upon the City's culinary water system. This adjustment could result in a different impact fee if evidence suggests a particular user will create a different impact than what is standard for its category. The impact fee for non-standard development would be determined based on the water utilization (in GPM) divided by the average gallons per minute per ERC (0.50), multiplied by the impact fee per ERC, as shown below.

FORMULA FOR NON-STANDARD WATER IMPACT FEES:

Estimated Usage (GPM) / 0.50 (GPM) * $2,027 = Impact Fee

CONSIDERATION OF ALL REVENUE SOURCES

The Impact Fees Act requires the proportionate share analysis to demonstrate that impact fees paid by new development are the most equitable method of funding growth-related infrastructure. See Section 5 for further discussion regarding the consideration of revenue sources.

EXPENDITURE OF IMPACT FEES

Legislation requires that impact fees should be spent or encumbered with six years after each impact fee is paid. Impact fees collected in the next five to six years should be spent only on those projects outlined in the IFFP as growth related costs to maintain the LOS.

GROWTH-DRIVEN EXTRAORDINARY COSTS

The City does not anticipate any extraordinary costs necessary to provide services to future development.

SUMMARY OF TIME PRICE DIFFERENTIAL

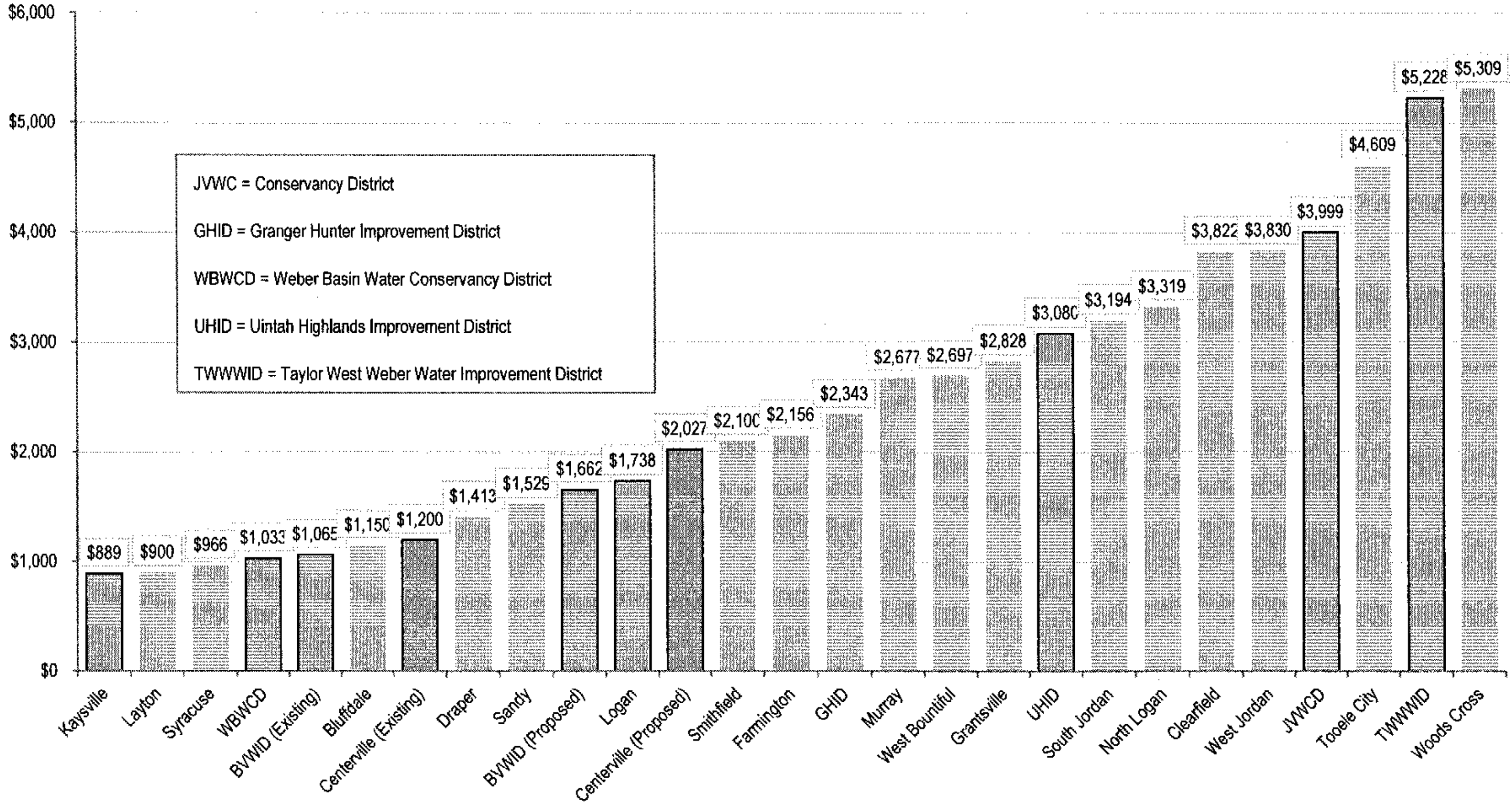
The Impact Fees Act allows for the inclusion of a time price differential to ensure that the future value of costs incurred at a later date are accurately calculated to include the costs of construction inflation. While an inflation component may be included in the impact fee analysis to reflect the future cost of facilities, it is not considered in the cost estimates in this study. However, the City has included the interest cost associated with the 2012 Bond.

[13] UC 11-36a-402(1)(c)

LYRB

Comparative Fees

- **Culinary Water Impact Fee**



CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 4.

Short Title: Public Hearing - Woods Park Subdivision - Final Plat

Initiated By: Cory Snyder - Community Development Director

Scheduled Time: 7:20

SUBJECT

Consider Final Plat for the Woods Park Subdivision - 690 West 2400 North. Alan Prince Development, Applicant

RECOMMENDATION

Approve Final Plat for the Woods Park Subdivision located at approximately 690 West 2400 North, subject to the conditions of approval and listed findings as set forth in the Staff Report.

BACKGROUND

See attached Transmittal Report from Cory Snyder, Community Development Director, as well as earlier staff report to the Planning Commission and minutes of the July 10, 2013 Planning Commission meeting pertaining to this matter.

ATTACHMENTS:

Name:	Description:
backup4_08-06-13_CC_Staff_Report_Woods_Park_Final_Plans_Plat.pdf	Cory's Transmittal Report - PC's recommendation to City Council
Pages_from_7_10_2013_minutes.pdf	PC minutes 7/10/2013
Pages_from_7_10_2013_PC.pdf	PC staff report - 7/10/2013

CITY COUNCIL TRANSMITTAL REPORT
COMMUNITY DEVELOPMENT DEPARTMENT

DATE: **JULY 31, 2013**

TO: **STEVE THACKER, CITY MANAGER**

FROM: **CORY SNYDER, COMMUNITY DEVELOPMENT DIRECTOR**

PROPERTY OWNER: **VAL WOODS TRUST**
103 EAST 500 SOUTH
FARMINGTON, UT 84025

APPLICANT: **ALAN PRINCE**
4255 SUGAR PINE COURT
LEHI, UT 84043

PROPERTY: **WOODS PARK DEVELOPMENT**
690 WEST 2400 NORTH

ACREAGE: **~6.10 ACRES (*GROSS AREA*)**

ZONING: **R-L/PD** ***(RESIDENTIAL-LOW/PLANNED DEVELOPMENT)***

APPLICATION: **FINAL SUBDIVISION PLAT AND PLANS**

RECOMMENDATION: **APPROVAL OF THE PROPOSED SUBDIVISION**

BACKGROUND

The proposed 29-lot development is to be located at approximately 690 West 2400 North, which is on the north end of the City limit line adjacent to the Frontage Road. The applicant previously received the requisite "planned development overlay" and preliminary subdivision approvals and now desires to proceed to final subdivision plat and plans approval.

PLANNING COMMISSION RECOMMENDATION & STAFF COMMENT

On July 10, 2013, the Centerville City Planning Commission recommended approval of the final subdivision plat and plan for the proposed Woods Park Subdivision to the City Council, subject to the applicant addressing, correcting, or resubmitting the following prior to submittal to the City Council:

1. The final subdivision plat and plans shall address the following:
   a. Several final plan exhibits incorrectly depict 30 lots/building pads, where only 29 units were originally approved.
   Staff Response: *The exhibits in question were actually a historical record taken from past reviews by the City. The Final Plat indeed depicts the approved 29 units.*

b. A reference plat note is missing on the final plat indicating the development is subject to a PDO approval and all homes are to comply with such architectural requirements.
Staff Response: *See Note 12.*

c. The fencing in the side yard areas is to be eliminated and just allow fencing in the rear yards of the homes. A note on the final plat shall be provided to call out this restriction.
Staff Response: *See Note 18.*

d. The plans and plat shall address the driveway cut width to be a maximum of a 2-car width and to reduce the hard surface to a minimum allowable on the 3-car driveway plans as provided in general plat note #13 with staff adding language to limit additional hardscape beyond the curb cut and drive approach skirt.
Staff Response: *See Note 13*

e. The plat and plans shall address the Planning Commission's expectation for a commitment that each rear elevation has a minimum of four (4) architectural design elements as provided in general plat note #14 with at least one of those being material variation above the fence line. This can be clarified by amending the concluding sentence of plat note #14 to include only a, e, and h.
Staff Response: *See Note 14*

f. A reference plat note shall indicate that no driveway shall be allowed on the side yard (street sides) of Lots 1, 14, 15 and 21.
Staff Response: *See Note 16*

g. A plat note indicating that there be a maximum allowance of 6' (depth) x 15' (width) uncovered decks outside the rear yard building line. Any amendments to the associated covenants, conditions, and restrictions shall include these parameters.
Staff Response: *See Note 17*

h. The applicant shall prepare and submit the required covenants, conditions, and restrictions along with the homeowners association documents to the City Attorney for review and acceptance with applicable laws and approvals related to the PDO approval of the Woods Park Development.
Staff Response: *See Exhibit in Final Subdivision Plat Approval Documentation.*

i. General plat note #18 be amended by changing the word "can" to the word "shall."
Staff Response: *See Note 18 - complies*

2. The final plat and plan submittal shall also be subject to all terms and conditions of the preliminary plan approval and the applicable Development Agreement associated with the Wood Park Development.
Staff Response: *Ongoing Condition of approval*
3. The final plat and plan submittal shall be subject to the acceptance of the flood inundation study, as determined by the City Engineer. Any needed amendments to the related Development Agreement shall be prepared and accepted prior to the time of final plan and plat recording.

Staff Response: The City Engineer has accepted the study. The City Attorney indicates that an amendment to the Development Agreement is not warranted.

4. The applicant or subsequent developer/owners of the project shall remain responsible for payment of all outstanding professional service fees related to the review of the final subdivision plans and plat.
Staff Response: Ongoing condition of approval

Reasons for the Action (Findings):

a) The Commission finds that the final subdivision plat and plan is to comply with the terms and conditions of Wood Park PDO Zone Map Amendment and associated conceptual plan acceptance that was approved in April of 2013.
b) The Commission finds that the conditions of the final plat and plan recommendation, subject to terms and conditions of the PDO, are consistent with Woods Park PDO Zone Map Amendment.
c) The Commission finds that the terms and conditions of the final plat and plan recommendation [are] consistent with preliminary subdivision approval, dated June 12, 2013.

Planning Commission Vote (5-0):

Commissioner	Yes	No	Not Present
Fillmore (Chair)	X		
Holman			X
Markham	X		
Kjar			X
Merrill	X		
Hirschi	X		
Randall	X		

CITY STAFF RECOMMENDATION

As per the Planning Commission's directive that the applicant address, correct, or resubmit the subdivision plans and plat prior to submittal to the City Council, City Staff makes the following recommendations for City Council approval of the final subdivision plat and plans.

1. The proposed plat notes should be revised and resubmitted (in redline form) to address the following:
   a) Add to the first part of Note #1: "Unless otherwise noted,"
   b) Add "(P.U.E.)" after the first use of the term Public Utility Easements in Note #2.
   c) Delete "and the City Engineer" from the end of Note #3.
   d) Revise Note #4 to reflect that the Developer shall install and the HOA shall be responsible to maintain, irrigate, provide irrigation water, and mow the Detention Basin Areas and Drainage Ways as shown on the plat.
   e) Have City Engineer or Public Works Director check the City responsibility provisions at the end of Note #4 regarding silt removal.
   f) Add to the end of Note #6: ", the Woods Park Development Agreement, and terms and conditions of PDO Zoning Approval granted by Centerville

City. Any and all development and construction within the subdivision shall comply with such recorded documents and approvals."

g) Compare Note #4 and Note #7 and make sure they are consistent.
h) Add to the first part of Note #8: "Unless otherwise noted,"
i) Have City Engineer check the provisions regarding finished floor elevations in Note #9. Compare with language in Section 12 of the Development Agreement which provides "The finished base floor elevation for any dwelling within the subdivision, including basements, whether finished or unfinished, shall be one foot (1') above the projected 100 year flood event for the Property."
j) Add to Note #9 the Development Agreement requirement as follows: "Builders shall be required to provide an engineer's certificate of all base floor elevations prior to pouring the footings for any structure."
k) Eliminate the word "statue" as used in Note #10.
l) Add to the end of Note #11: "and all terms and conditions of PDO Zoning Approval and final plat approval by Centerville City.
m) In Note #14, replace the term "community" with "subdivision," delete the "a" before inclusion, and replace the term "items" with "architectural design elements"
n) Compare Note #15 to Note #18. Is Note #15 regarding individual fencing?
o) Consider eliminating "elevated" from Note #17 regarding decks in the setback area. Confirm with Community Development Director whether it is "any deck" or just "elevated decks" that are subject to the encroachment restriction. Compare plat note language to PC Condition #1(g). Change the "or" to "nor" in first sentence.
p) In Note #18, change the first "to be" to "shall be" and add "than" after the word "other" in second line.

2. Add the following plat notes:
   a) All coordinates shown are based on Davis County Surveyor's Office Datum.
   b) No building permit for any lot within the subdivision shall be issued until and unless all wet utilities have been installed and completed and all streets are rough graded in accordance with applicable City Ordinances, including the storm drain improvements along Lund Lane, and until the Detention Basin is installed, completed and functioning, as more particularly provided in Section 11 of the Development Agreement as recorded against the property.
   c) No building permit for any lots within the subdivision shall be issued until and unless the City has obtained all required permits from UPRR and UTA for the construction of the Drainage Culvert and no certificate of occupancy shall be issued for any building within the subdivision until and unless the Drainage Culvert has been installed, completed and is functioning, as more particularly provided in Section 11 of the Development Agreement as recorded against the property.
   d) No building permit for any lots within Flood Plain Zone A, shown as Lots 2-5, shall be issued until and unless the Detention Basin and the Drainage Culvert have been installed, completed and are functioning, and Developer

has received LOMR approval and all conditions of the LOMR have been met, as more particularly provided in Section 11 of the Development Agreement as recorded against the property.

e) All property within the subdivision shall be developed in accordance with the City Ordinances, PDO Rezone Approval, Final Plat Approval, and all subsequent applicable final plans and construction drawings for individual lots within the subdivision. All applicable City, State and Federal construction standards and specifications shall be met. All owners, users, lots and development within the subdivision shall be subject to all agreements, easements, and restrictions governing the property, including, but not 3 limited to, the Woods Park PDO Development Agreement, as amended, and the Centerville City Planned Development Overlay Ordinances, as amended.

f) All designated common areas shall be owned and maintained by the HOA and shall be prohibited from future development.

3. Approval of the final plat for the Woods Park PDO is subject to and conditioned upon compliance with all terms and conditions of the Development Agreement dated April 4, 2013, as recorded against the property.
4. Final plat approval is conditioned upon and subject to Developer obtaining a Letter of Map Revision from FEMA pursuant to Section 10 of the Development Agreement as recorded against the property.
5. Prior to recording the final plat, Developer shall record and complete the boundary line adjustment acquiring the 50' strip of real property to be acquired from the Wrights and included within the subdivision.
6. Prior to recording the final plat, Developer shall ensure that all property within the subdivision is subject to the Development Agreement and PDO Zoning. If any boundary line adjustment has increased the size of the subdivision or added property thereto that is not subject to the Development Agreement, the Development Agreement shall be recorded against such additional property in a manner acceptable to the City Attorney. Any PDO Zoning issues shall be addressed in accordance with applicable City Ordinances.
7. Applicant shall show all easements of record on the plat or submit a vacation of easement prior to recording the plat and subject to review by the City Engineer.
8. Prior to recording the final plat, applicant shall submit an updated title report (current within 30 days) for the entire subdivision for review and approval of encumbrances and ownership issues by the City Attorney and City Engineer.
9. Developer to designate on final plat Parcels A, B and C as "Common Area to be owned and maintained by HOA" with associated plat note regarding HOA maintenance requirements and CC&R's. Provide adequate guarantees to protect such common areas from future development as required by PDO Ordinance (Section 12-41-110).
10. Revise CC&R's to comply with requirements of PDO Ordinance (Section 12-41-110) and suggested revisions from City Attorney. CC&R's shall be recorded prior to or concurrently with final plat. See, CC&R Review dated July 30, 2013.
11. Show existing and proposed Flood Plain Zones on the plat in accordance with Section 10 of the Development Agreement.

12. Except as specifically agreed to by the City in the Development Agreement for off-site drainage culvert improvements under the UPRR, Developer shall be required to pay for and install all required on-site and off-site public improvements and infrastructure for the Property to the extent reasonably necessary and related to the impact of the development in accordance with City Ordinances and engineering standards, including, but not limited to, streets, curbs, gutters, sidewalks, culinary waterlines and facilities, fire hydrants, street lights, sewer lines and facilities, secondary irrigation waterlines and facilities, storm drainage facilities, subdrain facilities, utilities, and detention facilities. All such improvements shall be bonded for and constructed and installed in accordance with applicable City Ordinances and specifications as determined necessary by the City Engineer. All plans and construction for water, sewer, street and drainage improvements shall be reviewed and approved by the City Engineer.

Reasons for the Action (Findings):

a) The City Council finds that the final subdivision plat and plan is to comply with the terms and conditions of Wood Park PDO Zone Map Amendment and associated conceptual plan acceptance that was approved in April of 2013.
b) The City Council finds that the conditions of the final plat and plan recommendation, subject to terms and conditions of the PDO, are consistent with Woods Park PDO Zone Map Amendment.
c) The City Council finds that the terms and conditions of the final plat and plan recommendation are consistent with preliminary subdivision approval by the Planning Commission, dated June 12, 2013.

Larry Miller Megaplex Theater which has a similar height to the proposed building. Staff does not believe the increased height will be a detriment to the PDO or pose any negative impacts that have not already been addressed as part of the PDO process. In addition, the Fire Marshal has also provided approval with regard to fire access.

Commissioner Hirschi questioned the visual impact of this building from the ground. Mr. Toponce explained appropriate buffers and landscaping will be installed. In addition, the proposed building is separated from the residential units by Legacy Boulevard. This too will help diminish the visual impact.

Craig Widmier, applicatnt, said this building was always intended to be 4-stories and has always been presented as such. This was simply an oversight. He said the project will meet all requirements of the development agreement.

Chair Merrill opened the public hearing. There was no comment; he closed the public hearing.

Commissioner Fillmore made a **motion** for the Planning Commission to approve the conditional use permit for the office building height located at 1148 West Legacy Crossing Boulevard, subject to the following condition:

1. The allowable height for the Legacy Crossing 4-Story Building, located on Lot 405, shall not exceed 58' in total height, from the finished grade to the top of the finished floor; excluding all applicable exceptions found in Section 12-55-120 of the Zoning Ordinance.

Reasons for the Action (findings):
1. The applicant has submitted a complete conditional use permit application according to Section 12-21-100(d)(1).
2. The design of the building and site was previously approved on October 10, 2012.
3. No negative impacts were found to occur if the additional height were granted [Section 12-21-100(e)(3,5)].

The motion was seconded by Commissioner Randall and passed by unanimous vote (5-0).

WOODS PARK SUBDIVISION | 690 WEST 2400 NORTH (LUND LANE)
Consideration of a final subdivision plan & plat for the Woods Park Subdivision, which consists of 29 building lots, located at 690 West 2400 North, in the R-L(PD) Zone. Alan Prince, Prince Development, Applicant.

Cory Snyder, Community Development Director, reported the applicant is seeking final approval for the Woods Park subdivision. He reviewed the color boards and the conditions set during preliminary approval. He explained the conditions/issues which have yet to be completed (see staff report dated July 10, 2013). Many of these outstanding issues are those set by the Commission during the preliminary process. He explained approval could still be granted conditioned on completion of outstanding issues prior to City Council approval.

Alan Prince, applicant, distributed a full size plat and documentation. The final plat shows twenty-nine (29) lots as approved. He reviewed the plat notes stating many of the outstanding issues are listed on the plat notes. The plat notes discuss rear elevation design elements (plat note #14), fencing color (#15), side yard fencing (#11), driveway width (#13), side loading garages (#16), and perimeter fencing including a mix of decorative and solid styles (#18). He said the homes originally envisioned were nowhere near as nice as the homes that will now be required. He explained, due to elevation, the proposed homes will have walk out basements at the back. He requested decks be allowed as discussed in plat note #17. It is reasonable to provide a deck outside the main living space for access to the rear yard. Decks encroaching the rear yard setback will not be covered. He said the proposed homes are 40-50 feet wide and the deck limit is 15 feet wide. This is not overly intrusive. He believes all issues have been dealt with and requests approval.

Commissioner Fillmore said the quality of this development is exciting, but she also wants to make sure all negative impacts are addressed. This is a major change to the current density and zoning in this area. She said plat note #14 does not meet the Commission's specific desires regarding rear elevation elements. She suggested at least one of the elements a, e, or h as listed be required. She said plat note #13 only discusses curb cut and driveway approach skirt width. It does not discuss the actual driveway width. She would like to ensure minimal hard surface beyond the drive approach. She also suggested plat note #18 be amended to a "shall" rather than a "can."

Mr. Snyder agreed clarifying the Commission's desires with regard to rear elevation elements is important. The applicant claims Henry Walker will be the builder of this subdivision, but it is also still possible another builder could purchase the project. It is important to make sure all conditions are clearly stated on the plat. He agreed the interior driveway should also be limited in width, not just the curb cut and drive approach skirt. He said there is still concern with elevated decks and possible privacy issues.

Commissioner Hirschi expressed concern with elevated decks on the south and east sides of the development. Privacy issues could arise. He said the Commission could consider restricting decks just on those sides of the development. Commissioner Randall agreed.

Commissioner Fillmore explained she strictly addressed decks in the Chapel Hill subdivision because there were already existing neighbors. In this case, there are no close existing structures/neighbors. Any adjacent future developments will be aware of the existing conditions on this development, including decks.

Commissioner Fillmore made a **motion** for the Planning Commission to recommend approval of the final subdivision plat and plan for the proposed Woods Park Subdivision to the City Council, subject to the applicant addressing, correcting, or resubmitting the following prior to submittal to the City Council:

Conditions:

1. The final subdivision plat and plans shall address the following:
    a. Several final plan exhibits incorrectly depict 30 lots/building pads, where only 29 units were originally approved.
    b. A reference plat note is missing on the final plat indicating the development is subject to a PDO approval and all homes are to comply with such architectural requirements.
    c. The fencing in the side yard areas is to be eliminated and just allow fencing in the rear yards of the homes. A note on the final plat shall be provided to call out this restriction.
    d. The plans and plat shall address the driveway cut width to be a maximum of a 2-car width and to reduce the hard surface to a minimum allowable on the 3-car driveway plans as provided in general plat note #13 with staff adding language to limit additional hardscape beyond the curb cut and drive approach skirt.
    e. The plat and plans shall address the Planning Commission's expectation for a commitment that each rear elevation has a minimum of four (4) architectural design elements as provided in general plat note #14 with at least one of those being material variation above the fence line. This can be clarified by amending the concluding sentence of plat note #14 to include only a, e, and h.
    f. A reference plat note shall indicate that no driveway shall be allowed on the side yard (street sides) of Lots 1, 14, 15 and 21.
    g. A plat note indicating that there be a maximum allowance of 6' (depth) x 15' (width) uncovered decks outside the rear yard building line. Any amendments to the associated covenants, conditions, and restrictions shall include these parameters.
    h. The applicant shall prepare and submit the required covenants, conditions, and restrictions along with the homeowners association documents to the City Attorney for review and acceptance with applicable laws and approvals related to the PDO approval of the Woods Park Development.

i. General plat note #18 be amended by changing the word "can" to the word "shall."

2. The final plat and plan submittal shall also be subject to all terms and conditions of the preliminary plan approval and the applicable Development Agreement associated with the Wood Park Development.
3. The final plat and plan submittal shall be subject to the acceptance of the flood inundation study, as determined by the City Engineer. Any needed amendments to the related Development Agreement shall be prepared and accepted prior to the time of final plan and plat recording.
4. The applicant or subsequent developer/owners of the project shall remain responsible for payment of all outstanding professional service fees related to the review of the final subdivision plans and plat.

Reasons for the Action (findings):

a) The Commission finds that the final subdivision plat and plan is to comply with the terms and conditions of Wood Park PDO Zone Map Amendment and associated conceptual plan acceptance that was approved in April of 2013.
b) The Commission finds that the conditions of the final plat and plan recommendation, subject to terms and conditions of the PDO, are consistent with Woods Park PDO Zone Map Amendment.
c) The Commission finds that the terms and conditions of the final plat and plan recommendation is consistent with preliminary subdivision approval, dated June 12, 2013.

The motion was seconded by Commissioner Hirschi and passed by unanimous roll-call vote (5-0).

PUBLIC HEARING | CHASE LN CULINARY PUMP HOUSE | 70 E CHASE LN Consideration of a final site plan and conditional use permit for a public utility substation for the Chase Lane Culinary Water Pump House, located at 70 East Chase Lane, for the construction of a new well site in the R-L Zone. Centerville City, Applicant

Brandon Toponce, Assistant Planner, reviewed the proposed application and site plan. The applicant has submitted the necessary landscape, lighting, and architectural plans as requested. The proposed building and site will blend with its surroundings as required. All lighting will face down and away from neighbors. The applicant plans to start construction in September. There are a number of chemicals used inside the pump house which are dangerous. The applicant has provided the necessary information regarding these dangerous chemicals including a plan on how the public will be kept safe. The applicant has also submitted a noise study showing the noise of a pump house does not exceed that of a traditional home. The pump

CENTERVILLE CITY
COMMUNITY DEVELOPMENT DEPARTMENT

655 North 1250 West, Centerville, Utah 84014
(801) 292-8232

STAFF REPORT
AGENDA: ITEM 3

PROPERTY OWNER: VAL WOODS TRUST
103 EAST 500 SOUTH
FARMINGTON, UT 84025

APPLICANT: ALAN PRINCE
4255 SUGAR PINE COURT
LEHI, UT 84043

PROPERTY: WOODS PARK DEVELOPMENT
690 WEST 2400 NORTH

ACREAGE: 6.10 ACRES (*GROSS AREA*)

ZONING: R-L/PD *(RESIDENTIAL-LOW/PLANNED DEVELOPMENT)*

APPLICATION: FINAL SUBDIVISION PLAT AND PLANS

RECOMMENDATION: TBD (*see options recommended by staff*)

BACKGROUND

The proposed 29-lot development is to be located at approximately 690 West 2400 North, which is on the north end of the City limit line adjacent to the Frontage Road. The applicant previously received a "planned development overlay" approval with an R-L Zoning and now desires to proceed to final subdivision plat and plans approval.

PREVIOUS PRELIMINARY SUBDIVISION APPROVAL & STAFF REPONSE

On June 12, 2013, the Planning Commission approved the preliminary subdivision plans for the proposed Woods Park Subdivision, subject to the following:

1. A final subdivision application and plans shall be submitted, within one (1) year, in accordance with the requirements of Title 15, Subdivisions and of Title 12-Zoning Ordinance.
   - **Staff Response:** Submittal received June 29, 2013.

2. The final plat and plans shall reflect the design, layout and all related items, as presented with the preliminary plan submittal, except as modified with the conditions of preliminary subdivision approval.

- **Staff Response:** [redacted].

3. Such final plat and plan submittal shall also be subject to all terms and conditions of the conceptual plan and the applicable Development Agreement associated with the Wood Park Development.
   - **Staff Response:** [redacted]

4. The final plat and plans shall also address the following:
   a. The City Engineer's request for two (2) sidewalks easements outside the right-of-way to provide internal connections to Lund Lane (east side entrance and to a future road north side of east street stub).
      - **Staff Response:** [redacted]

   b. The City Engineer's requests that fencing in the side yard areas be eliminated and just allow fencing in the rear yards of the homes. A note on the final plat shall be provided to call out this restriction.
      - **Staff Response:** [redacted]

   c. The City Engineer's request to straighten and align pedestrian crossings to facilitate future road maintenance.
      - **Staff Response:** [redacted]

   d. Provide a reference note on the final plat indicating the development is subject to a PDO approval and all homes are to comply with such architectural requirements.
      - **Staff Response:** [redacted]

   e. The side yard setback corrected to 5 feet for each lot, for a combined total of 10 feet between homes.
      - **Staff Response:** [redacted]

   f. Provide a plat note addressing the use of detached accessory buildings.
      - **Staff Response:** [redacted]

   g. The applicant shall address the driveway cut width to be a maximum of a 2-car width and to reduce the hard surface to a minimum allowable on the 3-car driveway plans.
      Staff Response: [redacted].

   h. Tonight, the applicant submitted a list of rear elevation architectural design elements. The Planning Commission expects a commitment that each rear elevation has a minimum of four (4) architectural design elements with at least one of those being material variation above the fence line.
      Staff Response: [redacted].

i. The pop-outs along the fence on Lund Lane are adequate. The Planning Commission prefers the fence be of colored vinyl and requires that color to be solid throughout the materials.
Staff Response: Compliance = No reference on exhibits indicated

j. Deck setbacks shall meet City Standards. The applicant may address use of uncovered decks for modification review.
   - **Staff Response:** Compliance = To be determined. The applicant is requesting that a maximum allowance of 6'x15' uncovered decks be approved with the final plans.

k. No driveway shall be allowed on the side yard of Lots 1, 14, 15 and 21.
Staff Response: [redacted]

5. The final plat submittal shall also address the needed drainage system improvements to properly manage the anticipated creek flow and flood waters, as recommended by the City Engineer. Any needed amendments to the related Development Agreement shall be prepared at the time of final plan and plat submittal.
   - **Staff Response:** Compliance = Yes, an inundation study was provided and accepted by the City Engineer. The City Engineer and Attorney are reviewing the plan and will make any needed recommendations.

6. The developer shall remain responsible for payment of all outstanding professional service fees related to the review of the preliminary subdivision plans.
   - **Staff Response:** [redacted]

PLANNING STAFF RECOMMENDATION

OPTION #1 (to table)

Suggested Motion for the final subdivision plat and plan approval for the Woods Park Development: I hereby make a motion for the Planning Commission to table the final subdivision plat and plan for the proposed Woods Park Subdivision, subject to the applicant addressing, correcting, or resubmitting the following:

1. Several final plan exhibits incorrectly depict 30 lots/building pads, where only 29 units were originally approved.
2. A reference plat note is missing on the final plat indicating the development is subject to a PDO approval and all homes are to comply with such architectural requirements.
3. The fencing in the side yard areas is to be eliminated and just allow fencing in the rear yards of the homes. A note on the final plat shall be provided to call out this restriction.
4. The plat and plans shall address the driveway cut width to be a maximum of a 2-car width and to reduce the hard surface to a minimum allowable on the 3-car driveway plans.
5. The plat and plans shall address the Planning Commission's expectation for a commitment that each rear elevation has a minimum of four (4) architectural

design elements with at least one of those being material variation above the fence line.

6. A reference plat note shall indicate that no driveway shall be allowed on the side yard (street sides) of Lots 1, 14, 15 and 21.

OPTION #2 (to recommend approval)

Suggested Motion for the final subdivision plat and plan approval for the Woods Park Development: I hereby make a motion for the Planning Commission to recommend the final subdivision plat and plan for the proposed Woods Park Subdivision to the City Council, subject to the applicant addressing, correcting, or resubmitting the following prior to submittal to the City Council:

1. The final subdivision plat and plans shall address the following:
    a. Several final plan exhibits incorrectly depict 30 lots/building pads, where only 29 units were originally approved.
    b. A reference plat note is missing on the final plat indicating the development is subject to a PDO approval and all homes are to comply with such architectural requirements.
    c. The fencing in the side yard areas is to be eliminated and just allow fencing in the rear yards of the homes. A note on the final plat shall be provided to call out this restriction.
    d. The plans and plat shall address the driveway cut width to be a maximum of a 2-car width and to reduce the hard surface to a minimum allowable on the 3-car driveway plans.
    e. The plat and plans shall address the Planning Commission's expectation for a commitment that each rear elevation has a minimum of four (4) architectural design elements with at least one of those being material variation above the fence line.
    f. A reference plat note shall indicate that no driveway shall be allowed on the side yard (street sides) of Lots 1, 14, 15 and 21.
    g. A plat note indicating that there be a maximum allowance of 6' (depth) x 15' (width) uncovered decks outside the rear yard building line. Any amendments to the associated covenants, conditions, and restrictions shall include to reflect these parameters.
    h. The applicant shall prepare and submit the required covenants, conditions, and restrictions along with the homeowners association documents to the City Attorney for review and acceptance with applicable laws and approvals related to the PDO approval of the Woods Park Development.
2. The final plat and plan submittal shall also be subject to all terms and conditions of the preliminary plan approval and the applicable Development Agreement associated with the Wood Park Development.
3. The final plat and plan submittal shall be subject to the acceptance of the flood inundation study, as determined by the City Engineer. Any needed amendments to the related Development Agreement shall be prepared and accepted prior to the time of final plan and plat recording.
4. The applicant or subsequent developer/owners of the project shall remain responsible for payment of all outstanding professional service fees related to the review of the final subdivision plans and plat.

Suggested Reasons for the Action (Findings):

a) The Commission finds that the final subdivision plat and plan is to comply with the terms and conditions of Wood Park PDO Zone Map Amendment and associated conceptual plan acceptance that was approved in April of 2013.
b) The Commission finds that the conditions of the final plat and plan recommendation, subject to terms and conditions of the PDO, are consistent with Woods Park PDO Zone Map Amendment.
c) The Commission finds that the terms and conditions of the final plat and plan recommendation is consistent with preliminary subdivision approval, dated June 12, 2013.

Cory Snyder

From: Alan Prince <alan@princedevelopment.com>
Sent: Wednesday, June 19, 2013 8:34 PM
To: Cory Snyder
Subject: FW: Woods Park
Attachments: Woods Park 40'x50' Lots.pdf; Woods Park 45'x45' Lots.pdf; Woods Park 50'x45' Lots.pdf

Cory, as you can see, the amount of protrudance by decking into the backyard of any home plan is 6 feet, and only for a brief width. We would like to propose that (a)no deck area be permitted to be covered which protrudes in any manner into the rear setback area. (Covered decks are fine, but only if they fit into the regular building pad space). No deck be permitted to invade any rear setback area further than 6 feet, and no deck to be wider than 15 feet. Thanks. Alan

---

From: Phil Holland [mailto:Phil@henrywalkerhomes.com]
Sent: Wednesday, June 19, 2013 11:35 AM
To: Alan Prince
Subject: FW: Woods Park

This is what we have as a visual for the rear deck outcome. Please review and give me some feedback. If there isn't any then we will print these out and put them on 11 x 17 sheets and boards.

Thanks,

Phil

Phil Holland
Vice President of Land Acquisition

HENRY WALKER HOMES
500 North Marketplace Drive, Suite 201
Centerville UT 84014
O: 801-677-1600 C: 801-668-1565
HenryWalkerHomes.com

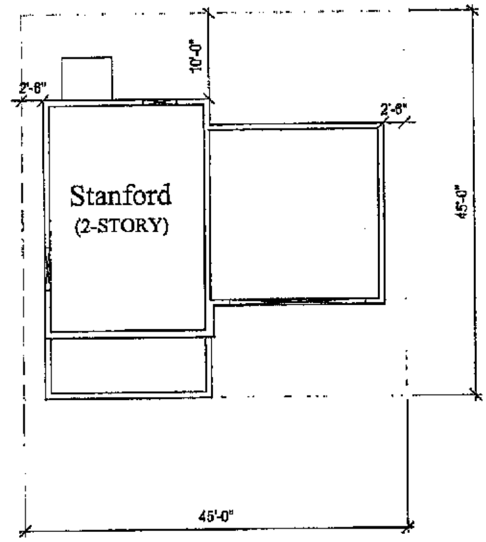
From: Tyler Lloyd <TLloyd@henrywalkerhomes.com>
Date: Wednesday, June 19, 2013 11:22 AM
To: Phil Holland <phil@henrywalkerhomes.com>
Subject: RE: Woods Park

The attached exhibits show the homes with the standard 5' deck, and the distance (if any) that the deck would extend beyond the building pad.

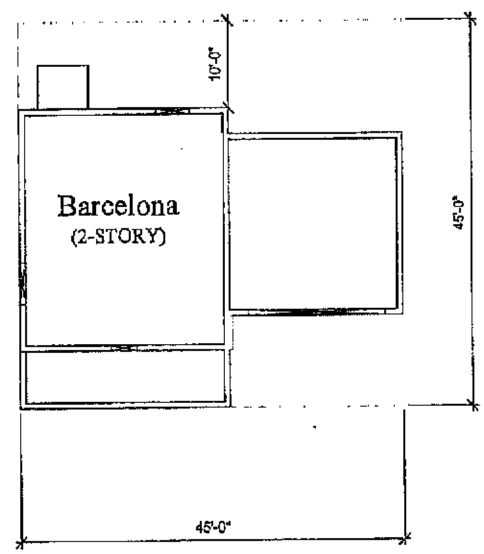
From: Phil Holland
Sent: Wednesday, June 19, 2013 11:13 AM
To: Tyler Lloyd
Subject: FW: Woods Park

I need our home footprints showing the building pad and where our decks are off the back (see below). How are we coming on that?

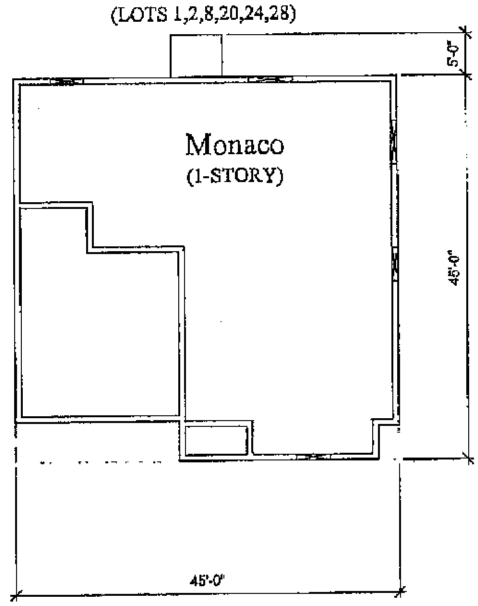
Also, you and I need to meet up as soon as we can (tomorrow morning, maybe) to discuss Loneview lot fit. Let me know if you have some time



45' Wide x 45' Deep
(LOTS 1,2,8,20,24,28)



45' Wide x 45' Deep
(LOTS 1,2,8,20,24,28)



CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 5.

Short Title: Woods Park Assignment and Assumption Agreement

Initiated By: City Attorney

Scheduled Time: 7:35

SUBJECT

Consider Assignment and Assumption Agreement between the City and various parties for the Woods Park Development Agreement governing property located at 690 West 2400 North (Alan Prince, Prince Development - Applicant)

RECOMMENDATION

Approve Assignment and Assumption Agreement between the City and various parties for the Woods Park Development Agreement governing property located at 690 West 2400 North.

BACKGROUND

The City previously entered into a Development Agreement for the Woods Park PDO dated April 4, 2013. The City entered into the Development Agreement with Val D. Wood, Trustee of the Val D. Wood Revocable Trust, William J. Wright and Suzanne B. Wright, and David L. Ellis. The Development Agreement has been recorded against all of the property within the Woods Park PDO development and all property and property owners within the development are subject to the terms and conditions of the Development Agreement. Pursuant to Section 23 of the Development Agreement, the parties are prohibited from assigning any of its obligations under the Development Agreement or any rights or interests therein without the prior written consent of the City. In addition, any future assignee is required to consent in writing to be bound by the terms and conditions of the Development Agreement. Each buyer or tranferee is required to sign an assignment and assumption agreement agreeing to be bound by the terms and conditions of the Development Agreement.

After final approval of the subdivision plat for the Woods Park PDO, the current parties to the Development Agreement intend to sell the property and the rights to develop the PDO to Henry Walker Land of Northern Utah, LLC. In accordance with Section 23 of the Development Agreement, Henry Walker Land of Northern Utah, LLC is required to enter into the Assignment and Assumption Agreement agreeing to be bound by all the terms and conditions of the Development Agreement. The assignment of rights and obligations shall become effecive when Henry Walker Land of Northern Utah, LLC acquires fee title ownership of the property and the Assignment Agreement will be recorded againt the property.

ATTACHMENTS:

Name:	Description:
assignment-(woods_park)-HWL.pdf	Woods Park Assignment and Assumption Agreement

When recorded, return to:

Centerville City
Attn: City Recorder
250 North Main Street
Centerville, Utah 84014

Affects Parcel: 07-070-0118 and 07-072-0025

ASSIGNMENT AND ASSUMPTION AGREEMENT FOR DEVELOPMENT AGREEMENT BETWEEN CENTERVILLE CITY, VAL D. WOOD TRUST, WILLIAM J. AND SUZANNE B. WRIGHT AND DAVID L. ELLIS FOR THE WOODS PARK PLANNED DEVELOPMENT (PDO) TO HENRY WALKER LAND OF NORTHERN UTAH, LLC

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement") is made and entered into as of the ______ day of _______________, 2013, by and between **VAL D. WOOD, TRUSTEE OF THE VAL D. WOOD REVOCABLE TRUST (DATED MARCH 27, 2002) AND VAL D. WOOD,** as their interests appear ("Wood Trust"), **WILLIAM J. WRIGHT AND SUZANNE B. WRIGHT,** as joint tenants with full rights of survivorship ("Wright"), and **DAVID L. ELLIS,** an individual ("Ellis") (collectively referred to as "Assignors"), **HENRY WALKER LAND OF NORTHERN UTAH, LLC,** a Delaware limited liability company ("Assignee"), and **CENTERVILLE CITY**, a Utah municipal corporation ("City"). The City, Assignee and Assignors may collectively be referred to herein as the "Parties", or individually, as a "Party".

RECITALS:

WHEREAS, Assignors own and/or have an interest in real property located at the southeastern corner of 2250 North (Lund Lane) and 800 West (Frontage Road) in Centerville City, Davis County, State of Utah, as more particularly described in **Exhibit A,** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Assignors and the City have previously entered into that certain Development Agreement, dated April 4, 2013, regarding the development of a planned residential development on the Property, as recorded against the Property in the Davis County Recorder's Office as Entry No. 2731793, Book No. 5743, Pages 390-430 ("Development Agreement"); and

WHEREAS, Assignors desire to convey their interest in the Property and all existing rights and obligations to develop the Property in accordance with the terms and conditions of the Development Agreement as more particularly provided herein to Assignee, who is under contract to purchase and develop the Property; and

WHEREAS, the Parties desire to enter into this Assignment Agreement in order to effect an assignment by Assignors and acceptance and assumption by Assignee of all of the terms and conditions of the Development Agreement as they pertain to the Property and development of the Property as of the date Assignee acquires fee title ownership to the Property, as more particularly provided herein.

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

1. **Assignment and Assumption**. Assignors hereby assigns to Assignee all of Assignors' right, title and interest in and to the Development Agreement as it pertains to the Property, together with Assignors' rights, powers and privileges thereunder existing from and after the date Assignee acquires fee title ownership to the Property ("Effective Date of Assignment"). Assignee hereby accepts the same and assumes the rights and responsibilities of the Development Agreement as it pertains to the Property and agrees to timely pay and perform each and every obligation to be paid and performed under the Development Agreement as it pertains to the Property from and after the Effective Date of Assignment. Pursuant to Section 23 of the Development Agreement, Assignee agrees to be bound by the terms of the Development Agreement and to be liable for the performance of each of the obligations contained in the Development Agreement as they relate to the Property and any other applicable obligation regarding development of the Property from and after the Effective Date of Assignment.

2. **Acknowledgment of Recording**. Assignors and Assignee hereby acknowledges the recording of the Development Agreement against the Property and authorize the recording of this Assignment Agreement against the Property on or after the date Assignee acquires fee title to the Property.

3. **Successors and Assigns**. This Agreement shall bind the Parties, their personal representatives, successors and assigns. Any assignment of the rights and duties of Assignee as assigned herein shall be subject to and comply with the terms of the Development Agreement, including, but not limited to Section 23 of the Development Agreement.

4. **Attorneys' Fees**. Should any Party commence a legal proceeding to enforce any of the terms or provisions of this Assignment Agreement, the prevailing Party in such proceeding shall recover reasonable attorneys' fees and costs from the defaulting Party, as fixed by the court in such proceeding.

5. Effective Date. The provisions of this Assignment Agreement shall become effective immediately upon proper execution by the Parties. The assignment and assumption provided herein shall become effective on the Effective Date of Assignment as defined in Section 1.

6. Miscellaneous. Nothing herein shall be deemed to create the relationship of principal and agent, partnership or joint venture between the Parties. This Assignment Agreement shall be interpreted and construed only by the content hereof, and there shall be no presumption or standard of construction in favor of or against any Party. This Assignment Agreement may be amended or modified only in writing. The invalidity or unenforceability of any provision of this Assignment Agreement, as determined by a court, shall in no way affect the validity or enforceability of any of the remaining provisions hereof. This Assignment Agreement shall be construed according to and governed by the laws of the State of Utah.

[Signature page to follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

"Assignors"

VAL D. WOOD TRUST

By:________________________________
Val D. Wood, Trustee

By:________________________________
Val D. Wood

WILLIAM J. AND SUZANNE B. WRIGHT

By:________________________________
William J. Wright

By:________________________________
Suzanne B. Wright

DAVID L. ELLIS

By:________________________________
David L. Ellis

"City"

ATTEST:

____
Marsha L. Morrow, City Recorder

CENTERVILLE CITY

____
Mayor Ronald G. Russell

"Assignee"

HENRY WALKER LAND OF NORTHERN UTAH, LLC

By:________________________________
Its:________________________________

VAL D. WOOD TRUST ACKNOWLEDGMENT

STATE OF UTAH)
:**ss.**
COUNTY OF __________)

On the _____ day of _______________, 2013, personally appeared before me Val D. Wood, who being duly sworn, did say that he is an individual and the Trustee of the Val D. Wood Revocable Trust, and that the foregoing instrument was signed by Val D. Wood in his individual capacity and in his capacity as the Trustee of the Val D. Wood Revocable Trust, and he acknowledged to me that he executed the same.

____
Notary Public

My Commission Expires: Residing at:

___________________________ __________________________________

WRIGHT ACKNOWLEDGMENT

STATE OF UTAH)
:**ss.**
COUNTY OF DAVIS)

On the _____ day of _______________, 2013, personally appeared before me William J. Wright and Suzanne B. Wright, who being duly sworn, did say that they signed the foregoing instrument in their individual capacity and they acknowledged to me that they executed the same.

____
Notary Public

My Commission Expires: Residing at:

___________________________ __________________________________

ELLIS ACKNOWLEDGMENT

STATE OF UTAH)
:**ss.**
COUNTY OF DAVIS)

On the _____ day of _______________, 2013, personally appeared before me David L. Ellis, who being duly sworn, did say that he signed the foregoing instrument in his individual capacity and he acknowledged to me that he executed the same.

____
Notary Public

My Commission Expires: Residing at:

_________________________ _______________________________

CITY ACKNOWLEDGMENT

STATE OF UTAH)
: **ss.**
COUNTY OF DAVIS)

On the _____ day of __________________, 2013, personally appeared before me Ronald G. Russell, who being duly sworn, did say that he is the Mayor of **CENTERVILLE CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Ronald G. Russell acknowledged to me that the City executed the same.

____
Notary Public

My Commission Expires: Residing at:

_________________________ _______________________________

ASSIGNEE ACKNOWLEDGMENT

STATE OF ______________)
: ss.
COUNTY OF ______________)

On the ____ day of ________________, 2013, personally appeared before me ______________________________, who being by me duly sworn did say that (s)he is the managing member of **HENRY WALKER LAND OF NORTHERN UTAH, LLC,** a Delaware limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and such signator duly acknowledged to me that said limited liability company executed the same.

____
Notary Public

My Commission Expires: Residing at:

______________________________ ______________________________

EXHIBIT "A"

Legal Description of Property

Beginning at the intersection of the quarter section line and the east line of a Frontage Road on the east side of the Interstate 15 Freeway, said point being North 89°13'20" East 384.08 feet along the quarter section line from the West Quarter corner of Section 31, Township 3 North, Range 1 East, Salt Lake Meridian, and running;

> Thence North 0°11'10" East 396.61 feet along the east line of said Frontage Road to the south line of Lund Lane;
> Thence South 89°30'30" East 498.00 feet along the south line of said Lund Lane to a line defined in a Boundary Line Agreement, recorded April 8, 2013, as Entry No. 2731793, in Book 5743, at Page 390;
> Thence South 0°11'15" West 418.58 feet along the line defined in said Boundary Line Agreement to a point 33.00 feet south of the quarter section line;
> Thence North 89°13'20" East 2.00 feet;
> Thence South 0°11'15" West 50.00 feet;
> Thence South 89°13'20" West 500.05 feet to the east line of a Frontage Road;
> Thence North 0°11'10" East 83.00 feet along the east line of a Frontage Road to the point of beginning.

Contains 236,196 square feet, 5.422 acres.

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 6.

Short Title: Public Hearing - Zoning Code Text Amendment

Initiated By: Staff

Scheduled Time: 7:40

SUBJECT

Zoning Code Text Amendment to Chapter 12-23 - Enforcement -Regarding Remedies, Penalties and Procedures for the Enforcement of the Zoning Code - Consider Ordinance No. 2013-11

RECOMMENDATION

Hold public hearing regarding proposed Zoning Code amendments. Approve Ordinance No. 2013-11 amending various provisions of Chapter 12-23 of the Zoning Code regarding remedies, penalties and procedures for enforcement.

BACKGROUND

Earlier this year, the City conducted a comprehensive review of civil code enforcement procedures and penalties. In response to such review and analysis, the City Council adopted various amendments to Title 1, Chapter 6 of the Centerville Municipal Code regarding civil code enforcement. Staff has prepared similar revisions and proposed amendments to Title 12, Chapter 23 of the Zoning Code regarding enforcement procedures and penalties for Zoning Code violations. The edits to Title 12, Chapter 23 are intended to mirror those amendments that were made earlier in the year to Title 1, Chapter 6. As indicated in the attached and redlined version of Title 12, Chapter 23, the proposed edits provide additional information and procedures regarding filing complaints, investigation of complaints, notices of violation, warning periods, issuance of civil penalties, and appeal hearing procedures.

The Planning Commission held a public hearing on the proposed amendments to Title 12, Chapter 23 on June 26, 2013, and has forwarded a recommendation of approval to the City Council. As an amendment to the Zoning Code, the City Council must also hold a public hearing on the proposed amendments. Staff recommends approval of the proposed amendments to Title 12, Chapter 23.

ATTACHMENTS:

Name:	Description:
12-23-010-(enforcement)-amd1-ena.pdf	Ordinance No. 2013-11
12-23-010-(enforcement)-amd1.pdf	Chapter 12-23, Enforcement
Pages_from_6_26_2013_PC_staff.pdf	PC Staff Report - 6/26/2013
Pages_from_7_10_2013_minutes.pdf	PC Minutes from 6/26/2013

ORDINANCE NO. 2013-11

AN ORDINANCE AMENDING CHAPTER 12-23 OF THE CENTERVILLE CITY ZONING ORDINANCE REGARDING REMEDIES, PENALTIES AND PROCEDURES FOR ENFORCEMENT

WHEREAS, the Centerville City Council has previously adopted the Centerville City Zoning Ordinance; and

WHEREAS, the Centerville City Council desires to amend various Sections of Chapter 12-23 the Zoning Ordinance regarding remedies, penalties and procedures for enforcement of the Zoning Ordinance; and

WHEREAS, the Centerville City Council has determined that the proposed revisions to Chapter 12-23 of the Zoning Ordinance as proposed are advisable and in the best interest of the public health, safety and welfare; and

WHEREAS, the proposed amendments to the City Zoning Ordinance as set forth herein have been reviewed by the Planning Commission and the City Council and all appropriate public hearings have been held in accordance with Utah law to obtain public input regarding the proposed revisions to the City Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CENTERVILLE CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. **Amendment.** Chapter 12-23 of the Centerville City Zoning Ordinance regarding remedies, penalties and procedures for enforcement is hereby amended to read in its entirety as set forth in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

Section 2. **Severability**. If any section, part or provision of this Ordinance is held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 3. **Omission Not a Waiver.** The omission to specify or enumerate in this ordinance those provisions of general law applicable to all cities shall not be construed as a waiver of the benefits of any such provisions.

Section 4. **Effective Date.** This Ordinance shall become effective twenty (20) days after publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED BY THE CITY COUNCIL OF CENTERVILLE CITY, STATE OF UTAH, THIS __________ DAY OF AUGUST, 2013.

CENTERVILLE CITY

By:________________________________
Mayor Ronald G. Russell

ATTEST:

____
Marsha L. Morrow, City Recorder

Voting by the City Council:

	"AYE"	"NAY"
Councilmember Allen	________	________
Councilmember Averett	________	________
Councilmember Higginson	________	________
Councilmember Lindstrom	________	________
Councilmember Wright	________	________

EXHIBIT "A"

CHAPTER 12-23

Title 12 – Zoning
Article 2 – Administration and Enforcement
Chapter 12-23 – Enforcement

Sections:

12-23-010. Purpose.

The purpose of this Chapter is to establish the remedies, penalties, and procedures for enforcement of this Title.

12-23-020. Scope.

The remedies, penalties, procedures, and other matters set forth in this Chapter shall apply to any violation of the provisions of this Title. The remedies, penalties and procedures set forth herein are not intended to limit or waive any remedies or rights under the law. The provisions of this Chapter shall not invalidate any other chapter, section or provision of the Centerville Municipal Code or applicable law, but shall be read in conjunction with such chapters, sections and provision, and shall be used as an additional remedy for enforcement of violations.

12-23-030. Definitions.

Certain words and phrases in this Chapter are defined in Chapter 12-12 of this Title.

12-23-040. Enforcement Authority.

This Title shall be administered and enforced by the Zoning Administrator or other authorized enforcement official.

12-23-050. Issuance of Permits.

Every official and employee of the City who is vested with the duty or authority to issue permits shall conform to the provisions of this Title and shall issue no permit, certificate, or license for a use, building, or purpose in conflict with the provisions of this Title. Any permit, certificate, or license issued in conflict with the provisions of this Title, intentionally or otherwise, or which is issued upon a false statement of fact material to the issuance of the permit shall be void.

12-23-060. Types of Violations.

(a) *Unlawful Acts.* It shall be unlawful for any person to violate any provision of this Title, cause the violation of any provision of this Title, or fail or refuse to do some act required under this Title, including, but not limited to, any of the following acts:

(1) To engage in any development, use, construction, remodeling, or other activity of any nature upon the land and improvements thereon subject to the jurisdiction of the City without all of the required permits, approvals, certificates, and other forms of authorization required by this Title or other City ordinance in order to conduct or engage in such activity;

(2) To engage in any development, use, construction, remodeling, or other activity which is contrary to the terms and conditions of any permit, approval, certificate, or other form of authorization required to engage in such activity;

(3) To violate, by act or omission, any lawful term, condition, or qualification placed by the City Council, Planning Commission, Board of Adjustment, or officer of the City, as applicable, upon a required permit, certificate, or other form of authorization or approval granted by the City Council, Planning Commission, Board of Adjustment, or other City officer allowing the use, development, or other activity upon land or improvements thereon;

(4) To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure, or to use any land in violation of this Title;

(5) To reduce or diminish any lot area so that setbacks or open spaces shall be smaller than prescribed by this Title and any applicable site plan or subdivision plat; or

(6) To remove, deface, obscure, or otherwise interfere with any notice required by this Title.

(b) *Continuing Violation.* Each day a violation occurs shall constitute a separate offense.

(c) *Persons Liable.* The owner, owner's agent, tenant and/or occupant of any building or land or part thereof and any builder, contractor, agent and/or other person who participates in, assists, directs or creates any situation that is contrary to the requirements of this Title may be held responsible for the violation and be subject to the penalties and remedies provided herein.

12-23-070. Remedies and Enforcement Powers.

Any violation of the provisions of this Title shall be subject to the enforcement remedies and penalties provided by this Chapter and by Utah law, including any of the following:

(a) *Withhold Permit.* The City may deny or withhold all permits, certificates, or other forms of authorization pertaining to any land or improvements when an uncorrected violation exists pursuant to this Title or to a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City Council, Planning Commission, Board of Adjustment, or other City officer. The City may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this section shall apply regardless of whether the original applicant or owner or current applicant or owner is responsible for the violation in question.

(b) *Revoke Permit.* Any permit may be revoked by the Zoning Administrator when the Zoning Administrator determines the permit was procured by false representation or was issued by mistake.

(1) When a permit is revoked hereunder for false representation or mistake, a notice of a revocation shall be in writing and may be served upon the owner, the owner's agent or contractor, or upon any person employed at the site of the building or structure for which such permit was issued. A notice of revocation shall be posted in a prominent location; and, thereafter, no such construction shall proceed under such permit.

(2) When plans conflict with applicable requirements, in lieu of revoking a permit, such plans may be modified to conform with applicable requirements as determined by the Zoning Administrator.

(3) When a mistake has been made calculating the fee for any permit, the proper fee shall be assessed and paid by the permit holder within ten (10) days of notification.

(c) *Stop Work.* In accordance with its power to stop work under the building code, the City may stop work, with or without revoking permits, on any building or structure on land where there exists an uncorrected violation of a provision of this Title, a permit, or other form of authorization issued hereunder.

(d) *Revoke Plan or Other Approval.* Where a violation of this Title involves failure to comply with approved plans or a condition upon which plan approval was subject, the original authorizing or approving body may, after ten (10) days notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a hearing:

(1) Revoke the plan or other approval; or

(2) Condition its continuance on strict compliance, the provision of security, or such other conditions as the original Zoning Administrator may reasonably impose.

(e) *Remove Sign.* When a sign is illegally located within a public right-of-way, on City-owned property, or in the case of an emergency or an identified hazard, the Zoning Administrator or authorized enforcement official may, without notice, cause the immediate removal of such sign.

(1) Such action by the City shall be at the expense of the owner and shall include the actual cost of repair or removal of the sign, plus fifteen (15) percent of such amount for administrative and overhead costs.

(2) If the owner fails to pay the amount due within thirty (30) days from the date of billing, the City may initiate legal action against the owner as provided by law to collect such costs and expenses, including interest at the legal rate and reasonable attorney fees.

(f) *Injunctive Relief.* The City may seek an injunction or other equitable relief in the district court to stop, prevent or enjoin any violation of this Title, or a permit, certificate, or other form of authorization granted hereunder.

(g) *Abatement.* The City may seek a court order from the district court in the nature of mandamus, abatement, or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition which existed prior to the violation.

(h) *Penalty.* ~~(1)~~ A violation of any provision of this Title shall be punishable either:

(1~~A~~) As a class C misdemeanor upon conviction~~.~~; or

(2~~B~~) By imposing a civil penalty as provided in Section 12-23-092. ~~Subsection 3 of this section.~~

(i) *Separate and Continuing Violation.* Each day that any violation of this Title is committed, maintained, continued or permitted shall be considered a separate offense for purposes of the penalties and remedies available to the City. Accumulation of the penalties for violations, but not the obligation for payment of penalties already accrued, shall stop on correction of the violation.

(j) *Other Remedies.* The City shall have such other remedies as are and as may be from time to time provided by Utah law or City ordinance for the violation of any provision of this Title.

(k) *Remedies Cumulative.* These remedies shall be cumulative.

12-23-080. Nonconforming Use as Affirmative Defense.

It shall be an affirmative defense to the enforcement of the provisions of this Title that the action complained of is a legally nonconforming lot, structure, use, or other nonconformity as governed by the provisions of Chapter 12-22 of this Title.

12-23-085. Complaint Procedures.

Centerville City generally uses the complaint-based methodology for code enforcement whereby the City pursues code enforcement upon receipt of a complaint. Any person desiring to file a complaint regarding a Zoning Code violation may do so by filling out a Centerville City Civil Complaint Form ("Civil Complaint Form") or by contacting the Community Development Department. The Community Development Department will accept complaints by phone or in writing. If complaints are made by phone, City staff will fill out the Civil Complaint Form. All official complaints will be logged and thereafter investigated by the applicable enforcement official. If requested, and contact information is provided, the enforcement official will follow up with the complainant and provide a summary of the investigation and the enforcement action taken, if any. The City may also use a systematic approach to code enforcement whereby the City conducts systematic sweeps or reviews of various areas of the City for code violations. The City may use the systematic approach when deemed necessary to address safety issues, rampant violations in a particular area, as part of an awareness campaign, or as directed by the City Council.

12-23-090. Enforcement Procedures.

(a) *Investigation and Inspection.* ~~*Complaints.*~~ The ~~Zoning Administrator, or~~ authorized enforcement official ~~his or her authorized designee,~~ may investigate any purported violation of this Title and take action as is warranted under the circumstances in accordance with the provisions and procedures set forth in this Chapter. An enforcement official is authorized to enter upon any property or premises to ascertain whether the provisions of this Title are being obeyed and to make any reasonable examination or survey necessary to determine compliance. This may include the taking of photographs, samples, or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If such inspection, entry, examination or survey requires entry onto private property, the enforcement official shall provide prior notice and obtain approval from the property owner or responsible person. If a property owner or responsible person refuses to allow an enforcement official to enter property, the enforcement official shall obtain a search warrant or administrative warrant before entering the property.

(b) *Notice of Violation.* Except as otherwise provided herein, if ~~If~~ the enforcement official ~~Zoning Administrator~~ determines that any provision of this Title is being violated and immediate enforcement action is not necessary under the circumstances, the enforcement official ~~Zoning Administrator~~ shall provide a written notice of violation to the property owner or any other person determined to be responsible for the violation. Such written notice of violation shall indicate the nature of the violation, the action necessary to correct the violation, the warning period established before further enforcement action or penalties, and the potential enforcement action and/or penalties to be imposed for failure to cure the violation within the established warning period. Such notice of violation shall be served in accordance with Section 12-23-091. Such notice of violation shall serve to start the warning period. A notice of violation shall not be required for violations requiring immediate enforcement under Subsection (d), or for subsequent violations within a 12-month period under Subsection (e), as amended.

(c) *Warning Period.* Unless otherwise determined by the enforcement official, ~~Zoning Administrator,~~ the warning period for correction of violations set forth in the notice of violation shall be ten (10) days from the receipt of the notice of violation. If the violation remains uncured after expiration of the warning period, the enforcement official ~~Zoning Administrator~~ shall pursue further enforcement action as deemed appropriate in accordance with the provisions provided herein. The enforcement official ~~Zoning Administrator~~ is authorized~~, in his or her discretion,~~ to extend the warning ~~waning~~ period, up to an additional ~~not to exceed~~ thirty (30) days, if the enforcement official ~~Zoning Administrator~~ determines good cause exists for such extended warning period and the extension will not create or perpetuate a situation imminently dangerous to life or property. The enforcement official is authorized to grant an extension beyond the additional thirty (30) days, on similar grounds and findings; provided, any such extension ~~Any such extension~~ shall require written agreement by the property owner or person responsible for the violation to remedy the violations within a set time frame and to comply with any and all conditions of extension as required by the enforcement official~~Zoning Administrator~~. A request for extension shall be filed in writing by the property owner or person responsible for the violation prior to the expiration of the ten (10) day response period. A warning period shall not be required for violations requiring immediate enforcement under Subsection (d), or for subsequent violations within a 12-month period under Subsection (e), as amended.

(d) *Immediate Enforcement.* The enforcement official is not required to provide a notice of violation or warning period for any continuing development or construction or an emergency situation. In the case of a violation involving such ~~either~~ continuing construction or development~~,~~ or an emergency situation, as reasonably determined by the enforcement official, ~~Zoning Administrator,~~ the enforcement official ~~City~~ may use the enforcement powers and remedies available ~~to it~~ under this Chapter, including issuance of a civil citation, without prior notice or notice of violation~~, in such case, the Zoning Administrator shall send the notice to the same parties set forth in the subsection (b) simultaneously with the beginning of enforcement action~~.

(e) *Subsequent Violations*. The enforcement official is not required to provide a notice of violation or warning period for the same subsequent Zoning Code violation occurring on the same property within a twelve (12) month period from the date of the first notice of violation. In the case of such subsequent violation(s) occurring on the same property within a twelve (12) month period, the enforcement official may use the enforcement powers and remedies provided under this Chapter, including issuance of a civil citation, without prior notice or notice of violation. In accordance with applicable statutes, property owners with weed violations need only be provided one notice of violation per season.

(f~~e~~) *Enforcement and Abatement*. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained; or any land, building, or premises used contrary to the provisions of this Title is hereby declared to be unlawful and a public nuisance. The City Attorney, Prosecutor or other authorized legal counsel may commence action or proceedings for the abatement, removal, and enjoinment thereof in the manner provided by law. The City Attorney, Prosecutor or other authorized legal counsel may also take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any building, structure, or property contrary to the provisions of this Title.

12.23.092. Civil Penalty Procedures.

(a) *Civil Citation ~~of Civil Penalties~~*. If any violation of this Title remains uncured after issuance of a notice of violation and expiration of the warning period set forth therein, as applicable, a civil citation ~~of civil penalties~~ may be issued to the property owner or other person determined to be responsible for the violation and civil penalties imposed for such violation ~~in accordance with the notice of violation~~. The civil citation shall be served in the manner set forth in Section 12-23-093. Each civil citation shall include the date and location of all violations, the Code sections violated, the amount of the civil penalty imposed for each violation, an explanation of how the civil penalty shall be paid and the consequences for failure to pay, an explanation of the right to and the procedures for requesting an administrative hearing, and the signature of the enforcement official issuing the citation.

(b) *Civil Penalties Imposed*. Civil penalties to be imposed for a civil citation ~~The civil penalty to be imposed for any given violation~~ shall be imposed in accordance with the civil penalties fee schedule adopted by the City. Civil penalties shall be due and owing to the City within twenty (20) days from the date of service. The civil penalty shall double if not paid within twenty (20) days from the date of service. The civil penalty shall triple if not paid within forty (40) days from the date of service. After forty (40) days, unpaid civil penalties shall accrue interest at the rate set forth by the State of Utah for unpaid judgments. Payment of any civil penalty shall not excuse any failure to correct a violation or the reoccurrence of the violation, nor shall it bar further enforcement action by the City. A civil citation and civil penalties may be imposed for each and every day a violation occurs or continues to exist. Additional civil penalties may be imposed for subsequent or reoccurring violations ~~offenses~~ on the same property within twelve (12) months from the date of the civil citation. ~~one year from the imposition of a civil penalty.~~ Such graduated penalties for subsequent or recurring violations shall be adopted by the City Council and set forth in the City Fee Schedule. If a violation is corrected but reoccurs on the same property within one year from the imposition of any civil penalty, any subsequent violation within such one year period shall subject the person to the recurring violation penalty. Civil penalties may not be imposed for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding. Civil penalties shall be paid to the City Finance Department.

(c) *Request for Hearing*. Any person having received a civil citation ~~of civil penalties~~ may request an administrative hearing before a hearing officer by filing a written application for hearing. Such request for hearing shall be filed with the City Recorder within twenty (20) days from the date of service of the civil citation or other specified date set forth therein. ~~prior to the due date for the civil penalties.~~ Failure to request an administrative hearing as provided herein within ten (10) days from the date of service of the civil citation or other specified time frame shall constitute a waiver of the right to an administrative hearing and the right to an appeal. ~~The hearing shall be held in accordance with the hearing procedures set forth in Subsection (f) below.~~

(d) *Scheduling Hearing*. Upon receipt of a request for an administrative hearing, the City Recorder shall forward the same to the City Manager. The City Manager shall thereafter appoint, contract with or hire a hearing officer to hear the matter. As soon as practicable after being appointed, the hearing officer shall schedule a date, time and place for the administrative hearing and shall send written notice of same to the responsible person(s). Notice of the hearing shall be served on the responsible person(s) in accordance with the provisions of Section 12-23-093.

(e~~d~~) *Hearing Procedures*. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply; provided, all persons shall be afforded due process of law, including adequate notice, an opportunity to be heard, and adequate explanation of the reasons justifying any action. The City shall bear the burden of proof to establish the existence of a violation of the Code. Such proof shall be established by a preponderance of the evidence. All administrative hearings shall be open to the public and shall be recorded. The responsible person shall have the right to be represented by an attorney. If an attorney will be representing a responsible person at a hearing, notice of the attorney's name, address and telephone number shall be given to the City at least one (1) day prior to the hearing. If such notice is not given, the hearing may be continued at the City's request, and all costs of the continuance shall be assessed to the responsible person. The burden to prove any raised defenses shall be upon the party raising any such defense. ~~All civil penalty hearings shall be held as a public meeting with business transacted during regularly scheduled hours. All civil penalty hearings shall provide for due process for the parties and shall be recorded or otherwise documented so that a true and correct transcript may be made of the proceedings.~~

(f) *Failure to Attend Hearing.* A responsible person who fails to appear at an administrative hearing shall be deemed to have waived the right to such hearing, the adjudication of issues related to the hearing, and the right to appeal, provided that proper notice of the hearing has been given as provided in Section 12-23-093.

(g) *Administrative Order.* After holding the administrative hearing, the hearing officer shall issue a written administrative order affirming, rejecting or modifying the civil citation and/or civil penalties. The administrative order shall become final on the date of signing by the hearing officer. The administrative order shall be served on all parties in accordance with the provisions of Section 12-23-093.

(h~~e~~) *Appeal.* Any person aggrieved of the hearing officer's determination regarding the imposition of civil penalties for a Zoning Ordinance violation may appeal such final administrative determination to the Board of Adjustment in accordance with the appeal procedures set forth in Section 12-~~-~~21-200.

(i~~f~~) *Collection.* The City may use any lawful means available to collect any unpaid penalty and fees imposed under this Chapter, including costs and reasonable attorney's fees.

(j~~g~~) *Enforcement Alternative.* The procedures set forth herein regarding notice and imposition of civil penalties is one of many enforcement options available to the Zoning Administrator and is not intended to be an exclusive or required remedy.

12-23-093. Notice.

Whenever notice is required to be given under Section 12-23-092 for civil enforcement proceedings, the notice shall be served by one of the following methods, unless different provisions are otherwise specifically stated to apply:

(a) Personal service;

(b) Certified mail, return receipt requested, postage prepaid, to the last known address(es) of the responsible person(s);

(c) Posting the notice conspicuously on or in front of the property, if inhabited; if the property is uninhabited, the notice must be personally served, mailed or published as provided herein; or

(d) Published in a newspaper of general circulation when the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service is impracticable under the circumstances, or where there exists good cause to believe the person to be served is avoiding service.

Failure of a responsible person to receive notice shall not affect the validity of any civil enforcement action taken hereunder if notice has been served in the manner set forth above. Service by certified mail shall be deemed served on the date signed for on the return receipt.

12.23.094. Criminal Penalty Procedures.

(a) *Criminal Citation.* If any violation of this Title remains uncured after issuance of a notice of violation and expiration of the warning period, a criminal citation may be issued to the property owner or other person determined to be responsible for the violation in accordance with the notice of violation. All criminal citations for Zoning Ordinance violations shall be issued by the City Police Department in accordance with applicable criminal procedures for issuance of a criminal citation.

(b) *Criminal Penalties.* The criminal penalty for Zoning Ordinance violations is a class C misdemeanor subject to such fines and incarceration as set forth by Utah law.

12.23-100.~~,~~ Other Enforcement Matters.

(a) *Inspection of Buildings, Structures, and Land Uses.* The Zoning Administrator, or his or her authorized designee, is authorized to inspect buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of this Title.

(b) *Right of Entry.* The Zoning Administrator, or his or her authorized designee, shall have the right to enter any building or property for the purpose of determining compliance with the provisions of this Title. Such right of entry shall be exercised only at a reasonable hour. In no case shall entry be made to any building in the absence of the owner or tenant thereof without consent of the owner or tenant, or a written order of a court of competent jurisdiction.

(c) *Interference with Enforcement Personnel.* It shall be unlawful for any person to interfere with lawful enforcement activities of authorized City personnel.

(d) *Other Powers.* In addition to the enforcement powers specified in this Chapter, the City may exercise any and all enforcement powers granted to it by Utah law, as may be amended from time to time.

(e) *Continuation.* Nothing in this Title shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid resolutions, ordinances, and laws.

(f) *Selection of Remedy*. Except as otherwise restricted by law, the City shall have the sole discretion in deciding whether to pursue a criminal or civil enforcement action for the violation of any ordinances or applicable code requirements and the provisions of this Chapter shall not be construed to limit the City's right to prosecute any violation as a criminal offense; provided, the City may not impose a civil penalty for a civil violation that occurs in conjunction with another criminal episode that will be prosecuted in a criminal proceeding.

(g) *Essential Governmental Function*. By establishing performance standards or by establishing obligations to act, it is the intent of the City Council that City employees and officers are exercising discretionary authority in pursuit of an essential governmental function and that any such standards or obligations shall not be construed as creating a ministerial duty for purposes of tort liability.

12-23-110. Appeal.

Except as otherwise provided herein for criminal or civil proceedings regarding zoning enforcement actions, any person adversely affected by a final decision of the Zoning Administrator regarding the provisions of this Chapter may appeal that decision to the Board of Adjustment as provided in Section 12-21-200 of this Title.

CENTERVILLE CITY
COMMUNITY DEVELOPMENT DEPARTMENT
655 North 1250 West, Centerville, Utah 84014
(801) 292-8232

STAFF REPORT
AGENDA: ITEM 2

APPLICANT: CENTERVILLE CITY
LISA ROMNEY, CITY ATTORNEY
655 NORTH 1250 WEST
CENTERVILLE, UT 84014

APPLICATION: ZONE CODE TEXT AMENDMENT, CHAPTER 12-23 - ENFORCEMENT

Postponed from July 12, 2013 Meeting

See attached amendments to Chapter 12-23 - Enforcement

These amendments are intended to bring the code enforcement procedures for zoning ordinance violations in line with the procedures we use for other civil code enforcement.

Sections:

12-23-010. Purpose.

The purpose of this Chapter is to establish the remedies, penalties, and procedures for enforcement of this Title.

12-23-020. Scope.

The remedies, penalties, procedures, and other matters set forth in this Chapter shall apply to any violation of the provisions of this Title. The remedies, penalties and procedures set forth herein are not intended to limit or waive any remedies or rights under the law. The provisions of this Chapter shall not invalidate any other chapter, section or provision of the Centerville Municipal Code or applicable law, but shall be read in conjunction with such chapters, sections and provision, and shall be used as an additional remedy for enforcement of violations.

12-23-030. Definitions.

Certain words and phrases in this Chapter are defined in Chapter 12-12 of this Title.

12-23-040. Enforcement Authority.

This Title shall be administered and enforced by the Zoning Administrator or other authorized enforcement official.

12-23-050. Issuance of Permits.

Every official and employee of the City who is vested with the duty or authority to issue permits shall conform to the provisions of this Title and shall issue no permit, certificate, or license for a use, building, or purpose in conflict with the provisions of this Title. Any permit, certificate, or license issued in conflict with the provisions of this Title, intentionally or otherwise, or which is issued upon a false statement of fact material to the issuance of the permit shall be void.

12-23-060. Types of Violations.

(a) *Unlawful Acts.* It shall be unlawful for any person to violate any provision of this Title, cause the violation of any provision of this Title, or fail or refuse to do some act required under this Title, including, but not limited to, any of the following acts:

(1) To engage in any development, use, construction, remodeling, or other activity of any nature upon the land and improvements thereon subject to the jurisdiction of the City without all of the required permits, approvals, certificates, and other forms of authorization required by this Title or other City ordinance in order to conduct or engage in such activity;

(2) To engage in any development, use, construction, remodeling, or other activity which is contrary to the terms and conditions of any permit, approval, certificate, or other form of authorization required to engage in such activity;

(3) To violate, by act or omission, any lawful term, condition, or qualification placed by the City Council, Planning Commission, Board of Adjustment, or officer of the City, as applicable, upon a required permit, certificate, or other form of authorization or approval granted by the City Council, Planning Commission, Board of Adjustment, or other City officer allowing the use, development, or other activity upon land or improvements thereon;

(4) To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure, or to use any land in violation of this Title;

(5) To reduce or diminish any lot area so that setbacks or open spaces shall be smaller than prescribed by this Title and any applicable site plan or subdivision plat; or

(6) To remove, deface, obscure, or otherwise interfere with any notice required by this Title.

(b) *Continuing Violation.* Each day a violation occurs shall constitute a separate offense.

(c) *Persons Liable.* The owner, owner's agent, tenant and/or occupant of any building or land or part thereof and any builder, contractor, agent and/or other person who participates in, assists, directs or creates any situation that is contrary to the requirements of this Title may be held responsible for the violation and be subject to the penalties and remedies provided herein.

12-23-070. Remedies and Enforcement Powers.

Any violation of the provisions of this Title shall be subject to the enforcement remedies and penalties provided by this Chapter and by Utah law, including any of the following:

(a) *Withhold Permit.* The City may deny or withhold all permits, certificates, or other forms of authorization pertaining to any land or improvements when an uncorrected violation exists pursuant to this Title or to a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City Council, Planning Commission, Board of Adjustment, or other City officer. The City may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this section shall apply regardless of whether the original applicant or owner or current applicant or owner is responsible for the violation in question.

(b) *Revoke Permit.* Any permit may be revoked by the Zoning Administrator when the Zoning Administrator determines the permit was procured by false representation or was issued by mistake.

(1) When a permit is revoked hereunder for false representation or mistake, a notice of a revocation shall be in writing and may be served upon the owner, the owner's agent or contractor, or upon any person employed at the site of the building or structure for which such permit was issued. A notice of revocation shall be posted in a prominent location; and, thereafter, no such construction shall proceed under such permit.

(2) When plans conflict with applicable requirements, in lieu of revoking a permit, such plans may be modified to conform with applicable requirements as determined by the Zoning Administrator.

(3) When a mistake has been made calculating the fee for any permit, the proper fee shall be assessed and paid by the permit holder within ten (10) days of notification.

(c) *Stop Work.* In accordance with its power to stop work under the building code, the City may stop work, with or without revoking permits, on any building or structure on land where there exists an uncorrected violation of a provision of this Title, a permit, or other form of authorization issued hereunder.

(d) *Revoke Plan or Other Approval.* Where a violation of this Title involves failure to comply with approved plans or a condition upon which plan approval was subject, the original authorizing or approving body may, after ten (10) days notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a hearing:

(1) Revoke the plan or other approval; or

(2) Condition its continuance on strict compliance, the provision of security, or such other conditions as the original Zoning Administrator may reasonably impose.

(e) *Remove Sign.* When a sign is illegally located within a public right-of-way, on City-owned property, or in the case of an emergency or an identified hazard, the Zoning Administrator <u>or authorized enforcement official</u> may, without notice, cause the immediate removal of such sign.

(1) Such action by the City shall be at the expense of the owner and shall include the actual cost of repair or removal of the sign, plus fifteen (15) percent of such amount for administrative and overhead costs.

(2) If the owner fails to pay the amount due within thirty (30) days from the date of billing, the City may initiate legal action against the owner as provided by law to collect such costs and expenses, including interest at the legal rate and reasonable attorney fees.

(f) *Injunctive Relief.* The City may seek an injunction or other equitable relief in the district court to stop, prevent or enjoin any violation of this Title, or a permit, certificate, or other form of authorization granted hereunder.

(g) *Abatement.* The City may seek a court order from the district court in the nature of mandamus, abatement, or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition which existed prior to the violation.

(h) *Penalty.* ~~(1)~~ A violation of any provision of this Title shall be punishable either:

(<u>1</u>~~A~~) As a class C misdemeanor upon conviction;~~,~~ or

(<u>2</u>~~B~~) By imposing a civil penalty as provided in <u>Section 12-23-092.</u> ~~Subsection 3 of this section.~~

(i) *Separate and Continuing Violation.* Each day that any violation of this Title is committed, maintained, continued or permitted shall be considered a separate offense for purposes of the penalties and remedies available to the City. Accumulation of the penalties for violations, but not the obligation for payment of penalties already accrued, shall stop on correction of the violation.

(j) *Other Remedies.* The City shall have such other remedies as are and as may be from time to time provided by Utah law or City ordinance for the violation of any provision of this Title.

(k) *Remedies Cumulative.* These remedies shall be cumulative.

12-23-080. Nonconforming Use as Affirmative Defense.

It shall be an affirmative defense to the enforcement of the provisions of this Title that the action complained of is a legally nonconforming lot, structure, use, or other nonconformity as governed by the provisions of Chapter 12-22 of this Title.

12-23-085. Complaint Procedures.

Centerville City generally uses the complaint-based methodology for code enforcement whereby the City pursues code enforcement upon receipt of a complaint. Any person desiring to file a complaint regarding a Zoning Code violation may do so by filling out a Centerville City Civil Complaint Form ("Civil Complaint Form") or by contacting the Community Development Department. The Community Development Department will accept complaints by phone or in writing. If complaints are made by phone, City staff will fill out the Civil Complaint Form. All official complaints will be logged and thereafter investigated by the applicable enforcement official. If requested and contact information is provided, the enforcement official will follow up with the complainant and provide a summary of the investigation and the enforcement action taken, if any. The City may also use a systematic approach to code enforcement whereby the City conducts systematic sweeps or reviews of various areas of the City for code violations. The City may use the systematic approach when deemed necessary to address safety issues, rampant violations in a particular area, as part of an awareness campaign, or as directed by the City Council.

12-23-090. Enforcement Procedures.

(a) *Investigation and Inspection.* ~~*Complaints.*~~ The ~~Zoning Administrator, or~~ authorized enforcement official ~~his or her authorized designee,~~ may investigate any purported violation of this Title and take action as is warranted under the circumstances in accordance with the provisions and procedures set forth in this Chapter. An enforcement official is authorized to enter upon any property or premises to ascertain whether the provisions of this Title are being obeyed and to make any reasonable examination or survey necessary to determine compliance. This may include the taking of photographs, samples, or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If such inspection, entry, examination or survey requires entry onto private property, the enforcement official shall provide prior notice and obtain approval from the property owner or responsible person. If a property owner or responsible person refuses to allow an enforcement official to enter property, the enforcement official shall obtain a search warrant or administrative warrant before entering the property.

(b) *Notice of Violation.* Except as otherwise provided herein, if ~~If~~ the enforcement official ~~Zoning Administrator~~ determines that any provision of this Title is being violated and immediate enforcement action is not necessary under the circumstances, the enforcement official ~~Zoning Administrator~~ shall provide a written notice of violation to the property owner or any other person determined to be responsible for the violation. Such written notice of violation shall indicate the nature of the violation, the action necessary to correct the violation, the warning period established before further enforcement action or penalties, and the potential enforcement action and/or penalties to be imposed for failure to cure the violation within the established warning period. Such notice of violation shall be served in accordance with Section 12-23-091. Such notice of violation shall serve to start the warning period. A notice of violation shall not be required for violations requiring immediate enforcement under Subsection (d), or for subsequent violations within a 12-month period under Subsection (e), as amended.

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(d) *Immediate Enforcement.* The enforcement official is not required to provide a notice of violation or warning period for any continuing development or construction or an emergency situation. In the case of a violation involving such ~~either~~ continuing construction or development~~,~~ or an emergency situation, as reasonably determined by the enforcement official, ~~Zoning Administrator,~~ the enforcement official ~~City~~ may use the enforcement powers and remedies available ~~to it~~ under this Chapter, including issuance of a civil citation, without prior notice or notice of violation~~, in such case, the Zoning Administrator shall send the notice to the same parties set forth in the subsection (b) simultaneously with the beginning of enforcement action~~.

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(f~~e~~) *Enforcement and Abatement.* Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained; or any land, building, or premises used contrary to the provisions of this Title is hereby declared to be unlawful and a public nuisance. The City Attorney, Prosecutor or other authorized legal counsel may commence action or proceedings for the abatement, removal, and enjoinment thereof in the manner provided by law. The City Attorney, Prosecutor or other authorized legal counsel may also take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any building, structure, or property contrary to the provisions of this Title.

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(b) *Civil Penalties Imposed.* Civil penalties to be imposed for a civil citation ~~The civil penalty to be imposed for any given violation~~ shall be imposed in accordance with the civil penalties fee schedule adopted by the City. Civil penalties shall be due and owing to the City within twenty (20) days from the date of service. The civil penalty shall double if not paid within twenty (20) days from the date of service. The civil penalty shall triple if not paid within forty (40) days from the date of service. After forty (40) days, unpaid civil penalties shall accrue interest at the rate set forth by the State of Utah for unpaid judgments. Payment of any civil penalty shall not excuse any failure to correct a violation or the reoccurrence of the violation, nor shall it bar further enforcement action by the City. A civil citation and civil penalties may be imposed for each and every day a violation occurs or continues to exist. Additional civil penalties may be imposed for subsequent or reoccurring violations ~~offenses~~ on the same property within twelve (12) months from the date of the civil citation. ~~one year from the imposition of a civil penalty.~~ Such graduated penalties for subsequent or recurring violations shall be adopted by the City Council and set forth in the City Fee Schedule. If a violation is corrected but reoccurs on the same property within one year from the imposition of any civil penalty, any subsequent violation within such one year period shall subject the person to the recurring violation penalty. Civil penalties may not be imposed for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding. Civil penalties shall be paid to the City Finance Department.

(c) *Request for Hearing.* Any person having received a civil citation ~~of civil penalties~~ may request an administrative hearing before a hearing officer by filing a written application for hearing. Such request for hearing shall be filed with the City Recorder within ten (10) days from the date of service of the civil citation or other specified date set forth therein. ~~prior to the due date for the civil penalties.~~ Failure to request an administrative hearing as provided herein within ten (10) days from the date of service of the civil citation or other specified time frame shall constitute a waiver of the right to an administrative hearing and the right to an appeal. ~~The hearing shall be held in accordance with the hearing procedures set forth in Subsection (f) below.~~

(d) *Scheduling Hearing.* Upon receipt of a request for an administrative hearing, the City Recorder shall forward the same to the City Manager. The City Manager shall thereafter appoint, contract with or hire a hearing officer to hear the matter. As soon as practicable after being appointed, the hearing officer shall schedule a date, time and place for the administrative hearing and shall send written notice of same to the responsible person(s). Notice of the hearing shall be served on the responsible person(s) in accordance with the provisions of Section 12-23-093.

(e~~d~~) *Hearing Procedures.* Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply; provided, all persons shall be afforded due process of law, including adequate notice, an opportunity to be heard, and adequate explanation of the reasons justifying any action. The City shall bear the burden of proof to establish the existence of a violation of the Code. Such proof shall be established by a preponderance of the evidence. All administrative hearings shall be open to the public and shall be recorded. The responsible person shall have the right to be represented by an attorney. If an attorney will be representing a responsible person at a hearing, notice of the attorney's name, address and telephone number shall be given to the City at least one (1) day prior to the hearing. If such notice is not given, the hearing may be continued at the City's request, and all costs of the continuance shall be assessed to the responsible person. The burden to prove any raised defenses shall be upon the party raising any such defense. ~~All civil penalty hearings shall be held as a public meeting with business transacted during regularly scheduled hours. All civil penalty hearings shall provide for due process for the parties and shall be recorded or otherwise documented so that a true and correct transcript may be made of the proceedings.~~

(f) *Failure to Attend Hearing.* A responsible person who fails to appear at an administrative hearing shall be deemed to have waived the right to such hearing, the adjudication of issues related to the hearing, and the right to appeal, provided that proper notice of the hearing has been given as provided in Section 12-23-093.

(g) *Administrative Order.* After holding the administrative hearing, the hearing officer shall issue a written administrative order affirming, rejecting or modifying the civil citation and/or civil penalties. The administrative order shall become final on the date of signing by the hearing officer. The administrative order shall be served on all parties in accordance with the provisions of Section 12-23-093.

(h~~e~~) *Appeal.* Any person aggrieved of the hearing officer's determination regarding the imposition of civil penalties for a Zoning Ordinance violation may appeal such final administrative determination to the Board of Adjustment in accordance with the appeal procedures set forth in Section 12-21-200.

(i~~f~~) *Collection.* The City may use any lawful means available to collect any unpaid penalty and fees imposed under this Chapter, including costs and reasonable attorney's fees.

(j~~g~~) *Enforcement Alternative.* The procedures set forth herein regarding notice and imposition of civil penalties is one of many enforcement options available to the Zoning Administrator and is not intended to be an exclusive or required remedy.

12-23-093. Notice.

Whenever notice is required to be given under Section 12-23-092 for civil enforcement proceedings, the notice shall be served by one of the following methods, unless different provisions are otherwise specifically stated to apply:

(a) Personal service;

(b) Certified mail, return receipt requested, postage prepaid, to the last known address(es) of the responsible person(s);

(c) Posting the notice conspicuously on or in front of the property, if inhabited; if the property is uninhabited, the notice must be personally served, mailed or published as provided herein; or

(d) Published in a newspaper of general circulation when the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service is impracticable under the circumstances, or where there exists good cause to believe the person to be served is avoiding service.

Failure of a responsible person to receive notice shall not affect the validity of any civil enforcement action taken hereunder if notice has been served in the manner set forth above. Service by certified mail shall be deemed served on the date signed for on the return receipt.

12.23.094. Criminal Penalty Procedures.

(a) *Criminal Citation.* If any violation of this Title remains uncured after issuance of a notice of violation and expiration of the warning period, a criminal citation may be issued to the property owner or other person determined to be responsible for the violation in accordance with the notice of violation. All criminal citations for Zoning Ordinance violations shall be issued by the City Police Department in accordance with applicable criminal procedures for issuance of a criminal citation.

(b) *Criminal Penalties.* The criminal penalty for Zoning Ordinance violations is a class C misdemeanor subject to such fines and incarceration as set forth by Utah law.

12.23-100. Other Enforcement Matters.

(a) *Inspection of Buildings, Structures, and Land Uses.* The Zoning Administrator, or his or her authorized designee, is authorized to inspect buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of this Title.

(b) *Right of Entry.* The Zoning Administrator, or his or her authorized designee, shall have the right to enter any building or property for the purpose of determining compliance with the provisions of this Title. Such right of entry shall be exercised only at a reasonable hour. In no case shall entry be made to any building in the absence of the owner or tenant thereof without consent of the owner or tenant, or a written order of a court of competent jurisdiction.

(c) *Interference with Enforcement Personnel.* It shall be unlawful for any person to interfere with lawful enforcement activities of authorized City personnel.

(d) *Other Powers.* In addition to the enforcement powers specified in this Chapter, the City may exercise any and all enforcement powers granted to it by Utah law, as may be amended from time to time.

(e) *Continuation.* Nothing in this Title shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid resolutions, ordinances, and laws.

(f) *Selection of Remedy.* Except as otherwise restricted by law, the City shall have the sole discretion in deciding whether to pursue a criminal or civil enforcement action for the violation of any ordinances or applicable code requirements and the provisions of this Chapter shall not be construed to limit the City's right to prosecute any violation as a criminal offense; provided, the City may not impose a civil penalty for a civil violation that occurs in conjunction with another criminal episode that will be prosecuted in a criminal proceeding.

(g) *Essential Governmental Function.* By establishing performance standards or by establishing obligations to act, it is the intent of the City Council that City employees and officers are exercising discretionary authority in pursuit of an essential governmental function and that any such standards or obligations shall not be construed as creating a ministerial duty for purposes of tort liability.

12-23-110. Appeal.

Except as otherwise provided herein for criminal or civil proceedings regarding zoning enforcement actions, any person adversely affected by a final decision of the Zoning Administrator regarding the provisions of this Chapter may appeal that decision to the Board of Adjustment as provided in Section 12-21-200 of this Title.

The applicant, Ron Marshall, explained the history of the property in question and the intention of the current owners to subdivide the property into two lots and build two homes. At 7:20 p.m. Chair Merrill opened a public hearing. Seeing that no one wished to comment, he closed the public hearing.

Commissioner Randall made a **motion** for the Centerville Planning Commission to approve the preliminary and final subdivision plat and plans for Lot #2 of the Bangerter Subdivision, with the following conditions or directives:

Conditions:

1. The following conditions of approval shall be accomplished prior to being scheduled for City Council final subdivision review and approval.
2. The street right-of-way shall be dedicated the entire distance (215') not just the first 125' that is shown.
3. The subdivision shall install the full set of public street improvements the first 125'. However, the hammerhead shall be constructed in accordance with the City & Fire Code Requirements for an all-weather access.
4. There is up to 15' of excess private land with associated utility easements on each side of the right-of-way (i.e. the first 125' of road). The plans shall be corrected to address how this will be maintained (e.g. landscaping) and a plat note shall disclose that all maintenance will be the responsibility of the applicable lot owner (no remnant parcel is to be created).
5. All required utility provider sheets shall be received by the City staff.
6. City Engineer shall determine sufficiency of easement for Lot #2 along front lot line.
7. The applicant shall provide the correct addresses for the new lots, as deemed acceptable by the Zoning Administrator.
8. Once conditions 1-6 are completed and deemed acceptable by City staff, the preliminary approval shall then become the Planning Commission's final recommendation to the City Council.

Reasons for the Action:

a. The Planning Commission finds that the subdivision for two lots is consistent with the goals of the Centerville City General Plan concerning development within Neighborhood 1, Southeast Centerville known as Extreme South Main Street Area [Section 12-480-2.d].
b. The Planning Commission finds that the property is currently zoned Residential-Medium (R-M) and that the subdivision, with the directives, could meet the applicable development standards found in Chapter 12-32 of the Zoning Ordinance in regard to layout and proper street frontage.
c. The Planning Commission finds, with the directives, that the requirements for subdividing will be addressed and satisfied [Title 15 – Subdivisions].

Commissioner Hirschi seconded the motion, which passed by unanimous vote (5-0).

PUBLIC HEARING – CODE TEXT AMENDMENT – CHAPTER 12-23, ENFORCEMENT [Postponed from June 12, 2013 Meeting]

Lisa Romney, City Attorney, explained the proposed Zone Code Text Amendments for Chapter 12-23 regarding enforcement, which are intended to bring the code enforcement procedures for zoning ordinance violations in line with the procedures used for other civil code enforcement within the city. The penalty fee for a first offense will be increased from $125 to $150, and the penalty for a repeat offense will double. Ms. Romney recommended changing the time allowed for requesting an administrative hearing on page 4 subsection 092(c), from ten days to twenty days from the date of service to be consistent with the twenty days from time of service allowed for payment of penalties in subsection 092(b). Mr. Snyder stated he feels the text amendments will allow a better process to be maintained within the complaint-based system.

At 7:39 p.m. Chair Merrill opened a public hearing. Seeing that no one wished to comment, he closed the public hearing. The Commission reviewed the proposed amendments and pointed out a few minor corrections. Commissioner Hirschi made a **motion** to adopt the Zone Code Text Amendment to Chapter 12-23, Enforcement, as modified by the Commission, and recommend approval by the City Council. Commissioner Randall seconded the motion, which passed by unanimous vote (5-0).

TRAINING FOR COMMISSIONERS

Ms. Romney updated the Commission regarding 2013 Legislation affecting land use. Ms. Romney was excused from the meeting after the training.

DISCUSSION REGARDING ACCESSORY DWELLING UNITS

Earlier in the year the City Council identified Accessory Dwelling Units (ADU's) as a desired topic for discussion. Mr. Snyder explained the purpose of ADU's, typical ADU regulations, and potential ADU drawbacks. The Commissioners discussed possible advantages and concerns related to allowing ADU's, and expressed a desire to continue the discussion at a future meeting when all commissioners are present.

COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

The next Planning Commission meeting will be held on July 10, 2013.

ADJOURNMENT

At 8:43 p.m. Commissioner Hirschi made a **motion** to adjourn the meeting. Commissioner Fillmore seconded the motion, which passed by unanimous vote (5-0).

Kevin Merrill, Chair

Date Approved

Katie Rust, Recording Secretary

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 7.

Short Title: Fee Schedule Amendments - Civil Penalties

Initiated By: Staff

Scheduled Time: 7:55

SUBJECT

Consider Resolution No. 2013-19 Amending the Centerville City Fee Schedule Regarding Civil Penalties for Zoning Code Violations

RECOMMENDATION

Adopt Resolution No. 2013-19 Amending Section XII of the Centerville City Fee Schedule regarding civil penalties for Zoning Code violations.

BACKGROUND

Eariler this year, the City conducted a comprehensive review of civil code enforcement procedures and penalties. In response to such review and analysis, the City Council adopted amendments to the Centerville City Fee Schedule to add a graduated civil penalty provision for muncipal code violations and subsequent or recurring violations within a 12-month period. Staff has prepared similar revisions and proposed amendments to the Fee Schedule regarding civil penalties for Zoning Code violations. The edits to the Fee Schedule regarding civil penalties for Zoning Code violations are intended to mirror those amendments and civil penalties for municipal code violations. The proposed edits increase the civil penalty for Zoning Code violations from $120 to $150 for the first violation. The proposed amendments also increase the penalty to $300 for the second violation and $500 for any subsequent violation occuring on the same property within twelve (12) months from the date of the civil citation. Civil penalties will double or triple if not paid witin the required time frame. Staff recommends approval of the amendments to the Centerville City Fee Schedule regarding civil penalties for Zoning Code violations.

ATTACHMENTS:

Name:	Description:
fee_schedule-(civil_penalties)-amd3.pdf	Resolution No. 2013-19

RESOLUTION NO. 2013-19

A RESOLUTION AMENDING SECTION XII OF THE CENTERVILLE CITY FEE SCHEDULE REGARDING CIVIL PENALTIES FOR ZONING CODE VIOLATIONS

WHEREAS, the City Council has recently adopted amendments to Title 12, Chapter 23 of the Centerville City Zoning Code regarding civil enforcement procedures for Zoning Code violations and civil penalties for such violations; and

WHEREAS, the City Council desires to amend the City Fee Schedule to increase the civil penalty for Zoning Code violations and to add a graduated civil penalty provision for subsequent or recurring violations within a 12-month period; and

WHEREAS, the City Council has determined that the amendments to the City Fee Schedule increasing the civil penalty for Zoning Code violations and adopting a graduated civil penalty for subsequent or recurring violations are reasonable and in the best interest of the public to provide for the protection of the public's health, safety and welfare.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF CENTERVILLE, UTAH, AS FOLLOWS:

Section 1. **Amendment.** The City Council hereby amends Section XII of the Centerville City Fee Schedule regarding Civil Penalties for Zoning Code violations to read in its entirety as follows:

XII. CIVIL PENALTIES.

A. Code Violations. Except as otherwise provided in Subsections (B) and (C), the civil penalty applicable to Centerville City Code violations enforced pursuant to Chapter 1-06 regarding civil enforcement procedures, shall be $150 for the first violation, $300 for the second violation, and $500 for any subsequent same code violations occurring on the same property within twelve (12) months from the date of the civil citation. The civil penalty shall double for any outstanding citation if not paid within 20 days from the date of service and shall triple if not paid within 40 days from the date of service.

B. Zoning Ordinance Violations. The civil penalty applicable to any ~~Any~~ violation of Title 12 of the Centerville City Code regarding Zoning Ordinances enforced pursuant to the civil enforcement procedures set forth in Title 12, Chapter 23, ~~therein shall be subject to the civil penalty set forth in Section I.H.5. of this City Fee Schedule~~ shall be $150 for the first violation, $300 for the second violation, and $500 for any subsequent same code violations occurring on the same property within twelve (12) months from the date of the civil citation. The civil penalty shall double for any outstanding citation if not paid within 20 days from the date of service and shall triple if not paid within 40 days from the date of service.

C. Traffic and Criminal Code Violations. The civil enforcement procedures set forth in Chapter 1-06 of the Centerville City Code are not applicable to violations of Title 13 (Criminal Code) or Title 14 (Traffic Code). Violations of such Titles shall be pursued as criminal violations subject to criminal fines and penalties set forth by law.

D. Appeals. A fee in the amount of fifty percent (50%) of the ~~original~~ applicable civil penalty shall be charged for the filing of an appeal of any civil penalty or notice of violation in accordance with applicable City Ordinances.

Section 2. **Repeal.** Section 1.H.2 of the Centerville City Fee Schedule regarding civil penalties for Zoning Code violations is hereby repealed. Civil penalties for such violations shall be set forth in Section XII.B, as amended herein.

Section 3. **Severability.** If any section, clause or portion of this Resolution is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Section 4. **Effective Date.** This Resolution shall become effective immediately.

PASSED AND ADOPTED BY THE CITY COUNCIL OF CENTERVILLE CITY, STATE OF UTAH, ON THIS 6th DAY OF AUGUST, 2013.

CENTERVILLE CITY

By: ______________________________
Mayor Ronald G. Russell

ATTEST:

____
Marsha L. Morrow, City Recorder

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 8.

Short Title: 10 Wheel Dump Truck for Public Works

Initiated By: Public Works

Scheduled Time: 8:00

SUBJECT

a. Consider Resolution No. 2013-20 approving 5 year Lease Purchase Agreement with Zions First National Bank for the financing of equipment in the amount of $215,813
b. Consider approval of purchase of cab and chassis and equipment from Rush Truck Center and Legacy Equipment in the amount of $215,813

RECOMMENDATION

a. Approve Resolution No. 2013-20 approving 5 year Lease Purchase Agreement with Zions First National Bank for the financing of equipment in the amount of $215,813
b. Approve purchase of cab and chassis and equipment from Rush Truck Center and Legacy Equipment in the amount of $215,813

BACKGROUND

a. The FY 2014 Public Works budget includes the purchase of a 10 Wheel dump truck with plow, under a 5 year lease purchase agreement. Zions has agreed to provide financing for a 5 year term at 1.95%. Annual payments will be $45,343.60, with the first payment due April 1, 2014 and four annual payments due thereafter on the same date. The FY 2014 budget includes $48,000 to cover the initial payment. The total principal amount of the Lease Purchase is $215,813.
Total interest paid over the lease period will be $10,905.

b. The Public Works Department has received a bid from Rush Truck Center, the regional International Truck Dealer and State Purchasing Contract Vendor, for an International 7600 SBA cab and chassis in the amount of $116,572. This truck will be used for snow plowing as well as hauling large loads. With a 10 wheel truck, two older bobtail dump trucks will be retired. Public works will also be able to reduce the number of trucks and drivers for snow plowing as this truck will be able to plow some major roads on its own, that currently require two vehicles.
Additional equipment including plow and bed will be provided to Rush Truck for installation by Legacy Equipment. They have attached the bid for the equipment in the amount of $99,241. The total cost for cab, chassis and equipment is $215,813.

ATTACHMENTS:

Name:	Description:
equipment_lease-(zions_bank)-res.pdf	Resolution No. 2013-20
Equipment_Lease_Centerville_2013.pdf	Zions Lease Purchase Agreement
10_wheel_truck.pdf	Quote for cab, chassis & equipment

RESOLUTION NO. 2013-20

A RESOLUTION APPROVING THE FORM OF THE EQUIPMENT LEASE AGREEMENT WITH ZIONS FIRST NATIONAL BANK, SALT LAKE CITY, UTAH; FINDING THAT IT IS IN THE BEST INTERESTS OF CENTERVILLE CITY TO ENTER INTO SAID AGREEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF.

WHEREAS, the Centerville City Council (the "Governing Body") has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

WHEREAS, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to Centerville City; and

WHEREAS, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF CENTERVILLE, UTAH, AS FOLLOWS:

Section 1. **Findings.** The terms of said Equipment Lease Agreement are in the best interests of Centerville City for the leasing of the equipment described therein.

Section 2. **Authorization.** The Mayor and City Recorder are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of Centerville City.

Section 3. **Obligations.** The officers of the Governing Body and Centerville City are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Section 4. **Effective Date.** This Resolution shall become effective immediately.

PASSED AND ADOPTED BY THE CITY COUNCIL OF CENTERVILLE CITY, STATE OF UTAH, ON THIS 6th DAY OF AUGUST, 2013.

CENTERVILLE CITY

By: ______________________________

Mayor Ronald G. Russell

ATTEST:

____

Marsha L. Morrow, City Recorder

LEASE PURCHASE AGREEMENT

This equipment lease (the "Lease") dated as of September 6, 2013, by and between Zions First National Bank, One South Main Street, Salt Lake City, Utah 84111 ("Lessor"), and Centerville City, Utah ("Lessee") a body corporate and politic existing under the laws of the State of Utah. This Lease includes all Exhibits hereto, which are hereby specifically incorporated herein by reference and made a part hereof.

Now therefore, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Lease Of Equipment

Section 1.1 *Agreement to Lease*. Lessor hereby demises, leases, and lets to Lessee and Lessee rents, leases and hires from Lessor, the "Equipment" (as hereinafter defined), to have and to hold for the term of this Lease; provided, however, that the obligation of Lessor to lease any item of the Equipment and to make payment to the Vendor therefor is subject to the condition precedent that Lessee shall provide the following at its cost, in form and substance satisfactory to Lessor:

(i) Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 10.2 hereof;

(ii) Invoice of the Vendor of such item of Equipment; and

(iii) Delivery And Acceptance Certificate in the form attached hereto as Exhibit "E" executed by Lessee acknowledging delivery to and acceptance by Lessee of such item of Equipment.

Section 1.2 *Title*. During the term of this Lease, title to the Equipment will be transferred to, and held in the name of, Lessee, subject to retransfer to Lessor as provided in Section 3.4. Upon termination of this Lease as provided in Sections 3.3 (a) or 3.3 (c), title to the Equipment will transfer automatically to Lessor without the need for any further action on the part of Lessor, Lessee, or any other person, provided that if any action is so required, Lessee by this Lease appoints Lessor its irrevocable attorney in fact to take any action to so transfer title to the Equipment to Lessor. Lessor at all times will have access to the Equipment for the purpose of inspection, alteration, and repair.

Section 1.3 *Security*. To secure the payment of all of Lessee's obligations to Lessor under this Lease, Lessee grants to Lessor a security interest in the Equipment and in all additions, attachments, accessions, and substitutions to or for the Equipment. The security interest granted herein includes proceeds. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices, and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or advisable to establish and maintain its security interest in the

Equipment. Lessor understands and agrees that the security interest granted in this Section shall be subject and subordinate to presently existing security interests and/or purchase money security interests in miscellaneous equipment which may be installed in accordance with the provisions of Section 9.3.

ARTICLE II

Definitions

The terms defined in this Article II shall, for purposes of this Lease, have the meaning herein specified unless the context clearly otherwise requires:

"Business Day" shall mean any day except Saturday, Sunday and legal holidays on which banks in the State of Utah are closed.

"Code" means the Internal Revenue Code of 1986, as amended.

"*Commencement Date*" shall mean the date when the term of this Lease begins and Lessee's obligation to pay rent accrues, as set forth in Section 3.1.

"*Equipment*" shall mean the property which Lessor is leasing to Lessee referred to in Section 1.1 and more fully described in Exhibit "A."

"*Lessee*" shall mean Centerville City, Utah.

"*Lessor*" shall mean Zions First National Bank, Salt Lake City, Utah, its successors and assigns.

"*Option Purchase Price*" shall mean the amount which Lessee must pay Lessor to purchase the Equipment, as determined by Article V.

"*Original Term*" shall mean the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date, as set forth in Section 3.2.

"Principal Outstanding" means the remaining unpaid principal outstanding under this Lease as specified on Exhibit "C" attached hereto.

"*Renewal Terms*" shall mean all of the additional periods of one year (coextensive with Lessee's fiscal year) for which this Lease shall be effective in the absence of a termination of the Lease as provided in Article III.

"Rental Payment Date" means the dates upon which Rental Payments are to be made by the Lessee to the Lessor hereunder as specified on Exhibit "C" attached hereto.

"*Rental Payments*" means the rental payments payable by Lessee pursuant to the provisions of this Lease during the Term hereof.

"*Term*" or "*Term of this Lease*" shall mean the Original Term and all Renewal Terms provided for in this Lease under Section 3.2.

"*Vendor*" shall mean the manufacturer of the Equipment and the manufacturer's agent or dealer from whom Lessor purchased or is purchasing the Equipment.

ARTICLE III

Lease Term

Section 3.1 *Commencement.* The Term of this Lease shall commence as of:

________ the date this Lease is executed.

________ days after the receipt, installation, and operation of the Equipment, and its acceptance by Lessee, as indicated by an acceptance certificate signed by Lessee.

________ the date the Vendor receives full payment for the Equipment from Lessor.

___X___ September 6, 2013.

Such date will be referred to as the Commencement Date.

Section 3.2 *Duration of Lease: Nonappropriation.* This Lease will continue until the end of the fiscal year of Lessee in effect at the Commencement Date (the "Original Term"). Thereafter, this Lease will be automatically extended for five (5) successive additional periods of one year coextensive with Lessee's fiscal year (each, a "Renewal Term"), unless this Lease is terminated as hereinafter provided.

The parties understand that as long as Lessee has sufficient appropriated funds to make the Rental Payments hereunder, Lessee will keep this Lease in effect through all Renewal Terms and make all payments required herein or Lessee will exercise its option under Article V to purchase the Equipment. Lessee hereby declares that, as of the date of the execution of this Lease, Lessee currently has an essential need for the Leased Equipment which is the subject of this Lease to carry out and give effect to the public purposes of Lessee. Lessee reasonably believes that it will have a need for the Equipment for the duration of the Original Term and all Renewal Terms. If Lessee does not appropriate funds to continue the leasing of the Equipment for any ensuing Renewal Term, this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Lessor of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect; provided, however, that a failure to give such written notice shall not constitute an event of default, result in any liability on the part of the Lessee or otherwise affect the termination of this Lease as set forth hereinabove.

Section 3.3 *Termination.* This Lease will terminate upon the earliest of any of the following events:

(a) the expiration of the Original Term or any Renewal Term of this Lease and the failure of Lessee to appropriate funds to continue the leasing of the Equipment for the ensuing Renewal Term;

(b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Equipment;

(c) a default by Lessee and Lessor's election to terminate this Lease under Article VII herein; or

(d) the expiration of the Term of this Lease.

Section 3.4 *Return of Equipment Upon Termination.* Upon termination of this Lease pursuant to Sections 3.3 (a) or 3.3 (c), Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 9.2 hereof in the following manner as may be specified by Lessor:

(a) By delivering the Equipment to Lessor at Lessee's principal place of business; or

(b) By loading the Equipment at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the destination designated by Lessor.

Lessee shall obtain all governmental authorizations to permit return of the Equipment to Lessor and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

ARTICLE IV

Rental Payments

Section 4.1 *Amount.* Lessee will pay Lessor as rent for the use of the Equipment during the Original Term and any Renewal Terms on the dates and in the amounts set forth in Exhibit "C" attached hereto. All Rental Payments shall be paid, exclusively from legally available funds, in lawful money of the United States of America to Lessor at or to such other person or entity or at such other place as Lessor may from time to time designate by written notice to Lessee.

Section 4.2 *Portion of Rental Payments Attributable to Interest.* The portion of each Rental Payment which is paid as and is representative of interest is set forth in Exhibit "C" attached hereto.

Section 4.3 *No Right to Withhold.* Notwithstanding any dispute between Lessee, Lessor, Vendor or any other party, Lessee will make all Rental Payments when due, without withholding any portion of such rent, pending final resolution of such dispute by mutual agreement between the parties thereto or by a court of competent jurisdiction.

Section 4.4 *Rental Payments to Constitute a Current Obligation of the Lessee.* The Lessee and the Lessor acknowledge and agree that the obligation of the Lessee to pay Rental Payments hereunder constitutes a current obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any provision of Sections 10–8–6 or 11–1–1 through 11–1–2, Utah Code Annotated 1953, as amended, or Section 3, 4, or 5 of Article XIV of the Utah Constitution, or any other constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the credit of the Lessee to the payment of the Rental Payments, or the interest thereon, nor shall this Lease obligate the Lessee to apply money of the Lessee to the payment of Rental Payments beyond the then current Original Term or Renewal Term, as the case may be, or any interest thereon.

ARTICLE V

Purchase Of Equipment

Section 5.1 *Option Purchase Price.* On any Business Day on or after September 6, 2013, Lessee may purchase the Equipment from Lessor at a price equal to the principal amount outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such date is a Rental Payment Date, in which case, the principal amount outstanding as of such date), plus accrued interest from such Rental Payment Date to such date of calculation at the rate of interest per annum in effect for the period during which the calculation is made, as set forth in Exhibit "C."

Section 5.2 *Manner of Exercise of Option.* To exercise the option, Lessee must deliver to Lessor written notice specifying the date on which the Equipment is to be purchased (the "Closing Date"), which notice must be delivered to Lessor at least thirty (30) days prior to the Closing Date specified therein. At the closing, Lessor will deliver to Lessee a bill of sale transferring the Equipment to Lessee free and clear of any lien or encumbrance created by or arising through Lessor, but without warranties, and will deliver all warranties and guarantees of Vendors of the Equipment.

Section 5.3 *Conditions of Exercise of Option.* Lessee may purchase the Equipment pursuant to the option granted by this Lease only if Lessee has made all Rent Payments when due (or has remedied any defaults in the payment of rent, in accordance with the provisions of this Lease) and if all other representations, covenants, warranties, and obligations of Lessee under this Lease have been satisfied (or all breaches of the same have been waived by Lessor in writing).

Section 5.4 *Termination Purchase.* Upon the expiration of the Term of the Lease and provided that the conditions of Section 5.3 have been satisfied, Lessee shall be deemed to have purchased the Equipment (without the payment of additional sums) and shall be vested with all rights and title to the Equipment. Lessor agrees that upon the occurrence of the events as provided in this Section, it shall deliver to Lessee the documents specified in Section 5.2, and shall comply with the provisions of Section 5.2 relating to termination upon exercise of the option to purchase.

ARTICLE VI

Representations, Covenants, And Warranties Of Lessee And Lessor

Section 6.1 *Representations, Covenants and Warranties of Lessee.* Lessee represents, covenants, and warrants as follows:

(a) Lessee is a body corporate and politic, duly organized and existing under the Constitution and laws of the State of Utah.

(b) Lessee is authorized by the Constitution and laws of the State of Utah to enter into this Lease and to effect all of Lessee's obligations hereunder. The governing body of Lessee has executed the resolution attached as Exhibit "B" to this Lease which specifically authorizes Lessee to execute and deliver this Lease.

(c) All procedures and requirements, including any legal bidding requirements, have been met by Lessee prior to the execution of this Lease in order to insure the enforceability of this Lease and all rent and other payment obligations will be paid out of funds legally available for such purpose.

(d) The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of this Lease was authorized, as evidenced by the certificate of open meeting law attached to the Resolution of Governing Body which is attached hereto as Exhibit "B."

(e) The letter attached to this Lease as Exhibit "D" is a true opinion of Lessee's counsel.

(f) Lessee will use and service the Equipment in accordance with Vendor's instructions and in such a manner as to preserve all warranties and guarantees with respect to the Equipment.

(g) During the term of this Lease, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

(h) The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.

(i) The Equipment shall be used solely by Lessee and shall not be subject to any direct or indirect private business use.

(j) Lessee covenants and certifies to and for the benefit of Lessor throughout the term of this Lease that:

(1) No use will be made of the proceeds of this Lease, or any funds or accounts of Lessee which may be deemed to be proceeds of this Lease, which use, if it had been reasonably expected on the date of execution of this Lease, would have caused this Lease to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code;

(2) Lessee will at all times comply with the rebate requirements of Section 148(f), to the extent applicable;

(3) in order to preserve the status of this Lease as other than a "private activity bond" as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease is outstanding: (I) none of the proceeds of this Lease or the Equipment financed therewith shall be used for any "private business use" as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code; and (II) no part of this Lease shall be secured in whole or in part, directly or indirectly, by any interest in any equipment used in any such "private business use" or by payments in respect of such equipment, and shall not be derived from payments in respect of such equipment;

(4) it will not take any action or omit to take any action such that would cause interest on this Lease to become ineligible for the exclusion from gross income of Lessor as provided in Section 103 of the Code.

(k) The obligations of Lessee under this lease are not federally guaranteed within the meaning of Section 149(b) of the Code.

(l) This Lease is being executed for the purpose of acquiring the Equipment and is not being issued to refund or refinance any outstanding obligation of Lessee, nor to reimburse Lessee for any expenditures made prior to sixty (60) days before the date the Governing Body (as defined in the Resolution of the Governing Body attached hereto) of the Lessee adopted the Resolution of the Governing Body attached hereto.

(m) In compliance with Section 149 (e) of the Code relating to information reporting, Lessee has caused or will cause to be filed with the Internal Revenue Service, IRS form 8038–G or 8038–GC, as appropriate.

(n) Lessee has selected the Equipment and desires to lease the Equipment for use in the performance of its governmental or proprietary functions. Lessor, at Lessee's request, has ordered or shall order the Equipment and shall lease the same to Lessee as herein provided, Lessor's only role being the facilitation of the financing of the Equipment for the Lessee. Lessor will not be liable for specific performance or for damages if the supplier or manufacturer of the Equipment for any reason fails to fill, or delays in filling, the order for the Equipment. Lessee acknowledges that Lessor is not a manufacturer of or a dealer in the Equipment (or similar equipment) and does not inspect the Equipment prior to delivery to Lessee. Lessee agrees to accept the Equipment and authorizes Lessor to add the serial number of the Equipment to Exhibit "A." Lessor shall have no obligation to install, erect, test, inspect, or service the Equipment. *For purpose of this Lease and of any purchase of the Equipment* *effected under this Lease, Lessor expressly disclaims any warranty with respect to the condition, quality, durability, suitability, merchantability or fitness for a particular purpose of the Equipment in any respect, and any other representation, warranty, or covenant, express or implied. Lessor will not be liable to Lessee for any liability, loss, or damage caused or alleged to be caused, directly or indirectly, by any inadequacy, deficiency, or defect in the equipment, or by any use of the equipment, whatsoever.* Lessor assigns to Lessee, without recourse, for the Term of this Lease all manufacturer warranties and guarantees, express or implied, pertinent to the Equipment, and Lessor directs Lessee to obtain the customary services furnished in connection with such guarantees and warranties at Lessee's expense, subject to Lessee's obligation to reassign to Lessor all such warranties and guarantees upon Lessor's repossession of the Equipment.

(o) During the term of this Lease, Lessee covenants and agrees (1) to include in its annual tentative budget prepared by the appropriate officials acting on behalf of Lessee in accordance with applicable law an item for expenditure of an amount necessary to pay the Rental Payments for the Equipment during the next succeeding Renewal Term, and (2) to take such further action (or cause the same to be taken) as may be necessary or desirable to assure that the final budget submitted to the governing body of Lessee for its consideration seeks an appropriation of moneys sufficient to pay such Rental Payments.

(p) There are no legal or governmental proceedings or litigation pending or, to the best knowledge of Lessee, threatened or contemplated (or any basis therefore) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of this Lease

(q) Lessee has never non-appropriated or defaulted under any of its payment or performance covenants, either under any municipal lease of the same general nature as this Lease or under any of its bonds, notes or other debt obligations for which its general credit or revenues are pledged.

Section 6.2 *Representations, Covenants and Warranties of Lessor.* Lessor represents, covenants, and warrants as follows:

(a) During the term of this Lease, Lessor will provide Lessee with quiet use and enjoyment of the Equipment, without suit, trouble, or hindrance from Lessor, except upon default by Lessee as set forth in this Lease.

(b) Lessor has not caused to be created any lien or encumbrance on the Equipment except the security interest provided in Section 1.3 of this Lease.

ARTICLE VII

Events Of Default And Remedies

Section 7.1 *Events of Default Defined.* The following shall be "events of default" under this Lease and the terms, "event of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 7.1 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 7.1 are subject to (i) the provisions of Section 3.2 hereof with respect to nonappropriation; and (ii) if by reason of *force majeure* Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article IV hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms, droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

Section 7.2 *Remedies on Default.* Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, Lessor shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

(a) With or without terminating this Lease, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, holding Lessee liable for the difference between (i) the rents and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, as appropriate, and (ii) the purchase price, rent or other amounts paid by a purchaser, lessee or sublessee of the Equipment pursuant to such sale, lease or sublease; and

(b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 7.3 *No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article VII it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.4 *Waiver of Certain Damages.* With respect to all of the remedies of Section 7.2 above, Lessee expressly waives any damages occasioned by Lessor's repossession of the Equipment.

ARTICLE VIII

Payment Of Taxes, Fees, Permits, And Utility Services

Section 8.1 *Interpretation.* This Lease for all purposes will be treated as a net lease.

Section 8.2 *Taxes and Fees.* Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, and other taxes and fees, together with any penalties, fines, and interest on such taxes and fees imposed or levied with respect to the Equipment and the ownership, delivery, lease, possession, use, operation, sale, and other disposition of the Equipment, and upon the rental or earnings arising from any such disposition, except any federal or state income taxes payable by Lessor on such rental or earnings. Lessee may in good faith and by appropriate proceedings contest any such taxes and fees so long as such proceedings do not involve any danger of sale, forfeiture, or loss of the Equipment or of any interest in the Equipment.

Section 8.3 *Permits.* Lessee will provide all permits and licenses necessary for the installation, operation, and use of the Equipment. Lessee will comply with all laws, rules, regulations, and ordinances applicable to the installation, use, possession, and operation of the Equipment. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Equipment, such changes or additions will be made by Lessee at its own expense.

Section 8.4 *Utilities.* Lessee will pay all charges for gas, water, steam, electricity, light, heat or power, telephone, or other utilities furnished to or used in connection with the Equipment (including charges for installation of such services) during the term of this Lease. There will be no abatement of rent on account of the interruption of any such services.

ARTICLE IX

Use, Repairs, Alterations, And Liens

Section 9.1 *Use*. Lessee will not install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee agrees that the Equipment is and at all times will remain personal property not withstanding that the Equipment or any part of the Equipment may now or hereafter become affixed in any manner to real property or to any building or permanent structure.

Section 9.2 *Repairs*. Lessee at its own cost will service, repair, and maintain the Equipment so as to keep the Equipment in as good condition, repair, appearance, and working order as when delivered to and accepted by Lessee under this Lease, ordinary wear and tear excepted. At its own cost, Lessee will replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices will be free and clear of all liens, encumbrances, and rights of others, and immediately will become a part of the Equipment and will be covered by this Lease (for all purposes including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.3 *Alterations*. Lessee may install such miscellaneous equipment as may be necessary for use of the Equipment for its intended purposes so long as either (a) the installation of such equipment does not alter the function or manner of operation of the Equipment, or (b) Lessee, upon termination of this Lease (other than termination pursuant to Section 3.3(b) or (d), restores the Equipment to its function and manner of operation prior to the installation of such equipment. Subject to the obligations described above, Lessee may remove such equipment upon termination of this Lease, if the removal of such equipment will not substantially damage the Equipment. Without the prior written consent of Lessor, Lessee will not make any other alterations, changes, modifications, additions, or improvements to the Equipment except those needed to comply with Lessee's obligations to change, add to, or repair the Equipment as set forth in Sections 9.2 and 10.3 herein. Any alterations, changes, modifications, additions, and improvements made to the Equipment, other than miscellaneous equipment installed as set forth above, immediately will become a part of the Equipment and will be covered by this Lease (for all purposes, including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.4 *Liens*. Except with respect to the security interest provided in Section 1.3 hereof, Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment or any interest in the Equipment. Lessee promptly and at its own expense will take such action as may be necessary to duly discharge any mortgage, pledge, lien, charge, encumbrance, or claim, not excepted above, if the same arises at any time.

ARTICLE X

Indemnification, Insurance, And Damage To Or Destruction Of The Equipment

Section 10.1 *Indemnification.* Lessee assumes liability for and agrees to indemnify Lessor from and against any and all liability (including attorney's fees) of any nature imposed upon, incurred by, or asserted against Lessor which in any way relates to or arises out of ownership, delivery, lease, possession, use, operation, condition, sale, or other disposition of the Equipment. Notwithstanding anything contained in this Section to the contrary, Lessor shall not be indemnified for, or relieved of, any liability which may be incurred from Lessor's breach of this Lease.

Section 10.2 *Insurance.* Lessee at Lessor's option will either self insure, or at its cost, will cause casualty insurance, public liability insurance, and property damage insurance to be carried and maintained on the Equipment, with all such coverages to be in such amounts sufficient to cover the value of the Equipment at the commencement of this Lease (as determined by the purchase price paid by Lessor for the Equipment), and to be in such forms, to cover such risks, and with such insurers, as are acceptable to Lessor. A combination of self–insurance and policies of insurance may be utilized. If policies of insurance are obtained, Lessee will cause Lessor to be the named insured on such policies as its interest under this Lease may appear. Insurance proceeds from insurance policies or budgeted amounts from self–insurance as relating to casualty and property damage losses will, to the extent permitted by law, be payable to Lessor to the extent of the sum of the Option Purchase Price of the Equipment at the time of its damage or destruction and all amounts due and owing hereunder. Lessee will deliver to Lessor the policies or evidences of insurance satisfactory to Lessor, if any, together with receipts for the initial premiums before the Equipment is delivered to Lessee. Renewal policies, if any, together with receipts showing payment of the applicable premiums will be delivered to Lessor at least thirty (30) days before termination of the policies being renewed. By endorsement upon the policy or by independent instrument furnished to Lessor, such insurer will agree that it will give Lessor at least thirty (30) days' written notice prior to cancellation or alteration of the policy. Lessee will carry workmen's compensation insurance covering all employees working on, in, or about the Equipment, and will require any other person or entity working on, in, or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverages throughout the Term of this Lease.

Section 10.3 *Damage to or Destruction of the Equipment.* If all or any part of the Equipment is lost, stolen, destroyed, or damaged, Lessee will give Lessor prompt notice of such event and will, to the extent permitted by law, repair or replace the same at Lessee's cost within thirty (30) days after such event, and any replaced Equipment will be substituted in this Lease by appropriate endorsement. All insurance proceeds received by Lessor under the policies required under Section 10.2 with respect to the Equipment lost, stolen, destroyed, or damaged, will be paid to Lessee if the Equipment is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement, such proceeds will be paid to Lessor to the extent of the then remaining portion of the Rental Payments to become due during the Term of this Lease less that portion of such Rental Payments attributable to interest which will not then have accrued. No loss, theft, destruction, or damage to the Equipment will impose any obligation on Lessor under this Lease, and this Lease will continue in full force and effect regardless of such loss, theft, destruction, or damage. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss, theft, destruction, or damage to the Equipment and for injuries or deaths of persons and damage to property however arising, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such damage to property be to Lessee's property or to the property of others.

ARTICLE XI

Miscellaneous

Section 11.1 *Assignment and Sublease by Lessee.* Lessee may not assign, transfer, pledge, or encumber this Lease or any portion of the Equipment (or any interest in this Lease or the Equipment), or sublet the Equipment, without the prior written consent of Lessor. Consent to any of the foregoing acts shall not constitute a consent to any subsequent like act by Lessee or any other person. Lessee agrees that Lessor may impose on the Equipment such plates or other means of identification as necessary to indicate that the Equipment is subject to this Lease and the restrictions set forth in this Section.

Section 11.2 *Assignment by Lessor.* The parties hereto agree that all rights of Lessor hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part; provided that (1) notice of any such assignment, transfer or other disposition is given to Lessee at least five (5) days prior thereto; (2) prior to any such assignment, transfer or other disposition, the name and address of the assignee or transferee must be registered on registration books maintained by Lessee for this Lease; and (3) prior to any such assignment, transfer or other disposition, this Lease must be surrendered to Lessee and the interest of any such assignee or transferee indicated on the face hereof and after such notation hereon, Lessee will redeliver this Lease to the new owner or owners hereof. Lessee shall maintain registration books for this Lease and shall be obligated to make the payments required hereby, including principal and interest payments, solely to the registered owner or owners hereof.

Section 11.3 *Lessor's Right to Perform for Lessee.* If Lessee fails to make any payment or fails to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, Lessor may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and any expenses incurred by Lessor, as the case may be, together with interest thereon as herein provided, will be deemed to be additional rent payable by Lessee on Lessor's demand.

Section 11.4 *Addresses.* All notices to be given under this Lease will be made in writing and mailed or delivered by registered or certified mail, return receipt requested to the following addresses until either Lessee or Lessor gives written notice to the other specifying a different address:

(a) if to Lessee, at Centerville City, Utah, 250 North Main, Centerville, UT 84014. Attention: Blaine L. Lutz.

(b) if to Lessor, at Zions First National Bank, One South Main Street, 17th Floor, Salt Lake City, Utah, 84133. Attention: Public Financial Services.

Section 11.5 *Manner of Payment.* All payments by Lessee will be made in cash, by certified or cashier's check, or by other manner acceptable to Lessor.

Section 11.6 *Nonwaiver.* No breach by Lessee in the satisfaction of any representation, covenant, warranty, or obligation contained herein or imposed hereby may be waived except by the written consent of Lessor, and any such waiver will not operate as a waiver of any subsequent breach. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or obligation and until complete performance by Lessee of said covenant or obligation Lessor shall be entitled to invoke any remedy available to it under this Lease despite said forbearance or indulgence. No collection of rent shall operate as a waiver of any default.

Section 11.7 *Severance Clause.* Any provision in this Lease which is prohibited by Law will be treated as if it never were a part of this Lease, and the validity of the remaining terms of this Lease will be unaffected.

Section 11.8 *Entire Agreement; Addendum.* This Lease and the attached Exhibits constitute the entire agreement between Lessor and Lessee and supersedes any prior agreement between Lessor and Lessee with respect to the Equipment, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by Lessor and Lessee.

Section 11.9 *Amendments.* This Lease may be amended only by a written document signed by Lessor and Lessee, or their respective successors and assigns.

Section 11.10 *Inurement.* Subject to the restrictions in Section 11.1 above, this Lease is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and assigns.

Section 11.11 *Governing Law.* This Lease is governed by the laws of the State of Utah.

Section 11.12 *Headings.* Headings used in this Lease are for convenience of reference only and the interpretation of this Lease will be governed by the text only.

Section 11.13 *Offset.* Rental Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set–off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Rental Payments or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Equipment or any restriction or interference with Lessee's use of the Equipment.

Section 11.14 *Interest.* If Lessee fails to pay any Rental Payment or other amount due hereunder within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the rate of one percent (1%) per month.

Section 11.15 *Nature of this Agreement.* Lessor and Lessee agree that it is their intention that, for federal income tax purposes, the interest of Lessor in the Equipment is as a secured party and the interest of Lessee is as a debtor with the aggregate principal amount of the Rental Payments constituting the purchase price of the Equipment, and that Lessor neither has nor will have any equity in the Equipment.

Section 11.16 *Set–Up Fee.* As additional consideration for the rights herein granted to Lessee, Lessee agrees to pay Lessor a commencement or set–up fee of Zero ($ .00) on the date this Lease is executed.

Section 11.17 *Designation of Issue for Tax Purposes.* In accordance with Section 265 of the Code, Lessee hereby designates this Lease as an issue qualifying for the exception for certain qualified tax–exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax–exempt interest. Lessee reasonably anticipates that the total amount of tax–exempt obligations [other than (i) private activity bonds, as defined in Section 141 of the Code (a qualified 501 (c)(3) bond, as defined in Section 145 of the Code, and any bond issued to refund certain obligations issued before August 8, 1986 as described in Section 265 (b)(3)(B)(ii)(II) of the Code not being treated as a private activity bond for this purpose), (ii) any obligation to which Section 141 (a) of the Code does not apply by reason of Sections 1312, 1313, 1316 (g) or 1317 of the Tax Reform Act of 1986 and which is described in Section 265 (b)(3)(C)(ii)(II) of the Code, and (iii) any obligation issued to refund (other than to advance refund within the meaning of Section 149 (d)(5) of the Code) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation] which will be issued by the Lessee and by any aggregated issuer during the current calendar year will not exceed $10,000,000.

Section 11.18 *Exhibits.* This Lease shall not be effective as against Lessor until such time as all Exhibits attached hereto, consisting of Exhibits "A" through "E," inclusive, are completed to the satisfaction of Lessor and delivered to Lessor.

EXHIBITS

Executed this _____ day of _________________, 20_____.

Lessor:

Zions First National Bank

By ____________________________________
Johnathan Ward, Vice President

Lessee:

Centerville City, Utah

By ____________________________________
Ron Russell, Mayor

EXHIBIT A
Description Of Equipment

Quantity	Description/Serial Numbers
1	2014 7600 SBA 6x4 10 Wheel Dump Truck

Initials of Lessee Signatory

EXHIBIT B

Resolution Of Governing Body

Extract Of Minutes

August 6, 2013

Centerville City, Utah

The City Council (the "Governing Body") of Centerville City, Utah met in regular session at its regular meeting place in Centerville City, Utah on August 6, 2013, with the following members of the Governing Body present:

Ron Russell .... Mayor

Justin Y. Allen .... Council Member
Ken Averett .... Council Member
John Higginson .... Council Member
Sherri Lindstom .... Council Member
Lawrence Wright .... Council Member

Also present:

Marsha L. Morrow .... City Recorder

Absent:

After the meeting had been duly called to order and the minutes of the preceding meeting read and approved, the following resolution was introduced in written form, discussed in full, and pursuant to motion duly made by Council Member ____________________ and seconded by Council Member ____________________ was adopted by the following vote:

YEA:

NAY:

The resolution was then signed by the ____________________ in open meeting and recorded by the __________________. The resolution is as follows:

A resolution approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah. Finding that it is in the best interests of Centerville City, Utah to enter into said Agreement, and authorizing the execution and delivery thereof.

Whereas, the City Council (the "Governing Body") has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

Whereas, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to Centerville City, Utah; and

Whereas, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

Be it resolved by the Governing Body of Centerville City, Utah as follows:

Section 1. The terms of said Equipment Lease Agreement are in the best interests of Centerville City, Utah for the leasing of the equipment described therein.

Section 2. The Mayor and City Recorder are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of Centerville City, Utah.

Section 3. The officers of the Governing Body and Centerville City, Utah are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Adopted and approved this _____ day of ________________, 20_____.

By ________________________________

Ron Russell, Mayor

STATE OF UTAH)

:ss.

COUNTY OF DAVIS)

I, Marsha L. Morrow hereby certify that I am the duly qualified and acting City Recorder of Centerville City, Utah.

I further certify that the above and foregoing instrument constitutes a true and correct copy of the minutes of a regular meeting of the City Council including a Resolution adopted at said meeting held on August 6, 2013, as said minutes and Resolution are officially of record in my possession, and that a copy of said Resolution was deposited in my office on ______________ _____, 20_____.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of Centerville City, Utah this ______ day of ____________________, 20_____.

By ___________________________________

Marsha L. Morrow, City Recorder

[S E A L] ↑

STATE OF UTAH)
:ss.
COUNTY OF DAVIS)

I, Marsha L. Morrow, the duly qualified City Recorder of Centerville City, Utah do hereby certify:

(a) that in accordance with the requirements of Section 52-4-202 (2), Utah Code Annotated (1953), as amended, public notice of the 20____ Annual Meeting Schedule of the City Council (the "Governing Body") of Centerville City, Utah was given, specifying the date, time and place of the regular meetings of the Governing Body scheduled to be held during the year, by causing a Notice of Annual Meeting Schedule for the Governing Body to be posted on ________________ _____, 20____, at the principal office of the Governing Body at Centerville City, Utah; said Notice of Annual Meeting Schedule having continuously remained so posted and available for public inspection during regular office hours of the undersigned until the date hereof; and causing a copy of the Notice of Annual Meeting Schedule to be provided on ________________ _____, 20____ to at least one newspaper of general circulation within the geographic jurisdiction of Centerville City, Utah, or to a local media correspondent;

(b) that in accordance with the requirements of Section 52-4-202 (1), Utah Code Annotated (1953), as amended, public notice of the regular meeting of the Governing Body on August 6, 2013, was given by specifying in a Notice of Regular Meeting the agenda, date, time and place of the meeting and by causing the Notice of Regular meeting to be posted at the principal office of the Governing Body on the _____ day of _____________, 20_____ a date not less than 24 hours prior to the date and time of the Governing Body's regular meeting, and to be provided on the _____ day of _____________, 20_____, to at least one newspaper of general circulation within the geographic jurisdiction of Centerville City, Utah, or to a local media correspondent.

In witness whereof, I have hereunto set my hand and affixed the official seal of Centerville City, Utah this _____ day of _________________, 20_____.

By ________________________________

Marsha L. Morrow, City Recorder

[S E A L] ↑

EXHIBIT C

Payment Schedule

Lessee: Centerville City, Utah

Date of Lease: September 6, 2013

Amount Due: $215,813.00

1. Interest has been computed at the rate of 1.95% per annum. Interest shall accrue from the Commencement Date.

2. Rental payments shall be due annually commencing April 1, 2014. The payments set forth on the attached debt service schedule shall be due on the 1st day of April up to and including April 1, 2018.

3. The Option Purchase Price, on any given date of calculation, is equal to the Principal Outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such calculation date is a Rental Payment Date, in which case, the Principal Outstanding as of such date) plus accrued interest from such Rental Payment Date at the rate set forth in paragraph number 1 above.

[Please see the attached Debt Service Schedule]

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Centerville City, Utah

$215,813.00 Equipment Lease Purchase

Dated September 6, 2013

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
09/06/2013	-	-	-	-
04/01/2014	42,947.18	1.950%	2,396.42	45,343.60
04/01/2015	41,972.72	1.950%	3,370.88	45,343.60
04/01/2016	42,791.18	1.950%	2,552.42	45,343.60
04/01/2017	43,625.61	1.950%	1,717.99	45,343.60
04/01/2018	44,476.31	1.950%	867.29	45,343.60
Total	**$215,813.00**	-	**$10,905.00**	**$226,718.00**

Yield Statistics

Bond Year Dollars	$559.23
Average Life	2.591 Years
Average Coupon	1.9500004%
Net Interest Cost (NIC)	1.9500004%
True Interest Cost (TIC)	1.9518405%
Bond Yield for Arbitrage Purposes	1.9518405%
All Inclusive Cost (AIC)	1.9518405%

IRS Form 8038

Net Interest Cost	1.9500004%
Weighted Average Maturity	2.591 Years

5Y 07/30/13 EL | SINGLE PURPOSE | 7/17/2013 | 4.28 PM

Initials of Lessee Signatory

EXHIBIT D

Opinion Of Lessee's Counsel

(Use Attorney's Letterhead)

To: Zions First National Bank
One South Main Street
Salt Lake City, Utah 84111

Gentlemen:

As counsel for Centerville City, Utah ("Lessee"), I have examined duly executed originals of Equipment Lease Agreement (the "Lease") dated September 6, 2013, between the Lessee and Zions First National Bank, Salt Lake City, Utah ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Lease. Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of Utah.

2. The Lease has been duly authorized, executed, and delivered by Lessee.

3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of the Lease was authorized.

4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditors' rights generally.

5. The Lease is in accordance with and does not violate the usury statutes of the State of Utah, if any.

6. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.

7. The Equipment (as defined in the Lease) constitutes personal property and when subjected to use by Lessee will not become fixtures under applicable law.

____

Attorney for Lessee

EXHIBIT E

Delivery And Acceptance Certificate

To: Zions First National Bank

Reference is made to the Equipment Lease Agreement between the undersigned ("Lessee"), and Zions First National Bank ("Lessor"), dated September 6, 2013, ("the Lease") and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.

2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.

3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.

4. The serial number for each item of Equipment which is set forth on Exhibit "A" to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

Centerville City, Utah

By: ______________________________
(Authorized Signature)

____
Witness

____
(Print name and title)

Date: ______________________________

7600 SBA 6x4 2010

Sales Proposal For:

CENTERVILLE CITY CORPORA

Presented By:

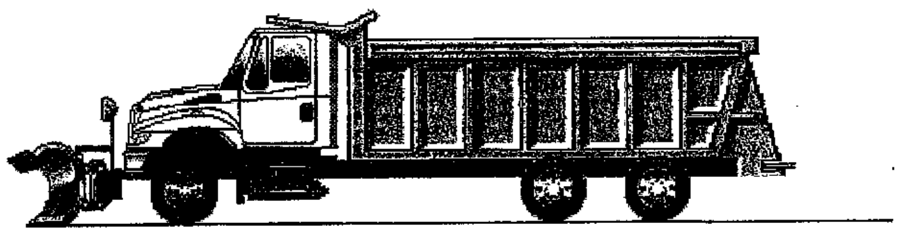
RUSH TRUCK CENTERS OF UT

INTERNATIONAL® July 08, 2013

Prepared For:
CENTERVILLE CITY CORPORA
KEN WILLIAMS
655 North 1250 West
CENTERVILLE, UT 84014-
(801)292 - 8232
Reference ID: N/A

Presented By:
RUSH TRUCK CENTERS OF UT
Ken Barton
964 SOUTH 3800 WEST
SALT LAKE CITY UT 84104 -
(801)972-5320

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.



Model Profile
2014 7600 SBA 6X4 2010 (SF667)

APPLICATION:	Front Plow and Wing with Spreader
MISSION:	Requested GVWR: 58000. Calc. GVWR: 58180 Calc. Start / Grade Ability: 31.05% / 3.10% @ 55 MPH Calc. Geared Speed: 92.1 MPH
DIMENSION:	Wheelbase: 205.00, CA: 137.90, Axle to Frame: 75.00
ENGINE, DIESEL:	{Navistar N13} EPA 10, SCR, 475 HP @ 1700 RPM, 1700 lb-ft Torque @ 1000 RPM, 2100 RPM Governed Speed, 475 Peak HP (Max)
TRANSMISSION, AUTOMATIC:	{Allison 4500_RDS_P} 4th Generation Controls; Wide Ratio, 6-Speed, With Double Overdrive; On/Off Hwy; Includes Oil Level Sensor, With PTO Provision, Less Retarder
CLUTCH:	Omit item (Clutch & Control)
AXLE, FRONT NON-DRIVING:	{Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity
AXLE, REAR, TANDEM:	{Meritor MT-40-14X-4DCR-P} Single Reduction, 0.433"(11mm) Wall Housing Thickness, 40,000-lb Capacity, R Wheel Ends, Lube Pump, With Driver Controlled Locking Differential in Forward Rear and Rear Rear Axle Gear Ratio: 4.11
CAB:	Conventional
TIRE, FRONT:	(2) 315/80R22.5 XZY-3 (MICHELIN) 486 rev/mile, load range L, 20 ply
TIRE, REAR:	(8) 11R22.5 XDE M/S (MICHELIN) 497 rev/mile, load range H, 16 ply
SUSPENSION, REAR, TANDEM:	{Hendrickson HMX-400-54} Walking Beam Type 54" Axle Spacing; 40,000-lb Capacity, With Rubber End Bushings, Transverse Torque Rods, Less Shock Absorbers
PAINT:	Cab schematic 100GS Location 1: 9219, Winter White (Std) Chassis schematic N/A

INTERNATIONAL®

Financial Summary
2014 7600 SBA 6X4 2010 (SF667)

July 08, 2013

(US DOLLAR)

Description	Price
Net Sales Price:	$116,572.00

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

Approved by Seller:

Accepted by Purchaser:

Official Title and Date

Firm or Business Name

Authorized Signature

Authorized Signature and Date

This proposal is not binding upon the seller without Seller's Authorized Signature

Official Title and Date

The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.

LEGACY
EQUIPMENT

Legacy Equipment Company
1220 South Legacy View Street
Salt Lake City, UT 84104
Phone: 801-975-0400
Fax: 801-975-7567
www.legacyeq.com

QUOTATION

Quote ID: 21863

1461
Customer: CENTERVILLE CITY
250 NORTH MAIN STREET
CENTERVILLE UT 84014

Contact: KEN WILLIAMS
Phone: (801) 292-3477
Fax:

Quote Number: 21863
Quote Date: 6/27/2013
Quote valid until: 7/27/2013

Salesperson: TERRY THOMPSON

QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT
1	EA	**15FT. SNOW PACKAGE WITH WING PLOW TO BE MOUNTED ON AN INTERNATIONAL TANDEM CHASSIS**	$99,241.00	$99,241.00
1	EA	TBEI/CRYSTEEL 15' STAINLESS STEEL DUMP BODY TO INCLUDE THE FOLLOWING: - BODY - 84" INSIDE DIAMETER & 96" OUTSIDE DIAMETER - HOIST MODEL - MARATHON CLASS 160 HIGH PRESSURE TELESCOPIC HOIST - BAIL MOUNT CYLINDER WITH NO DOGHOUSE - FRONT STYLE - STRAIGHT - SIDE STYLE - 3/4 DOUBLE WALL WITH ONE HORIZONTAL BRACE AND AN INTERNAL T-PANEL - REAR STYLE - SLOPED - ASPHALT REAR TAPER - WESTERN TUBULAR UNDERSTRUCTURE - HIGH TENSILE STEEL BODY WITH 58" FRONT, 44" SIDES AND 52" REAR - FRONT MATERIAL - 10 GAUGE 201 STAINLESS STEEL - INNER SIDE MATERIAL - 10 GAUGE 201STAINLESS STEEL - OUTER SIDE MATERIAL - 10 GAUGE 201 STAINLESS STEEL - REAR MATERIAL - 10 GAUGE 201 STAINLESS STEEL - FLOOR MATERIAL - 1/4"" AR400 STEEL - FRAME MATERIAL - 1/4" A1011STEEL - REAR AIR RELEASE TAILGATE WITH 7" OFFSET WITH ONE HORIZONTAL BRACE & TWO VERTICAL BRACES - ENCLOSED TAILGATE HARDWARE - LIFT LOOP IN TOP CENTER OF TAILGATE FOR EASY REMOVAL - RIGID GRIP-STRUT LADDER ON STREETSIDE FRONT OF BODY - SHOVEL HOLDER ON FRONT STREETSIDE OF BODY - LED LIGHT KIT WITH WIRING HARNESS - 3 REAR OVAL CUTOUT WITH UPPER L.E.D. OVAL STROBE, CENTER L.E.D. STOP, TURN TAIL & LOWER BACK-UP LIGHTS - BODY PROP - FACTORY PRIMER PAINT ON FLOOR & UNDERSTRUCTURE - NO PAINT ON STAINLESS STEEL		
1	EA	1/2 SIZE 10 GAUGE 201 STAINLESS STEEL CABSHIELD - 24" X 7'		
2	EA	LEGACY MUD FLAP INSTALLED BEHIND REAR WHEELS		
1	EA	BACKUP ALARM-97db		
1	EA	OVAL TAIL LIGHT KIT-L.E.D.-STOP, TURN, TAIL INCLUDING LIGHT HOLE		
1	EA	OVAL STROBE LIGHT KIT INCLUDING LIGHT HOLE		
1	EA	OVAL BACK-UP LIGHT KIT INCLUDING LIGHT HOLE		
1	EA	LEGEND 45" L.E.D. LIGHTBAR-AMBER WITH SIX PATTERN FLASH INCLUDING DIRECTIONAL STICK ON REAR OF LIGHT. INCLUDES TWO WHITE LIGHTS ON FRONT CORNERS & TWO RED LIGHTS IN REAR		

Legacy Equipment Company
1220 South Legacy View Street
Salt Lake City, UT 84104
Phone: 801-975-0400
Fax: 801-975-7567
www.legacyeq.com

QUOTATION

Quote ID: 21863

QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT
		CORNERS FOR BETTER VISIBILITY WITH IN-CAB SWITCH MOUNTED (PLEASE SPECIFY LOCATION - CABSHIELD OR TOP OF CAB)		
1	EA	LEGEND LIGHTBAR MOUNT KIT-FLAT MOUNT		
1	EA	FORCE AMERICA HYDRAULIC SYSTEM-FULL ELECTRONIC INCLUDING: VALVE FOR SINGLE ACTING HOIST FRONT MOUNT LOAD SENSING PISTON PUMP & DRIVELINE 3000 PSI MAXIMUM PRESSURE LOW/HOT OIL SENSOR 30-35 GALLON HYDRAULIC RESERVOIR AND VALVE BOX VALVES FOR SINGLE ACTING HOIST, POWER UP/GRAVITY DOWN & POWER LEFT/RIGHT PLOW, SPREADER OPERATION OF AUGER & SPINNER INSTALLATION INCLUDING ALL NECESSARY HOSES,FITTINGS,		
1	EA	HOSE, COUPLERS & FITTINGS FOR HYDRAULIC SYSTEM		
1	EA	VT-35 COMBINATION VALVE/TANK ASSEMBLY FOR HYDRAULIC SYSTEM		
1	EA	5100 ULTRA COMMANDALL ELECTRONIC CONTROLLER FOR SPREADER, PLOW UP/DOWN, PLOW LEFT/RIGHT AND HOIST UP/DOWN, LIQUID DE-ICING CONTROLS & ELECTRONIC DATA READ-OUT FOR SPREADER & DE-ICING FUNCTIONS		
1	EA	DOUBLE ACTING VALVE FOR WING PLOW		
1	EA	BUCKPLATE TOW PACKAGE-HEAVY DUTY INCLUDING: - 3/4" STEEL CONSTRUCTION - GLAD HANDS - SAFETY RINGS		
1	EA	PREMIER 470A AIR PINTLE HITCH		
1	EA	- 7-WAY TRAILER PLUG-FLAT PINS		
1	EA	- 7 WAY RECEPTACLE RUBBER BOOT		
1	EA	WAUSAU 11' X 42" REVERSIBLE SNOWPLOW: - FULL TRIP MOLDBOARD AND HYDRAULIC REVERSE		
1	EA	200BM PLOW HITCH - MONROE PLOW COMPATIBLE WITH BUMPER TO FRAME MODIFIED TO FIT SQH HITCH PLATE INCLUDING 4" LIFT CYLINDER		
1	EA	TQC LATCHING MECHANISM - PLOW MOUNTED		
1	EA	SQH PLOW HITCH PLATE (TOP OF PLATE MOUNTED 39" HIGH)		
1	EA	LATCH FOR SQH HITCH PLATE		
1	EA	TQC LATCHING MECHANISM - TRUCK PLOW HITCH MOUNTED		
1	EA	ADJUSTABLE PLOW JACK STANDS		
1	EA	11FT WAUSAU "PATROL WING" WING PLOW - MID-MOUNT TO INCLUDE: HYDRAULIC ANGLING STEEL CUTTING EDGE		
1	EA	SWENSON 14' STOCK V-BOX SPREADER-201 STAINLESS STEEL EQUIPPED WITH THE FOLLOWING: - 25:1 GEAR RATIO - 6 TOOTH SPROCKET - 82" WIDE HOPPER - 62" HIGH HOPPER - 11.2 CUBIC YARD CAPACITY - 12 GAUGE 201 STAINLESS STEEL SIDES & ENDS		

LEGACY
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Fax: 801-975-7567
www.legacyeq.com

QUOTATION

Quote ID: 21863

QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT
		- 7 GAUGE SLOTTED LONGITUDINALS		
		- 45 DEGREE SIDE SLOPE		
		- 1 1/2" DRIVE SHAFT WITH 1 1/4" IDLER SHAFT		
		- 7 GAUGE BOLT-IN REPLACEABLE CONVEYOR FLOOR		
		- INVERTED VEE OVER CONVEYOR CHAIN TO REDUCE LOAD ON CHAIN		
		- SELF CLEANING CONVEYOR CHAIN		
		- 1 1/2" X 3/8" DOUBLE WELDED CROSS BARS		
		- REAR CHAIN WIPER		
		- 18" CARBON STEEL SPINNER		
		- 12" ADJUSTABLE HEIGHT SPINNER EXTENSION		
		- SWING UP SPINNER ASSEMBLY		
		- BOTTOM MOUNTED MOTOR		
		- TOP SCREEN		
1	EA	WINCH FOR SWING UP SPINNER		
1	EA	SPREADER HOSE KIT		
1	EA	SPINNER LIGHT FOR SPREADERS		
1	EA	GREASE EXTENSION KIT FOR 14' BODY		
1	PR	SPILL SHIELD-12" OVERHANG-STAINLESS STEEL		
1	EA	CHAIN & RATCHET BINDER HOLD-DOWN (4 REQUIRED PER SPREADER)		
1	EA	SPRING LOADED CHAIN ADJUSTER TO REAR OF SPREADER		
1	EA	TAILGATE LATCH FOR V-BOX SPREADER & DUMP BODY		
1	EA	OBSERVATION PLATFORM-STAINLESS STEEL INCLUDING LADDER MOUNTED ON REAR - FACTORY INSTALLED		
1	PR	SIDE SHIELDS FOR 14FT STN STEEL SPREADER MADE FROM 24" 2 PLY RUBBER BELTING		
1	EA	ROLL-RITE TARPMASTER ELECTRIC 4-SPRING ALUMINUM TARP SYSTEM WITH TENSION BOW FOR UP TO 22FT OF TARP INCLUDING: 36460 97" TARP SPOOL 46440 PIVOT SET 76700 TARP BOW SET 76710 TENSION BOW SET		
1	EA	45 DEGREE ELBOW FOR TARPER (IF NECESSARY)		
1	EA	84" X 18' HD ASPHALT TARP FOR 13'-14' DUMP BED-NO GROMMETS		
1	EA	3RD EYE HD SINGLE COLOR CAMERA SYSTEM WITH TWO CAMERA PORTS INCLUDING CAMERA, 7" MONITOR & CABLE MOUNTED ON CURBSIDE BOTTOM OF MIRROR		

Quote Total:	**$99,241.00**
Sales Tax:	
Total Due:	**$99,241.00**

The following options may be added:

QUANTITY	DESCRIPTION	PRICE EACH	AMOUNT	ADD TO QUOTE

- **Price does not include chassis or equipment modifications that may be necessary due to unforeseen compatibility issues. Customer will be contacted for approval before any modifications are made.**
- **Paint, if applicable, will be matched as closely as possible. An exact match cannot be guaranteed.**

Legacy Equipment Company
1220 South Legacy View Street
Salt Lake City, UT 84104
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QUOTATION

Quote ID: 21863

- **Terms are Due Upon Receipt unless prior credit arrangements are made at the time of order.**
- Please note if chassis is furnished, it is as a convenience and terms are Net Due on Receipt of Chassis
- Quote may not include all applicable Federal Excise Tax, Sales Tax or Delivery Fees.

Customer must fill out the information below before the order can be processed...

Accepted by:	
Date:	
P.O. number:	

Notes:

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 10.

Short Title: Reconsideration of Approval of UTA Trail License Agreement

Initiated By: Staff

Scheduled Time: 8:30

SUBJECT

Reconsideration of approval of UTA Trail License Agreement between the City and UTA for the use and maintenance of a pedestrian pathway and trail system within the DRGW Corridor

RECOMMENDATION

Reapprove UTA Trail License Agreement between the City and UTA for the use and maintenance of a pedestrian pathway and trail system within the DRGW Corridor (without condition of approval regarding environmental liability coverage).

BACKGROUND

On July 16, 2013, the City Council approved a Trail License Agreement between the City and UTA for the use and maintenance of a pedestrian pathway and trail system within the DRGW Corridor. Pursuant to the motion, the approval of the Trail License Agreement was conditioned upon and subject to review and approval of the City's insurance company regarding the environmental liability clauses and coverage. In response to the condition of approval, Staff contacted URMMA, the City's insurance company, and asked whether the City would be insured for the Trail License Agreement's environmental liability clauses that allocate liability and responsibility to the City for any claims of "personal injury to trail users due to exposure to preexisting environmental contamination." URMMA's response is attached in the email correspondence dated July 29, 2013. In essence, URMMA has indicated that the City would most likely NOT be insured for personal injury claims to trail users arising from or due to exposure to preexisting environmental contamination. Coverage would be dependent upon type of injury and claim. Given URMMA's response regarding insurance coverage for such risks, Staff contacted UTA representatives to see if they would reconsider eliminating the environmental liability clauses. UTA again reiterated that these provisions are mandatory and that such provisions are in most of the trail license agreements that they have entered into for the corridor. Earlier contracts did not have these clauses, but all current contracts must contain these provisions. It is up to the City Council to determine whether to approve the contract with these mandatory provisions or not. Given the public benefit of the rail corridor trail and the low risk of environmental liability exposure, it is Staff's recommendation the Council approve the Trail License Agreement.

ATTACHMENTS:

Name:	Description:
Centerville_Final_DRGW_Trail_Agreement_7-11-2013.doc	UTA Trail License Agreement
uta_trail_agreement-urmma_email.pdf	URMMA Email

TRAIL LICENSE AGREEMENT
(Centerville – D&RGW Corridor)

This Trail License Agreement (the "Agreement") is entered into as of the ______ day of ____________, 2013 by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah ("UTA") and CENTERVILLE CITY CORPORATION, a municipal corporation organized under the laws of the State of Utah (the "City"). UTA and the City are hereafter sometimes collectively referred to as "parties," and either may be referred to individually as "party," all as governed to the context in which such words are used.

RECITALS

WHEREAS, UTA is the owner of a certain railroad corridor known as the Denver and Rio Grande Western line ("DRGW Corridor") as purchased from the Union Pacific Railroad Company ("UP");

WHEREAS, UP filed a Notice of Exemption with the United States Surface Transportation Board ("STB") seeking to abandon approximately 23.69 miles of the DRGW Corridor, and UTA filed a subsequent letter requesting that the STB issue a Notice of Interim Trail Use (the "NITU") regarding the DRGW Corridor pursuant to the National Trails Act (16 U.S.C. § 1247(d) and 49 CFR § 1152.29);

WHEREAS, the STB granted the NITU, suspending the abandonment proceeding and designating an interim use of the DRGW Corridor as a pubic trail;

WHEREAS, UTA, the City, Utah Department of Transportation ("UDOT"), Davis County, and other local jurisdictions have cooperated to finance, design, and construct a public trail along a portion of the DRGW Corridor;

WHEREAS, upon completion of construction of the public trail along a portion of the DRGW Corridor, the City agrees to maintain that portion of the trail located within the jurisdictional limits of the City in accordance with and subject to the terms and conditions set forth in the Agreement;

WHEREAS, the NITU (and therefore the use of the trail) is subject to the future restoration of rail service on the DRGW Corridor;

WHEREAS, the parties wish to acknowledge and confirm their respective agreements regarding the use and maintenance of the trail and D&RGW Corridor.

AGREEMENT

NOW, THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Purpose of Agreement. Various entities have cooperated in a joint project to finance, design, construct, and install a public trail (the "Trail") on a portion of the DRGW Corridor. The Trail will be a paved pedestrian pathway. The Trail is to be located on the UTA owned right-of-way. Upon completion of construction of the Trail, the City will assume sole responsibility to operate and maintain those portions of the Trail and DRGW Corridor located within the jurisdictional limits of the City as more particularly provided in this Agreement.

2. Portions of Trail within the City. That portion of the Trail to be constructed within the jurisdictional limits of the City is approximately 1.41 miles long and extends from approximately milepost 757.00 to milepost 758.41 and approximately 1275 North to the northern City boundary line. This is a part of a larger project intended to extend the Trail the full length of the DRGW Corridor. The City will not have responsibility with respect to any portions of the Trail that are not constructed within the jurisdictional limits of the City; provided, the City agrees to maintain any portion of the Trail located on property that is annexed into the City in the future.

3. Scope of use for Trail. The Trail will be open to the public for pedestrian use and will also be available to bicyclists and similar compatible uses (excluding motor vehicle uses). No motorized or equestrian use of the Trail is permitted, with the exception of motorized vehicles performing authorized maintenance, fire, police and emergency response functions, . UTA expressly reserves the right to prohibit any use of the Trail which is incompatible with UTA's other use(s) or interests in the DRGW Corridor.

4. Design Review. UDOT is the principal contracting entity with respect to the design consultant retained to perform design and engineering work for the Trail. UTA and the City have coordinated the design review process and both Parties approved the final design drawings that were included in the bid packages for project construction. The final approved design drawings are attached as Exhibit "A" to this Agreement.

5. Construction; Coordination with Contractor. UDOT is the principal contracting entity with respect to the contractor who will install the Trail in the DRGW Corridor. UTA being the property owner, will coordinate the contractor's access for the DRGW Corridor. UTA will require UDOT to require its contractor to obtain a Contractor's Right of Entry from UTA. UDOT shall require contractor to execute UTA's Contractor's Right of Entry form. UDOT shall inform its contractor or contractors of the requirement to execute this form and deliver the same to UTA prior to entry upon or the performance of any Construction inside the boundaries of the UTA Right of Way. Under no circumstances shall UDOT's contractor be allowed on the Right of Way without first executing and delivering to UTA the Contractor's Right of Entry form and providing the required proof of insurance . The City shall have no obligations to the contractor for the construction of the Trail and shall have no responsibility of liability to third parties for the acts or omissions of the contractor.

6. Inspection of Contractor's Work. When the contractor indicates that Trail construction is substantially complete under the terms of the construction contract, UDOT, UTA and the

City will conduct a joint inspection and walk-through of the construction site. As the party who will ultimately be responsible for operating and maintaining the Trail, the City shall have the right to object to any portions of the contractor's work which the City deems defective or non-compliant with the construction contract. At the completion of the inspection, UDOT, UTA and the City will develop a mutually agreeable punchlist of open items which the contractor must satisfactorily complete prior to final acceptance of the construction work. UDOT shall cause the contractor to complete the open items in accordance with the approved punchlist.

7. City to Maintain Trail. Beginning upon completion and final acceptance of the construction of the Trail by UDOT and continuing thereafter until the expiration or termination of this Agreement, the City shall assume sole responsibility to maintain the Trail and DRGW Corridor . This shall include responsibility for posting and enforcing rules and ordinances related to use of the Trail. This shall include maintaining, repairing, replacing, and reconstructing all pavements, fencing, signage, landscaping or other improvements installed as part of the Trail, such responsibility to continue throughout the term of this Agreement and until rail use is reactivated. This shall also include performing any law enforcement, security monitoring or other activities necessary to protect persons and property on the Trail.

8. License to Operate Trail. UTA hereby grants the City a license allowing the City to operate and maintain the Trail, as contemplated in the design drawings attached as Exhibit "A" to this Agreement. The license is subject to the terms and conditions of this Agreement. The scope of the license shall not include any improvements that are not specifically necessary for the Trail such as utility crossings or drainage facilities upon, under, along or within the DRGW Corridor. Any out of scope uses requested by the City shall be considered pursuant to a separate licensing process.

9. Maintenance Standard. The City agrees to maintain all Trail improvements in a good and workmanlike manner and in a manner consistent with the City's other public parks and trails. All maintenance shall be performed consistent with the laws, rules, regulations, ordinances or other requirements of any governmental authority having jurisdiction with respect to the DRGW Corridor. Any landscaping, bushes, trees, plants, and the like within the DRGW Corridor shall be maintained by City in a manner that is acceptable to UTA; which may include, but is not limited to, keeping down weeds, and noxious plants, and maintaining trees in a safe condition.

10. Work to be Performed by City after Initial Installation. Upon completion and acceptance of the construction of the Trail by UDOT, the City will be responsible for all subsequent work required to maintain the Trail to the standards contemplated in this Agreement. The City agrees to cause the preparation of detailed plans and specifications with respect to any non-routine work to be performed by the City within the DRGW Corridor including, without limitation, any work involving the proposed excavation or penetration of surface soils. UTA shall have the right to review and approve such plans and specifications. In addition, the City agrees to comply with requirements, standards and restrictions set forth in Exhibit "B" to this Agreement (Exhibit "B" is attached hereto and incorporated into and made a part of this Agreement by reference). As used in Exhibit "B", the term "Work" shall mean any activities

performed by the City subsequent to the initial installation including, without limitation, any subsequent maintenance, repair, replacement or reconstruction performed by the City.

11. Environmental Covenant. Unless specifically approved in writing by UTA, the City hereby covenants not to cause or permit the introduction, usage, storage or release of any hazardous materials on or adjacent to the DRGW Corridor. As used in this Agreement, the term "hazardous materials" means any pollutants, toxic substances, hazardous wastes, hazardous substances, oils of any kind or in any form (including petroleum, fuel oil, diesel oils, crude oil or any fraction thereof), and any other substances defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Response, Compensation and Liability Act, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substance Control Act, or any other federal, state or local environmental laws, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereon, previously enforced or subsequently enacted. Without limiting the breadth of the foregoing covenant, the City hereby agrees that any herbicides or other chemicals used by the City to maintain landscaping improvements shall be subject to the advance approval of UTA's Environmental Compliance Manager or his or her designee.

12. Allocation of Liability; Indemnity. Each party shall perform the obligations it has assumed under the Agreement in a reasonable manner and in compliance with all applicable laws. Liability for any costs, liabilities, judgments, fines, fees (including attorneys' fees) or other losses (hereafter collectively "Losses") arising from the Trail shall be allocated as follows:

12.1. Each party shall be liable and responsible for any Losses arising from or in connection with its respective breach of the obligations assumed under this Agreement.

12.2. The City shall be liable and responsible for any Losses arising from or in connection with the operation or maintenance of the Trail after the initial completion and acceptance of construction of the Trail by UDOT, including, without limitation, Losses related to the death or injury of trail users or third parties or damage to property. The scope of this indemnity includes claims of personal injury to trail users due to exposure to preexisting environmental contamination.

12.3. UTA shall remain liable and responsible for any Losses connected to the existing environmental condition of the DRGW Corridor, except for claims arising from trail user's exposure to existing environmental condition. The City shall be liable and responsible for any Losses related to any exacerbation of existing environmental conditions affected by the City's breach of its obligations under this Agreement including, without limitation, the City's violation of the covenant contained in Section 11 of this Agreement.

12.4. All other Losses shall be allocated as otherwise provided by applicable law.

12.5. In cases where a lawsuit, enforcement proceeding, administrative hearing or other adjudicative proceeding is commenced against either party for or on account of Losses for which the other party may be solely or jointly liable under this Agreement, the party thus served shall give the other party timely written notice of the pendency of such proceeding, and thereupon the party so notified shall assume or join in the defense thereof. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action.

12.6. Nothing provided in this Agreement is intended to waive, modify, limit or otherwise affect any defense or provisions that the parties may assert with respect to any third party under Title 63G, Chapter 7 of the Utah Code, as amended, and/or other applicable laws.

13. Subordination of Rights Granted – Relocation of Trail.

13.1. The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use its Right of Way, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new facilities upon any or all parts of the Right of Way, all or any of which may be freely done at any time or times by UTA without liability to the City for compensation or damages. The grant of License is made without covenant of quiet enjoyment. UTA makes no warranties, either express or implied, regarding the existence or nonexistence of third person rights which may be superior to the License granted pursuant to this Agreement.

13.2. If necessary to accommodate a change or addition to the Right of Way, the City shall, within 180 days after receipt of written notice from UTA, modify the Trail, relocate all or any portion of the Trail to such new location on the Right of Way as UTA may designate, or (if relocation is not possible or not desirable as determined by the City) remove the Trail or a portion of the Trail entirely from the Right of Way. Any relocation or modification of the Trail or a portion thereof as required under the terms of this Section shall be at the City's expense with no reimbursement from UTA. Any removal of the Trail or a portion thereof as provided under the terms of this Section shall be in accordance with the provisions of Section 17, regarding Effect of Termination. All the terms, conditions and stipulations herein expressed with reference to the Trail on UTA's Right of Way in the location described herein shall, so far as the Trail remains on UTA Right of Way, apply to the Trail as modified or relocated pursuant to this Paragraph 13. This covenant constitutes consideration for the License granted by this Agreement. The City shall not be entitled to any damages or other compensation as the result of UTA's exercise of its rights under this Paragraph 13. UTA agrees to exercise its rights under this Paragraph 13 reasonably and in good faith.

13.3. The City expressly understands and agrees that if UTA deems it necessary or advisable to use the Right of Way or any portion of it, for transit purposes, UTA may unilaterally terminate this License. Removal of the Trail and restoration of the Right of Way shall be conducted in accordance with the provisions of Section 17, regarding Effect of Termination.

13.4. The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to third parties by UTA, or its predecessors in interest, and the right of UTA to renew and extend the same.

13.5. The City acknowledges that, without the terms and conditions of this Paragraph 13, UTA would not otherwise grant a license for the Trail, and as such, the terms of this Paragraph 13 are intended to, and hereby do, constitute additional consideration for this Agreement. The City and UTA acknowledge and agree that the terms of Paragraph 13 of this Agreement shall govern the obligations of the Parties in the event any modification or relocation of the Trail shall be necessary.

13.6. UTA shall have the absolute right to close all or any portion of the Trail at any and all such times, and to such extent, as may be legally sufficient to prevent a dedication of, or the accrual of any right in, the Trail, to any person or entity or to the public.

14. Default. A party shall be deemed in default of this Agreement upon the failure of such party to observe or perform a covenant, condition or agreement on its part to be observed or performed, and the continuation of such failure for a period of 30 days after the giving of written notice by the non-defaulting party, which notice shall specify such failure and request that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within the applicable period, it shall not give rise to a default hereunder if corrective action is instituted within the 30-day period and thereafter diligently pursued until such failure is corrected. In the event of a default hereunder, the non-defaulting party shall have a breach of contract claim remedy against the defaulting party in addition to all the other remedies provided or permitted by law, provided that no remedy which would have the effect of amending or terminating any provisions of this Agreement shall become effective without formal amendment of this Agreement.

15. Term. This Agreement shall be effective when fully executed by both parties. Subject to the provisions for termination as provided in Section 16 below, this Agreement shall continue in full force and effect for an initial term of 25 years. Provided that neither party is in default with respect the this Agreement and subject to the provisions for termination as provided in Section 16 below, this Agreement shall automatically renew for an additional term of 25 years, provided that neither party has delivered (at least 90 days prior to expiration of the initial term) written notice of its intent to terminate the Agreement upon expiration of the initial term.

16. Termination. This Agreement and the Trail contemplated hereunder are both subject to recommencement of rail operations within the DRGW Corridor at any time. Not withstanding the Term of this Agreement or any other provision of this Agreement, UTA shall have the right to terminate this Agreement, at its sole option, and without recourse on the part of the City, in the event that freight or public transit operation are commenced (or

construction with respect to freight or public transit improvements commences) in the DRGW Corridor. The City shall have the right to terminate this Agreement, and its maintenance obligations regarding the Trail and D&RGW Corridor, upon five (5) years prior written notice to UTA.

17. Effect of Termination. In the event that this Agreement expires or is terminated prior to expiration, the City shall peacefully surrender its use of the DRGW Corridor and the DRGW Corridor within the jurisdictional limits of the City shall cease to be used as a Trail. If the termination of this Agreement is by expiration (after the initial term or subsequent terms) or is terminated by UTA, then UTA, at its expense, shall be responsible for removal of any and all property constructed upon the DRGW Corridor as part of the Trail. If the termination of this Agreement is due to termination rights exercised by the City as provided in Section 16, then the City, at its expense, shall be responsible for removal of the Trail within the DRGW Corridor.

18. Notices. Any notice, demand, request, consent, submission, approval, designation or other communication which either party is required or desires to give under this Agreement shall be made in writing and delivered to the other party at the addresses set forth below or at such other addresses as such party may provide in writing from time to time. All notices shall be hand delivered, mailed (by first-class mail, postage prepaid) or delivered by courier service as follows:

If to UTA
Utah Transit Authority
Attn: Property Management Department
669 West 200 South
Salt Lake City, Utah 84101

With a Copy to
Utah Transit Authority
Attn: General Counsel's Office
P.O. Box 30810
Salt Lake City, Utah 84130-0810

If to the City
Centerville City
Attn: City Manager
250 North Main Street
Centerville, Utah 84014

With a Copy to
Centerville City
Attn: City Attorney
250 North Main Street
Centerville, Utah 84014

19. Non-Waiver. No covenant or condition of this Agreement may be waived by a party unless done so in writing by such party. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other party.

20. Severability. In the event any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of the Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. Governing Law. The validity, interpretation and performance of this Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement that cannot be resolved to the satisfaction of the parties shall only be brought in the District Court of Salt Lake County, Utah, which shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

22. No Third-Party Beneficiaries. There are no intended third party beneficiaries to this Agreement. It is expressly understood that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties, and nothing contained in this Agreement shall give or allow an claim or right of action by any third persons under this Agreement. It is the express intention of the parties that any third person who receives benefits under this Agreement shall be deemed an incidental beneficiary only.

23. Entire Agreement; Amendment. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and no statements, promises or inducements made by either party or agents of either party that are not contained in this Agreement shall be binding or valid. This Agreement may not be amended, enlarged, modified or altered except through a written instrument signed by both parties.

IN WITNESS WHEREOF, the parties have each executed this Agreement as of the date first set forth above.

UTAH TRANSIT AUTHORITY

By: ______________________________
Michael Allegra, General Manager

By: ______________________________
Steve Meyer, Chief Capital Development Officer

APPROVED AS TO FORM AND LEGALITY

____
UTA General Counsel's Office

CENTERVILLE CITY CORPORATION

By: ______________________________
Name:
Title:

ATTEST AND COUNTERSIGN:

____
CITY RECORDER

APPROVED AND REVIEWED AS TO PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW

____
Centerville City Attorney's Office

EXHIBIT "A"

DESIGN DRAWINGS FOR TRAIL

[INSERT DRAWINGS CONTAINED IN BID DOCUMENTS]

EXHIBIT "B"

RESTRICTIONS ON MAINTENANCE, REPAIR, RECONSTRUCTION AND OTHER WORK TO BE PERFORMED BY THE CITY IN THE DRGW CORRIDOR

A. In the prosecution of the Work, the City shall comply with all applicable federal, state and local laws, regulations and enactments. If any failure by the City to comply with any laws, regulations and enactments shall result in a fine, penalty, cost or other charge being assessed, imposed or charged against UTA the City shall assume responsibility for and, if necessary, reimburse UTA for any such fine, penalty, cost or charge including, without limitation, attorneys' fees, court costs and expenses; provided, UTA provides the City with proper notice of the action. The City further agrees in the event of any such action, upon written notice thereof being provided by UTA, to defend such action free of cost, charge or expense to UTA. UTA shall have the right, but not the obligation, to observe any and all Work performed in or materially affecting the DRGW Corridor pursuant to this Agreement to ensure that the DRGW Corridor is adequately protected.

B. The City acknowledges that the DRGW Corridor is subject to arrangements with the Utah Department of Environmental Quality ("UDEQ") and the United States Environmental Protection Agency ("EPA"). Pursuant to such arrangements, UTA is required to characterize any excavated soil that appears to be (or has the potential to be) contaminated and to handle and dispose of any such soil in compliance with applicable state and federal laws. Under these arrangements, UTA is not required to excavate any soil except as required for its rail construction activities in the DRGW Corridor. Accordingly, any excavation performed by the City exposes UTA to potential environmental liability that would not otherwise be present. Prior to commencing any Work involving excavation or other activities involving the penetration of the DRGW Corridor, the City shall cause to be prepared and submitted to UTA detailed engineering drawings showing the proposed Work and identifying the proposed area of excavation or penetration. The proposed Work may not be performed without the expressed written consent of UTA, which consent may be withheld at UTA's sole discretion.

C. Various utilities may exist on, over and under the surface of the DRGW Corridor. Prior to commencing any Work, the City shall properly investigate and determine the location of all such utilities. In addition to the required investigation, the City shall have all utilities within the DRGW Corridor "blue-staked" according to state law and clearly marked prior to any excavation. The City, at its sole expense, shall make arrangements for the protection of all utilities and shall commence no excavation until all such protection has been accomplished.

D. One or more fiber optic cable systems may be buried within the DRGW Corridor pursuant to 10-foot exclusive easements reserved by UP. Protection of fiber obtic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to commencing any Work, the City shall telephone UP during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-

day number for emergency calls) to determine if fiber optic cable is buried near the location of proposed Work. If so, the City will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, make arrangements for relocation or other protection of the fiber optic cable. The City shall not commence any of the Work until all such protection and temporary relocation have been accomplished. Upon completion of the Work, the City shall cause the relocated line to be restored to its prior location.

E. The City shall fully pay for all materials joined or affixed to the DRGW Corridor in connection with the performance of Work, and for all labor performed with respect to such Work. The City shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any Work done or materials furnished thereon at the instance or request or on behalf of the City. The City shall require its contractor or contractors to obtain and provide a payment bond covering the full cost for the Work, with UTA and the City as named obligees.

F. Upon completion of the Work, the City shall restore the surface of the DRGW Corridor to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any property that the City disturbed or removed from the DRGW Corridor.

From: Blaine Lutz
Sent: Monday, July 29, 2013 5:00 PM
To: Steve Thacker
Subject: UTA

Steve,

This is what Carl sent me. Sounds like there is some risk with the City being covered, but it is extremely low.

BL,

Our opinion remains the same as we supposed last week. The exclusion would likely apply depending how a claim was worded. We are in agreement that the potential of a claim is extremely remote especially if the trial is capped and paved. That is a risk I would likely take.

If you have reason to believe the contracts differ between entities, it may give you some room to negotiate with the State??

Let me know if I can help confuse the issue further.

Carl

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 11.

Short Title: Mayor's Report

Initiated By: Mayor

Scheduled Time: 8:35

SUBJECT

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Name:	Description:
No Attachments Available	

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 12.

Short Title: City Manager's Report

Initiated By: Steve Thacker - City Manager

Scheduled Time: 8:40

SUBJECT

a. Parrish & Main Intersection Project update
b. UDOT I-15 express lane project
c. ULCT Legislative Policy Committee issues

RECOMMENDATION

Not applicable

BACKGROUND

City Manager will report on these matters during the meeting. No action required.

ATTACHMENTS:

Name:	Description:
No Attachments Available	

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 13.

Short Title: Miscellaneous Business

Initiated By: City Manager

Scheduled Time: 8:55

SUBJECT

a. Consider authorizing letter of support for Market Place Fairness Act legislation

RECOMMENDATION

Authorize letter to be sent to Utah's congressional delegation, expressing support for the Market Place Fairness Act legislation pending in the U.S. House of Representatives.

BACKGROUND

This matter was discussed in the most recent Legislative Policy Committee of the Utah League of Cities and Towns. The Committee voted unanimously to promote this federal legislation, where the bill is pending in the U.S. House of Representatives. The attached email from Cameron Diehl, a ULCT staffer, provides a brief summary. Note that the bill would not impose a new tax, but would enable the collection of an existing tax that online retailers are not currently collecting and remitting. Also attached is a template for letters that could be sent to Utah's Representatives. That template provides much more detail about this matter. The ULCT Legislative Policy Committee urges city officials to contact their Representatives (by letter and direct contact) during August, before the Representatives return from recess to Washington, D.C, and urge them to give the bill a hearing in September; if not, the bill will likely fail and not be considered again until 2015.

The City Manager is seeking the Council's direction on whether to draft a letter for the Mayor and/or Council Members to sign.

ATTACHMENTS:

Name:	Description:
ULCT_email_re_Marketplace_Fairness_Act.pdf	ULCT Staff Email re Marketplace Fairnes Act
ULCT_Letter_Templat.pdf	ULCT Letter Template re Marketplace Fairness Act

Steve Thacker

From:	Cameron Diehl <CDiehl@ulct.org>
Sent:	Tuesday, July 23, 2013 2:47 PM
To:	Cameron Diehl
Subject:	ULCT LPC Call to Action on Marketplace Fairness Act in Congress
Attachments:	Marketplace for House action alert.docx

Hello LPC,
Last Monday, the Legislative Policy Committee voted unanimously to promote S. 743/H.R. 684 (The Marketplace Fairness Act) in the United States House of Representatives. The LPC voted unanimously to urge Utah's House members to a) advocate for a House Judiciary Committee hearing on S. 743 or H.R. 684 by the end of September and b) to support the bill.

I) Brief summary

The bill would empower state and local governments to collect the sales tax from remote sellers that **are already owed** under current law. **It is not a new tax**, but rather a collection of an existing tax that online retailers are not currently collecting and remitting. The bill would level the playing field between brick and mortar businesses who collect and remit sales tax and online businesses who currently do not collect or remit sales tax. Small online businesses--those with annual remote sales of less than $1 million--are exempt from the collection and remittance requirements. The bill also provides a mechanism for online retailers to obtain free compliance software and Utah is already a member of the Streamlined Sales and Use Tax Agreement. Utah's estimated potential revenues are $180 million. The bill passed the Senate overwhelming 69-27 and is awaiting a hearing in the House Judiciary Committee.

II) Contact the House!

Attached is a draft letter that you can re-format & send to the delegation. The letter identifies seven reasons to support the bill. We urge you to re-format and send the letter to your Member(s) of Congress. Less is more; you can use as much or as little of the letter as you see fit.

We expect opposition to the bill from online retailers such as E-Bay and Overstock.com. Senator Hatch offered several amendments to the Senate version at the behest of online retailers and both Senators Hatch and Lee voted no on the bill in the Senate. Congressman Chaffetz has also raised concerns publicly on their behalf. We expect the online retailers to lobby the House delegation.

We urge mayors and council members specifically to contact your House member directly. The impact of an elected official to elected official conversation is a game-changer on Utah's Capitol Hill. We want to similarly marshal the forces of Utah's municipal leaders to promote the Act with the delegation.

Once you have contacted your House Member, please notify ULCT of the response. You can reach me at 801-328-1601 or cdiehl@ulct.org.

III) Congressman Chaffetz and the House Judiciary Committee

Congressman Chaffetz sits on the House Judiciary Committee. He is therefore in a prime position to urge the House Judiciary Committee Chairman Bob Goodlatte to schedule a hearing on Marketplace.

The House Judiciary did hold a hearing on Marketplace's predecessor during the previous Congressional term on July 24, 2012. During that hearing, Congressman Chaffetz raised several questions about compliance software, fair compensation to businesses, and simplification of state tax codes and referred specifically to Overstock.com. Consequently, it is critical that LPC members who have relationships with Congressman Chaffetz contact him immediately and explain that the Act is not a new tax but rather the collection and remittance of an existing tax, levels the playing field between online and brick and mortar retailers, provides mechanisms to facilitate corporate compliance, and provides significant revenue for local governments.

IV) Congressional Schedule

Congress will be in session until Friday, August 2. They will then recess until Monday, September 9. As such, please contact your Member of Congress while they are in Utah during the August recess. As of now, Congress is scheduled to convene from Monday, September 9 until Friday, September 20 and again from Monday, September 30 until Friday, October 11. While Congress will convene later in the year, ULCT sources in DC tell us that if Marketplace hasn't had a hearing by the end of September, then the bill will likely fail.

V) Contact information for Utah House delegation

I am providing the contact info for each House member and the staff with whom ULCT has a relationship. Please contact the House Members directly if you can; if not, please utilize the following information. We ask that you call, send the letter, or both and notify us of their reply.

Congressman Rob Bishop (1st)
Ogden office: 801-625-0107
1017 Federal Building, 324 25th Street, Ogden UT 84401

Chief of Staff: Scott Parker, 202-225-0453 (DC), scott.parker@mail.house.gov
District Director: Peter Jenks, 801-625-0107, peter.jenks@mail.house.gov
ULCT local liaison: Jennifer Somers, 801-625-0107, Jennifer.somers@mail.house.gov

Congressman Chris Stewart (2nd)
SLC office: 801-364-5550
SLC office: 136 East South Temple Street, Suite 900

DC Legislative Liaison w/ULCT: Gordon Larsen, 202-225-9730, Gordon.larsen@mail.house.gov
District Director: Dell Smith, 801-364-5550, dell.smith@mail.house.gov
ULCT local liaison: Randy Minson, 801-364-5550, randy.minson@mail.house.gov

Congressman Jason Chaffetz (3rd)
Provo office: 801-851-2500
51 S University Ave Suite #318, Provo, UT 84601

DC Legislative Liaison w/ULCT: Mike Jerman; 202-225-7751, mike.jerman@mail.house.gov
Communications Director/ULCT local liaison: Jennifer Scott, Jennifer.scott@mail.house.gov

Congressman Jim Matheson (4th)
West Jordan office: 801-486-1236
9067 South 1300 West, Suite 101, West Jordan, UT 84088

Chief of Staff: Meg Joseph, 202-225-3011, meg.joseph@mail.house.gov
District Director: Mike Reberg, 801-486-1236, mike.reberg@mail.house.gov
ULCT local liaison: Chase Clyde, 801-486-1236, chase.clyde@mail.house.gov

Maps:

If you need confirmation of your House district, please see the following link:
http://elections.utah.gov/map/district-maps

Please let me know ASAP once you have both contacted your House Member and his response. We expected a heavy lobbying effort from the bill's opponents and want to measure our impact with the delegation. Please also notify me of any concerns that your Member raises and other information. You can reach me at 801-328-1601 or cdiehl@ulct.org.

Thank you for your continued advocacy for local government and please let me know if you have any questions. Happy Pioneer Day!

Cameron Diehl
Policy Analyst/Attorney
Utah League of Cities and Towns
50 South 600 East Suite 150
Salt Lake City, UT 84102
cdiehl@ulct.org
801-328-1601

ULCT Letter Template.pdf

July 22, 2013

Template Letter re Marketplace Fairness Act

TEMPLATE FOR LETTER FROM UTAH CITY TO THE UTAH HOUSE DE

On behalf of the 245 member municipalities of the Utah Le Towns (ULCT), we urge you to support S. 743 or H.R. 684, commonly known as the Marketplace Fairness Act. We also urge you to push the House Judiciary Committee to hold a hearing to deliberate on S. 743 or H.R. 684.

I) COMPLIANCE WITH CURRENT LAW

The Marketplace Fairness Act would grant state and local governments the option to collect the sales tax from remote sellers that are **already owed** to them under current law. The current tax structure requires brick and mortar business to collect and remit state and local sales tax but does not have the same requirement for remote sellers. Consumers are required under existing Utah law to pay sales & use taxes on all goods they purchase. However, online sellers are not required to collect and remit sales taxes in the same way that local brick and mortar businesses collect the taxes.

The Marketplace Fairness Act is thus not a new tax on businesses but rather a collection of an existing tax that certain retailers are not collecting and remitting. Collecting sales tax should be simply part of selling goods online, just as it is a part of selling goods on Main Street. The skewed tax rules thus create an unfair business environment for brick and mortar retailers.

II) POTENTIAL FINANCIAL IMPACT

The National League of Cities anticipates that the Act will empower local governments nationwide to collect $23 billion (FY 2012) of already-owed sales taxes which can be used on necessary public services and infrastructure projects. Utah's estimated potential revenues are $180 million.

III) POLITICS & PROCESS

S. 743 passed the United States Senate 69-27 in May 2013. The Senate bypassed normal procedure and the bill was lifted directly to the floor for a floor vote without a committee hearing. However, the House Judiciary Committee Chairman Bob Goodlatte publicly declared that the House would follow normal order and procedure for either S. 743 or the House version (H.R. 684). H.R. 684 is sponsored by Representative Steve Womack (R-AR) and has 66 bipartisan co-sponsors.

Realistically, if the House Judiciary Committee does not hold a hearing by the middle of September 2013, the bill will likely fail this session. The Senate vote will be in vain and the bill will likely not have another opportunity until 2015 at the earliest.

Consequently, ULCT requests that Utah's House delegation request that the Judiciary Committee hold a hearing on either bill. Last session, the House Judiciary Committee held a hearing on a similar version of the bill (H.R. 3179). This year's bill deserves a hearing and an opportunity for a vote.

IV) IMPACT ON SMALL BUSINESS

Under the bill, remote sellers would be required to collect and remit sales taxes to other localities so long as the total annual remote sales exceed $1 million. The bill thus provides a safe harbor to small online businesses—those with annual remote sales of less than $1 million—so that those businesses need not collect and remit the sales tax. The business themselves are not paying the tax; they are simply collecting and remitting the tax paid by their customers.

V) STREAMLINED SALES AND USE TAX AGREEMENT

The bill requires states to simplify their sales tax laws to facilitate multistate sales tax collection. Utah is actually already a full member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has been a leader in the national SSUTA effort. Per Senate Bill 58 (2013), Utah has established a restricted account for the potential revenues from the Marketplace Fairness Act. Upon passage of the Act, Utah local leaders will deliberate how best to allocate those funds and examine possible modifications to the overall municipal finance structure.

VI) FREE COMPLIANCE SERVICES

The bill provides for free services to assist online retailers to comply. For example, the Streamlined Sales and Use Tax Agreement Governing Board oversees a certification process that includes the testing and verification of software and/or services to ensure compliance with all applicable state and local sales tax laws. As of today, there are six certified service provider platforms available to help retailers achieve compliance.

VII) FEDERALISM

The Marketplace Fairness Act is also an example of federalism. Per the Supreme Court holding in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) Congress must authorize local governments to enforce sales tax laws on remote sellers. When Congress enacts the Act, then Congress will empower only state and local governments to levy sales tax on remote sellers. Congress, meanwhile, will not have the authority for a federal remote sales tax nor can Congress mandate that local governments levy the sales tax on remote sellers. Congress enables the tool but then must defer to the wisdom of local governments.

In closing, please urge Chairman Goodlatte to hold a hearing on Marketplace and please support the bill. You can reach me at _______ with additional questions. Thank you for your service to the state of Utah.

Sincerely,

Name
Title

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 14.

Short Title: Closed meeting, if necessary, for reasons allowed by state law , including, but not limited to, the provisions of Section 52-4-205 of the Utah Open and Public Meetings Act, and for attorney-client matters that are privileged pursuant to Utah Code Ann. § 78B-1-137, as amended

Initiated By:

Scheduled Time: 9:00

SUBJECT

RECOMMENDATION

No need for a closed meeting has been identified by staff at the time of this report. However, the agenda allows for that possibility if the need arises.

BACKGROUND

Not applicable

ATTACHMENTS:

Name:	Description:
No Attachments Available	

REDEVELOPMENT AGENCY OF CENTERVILLE CITY AGENDA

NOTICE IS HEREBY GIVEN THAT THE REDEVELOPMENT AGENCY OF CENTERVILLE CITY WILL HOLD A PUBLIC MEETING AT 9:00 P.M. ON TUESDAY, AUGUST 6, 2013 AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Meetings of the Centerville Redevelopment Agency Board may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Blaine Lutz, Centerville Finance Director, at 295-3477, giving at least 24 hours notice prior to the meeting.

Tentative
Time:

9:00 **A. ROLL CALL**

B. NEW BUSINESS

1. Minutes Review and Acceptance
   July 16, 2013 RDA meeting

2. Barnard Creek Community Development Area
   Consideration of Resolution No. 2013-03, a resolution approving and Interlocal Cooperative Agreement between the Redevelopment Agency of Centerville City and Davis County for the collection of incremental property taxes collected from property within the Barnard Creek Community Development Area

3. Centerville City Riviera CDBG Project
   Consider Grant to Centerville City Riviera CDBG Project in the amount of $30,000

C. ADJOURNMENT

Steve H. Thacker
Executive Director