



## **CITY COUNCIL MEETING**

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a regular public meeting in the Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **6:00 p.m. on July 17, 2007**.

### AGENDA ITEMS:

#### **1. CALL TO ORDER, PLEDGE, OPENING CEREMONY, RECOGNITIONS:**

- a. Pledge
- b. Fiesta Days Rodeo Royalty
- c. Miss Spanish Fork Royalty
- d. Recognitions

#### **2. PUBLIC COMMENTS:**

Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comment will be limited to three minutes per person. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing. The Mayor or Council may restrict the comments beyond these guidelines.

#### **3. COUNCIL COMMENTS:**

#### **4. PUBLIC HEARINGS: 6:30 p.m.**

- a. [Vincent Rim Estates Zone Change and Preliminary Plat Approval](#)
- b. [Powell Zoning Map Amendment](#)
- c. [Jim Nielsen General Plan and Zoning Map Amendment](#)
- d. [Ordinance Amendment Proposed Changes Title 15 \(Continued from last meeting\)](#)

#### **5. CONSENT ITEMS:**

These items are considered by the City Council to be routine and will be enacted by a single motion. If discussion is desired on any particular consent item, that item may be removed from the consent agenda and considered separately.

- a. [Minutes of Spanish Fork City Council Meeting – June 5, 2007; June 19, 2007](#)
- b. [POTW Ordinance Amendment](#)
- c. [Amendment Master Facility Use Agreement – Nebo School District](#)
- d. [Ordinance Making Amendments to the Election Section of the Municipal Code](#)
- e. [Wasatch Wind Contract Amendment](#)
- f. [Contract for County Grant Funds](#)
- g. [Contract with Western Unlimited – Rodeo Ticket Sales](#)

#### **6. NEW BUSINESS:**

- a. [Contract for Lead Removal at Gun Club](#)
- b. [Agreement for Professional Services – Comlink Land Services, LLC – Electrical System Strategic Plan](#)
- c. [Agreement for Professional Services - Spanish Fork River FEMA Study](#)
- d. [Agreement for Professional Services – Spanish Fork River Parkway Trail Design](#)
- e. [Agreement for Professional Services – North Park Design Landmark Design Inc.](#)
- f. [Interlocal Agreement with Spanish Fork Redevelopment Agency](#)

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed executive meeting for any of the purposes identified in that Chapter.

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

- g. Assignment of the Tenedor Agreement
- h. Board Appointments

**7. ADJOURN TO RDA MEETING**

**8. OTHER BUSINESS:**

- a. Executive Session If Needed – To be Announced in the Motion

ADJOURN:

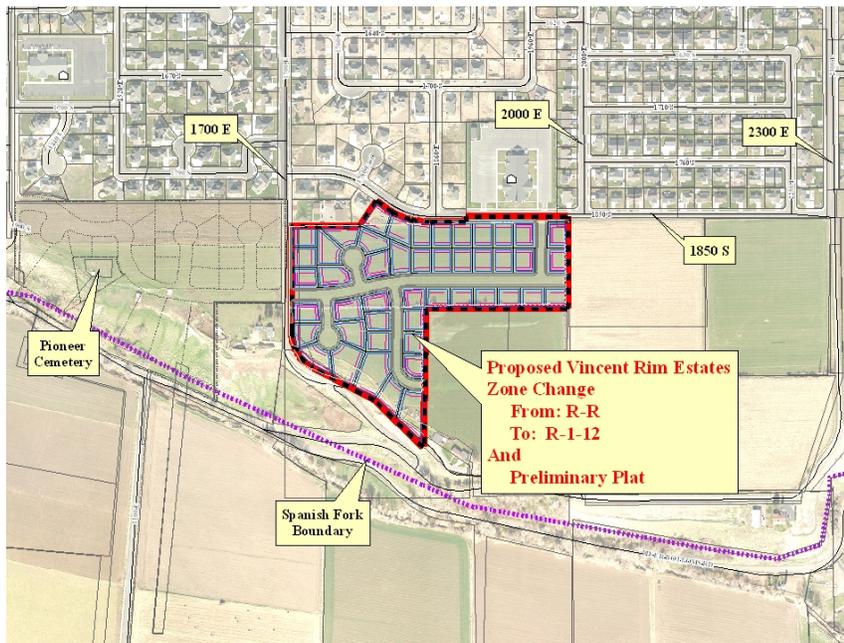
**SPANISH FORK CITY  
Staff Report to City Council**



<b>Agenda Date:</b>	<b>July 17, 2007</b>
<b>Staff Contacts:</b>	<b>Dave Anderson, Planning Director</b>
<b>Reviewed By:</b>	<b>Development Review Committee</b>
<b>Subject:</b>	<b>Vincent Rim Estates Zone Change and Preliminary Plat Approval Request</b>

**Background Discussion:**

The applicant, Sleight Development, is requesting a Zone Change and Preliminary Plat approval for a 19.5-acre parcel located at approximately 1700 East 1850 South. The property is currently zoned Rural Residential and the applicant has proposed that the zoning be changed to R-1-12. The General Plan designates the property as Residential 1.5-2.5 units per acre.



**Details**

The subject property is located immediately east of the Pioneer Ridge Estates development that was approved last year. In some respects, this project is very similar to the Pioneer Ridge project in that the zoning is identical and lot sizes are very comparable. Land uses to the north include dwellings and a religious institution. At this time, access to the subject property would come via 1700 East and 1850 South. The proposed plat includes a total of 47 lots.

Given the conformity of the proposed Zoning Map Amendment with the existing General Plan designation, the Development Review Committee recommended that the proposed amendment be approved. Likewise, as the proposed Preliminary Plat conforms to the City's standards for the subdivisions in the R-1-12 zone, the Development Review Committee recommended that the proposed Preliminary Plat be approved.

In accordance with City requirements, the developer has hosted a neighborhood meeting to review the proposal with the surrounding property owners. Staff understands that no significant comments arose in that meeting.

### **Development Review Committee**

The Development Review Committee reviewed these requests in their June 13, 2007 meeting and recommended that they be approved. Draft minutes from that meeting are as follows:

#### **Vincent Rim Estates**

Applicant: Sleight Development

General Plan: Residential 1.5 to 2.5 units per acre residential

Zoning: Rural Residential existing, R-1-8 requested

Location: 1700 East 1850 South

Mr. Anderson explained the proposal.

Discussion was held regarding the dedication of the road in front of the church and an easement for the turn around.

Mr. Nielson said that as he redlined the plans that they instructed them to make improvements on 1700 East. The applicant has concerns with the improvements.

Discussion was held regarding 1700 East, and access into the Dean Vincent property.

Mr. Peterson said that there is a 600 amp circuit box adjacent to the property and that they will have to connect into the box and that easements will need to be obtained.

Mr. Anderson told the applicant that we need two more copies of the Preliminary Plat and a legal description in Word format.

Mr. Nielson made a **motion** to approve the Zoning Map Amendment for Vincent Rim Estates located at 1700 East 1850 South subject to the following finding:

#### **Finding:**

1. That the proposed zoning is consistent with the General Plan.

Ms. Johnson **seconded** and the motion **passed** all in favor.

Mr. Nielson made a **motion** to **approve** the Preliminary Plat for Vincent Rim Estates located at 1700 East 1850 South subject to the following conditions:

#### **Conditions:**

1. That the 1700 east extension off of the hill on the south side of the property be improved or be paid for by the developer pending the Engineering Department's review.
2. That an electrical 600 amp circuit is constructed through the subject property per the Electric Department.

3. That the driveway for the Dean Vincent home is relocated to a suitable location.
4. That any overhead SESD power lines be relocated.

Mr. Peterson **seconded** and the motion **passed** all in favor.

### **Planning Commission:**

The Planning Commission reviewed this request in their June 27, 2007 meeting and recommended that both the proposed Zone Change and Preliminary Plat be approved. An excerpt from the draft minutes from that meeting read as follows:

#### **Vincent Rim Estates Zoning Map Amendment**

Applicant: Sleight Development  
General Plan: Residential 1.5 to 2.5 units per acre residential  
Zoning: Rural Residential existing, R-1-12 requested  
Location: 1700 East 1850 South

#### **Vincent Rim Estates Preliminary Plat**

Applicant: Sleight Development  
General Plan: Residential 1.5 to 2.5 units per acre residential  
Zoning: Rural Residential existing, R-1-12 requested  
Location: 1700 East 1850 South

Mr. Anderson gave background and explained the proposal.

Commissioner Lewis asked for clarification on access to the homes off of 1700 East.

Discussion was held regarding the dirt road and easements, curb and gutter, asphalt, not upsetting the hillside, easement issues on the Dean Vincent property, and irrigation ditches.

Kevin Sleight

Mr. Sleight addressed the Commission. He said that the dirt road is an access for Dean and Fred Vincent. He proposed that until the rest of the land develops that access remain on the dirt road.

Commissioner Lewis asked for elimination of the road.

Dean Vincent

Mr. Vincent said that there is not a way to abandon the dirt road because of the farm equipment he uses on his property.

Discussion was held regarding the access to Dean Vincent's property, and deeded right of ways.

Mr. Sleight feels that they can preserve the easement to the Dean Vincent property through a title company.

Commissioner Lewis would support this development on three conditions. He explained the conditions.

Discussion was held regarding City property and the Dean Vincent access road.

Commissioner Robins moved to close public hearing. Commissioner Huff seconded and the motion passed all in favor at 9:48 p.m.

Commissioner Lewis made a **motion** recommending **approval** of the proposed Zoning Map Amendment and the Preliminary Plat at approximately 1700 East 1850 South, changing the zoning from RR to R-1-12 based on the following finding and subject to the following conditions:

**Finding:**

1. That the proposed zoning is consistent with the General Plan.

**Conditions:**

1. That the 1700 East extension off of the hill on the south side of the property be improved or be paid for by the developer pending the Engineering Department's review.
2. That an electrical 600 amp circuit is constructed through the subject property per the Electric Department.
3. That the driveway for the Dean Vincent home is relocated to a suitable location.
4. That any overhead SESD power lines be relocated.

**Vincent Rim Estates Preliminary Plat**

Applicant: Sleight Development

General Plan: Residential 1.5 to 2.5 units per acre residential

Zoning: Rural Residential existing, R-1-12 requested

Location: 1700 East 1850 South

Commissioner Christianson **moved** to go out of public hearing. Commissioner Robins **seconded** and the motion **passed** all in favor at 9:18 p.m.

**Budgetary Impact:**

Given development that exists or is occurring in the immediate vicinity, staff anticipates no significant budgetary impact with the proposed amendment and plat.

**Alternatives:**

The City has considerable discretion with respect to approving or denying Zone Change requests. Should the zoning be changed to R-1-12, less discretion would exist with respect to approving the proposed plat. As the proposed Preliminary Plat is consistent with the City's standards for developments in the R-1-12 zone, there are not many options that the City may pursue to require modifications once the zoning is changed.

**Recommendation:**

Staff recommends that the City Council approve the proposed Preliminary Plat and Zone Change for Vincent Rim Estates based on the following finding and subject to the following conditions:

**Finding:**

1. That the proposed zoning is consistent with the General Plan.

**Conditions:**

1. That the 1700 East extension off of the hill on the south side of the property be improved or be paid for by the developer pending the Engineering Department's review.
2. That an electrical 600 amp circuit is constructed through the subject property per the Electric Department.
3. That the driveway for the Dean Vincent home is relocated to a suitable location.
4. That any overhead SESD power lines be relocated.

attachments: photos  
proposed Preliminary Plat



Subject property as viewed from the west.



Northern boundary of the subject property.



Southern boundary – continuation of 1700 East.

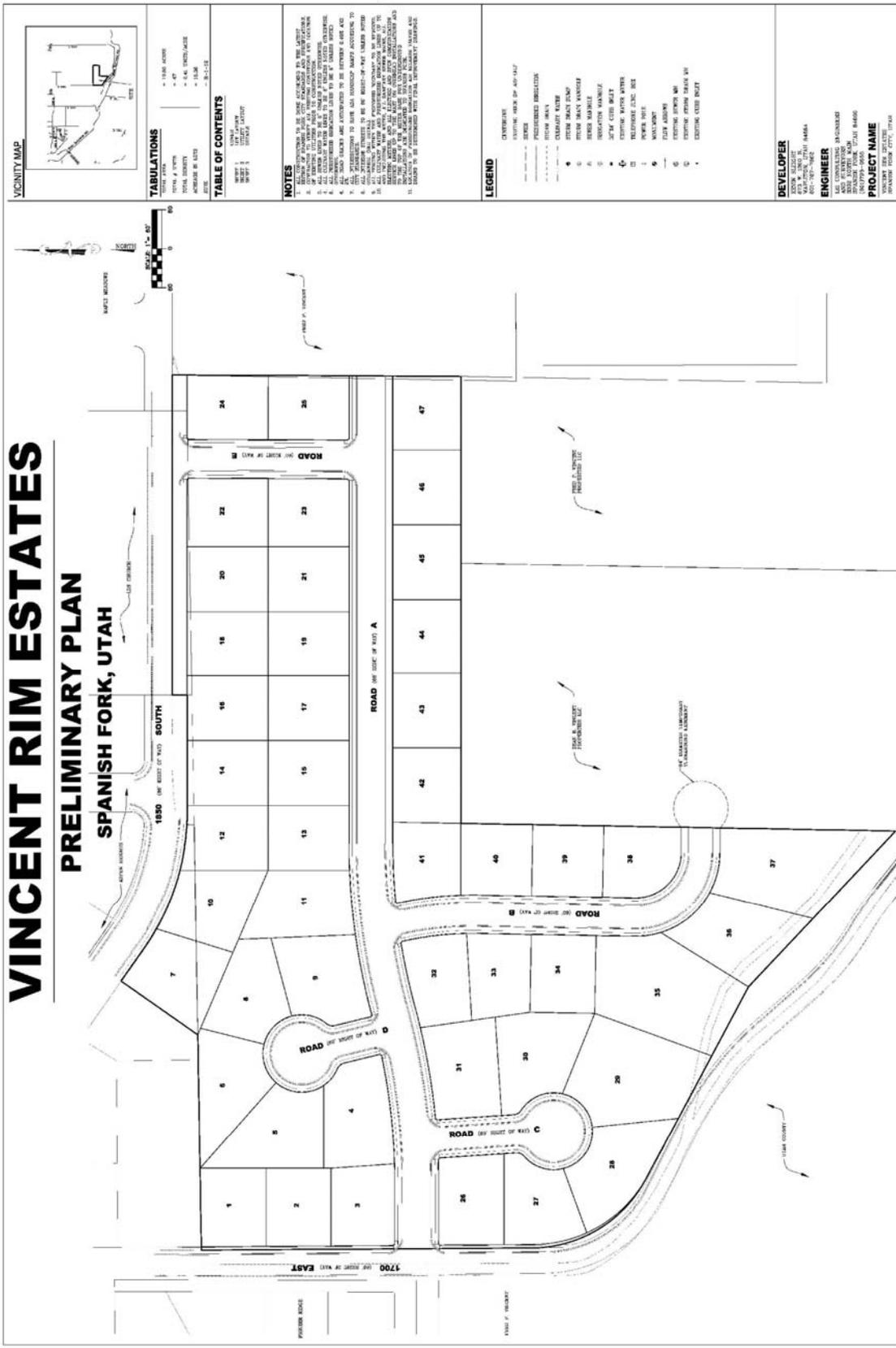


Western boundary of subject property.

# VINCENT RIM ESTATES

## PRELIMINARY PLAN

### SPANISH FORK, UTAH



**VICINITY MAP**

**TABULATIONS**

TOTAL AREA: 1.16 ACRES  
 TOTAL PERMITS: 47  
 AVERAGE DENSITY: 41.1 U/LM  
 ZONE: R-100-100

**TABLE OF CONTENTS**

SECTION 1: GENERAL NOTES  
 SECTION 2: LEGEND  
 SECTION 3: DEVELOPER  
 SECTION 4: ENGINEER  
 SECTION 5: PROJECT NAME

**NOTES**

1. ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON RECORD PLANS AND FIELD SURVEY DATA.
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15. ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON RECORD PLANS AND FIELD SURVEY DATA.

**LEGEND**

CENTERSIDE  
 EXISTING SIDEWALK  
 PROPOSED SIDEWALK  
 EXISTING WATER  
 EXISTING SEWER  
 EXISTING GAS  
 EXISTING POWER  
 EXISTING TELEPHONE  
 EXISTING CABLE

**DEVELOPER**

WILLIAM W. WILSON  
 1000 N. 1000 W.  
 SPANISH FORK, UTAH 84606

**ENGINEER**

WILLIAM W. WILSON  
 1000 N. 1000 W.  
 SPANISH FORK, UTAH 84606

**PROJECT NAME**

VINCENT RIM ESTATES  
 SPANISH FORK, UTAH





**SHEET**  
**2**

DESIGNER:	CIP
DATE:	06/12/2007
SCALE:	1" = 60'
CHECKED BY:	DOB
PROJECT:	06-1812

**VINCENT RIM ESTATES**  
**SPANISH FORK CITY, UTAH COUNTY, UTAH**  
**UTILITY LAYOUT**

**13**  
Consulting Engineers  
and Surveyors, Inc.  
3302 No. Main St.  
Spanish Fork, UT 84660  
801-798-0555  
Fax 801-798-9393

REVISION	DATE	BY

**SPANISH FORK CITY**  
**Staff Report to City Council**



<b>Agenda Date:</b>	<b>July 17, 2007</b>
<b>Staff Contacts:</b>	<b>Dave Anderson, Planning Director</b>
<b>Reviewed By:</b>	<b>the Development Review Committee</b>
<b>Subject:</b>	<b>Powell Zoning Map Amendment</b>

**Background Discussion:**

The applicant, Mr. Tony Powell, is proposing to change the Zoning for a 2.3-acre parcel from R-1-6 to R-3. The General Plan designation for the subject property is Residential 5.5 to 8 units per acre. The subject property is located at 1100 East 400 North.



With the current R-1-6 zoning, the applicant is able to develop the subject property with either single-family or twin homes at a density that cannot exceed 8 units per acre. The applicant is requesting the proposed amendment to R-3 so as to gain the ability to develop the subject property with townhomes at a density that would still not exceed 8 units per acre.

The subject property has a fairly unusual configuration and topography. The property slopes from the south to north with the lowest portion of property being adjacent to 400 North. The UDOT right-of-way for Highway 6 is

east of the subject property, single-family dwellings are to the west and a townhome development is south of the site. Access to any development of the subject property would likely be limited to 400 North.

Given that the applicant is not proposing to increase the density of a proposed residential development, the property's odd configuration and the property's close proximity to Highway 6 and another townhome development, the Development Review Committee recommended that the proposed change be approved. A copy of the concept plan the applicant has prepared is attached to this report.

### **The Development Review Committee**

The Development Review Committee reviewed this proposal in their June 13, 2007 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

#### **Powell Zoning Map Amendment**

Applicant: Tony Powell

General Plan: Residential 5.5 to 8 units per acre Residential

Zoning: R-1-6 existing, R-3 requested

Location: 1100 East 400 North

Mr. Anderson gave background and explained the proposal.

Discussion was held regarding density, highway 6, the railroad tracks, affordable housing, utilities, and trails.

Ms. Johnson feels that to put this proposal into a higher density use would improve the area.

Mr. Thompson made a **motion to approve** the Zoning Map Amendment for Tony Powell located at 1100 East 400 North to R-3 subject to the following findings:

#### **Findings:**

1. That the lot's odd shaped enough that developing in the R-1-6 zone would not be ideal.
2. That the Zone Change is consistent with the General Plan.

Mr. Nielson **seconded** and the motion **passed** all in favor.

### **Planning Commission:**

The Planning Commission reviewed this request in their June 27, 2007 meeting and recommended that it be approved. An excerpt from the draft minutes from that meeting read as follows:

#### **Powell Zoning Map Amendment**

Applicant: Tony Powell

General Plan: Residential 5.5 to 8 units per acre Residential

Zoning: R-1-6 existing, R-3 requested

Location: 1100 East 400 North

Mr. Anderson gave background and explained the proposal.

Commissioner Lewis asked for clarification on the units.

Mr. Anderson clarified that it is 18 units.

Brandon Kirk

Mr. Kirk addressed the Commission. He explained the proposal. He feels that they will do a very aesthetic project that will add value to the neighborhood.

Mark Peterson

Mr. Peterson said that they have hired a company, Earthtec, to work up the water issues.

Commissioner Bradford feels that water has already been a problem in the area.

Discussion was held regarding water and storm drain issues in the area, and density.

Deborah Bell

Ms. Bell feels that this proposal will put 6 homes in her backyard. She feels that water is an issue. She feels that only one egress and ingress is not enough.

Discussion was held regarding development agreements and density.

Gary Carter

Mr. Carter feels that 400 North is a concern. He feels that there is a current 30 minute wait time to get out of his driveway. He feels that water is a concern and density is a concern.

John Ward

Mr. Ward feels that ingress and egress is a concern. To have only one way in and out is a concern in case of an emergency.

Mr. Kirk clarified that their development cul-de-sac meets the City's requirements.

Ms. Bell feels that the zoning should not be changed.

Discussion was held regarding density, twin homes vs. town homes, and HOA's.

Janet Reese

Ms. Reese asked about the park and whether or not a fence will be constructed.

Discussion was held regarding masonry walls, and zoning.

Mr. Ward asked for clarification on zoning and residential treatment centers.

Ms. Johnson clarified the code.

Discussion was held regarding the high density in this area of town, and HOA's.

Commissioner Bradford is against anymore density in the area.

Commissioner Christianson feels that HOA's are good and supports the development.

Commissioner Robins agrees with Commissioner Christianson.

Commissioner Miya feels that traffic is a problem.

Commissioner Lewis disclosed a possible conflict of interest. He feels that there are some traffic and water problems but supports this development.

Commissioner Bradford asked if the water will be a liability to the City.

Ms. Johnson said that in the past when there have been concerns about flooding that the property owners sign a waiver. She feels that there is not a way for the City to insulate itself from any liabilities for unforeseen circumstances.

Discussion was held regarding detailed engineering.

Commissioner Lewis made a **motion** recommending **approval** of the proposed Zoning Map Amendment at approximately 1100 East 400 North, changing the zoning from R-1-6 to R-3 based on the following findings:

**Findings:**

1. That given the property's configuration and situation, a townhome development is appropriate.
2. That the Zone Change is consistent with the General Plan designation.

Commissioner Robins **seconded** and the motion **passed** by a unanimous roll call vote.

**Budgetary Impact:**

No change would be anticipated with the proposed amendment.

**Alternatives:**

The City maintains considerable discretion with respect to approving or denying Zoning Map Amendments. The Council may approve, deny or take some alternate action.

**Recommendation:**

Staff recommends that the City Council approve the proposed Zoning Map Amendment at approximately 1100 East 400 North, changing the zoning from R-1-6 to R-3 based on the following findings:

**Findings:**

1. That given the property's configuration and situation, a townhome development is appropriate.
2. That the Zone Change is consistent with the General Plan.

attachments: property photos  
proposed concept plan



View of the subject property from 400 North looking south.



View of the subject property from 400 North looking south.



View of subject property at approximately 300 North.



The northernmost building in the townhome development south of the subject property.



**SPANISH FORK CITY  
Staff Report to City Council**



<b>Agenda Date:</b>	<b>July 17, 2007</b>
<b>Staff Contacts:</b>	<b>Dave Anderson, Planning Director</b>
<b>Reviewed By:</b>	<b>the Development Review Committee</b>
<b>Subject:</b>	<b>Jim Nielsen General Plan and Zoning Map Amendments</b>

**Background Discussion:**

The applicant, Mr. Jim Nielsen, is proposing to change the General Plan and Zoning for a three-acre parcel from General Commercial (General Plan) and R-1-8 (zoning) to Light Industrial (General Plan) and Industrial 1 (zoning). Staff understands that Mr. Nielsen's ultimate goal is to construct storage units on the subject property.



At present, the subject property is surrounded by a precast masonry wall which was installed preparatory to developing the property commercially. Also, as is mentioned above, the General Plan designates the property General Commercial.

Access to the property can be gained via 100 South, 150 South or the commercial development to the northwest of the subject property. Accessing the property from either 100 or 150 South would convey traffic through an existing residential neighborhood. The potential means of access through the commercial development is limited such that, in staff's view, it is not adequate to support commercial uses on the subject property.

With that said, staff believes the property should be developed according to the current zoning of the property which is R-1-8. Having the property develop in a manner that's consistent with the surrounding residential uses would resolve staff's concerns with traffic patterns or any other aspects of the property's development.

Staff also believes it would be appropriate at some time to change the General Plan to Residential 3.5 to 4.5 units per acre so as to bring conformity to the existing zone and General Plan designation.

### **The Development Review Committee**

The Development Review Committee reviewed this proposal in their June 13, 2007 meeting and recommended that it be denied. Draft minutes from that meeting read as follows:

#### **Jim Nielsen General Plan and Zoning Map Amendment**

Applicant: Jim Nielsen

General Plan: General Commercial existing, Light Industrial requested

Zoning: R-1-8 existing, Industrial 1 requested

Location: 1450 East 100 South

Mr. Anderson gave background and explained the proposal. He does not feel that changing the residential zone to the Industrial 1 zone is good land use practice.

Discussion was held regarding the history of the wall around the parcel and allowed uses in the Industrial 1 district.

Ms. Johnson made a **motion to deny** the General Plan and Zoning Map Amendments for Jim Nielsen located at 1450 East 100 South based on the following finding:

#### **Finding:**

1. That this area is not suitable for the Industrial 1 zone.

Mr. Peterson **seconded** and the motion **passed** all in favor.

### **Planning Commission:**

The Planning Commission reviewed this request in their June 27, 2007 meeting and recommended that it be denied. An excerpt from the draft minutes from that meeting read as follows:

#### **Jim Nielsen General Plan and Zoning Map Amendment**

Applicant: Jim Nielsen

General Plan: General Commercial existing, Light Industrial requested

Zoning: R-1-8 existing, Industrial-1 requested

Location: 1450 East 100 South

Mr. Anderson gave background and explained the proposal. He explained that while the applicant has discussed developing the site with Storage Units, the questions before the Commission at this time have only to do with the General Plan designation and zoning of the property. Mr. Anderson stated that he does not believe the property is a viable location for commercial development. He feels it is appropriate for the City to concentrate on the existing zoning and allow the property to develop residentially. He also feels it would be a mistake to further progress from commercial zoning in a residential neighborhood to Industrial.

Commissioner Christianson asked if the City can initiate a General Plan Amendment.

Mr. Anderson said that the City could and routinely does initiate General Plan Amendments.

Commissioner Bradford asked about egress and ingress to the development.

Mr. Anderson explained the egress and ingress possibilities.

Commissioner Huff asked for the width of the egress and ingress on the existing access from the neighboring development.

Mr. Anderson clarified that there is adequate access from the neighboring development; he estimated that it is at least 30 feet wide. He further clarified that while the access is physically adequate for traffic to get from the existing commercial development to the subject property it is, in his opinion, very poor access to support commercial uses. For that reason, Mr. Anderson believes it was a mistake to plan to have this property develop commercially.

Jim Nielson

Mr. Nielson addressed the Commission. His number one objective is to develop property with little or no problems for the neighbors. He feels that storage units are a perfect fit. He gave the history on the cement wall that surrounds the property. He explained his proposal. He feels that his history of running businesses in town for over 20 years that his track record should speak for itself. He was born and raised here and he wants to do something nice for the City. He feels that the neighbors will not even know that the storage units are there.

Commissioner Miya asked Mr. Nielson to explain how a storage facility can be secure without lighting.

Mr. Nielson clarified that there would be lighting, just not lights on tall poles that would be taller than the existing wall.

Commissioner Christianson asked Mr. Nielson if he has considered a strip mall.

Mr. Nielson said that he could put other businesses at this location but does not feel that it is a good fit.

Commissioner Christianson asked Mr. Nielson why he is uncomfortable developing the property commercially.

Mr. Nielson feels that the neighbors love the dead end at 100 south and if he put in a residential development that the neighbors would be mad about losing the dead end. He feels there isn't enough value in residential lots to justify residential development.

Commissioner Christianson asked if Mr. Nielson if he had ever considered residential and drawn concepts plan.

Mr. Nielson said that he had not come up with any residential concept plans but that higher density might work for him. He feels that he should be able do something commercially with the property in its current state.

Discussion was held regarding who required Mr. Nielson to construct the masonry wall and the history of the wall.

Bryce Walker

Mr. Walker addressed the Commission. His greatest concern is the ingress and egress at the commercial site. He feels it is too narrow. He does not feel that a lot of cars can access the property from the existing access at the neighboring commercial site.

Allen Carter

Mr. Carter addressed the Commission. He gave background on the history of the property. He feels that the property has not been maintained as was promised. He would like this property to be residential and a sound barrier constructed along Highway 6. He is against the zoning to Industrial. He does not feel that Industrial zoning will add any value to the neighborhood. He would like to see the landscape of the property maintained.

John Bailey

Mr. Bailey addressed the Commission. He said that the dead end on 100 south has created a playground for motorcyclists. They come to the dead end at 100 south to spin wheelies. He said that his car has extra dings because of this. He feels that Mr. Nielson does not keep his promises. He wants residential.

Discussion was held regarding the concerns and issues related to the temporary turn around on 100 south.

Teresa Johnson

Ms. Johnson addressed the Commission. She is concerned about what Mr. Nielson says. She feels that he does not keep his word. She is concerned about lighting and traffic. She would support residential. Mr. Johnson feels that people will run small businesses out of the storage units. They are against storage units.

Gina Peterson

Ms. Peterson addressed the Commission. She would like residential. She is concerned about property values. She feels that Jim Nielson is not trustworthy. She would like residential.

Tamsin Dansin

Ms. Dansin is against commercial or industrial. She supports residential.

Nancy Lund

Ms. Lund asked the Planning Commission that if the property were to be changed to Industrial if the City would hold Mr. Nielson to the construction of storage units or would he be able to change his mind and put in some other use. She supports residential.

Commissioner Robins asked Mr. Anderson for clarification on the zoning.

Mr. Anderson clarified the zoning.

Discussion was held regarding the cell tower that currently exists on the property.

Paul Throckmorton

Mr. Throckmorton feels that safety is an issue on Mountain View Drive. He feels that the traffic light onto Highway 6 is already congested. He feels that the masonry wall that exists is a safety hazard because it is solid and too close to the corner.

Commissioner Robins feels that Mr. Nielson has already put money into the wall and realistically could we ask Mr. Nielson to take the wall down and build residential.

Mr. Throckmorton has concerns with storage units. He feels that people due crazy things in storage units and that he would support commercial versus industrial but would ultimately like residential.

Discussion was held regarding the cell tower.

Mr. Carter explained the history of how the masonry wall came to be with regard to the Utah State Department of Transportation.

Lyle Evans

Mr. Evans feels that Mr. Nielson could put anything on the property with regard to Industrial. He feels that if a manufacturing plant were to go in at this location where would the big trucks access the property. He does not feel that it would be safe. He would support residential.

Jared Dansin

Mr. Dansin is in support of residential.

Charles Graham  
Mr. Graham is in support of residential.

Mr. Nielson told the Commission that he would agree to enter into a development agreement to only construct storage units.

Discussion was held regarding the masonry versus a sound wall.

Commissioner Miya feels that Industrial is totally out of place in this area and where this is a residential area that it should stay residential. She is skeptical about commercial development and access. She feels that this is a major gateway into the City and does not feel the storage units would be good. She would support a General Plan Amendment.

Commissioner Lewis said that he walked the property with Mr. Nielson. He feels that commercial would be a mistake because of access. He would not support storage units without certain conditions and he explained his conditions.

Commissioner Bradford feels that Industrial is not appropriate in the middle of a residential neighborhood.

Commissioner Huff feels that this property is commercially zoned and that some of the other uses in a commercial zone would be far more offensive than storage units.

Commissioner Christianson does not feel that traffic is a concern with a residential development.

Discussion was held regarding the temporary turn around at 100 South.

Commissioner Christianson feels that a property owner should be able to do with his property what they wish so as not to adversely affect the neighbors too much. He feels that the construction of the masonry wall was a mistake.

Discussion was held amongst the Commission regarding what property owners may and may not do with their property.

Commissioner Robins feels that storage units would affect the neighborhood the least. He feels that with a development agreement he would support storage units.

Discussion was held regarding the property being cleaned up.

Commissioner Miya made a **motion** recommending **denial** of the proposed General Plan and Zoning Map Amendments at approximately 1450 East 100 South, changing the General Plan Map from General Commercial to Light Industrial and changing the zoning from R-1-8 to Industrial 1 based on the following finding:

**Finding:**

1. That the presence of dwellings adjacent to the subject property makes it unsuitable for Industrial 1 zoning and industrial uses.

Commissioner Christianson **seconded** and the motion **tied** by a roll call vote. Commissioner Lewis voted nay. Commissioner Robins voted nay. Commissioner Bradford voted yes. Commissioner Huff voted nay.

Discussion was held regarding the zoning.

Ms. Johnson told the Commission that should the zoning be changed to Industrial 1 that the owner of the property would not be bound to the construction of storage units. That the owner could follow any of the permitted uses allowed in an Industrial zone.

Commissioner Lewis made a **motion** recommending **approval** of the proposed General Plan and Zoning Map Amendments at approximately 1450 East 100 South, changing the General Plan Map from General Commercial to Light Industrial and changing the zoning from R-1-8 to Industrial 1 based on the following conditions:

#### **Conditions**

1. Sound wall be completed adjacent to the commercial plaza.
2. 100 south sidewalk completed and landscape installed.
3. Cul-de-sac be complete with asphalt, sidewalk and landscape.
4. Garbage dumpsters enclosed.
5. Entry to the project be approved.
6. Elevation of the entire project improved.
7. 365 days to perform on this project or the approval is denied.
8. Exterior improvements completed within the first 90 days or red tagged and denied.

Commissioner Huff **seconded** and the motion was **denied** by a roll call vote. Commissioners Miya, Robins, Bradford, and Christianson voted nay.

Commissioner Miya made a **motion** recommending **denial** of the proposed General Plan and Zoning Map Amendments at approximately 1450 East 100 South, changing the General Plan Map from General Commercial to Light Industrial and changing the zoning from R-1-8 to Industrial 1 based on the following finding:

#### **Finding:**

1. That the presence of dwellings adjacent to the subject property makes it unsuitable for Industrial 1 zoning and industrial uses.

Commissioner Robins **seconded** and the motion **passed** by a roll call vote. Commissioner Lewis voted nay. Commissioner Huff voted nay.

Commissioner Miya **moved** to instruct staff to investigate initiating a general plan change to residential 3.5 to 4.5 units per acre; thus, bringing the general plan and zoning into alignment.

Discussion was held regarding the motion.

**Motion failed** due to no second.

#### **Budgetary Impact:**

It is unlikely that the proposed changes would have any significant impact on the City's financial situation.

#### **Alternatives:**

The City maintains considerable discretion with respect to approving or denying Zoning Map Amendments. The Council may approve, deny or take some alternate action.

**Recommendation:**

Staff recommends that the City Council deny the proposed General Plan and Zoning Map Amendments at approximately 1450 East 100 South, changing the General Plan Map from General Commercial to Light Industrial and changing the zoning from R-1-8 to Industrial 1 based on the following findings:

**Finding:**

1. That the presence of dwellings adjacent to the subject property makes it unsuitable for Industrial 1 zoning and industrial uses.

attachments: property photos



From the northwest corner of the subject property looking southeast.



From the northwest corner of the subject property looking southeast.



At the end of 100 South looking at the subject property.



At the eastern boundary of the property.



The southern boundary of the subject property.

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# SPANISH FORK

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## MEMORANDUM

**TO:** Spanish Fork City Council  
**FROM:** Dave Anderson, Planning Director  
**DATE:** July 17, 2007  
**RE:** Proposed Changes to Title 15

This item was continued from your June 19, 2007 meeting.

### Flag Lots

The City recently received an application from Darin Farnworth to amend Title 15. The specific change requested by Mr. Farnworth involves changing the text on page 15-39 to allow flag lots anywhere in the City. At present, the ordinance only allows flag lots in the older parts of the City, areas described as the original Plats A and B. One other zoning limitation on flags lot is their prohibition in zones except the R-O, R-3 and R-1-6 districts.

As the Development Review Committee reviewed Mr. Farnworth's Request, it was recommended that the ordinance be amended to allow flag lots anywhere in the City. The DRC also recommended that the ordinance also be changed to allow flag lots in the R-1-8 and R-1-9 districts. The prohibition of flag lots in the other districts would remain the same.

These proposed changes would be applied City wide. By way of information, the specific parcel that Mr. Farnworth would like to develop is located at 715 South 1100 East.



## Planning Commission

It's important to note that the Planning Commission recommended that the proposed changes be denied for reasons that are provided in the excerpt of their minutes from the June 6 meeting. The excerpt of the draft minutes reads as follows:

### **Ordinance Amendment – Title 15**

Applicant: Darin Farnworth

Location: Citywide

Mr. Anderson explained the proposal.

Commissioner Christianson asked what the City's interpretation of an 'in ill lot' is.

Mr. Anderson explained the language.

Commissioner Robins asked for any history on how the Jensen and Frandsen parcels were allowed to be flag lots.

Commissioner Christianson and Mr. Nielson gave the history.

Discussion was held regarding flag lots.

Darin Farnworth

Mr. Farnworth addressed the Commission. The main reason is to clean up the property. Rodents and stray cats have moved in along with a lot of weeds. He feels that there are other properties outside of the original plats that have been allowed to become flag lots and would like the same consideration.

Mr. Robins is not convinced that changing the ordinance to allow flag lots throughout the entire City is the right thing to do. He is okay with this proposal at this location but not elsewhere.

Discussion was held regarding discussion held in the Development Review Committee, and how many properties this change to the ordinance possibly could affect.

Commissioner Bradford invited public comment.

Linda Bartholomew

Ms. Bartholomew addressed the Commission. She is against this proposal. She explained that her house fronts Canyon Road. She feels the back yards are nice. She feels like putting a house in the middle of the block will mess it up. She would like green space. She feels that maybe a park or a basketball court would be better than a house.

Commissioner Robins feels that he is not convinced that flag lots are a good usage of land. He feels that they create safety hazards.

Commissioner Bradford has seen flag lots in other parts of town. He does not know how big of a problem they are. He feels that a little open space is good.

Commissioner Robins feels that flag lots can cause privacy concerns for neighbors.

Commissioner Christianson feels that flag lots are okay sometimes. He is concerned about changing the ordinance for the entire City over one parcel.

Commissioner Robins made a **motion** recommending the **denial** of the proposed Ordinance Amendment changes to Title 15. For the following reasons:

1. That flag lots can be detrimental to the safety of pedestrian access.
2. That they create privacy issues for surrounding property owners.

Commissioner Christianson **seconded** and the motion **passed** all in favor.

## Proposed Changes

The proposed changes to Title 15 read as follows:

### Page 15-39

The following is an excerpt from page 15-39 of Title 15 that outlines the change proposed by Mr. Farnworth:

#### **F. Flag Lots**

~~a. Flag lots are allowed in the Original Plats A&B.~~

**a. Flag lots are allowed as infill lots in the R-O, R-3, R-1-6, R-1-8, and R-1-9 zones but not as building lots in new subdivisions.**

b. Minimum lot area of a flag lot is 8,000 square feet **except in the R-1-9 zone where the minimum size is 9,000 square feet.**

c. The panhandle section shall not be included when calculating the minimum lot area.

d. The panhandle section must have a minimum paved driveway width including curb and gutter of 20 feet, with 6-inch concrete curbing or other approved method of handling drainage.

e. No more than two single family dwelling units can share a driveway access.

### Page 15-20

The following is the table that indicates, among other things, which zones flag lots are allowed in. The proposed change involves adding footnote 2 to both the R-1-8 and R-1-9 zones. The addition of this footnote would clarify that flag lots are allowed in the R-1-8 and R-1-9 zones.

TABLE 1 - Residential Development Standards

District	Base Density	Minimum Lot Area	Minimum Width <sup>2</sup>	Minimum Depth	Minimum Setback <sup>1</sup>				Max. Building Height	
					Front <sup>11</sup>	Rear	Side	Corner	Principal Bldg <sup>1</sup>	Accessory Bldg <sup>1</sup>
A-E	n/a	40 acres	400'	400'	50'	50'	50'	50'	35'	35'
R-R	n/a	5 acres	200'	200'	50'	50'	25'	50'	35'	35'
R-1-80	.4 units per acre	80,000 s.f.	180'	200'	40'	80'	20'	30'	30'	20'
R-1-60	.54 units per acre	60,000 s.f.	160'	200'	40'	60'	20'	30'	30'	20'
R-1-40	.81 units per acre	40,000 s.f.	140'	200'	30'	40'	20'	30'	30'	20'
R-1-30	1.07 units per acre	30,000 s.f.	130'	150'	40'	40'	15'	25'	30'	20'
R-1-20	1.61 units per acre	20,000 s.f.	125'	150'	30'	30'	15'	25'	30'	15'
R-1-15	2.15 units per acre	15,000 s.f.	100'	125'	30'	30'	15'	25'	25'	15'
R-1-12	2.69 units per acre	12,000 s.f.	100'	100'	25'	25'	10'	15-25' <sup>8</sup>	30'	15'
R-1-9	3.58 units per acre	9,000 s.f. <sup>2</sup>	85'	90'	20-25' <sup>6</sup>	25'	10'	15-25' <sup>8</sup>	30'	15'
R-1-8	4.03 units per acre	8,000 s.f. <sup>2,4</sup>	75' <sup>2</sup>	90'	20-25' <sup>6</sup>	25'	10'	15-25' <sup>8</sup>	30'	15'
R-1-6	5.37 units per acre	6,000 s.f. <sup>2,5</sup>	50'	90'	20-25' <sup>6</sup>	25'	5-10' <sup>7</sup>	15-25' <sup>8</sup>	30'	15'
R-3	5.37 units per acre	6,000 s.f. <sup>2,5</sup>	50'	90'	20-25' <sup>6</sup>	25'	5-10' <sup>7</sup>	15-25' <sup>8</sup>	30'	15'
R-O	n/a	6,000 s.f. <sup>2,3</sup>	50'	90'	20-25' <sup>6</sup>	25'	5-10' <sup>7</sup>	15-25' <sup>8</sup>	30'	15'

- 1- refer to 15.3.24.090(A) for accessory buildings
- 2- refer to 15.3.24.090(F) for flag lots.
- 3- 10,000 s.f. for duplex lots in the R-O zone.
- 4- 10,000 s.f. for twinhome or duplex lots.
- 5- 9,700 s.f. for twinhome or duplex lots; 14,000 s.f. for 3-plex lots; 18,000 s.f. for 4-plex lots.
- 6- 20 feet to living areas, 25 feet to garages or carports, and 20 feet to the front of the side entry of a garage.
- 7- 5 feet for single family dwellings; 10 feet for twinhomes, duplexes, accessory apartments, or non-residential uses; 15 feet for 3-plexes and 4-plexes
- 8- 15 feet to living areas, 25 feet to garages or carports, and 20 feet to the front of the side entry of a garage.
- 9-80 feet for twin homes or duplexes, 40 feet per unit.
- 10-flagpoles are limited to the height of principal buildings in residential zones.
- 11-maximum setback is 250 feet, with an all-weather driveway, capable of supporting a fire truck, and with adequate turn around space for a fire truck at the end of the drive. Greater distances may be allowed if a fire hydrant is installed within 250 feet of the principal building.
- 12-9700 s.f. for twin home or duplex lots

## Development Review Committee

The Development Review Committee recommended that the above described changes be made to Title 15. As is the case with most ordinance amendments, the City has complete discretion in approving or denying proposals. In this case, should the Planning Commission feel comfortable with the concept of allowing flag lots outside the original areas of the City but not feel comfortable with the proposed changes, other options exist that staff can describe in your meeting.

Draft minutes from the Development Review Committee's May 30 meeting read as follows:

### **Farnworth Text Amendment (continued from May 23, 2007)**

Mr. Anderson gave background and explained the proposal.

Discussion was held regarding square footage.

Mr. Heap said the first issue to talk about is whether or not to allow flag lots other than in the original City blocks.

Mr. Nielson said the discussion in the last DRC meeting was that Randy Jensen and Tracy Frandsen, the lots that are further to the south are outside of the original blocks and are flag lots.

Discussion was held regarding the Jensen and Frandsen lots.

Mr. Peterson said that there would need to be some power upgrades.

Discussion was held regarding what sections of the power lines would need to be upgraded.

Mr. Heap suggested adding restrictive language that would allow flag lots in other residential zones but not open them up completely.

Mr. Anderson said one option is to make it a conditional use. He then said that Christine Johnson the Assistant City Attorney expressed in the last DRC meeting that she has dealt with flag lots in Salem City as conditional use permits and that they are a nightmare, very subjective and political.

Mr. Farnworth said that the owner of the property is aging and cannot care for the property. It is too much for him to handle. The property is currently a weed patch and attracts mice and stray cats. The owner would like to sell it to clean it up.

Discussion was held regarding properties in town that have potential to be flag lots in town.

Mr. Baker said that he will create the verbiage that will discourage developer's to create flag lots on their plats.

Mr. Nielson said that the way Payson handles their flag lots is through and in-lay overfill zone. So it is a Zone Change to allow for it to happen.

Mr. Baker said that a Zone Change would still require a public hearing and we would want to discourage that.

Mr. Anderson made a **motion** to the Planning Commission recommending **approval** of the proposed amendment to Title 15 amending the chart and the text on 15-39 subject to Mr. Baker drafting the final language. Mr. Nielson **seconded** and the motion **passed** all in favor.

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**Tentative Minutes**  
**Spanish Fork City Council Meeting**  
**June 5, 2007**

Elected Officials Present: Mayor Joe L Thomas, Councilmember's G. Wayne Andersen, Matthew D. Barber, Seth V. Sorensen, Chris C. Wadsworth, Steven M. Leifson

Staff Present: John Bowcut, Kent Clark, Dale Robinson, Richard Heap, Junior Baker, Dave Anderson, Dave Oyler, Seth Perrins, Dee Rosenbaum, Pam Jackson, Kimberly Robinson

Citizens Present: Helen Fish, Elisabeth Stoddard, Mark Stoddard, Janet McManus, Richard McManus, Jeff Foster, Pat Parkinson, Heather Campbell, Jennifer Leigh Mustoe, Brent Jarvis, Don Thomas, Patti Witham, Karen Payne

**CALL TO ORDER, PLEDGE, RECOGNITIONS:**

Mayor Thomas called the meeting to order at 6:05 p.m.

**Pledge**

Councilman Barber led in the pledge of allegiance.

**Jeff Foster Recognition**

Mr. Heap stated electric superintendent Jeff Foster has been with the city for 32 years. He has been a great asset for Spanish Fork City, he has done a tremendous job. He says goodbye with reluctance to see Mr. Foster go, he is thankful for him and for the work he has done.

Mr. Foster thanked the city employees. He said he had a good relationship with them, they work hard and made his job a lot easier, and he appreciates all the comments.

Mayor Thomas thanked Mr. Foster for his years of service, he is sad to see him leave. The entire Council wishes him the best.

The Council thanked Mr. Foster for his work and a standing applause was given.

**PUBLIC COMMENTS:**

Jennifer Mustoe

Ms. Mustoe is in charge of the art show case and invited all to attend.

Mark Stoddard

45 Mr. Stoddard lives in the neighborhood below the reservoir. He has been getting e-mails  
46 from people in the area. The sand is blowing into their neighborhood from the  
47 construction. He stated the problem is not letting the sand leave their property.  
48

49 Mr. Heap stated the watering so far is not working to keep the dust down; the city will be  
50 meeting with them tomorrow and looking at their options.  
51

52 Mr. Stoddard would like the developer to pay the cost of cleaning all the neighbors'  
53 carpets because the dirt cuts half the life out of the carpet and they need to clean up after  
54 themselves. They now have to run their air conditioning all the time because they can't  
55 leave their windows open. They would like them to figure out how to take care of the  
56 problem or else shut the job down until they do figure something out. He thanked Richard  
57 Heap and Dave Anderson for returning his calls.  
58

59 **COUNCIL COMMENTS:**  
60

61 Councilman Leifson reported the Parks and Recreation Committee meeting was last  
62 Monday. They reviewed the survey at the public meeting. He admonished everyone that  
63 has received the survey to fill it out, add their input, and send it in, that is how their ideas  
64 will be heard.  
65

66 Councilman Barber reported Fiesta days is coming up quickly, and feels it will be another  
67 great year.  
68

69 Councilman Wadsworth said they had a trails committee meeting last Wednesday. They  
70 covered important items such as the trails master plan. He also talked about a cultural  
71 heritage grant that can be used near the reservoir. For community service day they hope  
72 to have people clean up segments of the future trail. He noted Chris Thompson secured a  
73 grant for a trail by Highway 6. He reported they are now coordinating at a higher level  
74 with county and trail organizations in creating a conservative effort for a trails system.  
75

76 Councilman Sorensen reported the Chamber of Commerce Rotary Club scholarship  
77 banquet was held. They awarded scholarships to almost all that applied. Scholarships  
78 were given to students that have not gotten any other scholarships. He encourages people  
79 to get involved.  
80

81 Councilman Andersen reported on the 24<sup>th</sup> of July he looks forward to the celebration. He  
82 expressed appreciation to President Chris Shepherd and the Spanish Fork West Stake for  
83 committing a float to this year's parade. He thinks it is fitting that some of these  
84 organizations participate and be represented. He invites a challenge to any who would  
85 like to participate in the parade.  
86

87 Councilman Leifson talked about the planters on Main Street. He thanked all those that  
88 participated in giving service this year. As a Council he wanted to say thank you to all  
89 those that helped in the planting on Main Street.  
90

91 Mr. Heap said this year clean up day will be July 14<sup>th</sup>, they would like to solicit help from  
92 anyone that wants to help.

93  
94 Mayor Thomas reported Memorial Day the cemetery looked beautiful, he thanked all  
95 those involved with the celebration. He commented on the North Park development.  
96 There is a lot of misinformation going around but progress continues wonderfully we  
97 should see activity there in the next couple weeks and also some announcements. North  
98 Park will be enhanced and not gotten rid of, when completed it should be one of the  
99 nicest parks in the County. His personal experiences have been about 75% of people not  
100 having the full information. Many are delighted with the Spanish Oaks golf course this  
101 year he invites all to go up and golf. He was contacted by a foreign exchange student  
102 group; please contact him if you are interested in hosting [mayor@spanishfork.org](mailto:mayor@spanishfork.org)  
103

104 Mr. Perrins announced tentative information for the 1<sup>st</sup> Charlie Battery 145<sup>th</sup> National  
105 Guard Unit. They will be leaving for deployment and will have over 100 soldiers a  
106 majority of which come from South Utah County. They are coordinating a sendoff event  
107 Monday at 1:00 p.m. there will be a parade down Main Street to the city park followed  
108 with a short function. He invites all the community to show their support as they prepare  
109 to deploy.

110

111 **PUBLIC HEARINGS:**

112

113 Councilman Sorensen made a **motion** to move to the public hearing. Councilman  
114 Andersen **seconded** and the motion **passed** all in favor at 6:31 p.m.

115

116 **Sale of Surplus Property**

117

118 Mr. Clark explained in order to go through statutory requirements they must declare the  
119 items as possible surplus property.

120

121 Councilman Barber recused himself from discussion and voting on this item because a  
122 client of his is involved with the sale of this property.

123

124 Mr. Rosenbaum explained master planning the growth they are anticipating. He noted  
125 when the fire station was originally built they expected expansion. The bottom line  
126 concern of his is there needs to be some additional effort put into master planning for the  
127 fire department over the next few years. Some of the discussion was when the fire  
128 department was built it was done so in the future they could expand to the north. They  
129 knew eventually this building would be full and have to expand.

130

131 Mr. Don Thomas the ambulance captain commented that as long as this area will be used  
132 for functions and as long as the memorial building is used as such they will continue  
133 having parking problems.

134

135 Mayor Thomas stated there are options to possibly trade the property for a bigger nicer  
136 building over the next number of years.

137

138 Brent Jarvis, Fire Chief.

139 Chief Jarvis said in his opinion they feel the property is not surplus until everyone is on  
140 the same page and they know what the master plan is. They do not have enough parking  
141 and there are issues with the main roadway. In his opinion they need to draw a straight  
142 line and keep it for training and parking.

143

144 Councilman Andersen said in light of what they are talking about and some of the things  
145 that are coming up it would be wise not to declare any of that as surplus until they  
146 consider their options and decide what's going to happen.

147

148 Councilman Sorensen would agree to wait if they need that for parking the way it is right  
149 now, he can see some major problems down the road.

150

151 Mr. Rosenbaum thinks there are a lot of options they have not even considered yet and  
152 they need to get the master plan for the fire department and figure out what they need in  
153 the future.

154

155 Councilman Wadsworth asked about using the Ad-hoc committee to discuss these issues.

156

157 Mr. Rosenbaum agreed that was an option, also to have input from the fire fighter at the  
158 state, he will give his opinion.

159

160 Patty Witham

161 Ms. Witham is the executive director of the chamber of commerce. This affects the  
162 chamber because they are currently in the home considered as surplus, they still have so  
163 many years on their contract and are concerned about having no parking, she would like  
164 to propose the chamber be moved to the police building because it is high profile and  
165 they can put the DUP museum there, hopefully that could be considered.

166

167 Marvin Banks, neighbor and firefighter.

168 Mr. Banks lives straight across from the chamber building. The other day he counted 25  
169 cars parked on his street. He feels he should have some parking in front of his own house.  
170 He personally thinks they would regret selling one inch of the property. He thinks it  
171 should not even be entertained to let that property go, fire fighting is about location and  
172 they need to be in the hub, that's where the response time comes. He thinks they need to  
173 take a good hard look at their property before they make any decisions.

174

175 Councilman Leifson likes Mr. Rosenbaum's idea of bringing someone in and talking  
176 about their needs and discussing how their needs have grown. Until they have a plan of  
177 attack they feel they need to sit back and figure out what the best use for that is. Until a  
178 survey or study is done they need to table this item until they know exactly what they are  
179 looking at.

180

181 Mayor Thomas said there are parking issues that need to be addressed. He thinks the  
182 option should be open to trading the property for a newer better building. He feels there

183 should be all the options on the table. He feels there is no urgency and they are not  
184 looking to make money.  
185  
186 Councilman Andersen made a **motion** to not declare the property excess at this time and  
187 take no action on this property at this time. Councilman Sorensen **seconded** and the  
188 motion **passed**. Councilman Barber abstained from voting for the reasons stated before.  
189  
190 Mayor Thomas opened this item for public comment. There was none given at this time.  
191  
192 Mayor Thomas would like to see a sign for sale on the 2550 East Highway 6, property,  
193 and would rather see something done with it then let it sit vacant and unused.  
194  
195 Councilman Sorensen lives up in that neighborhood. The majority of people that have  
196 talked to him want to see it commercial in that area.  
197  
198 Councilman Leifson said as he looks at the property he does not see it as a city use for  
199 anything the city needs and should let it go to surplus.  
200  
201 Councilman Wadsworth made a **motion** to put this parcel located at 2550 E. and  
202 Highway 6, on the commercial market for sale. Councilman Leifson **seconded** and the  
203 motion **passed** all in favor.  
204  
205 **Budget FY08**  
206  
207 Mr. Clark gave a presentation on the budget. He listed the donations the city will  
208 contribute to this next fiscal year.  
209  
210 Councilman Barber clarified that the Chamber of Commerce is not considered a donation  
211 it is a contract arrangement. The goal of the chamber is to be autonomous but it is hard to  
212 do.  
213  
214 Councilman Sorensen talked about some ways the chamber is trying, they have been  
215 doing the ribbon cuttings, and they created a directory for all the residents in town to help  
216 them shop locally. They have been working with the city to put some maps together for  
217 shopping and city facilities.  
218  
219 Councilman Barber would like to see more effort for the Chamber to become  
220 autonomous.  
221  
222 Councilman Sorensen said they have had numerous discussions to work towards bringing  
223 in more funds. They are trying to increase membership and have links to different  
224 websites for more information.  
225  
226 Councilman Barber would like the chamber to be a little more proactive towards working  
227 with the businesses and not be afraid to work with the city.  
228

229 Councilman Wadsworth said the Council wants to see more outcomes for the businesses.  
230  
231 Janet McManus  
232 Ms. McManus lives at 1704 fairway.  
233 They moved here a couple of years ago; they drove down Main Street and said this is  
234 their town. They feel the Chamber of Commerce needs to look like a Chamber not just an  
235 old house down a side street.  
236  
237 Mr. Clark explained the reason for the notice was electric transfers since they will not be  
238 used in the fund they were collected in. Some of the funds are used for the cemetery,  
239 swimming pool, golf course, senior center etc.  
240  
241 Ms. McManus said it seems to her there is an overabundance of funding that goes to the  
242 golf course, not everyone golf's and swims, so why don't they cut the electric funds  
243 instead.  
244  
245 Mayor Thomas feels the same way she does there were several that put pressure on the  
246 golf course to break even; they are doing great with the new management. His goal is that  
247 the course breaks even and that it will not have to be subsidized.  
248  
249 Councilman Andersen said one of the items in the budget this year makes the funds  
250 higher than usual, because they have to replace a pump, they are not replaced cheaply.  
251  
252 Councilman Wadsworth said on the bright side they have privatized the pro shop and it  
253 will no longer be a liability to the city. They are looking at data and monitoring this  
254 closely because the goal is to have the enterprise funds be self funded, the pool is one that  
255 they are doing everything they can to be self funded.  
256  
257 Mayor Thomas feels the primary users of the pool are the youth. He feels it is important  
258 to keep them active.  
259  
260 Councilman Andersen said to help put their mind at ease on electrical rates, Spanish Fork  
261 has some of the lowest rates in the state because of the actions of some wise people years  
262 ago in joining an organization the power we get is basically our own, because of that  
263 Spanish Fork has been put in favorable situations and allows the city to fund some things  
264 where normally they wouldn't, also everyone uses power so everyone pays a portion and  
265 participates.  
266  
267 Ms. McManus is not complaining about rates and property taxes they love it here they  
268 have declared this city as a piece of heaven.  
269  
270 Councilman Sorensen said the people that run our power agency do a fantastic job. They  
271 have been able to purchase the power and sell it on the open market. They have been able  
272 to accumulate a rainy day fund so when they have power stations go down for  
273 maintenance they can go out on the open market and purchase the power and not have to  
274 pass the extra cost onto the users.

275  
276 Mayor Thomas would like people to be able to see where their electric rates are going.  
277  
278 Mr. Clark commented that one of the benefits the city has being a member of the co-op is  
279 it allows the profits of the power company to stay in our city, the other companies big  
280 power profits go to business owners.  
281  
282 Joe Broderick  
283 Mr. Broderick said many of the streets are lacking, and asked if there is going to be a  
284 budget to resurface the road. He also commented on the 750 closure, he would like it  
285 opened back up.  
286  
287 Mayor Thomas asked the public to please send questions or comments about the budget  
288 to [council@spanishfork.org](mailto:council@spanishfork.org)  
289  
290 Mr. Heap addressed the road overlay issues. They have to keep in mind there are other  
291 utilities in the roads they have to see if there is anything involved in those sections of the  
292 streets that will have to be dug up in the near future. They are not going to overlay the  
293 road if they have to dig it back up.  
294  
295 Councilman Andersen asked Mr. Heap to explain to the public their course for  
296 maximizing the ability to chip seal the roads.  
297  
298 Mr. Heap explained we have worked with other cities and we use their equipment and  
299 ours to do the chip seals it saves the cities 35% - 40%.  
300  
301 Councilman Barber asked about the philosophy for the vehicle purchases.  
302  
303 Mr. Heap explained the vehicles are analyzed by mechanics each year and they put a life  
304 span on them. We are at the point trucks do not get moved around like they used to.  
305  
306 Mayor Thomas asked why they are all trucks and 4-wheel drive.  
307  
308 Mr. Heap explained where the inspections have to be made the inspectors require access  
309 to the property. They have purchased extended cab instead of the crew cab trucks, but in  
310 talking with the inspectors they need to be able to get where they need to be and on time.  
311  
312 Mayor Thomas is concerned about the 97-5 he does not see that happening in the budget.  
313  
314 Mr. Heap stated they will still monitor the system and see where they are at; they will still  
315 be using some of it. This number reflects what has already been paid.  
316  
317 Councilman Sorensen stated the amounts reflect what will still be used and still going on.  
318 He sees it as a fairly accurate description of what is going on.  
319

320 Councilman Barber does not understand the cost to run the actual fiber and the city  
321 services they will be using.  
322  
323 Councilman Sorensen stated the utilities will be paying a portion of those lines, they are  
324 calculating the system to the percentage of cable and usage.  
325  
326 Mayor Thomas said the new radio meters will be put on new construction and will be  
327 replacing faulty meters.  
328  
329 Mr. Heap stated they are planning on eventually replacing all the power meters in the  
330 next few years.  
331  
332 Mayor Thomas does not think it is a good idea.  
333  
334 Councilman Sorensen feels as a user it is a savings, he is able to track his use and know  
335 where and how much he is using.  
336  
337 Mayor Thomas understands fiber optics were originally for meter reading.  
338  
339 Mr. Clark said they were first linking it around the city and then they linked it to cable  
340 and internet.  
341  
342 Mayor Thomas does not want to spend money on meters prematurely.  
343  
344 Councilman Andersen asked what they should do, keep speculating or get the numbers  
345 and then decide.  
346  
347 Councilman Wadsworth stated there are philosophical differences and at least this is part  
348 of the process of the due diligence of everyone. He appreciates the input. He has  
349 struggled over the years because he can't see it as government's obligation to become one  
350 to ensure competitive pricing.  
351  
352 Councilman Sorensen sees the same things they are doing with SFCN as they are with  
353 their power and feels there were individuals that saw foresight to do so.  
354  
355 Councilman Wadsworth feels it is not similar because power is an essential service, all  
356 have to have it but not all have to have cable and internet.  
357  
358 Councilman Andersen feels it could go from one extreme to the other and they will have  
359 to determine what a value to the citizens is and what adds to the quality of life sometimes  
360 there are things that need to be considered more than just dollars and cents all the time.  
361  
362 Councilman Sorensen noted the curb and gutter that was installed the citizens received no  
363 dollar return on that but the citizen's benefit because of it.  
364

365 Mayor Thomas said his point is if they are going to blend their meters, he thinks it is  
366 financially not responsible because of the pay out when the meters are not faulty to  
367 replace them. He thinks it should make a natural replacement.

368  
369 Councilman Barber asked for a lights update at Dons Field.

370  
371 Mr. Robinson said the bottom line is they are 50 year old towers; they cannot and will not  
372 work on those lights. The lights must meet the standards for candles and the proper ones  
373 are very expensive.

374  
375 Mr. Heap stated the amount budgeted is just an estimate, they will be bidding it out for an  
376 actual cost.

377  
378 Councilman Leifson said they met with some lighting companies and the lights required  
379 are not cheap.

380  
381 Mayor Thomas would love to explore options.

382  
383 Councilman Wadsworth read an article from governing magazine, January 2007.  
384 *"Everybody knows that government workers receive benefits that are*  
385 *increasingly rare in the private sector: generous defined-benefit*  
386 *pensions and health coverage after retirement. And then there's job*  
387 *security, which also is all but gone in corporate America. But this is*  
388 *part of the bargain, municipal unions say. After all, government*  
389 *workers are paid a lot less than employees in business, right? A new*  
390 *study says perhaps not. The study compared government paychecks in New*  
391 *Jersey with those in private industry and found that public sector*  
392 *workers are now paid more than those in business. Add in benefits, and*  
393 *the value of a government pay packet would be much greater. Thirty*  
394 *years ago, government workers were paid less in New Jersey than*  
395 *private workers and may still be in other parts of the country. In*  
396 *1970, men working for New Jersey state and local governments made*  
397 *about 13 percent less than those working for companies, Rutgers*  
398 *University Professor William M. Rogers III found in his study. By*  
399 *2000, men in government had passed their private-sector counterparts.*  
400 *(Interestingly, women in government have long made more than women in*  
401 *business.) Rogers thinks two things caused government wages to catch*  
402 *up. First, business pay stagnated. Second, unions remained strong*  
403 *among public employees, and their bargaining has boosted government*  
404 *paychecks." (Source: Otis White's Urban Notebook, Governing Magazine/January 2007)*  
405

406 They discussed a data set of private sector data and he wants to make sure the same thing  
407 that has happened in New Jersey is not happening here. He supports the Hay study and all  
408 he is asking for is creating a data set that they can use to compare to the private sector. It  
409 is an important point to him, if that can be settled he will feel better about the budget.

410

411 Mr. Perrins said historically the study has been done in August or September and they  
412 were not able to get started on it yet. Mr. Dave Jackson told him he was able to give blind  
413 data and get it easily and accurately. Mr. Perrins feels that would be a better way to go.  
414  
415 Councilman Wadsworth realizes it is difficult but if they can get the information it would  
416 settle his mind.  
417  
418 Mr. Perrins feels if they can get it easily and accurately they can do so. He also noted the  
419 article discussed bargaining because of the union, Utah does not have that.  
420  
421 Councilman Wadsworth feels good about what they are doing, and thanked them for their  
422 effort.  
423  
424 Councilman Leifson sent an e-mail to the Council about the spook alley, wondering if  
425 they want to keep funding it or if it is something that needs to be in the private sector. He  
426 asked Mr. Robinson if the spook alley would be something they want to do.  
427  
428 Mr. Robinson stated the new special events coordinator has done an analysis to find out  
429 where they are at, he would guess within a week they would have some numbers  
430 available and could decide from there.  
431  
432 Councilman Sorensen made a **motion** to close the public hearing. Councilman Andersen  
433 **seconded** and the motion **passed** all in favor at 8:49 p.m.  
434  
435 Councilman Barber looks at the spook alley similar to the golf course, if it will be an  
436 enterprise it needs to break even. He feels the spook alley is similar to the festival of  
437 lights, he is fine to see what Elaine, the special events coordinator has to show.  
438  
439 Mayor Thomas feels if it can't break even it is done, it bothers him that they lost money,  
440 he told Elaine it has to make the money back that they lost. He does not think the city  
441 should lose money and hopes they can make money. He is supportive of it.  
442  
443 Councilman Andersen feels comfortable with allowing them to do the research and bring  
444 some numbers back to the Council. In all fairness he does not have a problem giving it  
445 another year or so seeing what develops.  
446  
447 Councilman Sorensen feels they can make a decision when they get the data back.  
448  
449 Councilman Wadsworth thinks the spook alley should be self sufficient and needs to be  
450 treated as an enterprise fund. He also asked John Bowcut about hiring a full time  
451 developer and where they were on that.  
452  
453 Mr. Bowcut stated for the IS side of it there has been no progress other than the demands  
454 continue to stack up. He promised that the items will be brought before the Council with  
455 the options asking for the Councils direction.  
456

457 Councilman Barber said it came to his attention the police officers have an 86 hour pay  
458 period verses the other employees that have an 80 hour. He feels the personnel committee  
459 really needs to look at that and make an adjustment if that needs to be done.

460

461 Mr. Oyler said they reviewed the hour work week with the officers and met with Mr.  
462 Rosenbaum and Mr. Johnston, they analyzed other cities in the county. We are one of two  
463 that do not do the 40 hour work week for public safety. Administratively they will  
464 proceed with the 40 hour work week as of July. He explained they have adjusted their  
465 shifts so they will not be in overtime.

466

467 Councilman Sorensen had quite a bit of feedback, it has been greatly appreciated. The  
468 budget time is more taxing on the Council meeting with staff and working through it on  
469 their own. The ULCT talk about the budget being a reflection of the Councils priorities  
470 and he feels this budget is.

471

472 Councilman Sorensen made a **motion** to adopt the FY08 budget. Councilman Leifson  
473 **seconded** and the motion **passed** by a roll call vote. Councilman Barber stated he is  
474 philosophically and strongly opposed to the fiber optics but is voting Aye, Councilman  
475 Andersen voted Aye, Councilman Sorensen voted Aye, Councilman Wadsworth voted  
476 Nay for items stated before.

477

478 **CONSENT ITEMS:**

479

480 **Minutes of Spanish Fork City Council Meeting – May 1, 2007; May 15, 2007; May**  
481 **24, 2007**

482 **Interlocal Agreement Utah County Sex Crimes Task Force**

483 **Golf Pro Shop Contract**

484

485 Councilman Sorensen made a **motion** to approve the consent items. Councilman Leifson  
486 **seconded** and the motion **passed** all in favor.

487

488 **ADJOURN TO RDA MEETING:**

489

490 Councilman Barber made a **motion** to move to RDA. Councilman Sorensen **seconded**  
491 and the motion **passed** all in favor at 9:05 p.m.

492

493 Councilman Sorensen made a **motion** to adjourn the RDA meeting back to the Council  
494 Meeting. Councilman Wadsworth **seconded** and the motion **passed** all in favor at 9:15  
495 p.m.

496

497 **NEW BUSINESS:**

498

499 **Airport Assessment \$34,000**

500

501 Mr. Heap explained Spanish Fork City's portion of the airport budget is \$34,000.

502

503 Councilman Sorensen made a **motion** to approve the airport assessment of \$34,000.  
504 Councilman Leifson **seconded** and the motion **passed** all in favor.

505  
506 **Development Agreement Tenedor LLC**

507  
508 This item was tabled for the next meeting.

509  
510 **Sterling Hollow Water Tank Bid Tabulation**

511  
512 Mr. Heap stated this item was on the agenda at an earlier meeting but they needed more  
513 information. This is before the Council because it is over budget from what they had last  
514 year. Staff recommends awarding the bid to Build Incorporated.

515  
516 Councilman Sorensen made a **motion** to award the bid for the Sterling Hollow Water  
517 Tank to Build Incorporated in the amount of \$3,195,000.00. Councilman Andersen  
518 **seconded** and the motion **passed** all in favor.

519  
520 Councilman Wadsworth said Mr. Neiderhauser asked for direction where they need to go.  
521 He asked Mr. Anderson about Old Mill Estates.

522  
523 Mr. Anderson said Mr. Neiderhauser has been working with Mr. Glen Way to make Del  
524 Monte road the access.

525  
526 Councilman Andersen said they have come to an agreement. There is strip of property  
527 between them owned by Mr. Muhlstein. He told Mr. Neiderhauser he was willing to work  
528 with Mr. Muhlstein.

529  
530 Mr. Anderson stated they have had a very positive discussion with Mr. Way.

531  
532 Mr. Heap stated they would not want to close off Mill Road permanently.

533  
534 **OTHER BUSINESS:**

535  
536 Mr. Perrins said from the last growth meeting they would like to meet with Mapleton  
537 City, the last part of June, the date preferences are the 21<sup>st</sup>, 19<sup>th</sup>, and the 23<sup>rd</sup>.

538  
539 **ADJOURN:**

540  
541 Councilman Leifson made a **motion** to adjourn to executive session for land use.  
542 Councilman Wadsworth **seconded** and the motion **passed** all in favor at 9:25 p.m.

543  
544 **ADOPTED:**

545  
546  
547 \_\_\_\_\_  
Kimberly Robinson, Deputy Recorder

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**Tentative Minutes**  
**Spanish Fork City Council Meeting**  
**June 19, 2007**

Elected Officials Present: Mayor Joe L Thomas, Councilmember's G. Wayne Andersen, Seth V. Sorensen, Matthew D. Barber, Steven M. Leifson

Staff Present: Dave Oyler, Seth Perrins, Junior Baker, Dee Rosenbaum, Dale Robinson, Richard Heap, Elaine Hanson, Steven Money, Kent Clark, John Bowcut, Kimberly Robinson

Citizens Present: Larry Johnson, Allen Hall, Faye Hall, Nathan Oberhansly, Mark Stoddard

**CALL TO ORDER PLDEGE:**

Mayor Thomas called the meeting to order at 6:03 p.m. and lead in the pledge of allegiance.

**PUBLIC COMMENTS:**

Larry A. Johnson

Mr. Johnson is a resident of Spanish Fork, he and his wife use the public library. He would like to see it open the same hours all through the year.

Mayor Thomas stated staff will look into the reasons for the hours.

Mark Stoddard

Mr. Stoddard said the dust is still in their area. He called the developer who stated it was not his problem. He has not heard anything from anyone and would like to know what is going to be done.

Mayor Thomas apologizes that no one has gotten back to him. He stated it is a problem and they have been working on it.

Mr. Heap stated they have been working with them and have told them they will be shut down if they do not do something about it. They will follow up and get something done; he added they do have an inspector on site several times a day. He will follow through tomorrow and will let Mr. Stoddard know what is going on. He apologizes for not getting back to him before.

Councilman Barber feels we need to work with them but also let them know we are serious about correcting the problem.

Councilman Leifson stated the Council is in agreement that something needs to be done.

47 Councilman Andersen does not like to see the dust problem either. Mr. Heap said he will  
48 do something about it and he feels he will get it taken care of.

49

50 **COUNCIL COMMENTS:**

51

52 Councilman Andersen addressed a situation that has come up with articles and letters  
53 written about the Council. There are philosophical differences within the Council, but  
54 they are not enemies and it is ok to disagree. Since he has taken office there have been a  
55 total of 252 motions made by the Council. 242 of the motions were unanimous votes,  
56 96% of the time this Council has voted unanimously, he feels there is nothing wrong.  
57 Sometimes they disagree but that is healthy to come up with different ideas. Also there  
58 has been a challenge set down for this group the last few nights of the rodeo they will do  
59 the mounted shooting, they challenge the Council to have a match race.

60

61 Steven Money

62 Mr. Money made a challenge to the City Council with a total of six people to compete in  
63 the mounted shooting.

64

65 Mayor Thomas said the Council does see things differently, but that is not a bad thing. He  
66 would love to see citizens get involved with voting. He reported North Park is proceeding  
67 nicely there will be impacts on the city with more traffic and some that will come from  
68 reshaping north park, he feels this will benefit citizens for years. He publicly thanked the  
69 Special Events for their work and effort, Elaine Hansen, and Steven Money; he feels they  
70 will serve our city very well.

71

72 Councilman Barber reminded Fiesta Day's is coming up soon. There should be a  
73 brochure about all the activities coming out around the 4<sup>th</sup> of July. All the events are  
74 listed online on the city website. They named the grand marshals for the parade this year  
75 it will be Dale Barney and his wife.

76

77 Councilman Leifson reported on parks and recreation. He asked that the survey they sent  
78 regarding future parks should be sent in they are wrapping it up. Also Elaine Hansen has  
79 prepared information on the spook alley.

80

81 Mr. Robinson said they are excited about the special events in their department.

82

83 Ms. Hansen did a budget analysis to see how much it will cost to do the spook alley right,  
84 they can learn from their mistakes and improve from the last time. This time they will  
85 change the focus to one spook alley instead of two. It will be indoors to help with  
86 security. They will have all the schools around get involved and each school will have a  
87 few rooms that will draw more people and broaden the talent base. Rocky Mountain  
88 spook alley is no longer working and so they will focus on getting those that will be  
89 looking for another spook alley to come to.

90

91 **PUBLIC HEARING:**

92

93 Councilman Sorensen made a **motion** to open the public hearing. Councilman Andersen  
94 **seconded** and the motion **passed** all in favor.

95  
96 **Ordinance Amendment Proposed Changes to Title 15**

97  
98 Councilman Sorensen made a **motion** to continue the public hearing for this item to the  
99 July 17<sup>th</sup> Council meeting. Councilman Leifson **seconded** and the motion **passed** all in  
100 favor.

101  
102 **Faye and Allen Hall Zone change**

103  
104 Mr. Baker explained the proposed changes.

105  
106 Allen Hall

107 Mr. Hall lives between the two developments and they requested R-1-9 so they do not get  
108 landlocked.

109  
110 Councilman Barber made a **motion** to approve the Faye and Allen hall zone change from  
111 R-R to R-1-9 zoning. Councilman Leifson **seconded** and the motion **passed** all in favor.

112  
113 **City Budget Revision of FY07**

114  
115 Mr. Clark explained the revision is for the year end of FY07. The Council adopted the  
116 original budget last year and had one revision so far, this is the second revision. In the  
117 General fund revenues, sales tax is up from what was budgeted, natural gas is down, the  
118 transfer from electric enterprise funds will be taking less. Arts Council went down,  
119 Airport assessed the \$34,000. Police department restructuring accounts expenses are  
120 taken out and an increase in personnel as far as benefits and wages. The rest are minor  
121 adjustments. He also pointed out some of the capital projects that will be carried over to  
122 next year. Electric has some projects moved forward, some water projects are being  
123 moved forward as well such as a water tank at the mouth of the canyon.

124  
125 This item was opened for public comment. There was no public comment given at this  
126 time.

127  
128 Councilman Sorensen made a **motion** to approve the FY07 budget revision. Councilman  
129 Andersen **seconded** and the motion **passed** all in favor.

130  
131 Mayor Thomas said the money they bring in from sales tax is money they do not take  
132 from the citizens pockets.

133  
134 Councilman Sorensen made a **motion** to close the public hearing. Councilman Leifson  
135 **seconded** and the motion **passed** all in favor at 6:49 p.m.

136  
137 **CONSENT ITEMS:**

138

139 **Senior Center Contract with Mountainland Department of Aging**  
140  
141 Councilman Sorensen made a **motion** to approve the Mountainland Department of Aging  
142 Contract. Councilman Andersen **seconded** and the motion **passed** all in favor.

143  
144 **NEW BUSINESS:**  
145

146 Mayor Thomas discussed ways to appoint members to the boards and committees and  
147 invite applicants to attend a meeting to help get to know them before they decide. He  
148 feels they need a process by which they hold each other accountable.

149  
150 Councilman Andersen would like to have an opportunity to meet the applicants on a  
151 personal basis and give them an opportunity to present themselves.

152  
153 Mayor Thomas likes the idea of being able to meet them before a decision is made.

154  
155 Councilman Barber thinks getting to know them is a good idea.

156  
157 Councilman Leifson agrees and if they are comfortable with coming to a meeting they  
158 can get to know them.

159  
160 Mayor Thomas suggested having candidates attend a meeting and two weeks later the  
161 Council can decide.

162  
163 Councilman Barber stated these appointments require skills and qualifications.

164  
165 Councilman Andersen said as fast as the city is growing it will be a good idea to meet the  
166 candidates before appointment.

167  
168 Mayor Thomas said the idea is to invite candidates to be introduced and get to know them  
169 between that meeting and the next they can do reference checks and decide at the next  
170 meeting. It gives the public a chance to meet them and send their comments to the  
171 Council as well.

172  
173 Mayor Thomas motioned to appoint Darryl Stevenson to the personnel committee. The  
174 motion passed all in favor.

175  
176 **Banking Services Bid**  
177

178 Mr. Clark said they sent out the banking services proposals. They met and discussed the  
179 services they can provide. The Finance Committee was unanimous that we stay with  
180 Zion's bank. He recommends approval of Zion's Bank for the cities banking services.

181  
182 Councilman Barber asked how this process helped.  
183

184 Mr. Clark stated Zion's bank lowered the cost a little but we were already getting a good  
185 bid.

186  
187 Councilman Andersen commented the Finance Committee felt it was a good exercise,  
188 and is something that needs to be done every once in a while.

189  
190 Councilman Leifson talked to one of the banks and they were grateful for the opportunity  
191 to bid.

192  
193 Mayor Thomas said every bank in town was pleased with the option. He feels it is  
194 healthy and hopes they will bid it out every five to six years.

195  
196 Councilman Leifson made a **motion** to accept Zion's Bank to be the City's private  
197 banking service. Councilman Barber **seconded** and the motion **passed** all in favor.

198  
199 **RDA MEETING:**

200  
201 Councilman Sorensen made a **motion** to move to executive session after the RDA  
202 meeting. Councilman Leifson **seconded** and the motion **passed** all in favor at 7:05 p.m.

203  
204 **ADJOURN:**

205  
206 Councilman Barber made a **motion** to adjourn to executive session for real estate and  
207 potential litigation issues. Councilman Leifson **seconded** and the motion **passed** all in  
208 favor at 7:08 p.m.

209  
210 Mr. Clark made an announcement on election changes. There are three seats open,  
211 Councilman Barber, Sorensen, and Wadsworth. Legislation has changed the deadline to  
212 file to July 1-15<sup>th</sup> this year goes to July 16<sup>th</sup> by 5:00 p.m. come fill out a declaration of  
213 candidacy. The Primary Election because of the new voting machines has required  
214 moving the primary which is now the second Tuesday of September. The major  
215 difference this year with the voucher question on the November election the Governor  
216 mandated that it go on the ballot and the election be run by the county. He will not be in  
217 charge of the November election, it will be the county. For the primary, if they have more  
218 than six file for candidacy, they will use the paper ballots because of the cost to use the  
219 machines. He will try to use the same voting districts to avoid voter confusion. The  
220 November Elections the county will run, if you are a county resident you will vote just  
221 the voucher, the city residents will receive a ballot and a voucher.

222  
223 **ADOPTED:**

224  
225 

---

Kimberly Robinson, Deputy Recorder

# ORDINANCE NO. 09-07

## ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>		
MATTHEW D. BARBER <i>Councilmember</i>		
STEVE LEIFSON <i>Councilmember</i>		
SETH V. SORENSEN <i>Councilmember</i>		
CHRIS C. WADSWORTH <i>Councilmember</i>		

I MOVE this ordinance be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

### ORDINANCE 09-07

#### AN ORDINANCE MAKING TECHNICAL CORRECTIONS TO THE PUBLICLY OWNED TREATMENT WASTEWATER ORDINANCE

WHEREAS, Spanish Fork City owns and operates a publicly owned treatment waste water facility, which it operates in accordance with State and Federal regulations; and

WHEREAS, in order to manage the POTW in accordance with State and Federal regulations, the City has adopted various Ordinances, of which several adopt State and/or Federal standards; and

WHEREAS, the City has noticed that some of the references in the existing Ordinance are in error and need to be corrected:

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

I.

Spanish Fork City Municipal Code Section 13.32.272 is amended by making corrections to the references to the Code of Federal Regulations and shall read as follows:

**13.32.272 Notification Requirements.**

All Industrial Users shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User. An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during that calendar month and an estimation of the mass constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide a notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of change discharges must be submitted under 40 CFR 403.12(I). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b),(d).and (e).

II.

In order to protect the health, safety, welfare of the residents of the City, this Ordinance shall become effective immediately upon passage.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK,  
UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

---

JOE L THOMAS, Mayor

ATTEST:

---

KENT R. CLARK, City Recorder

F:\ORDBOOK\ORD----

## MEMO

To: Mayor and City Council  
From: S. Junior Baker  
Date: 9 July 2007  
Re: Nebo Facilities Agreement Amendment Consent Item

The July 17 council agenda contains a consent items for the Nebo School District Facilities Use Agreement Amendment. The Council, earlier, approved the Facilities Use Agreement with the School District. The State Risk Manager, who insures the school district wanted some minor changes in the indemnity and insurance provisions. We have looked those over and find them acceptable. Since the changes are very minor, this appears as a consent item.

**NEBO SCHOOL DISTRICT & SPANISH FORK CITY**  
**MASTER FACILITY USE**  
**INTERLOCAL COOPERATION AGREEMENT**

THIS NEBO SCHOOL DISTRICT & SPANISH FORK CITY - MASTER FACILITY USE INTERLOCAL COOPERATION AGREEMENT (the "Agreement"), is made and entered into by and between the BOARD OF EDUCATION OF NEBO SCHOOL DISTRICT ("School District"), a political subdivision of the State of Utah, of 350 South Main, Spanish Fork, Utah, 84660, and SPANISH FORK CITY ("City"), a political subdivision of the State of Utah, of 40 South Main, Spanish Fork, Utah, 84660.

**WITNESSETH**

WHEREAS, pursuant to the provisions of the Utah Interlocal Cooperation Act, Utah Code Annotated, Section 11-13-101, et seq., public agencies, including political subdivisions of the State of Utah as defined therein, are authorized to enter into mutually advantageous agreements for joint or cooperative action; and

WHEREAS, the School District and City, through their respective governing bodies, have voluntarily determined that the interests and welfare of the public within their respective jurisdictions will best be served by this Agreement to provide for joint and cooperative action in the shared use of the School District's Facilities and the City's Facilities located in Spanish Fork, Utah, in conjunction with the School District's classes, programs, activities, and events; and the City's classes, programs, activities, and events, as described herein;

WHEREAS, the governing bodies of the School District and the City have by resolution agreed to adopt this Agreement to provide for the joint and cooperative action contained herein; and

WHEREAS, this Agreement shall replace and supercede the Nebo School District & Spanish Fork City - Master Facility Use Interlocal Cooperation Agreement executed February 14 & 20, 2007 by the School District and the City.

NOW, THEREFORE, be it mutually covenanted and agreed as follows, each of the parties accepting as consideration for this Agreement the mutual promises and agreements of the other:

**SECTION ONE**  
**EFFECTIVE DATE AND DURATION**

This Agreement shall be effective on the date it is signed by the parties, and shall continue for a period of up to fifty (50) years, unless sooner terminated as provided herein.

**SECTION TWO**  
**ADMINISTRATIVE ENTITY**

The School District and City do not contemplate nor intend to establish a separate legal entity under the terms of this Agreement. However, the parties agree to establish a six (6) member Joint Governance Committee (the "Committee") comprised of the following individuals: (a) the Nebo School District Secondary Education Director, or his/her designee; (b) the Nebo School District Operations Director, or his/her designee; (c) the Nebo School District Legal Counsel, or his/her designee; (d) the Spanish Fork City Manager, or his/her designee; (e) the Spanish Fork City Parks & Recreation Director, or his/her designee; and (f) the Spanish Fork City Attorney, or his/her designee. The Nebo School District Secondary Education Director, or his/her designee, and the Spanish Fork City Parks & Recreation Director, or his/her designee, shall be the co-chairs of the Committee. This Committee shall meet as necessary and shall, in addition to any

other duties and responsibilities set forth in this Agreement, establish usage guidelines and rules, scheduling procedures, supervision and security, custodial duties, and payment of expenses associated with the Facilities, as described herein, subject to the terms and conditions of this Agreement. Governance of the Committee shall be by majority rule. In the event of a deadlock when there is an even division among the members of the Committee with respect to a matter concerning this Agreement, and the Committee members are unable to break the deadlock, the Superintendent of the School District and the City Manager shall mutually cast a final vote to break the deadlock.

### **SECTION THREE** **PURPOSE**

This Agreement is established for the purpose of sharing the use and maintaining the School District's Facilities and the City's Facilities located in or about Spanish Fork, Utah, in conjunction with the School District's classes, programs, athletic teams, activities, and events, including community school classes and programs; and the City's classes, programs, activities, and events, including city recreation teams and programs, and to set forth the respective duties and responsibilities of the School District and the City in conjunction therewith. Exhibit "A" attached hereto contains a list of the various School District Facilities along with the authorized uses, responsibilities, services and considerations of the City. Exhibit "B" attached hereto contains a list of the various City Facilities along with the authorized uses, responsibilities, services and considerations of the School District.

### **SECTION FOUR** **USE AND SCHEDULING OF FACILITIES**

**A. School District Facilities:** The School District shall have the exclusive use of its buildings, properties, and facilities (the "School District Facilities") during school hours and during school related classes, programs, athletic teams, activities, and events, including community school classes and programs. At other times when the School District Facilities are not being used by the School District, the School District may schedule the use of the School District Facilities for appropriate City classes, programs, activities, and events, including city recreation teams and programs. The City acknowledges and agrees that the School District may allow other individuals and entities to generally schedule up to six (6) months in advance for use of the School District Facilities in accordance with Nebo School District's School Facility Use Policy #ECF. The specific City classes, programs, activities, and events shall be pre-approved by the Committee to assure that such activities are proper and compatible with the School District Facilities, and in compliance with applicable School District policies, procedures, and directives. All scheduling and access arrangements for the use of the School District Facilities shall be coordinated through the respective school principals or assistant principals. The City may schedule dates and times for the use of the School District Facilities up to one (1) year in advance by using a School District form requesting use of School District Facilities. To the extent legally and reasonably possible, the School District shall give the City second priority in scheduling the use of the School District Facilities (subsequent to the School District who has first priority). However, as with any scheduling of the School District Facilities, whether by the City or other individuals or entities, school related classes, programs, activities, and events will take precedence. Emergency or unforeseen circumstances that require the use of the School District Facilities by the School District, as determined to be in the best interests of the School District, will take precedence over any prior scheduling by the City or any other individuals or entities. In the event the City disagrees with the School District's determination that there is an "emergency or unforeseen circumstance" which has taken precedence over the City's prior scheduled use of the School District Facilities, the City shall attempt to resolve the issue with the School District at the lowest level possible beginning with the school principal and continuing up to the Superintendent of the School District. Use of the School District Facilities by the City shall be in accordance with all the terms, conditions, rules, and regulations set forth in Nebo School District's School

Facility Use Policy #ECF, which policy is incorporated fully herein and made a part of this Agreement. The City's use of the School District Facilities shall also be in accordance with the reasonable rules, regulations, and directions imposed by the school administrators and/or custodians. Upon giving reasonable prior notice to the City, the School District may prohibit the use of any of its Facilities in the event the Facility is in need of maintenance, repair, or restoration; the physical condition of the Facility is unsafe for the intended activity(ies); or for any other reason relating to the condition of the Facility deemed to be in the best interests of the School District as determined in its sole and absolute discretion. In consideration of the services and expenditures provided by the City for the use of the School District Facilities as set forth in Exhibit "A" hereto, there will be no rent charged for the City's use of the School District Facilities. However, the City shall be responsible to pay any and all costs for the employment of school personnel, such as supervisors, custodians, technicians, and food service workers. The City shall be entitled to use the School District Facilities subject to the following conditions:

1. The City shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations.
2. The City shall not commit or suffer to be committed any destruction or damage, beyond reasonable wear and tear.
3. The City shall not commit or suffer to be committed any public or private nuisance.
4. The City shall maintain the School District Facilities in a reasonably clean and safe condition.

**B. City Facilities:** The City shall have the exclusive use of its buildings, properties, and facilities (the "City Facilities") for city related classes, programs, activities, and events, including city recreation teams and programs. At other times when the City Facilities are not being used by the City, the City may schedule the use of the City Facilities for appropriate School District classes, programs, athletic teams, activities, and events, including community school classes and programs. The School District acknowledges and agrees that the City may allow other individuals and entities to generally schedule up to six (6) months in advance for use of the City Facilities in accordance with its policies and procedures. The specific School District classes, programs, athletic teams, activities, and events shall be pre-approved by the Committee to assure that such activities are proper and compatible with the City Facilities, and in compliance with applicable City policies, procedures, and directives. All scheduling and access arrangements for the use of the City Facilities shall be coordinated through the City Parks & Recreation Department. The School District may schedule dates and times for the use of the City Facilities up to one (1) year in advance by using a City form requesting use of City Facilities. To the extent legally and reasonably possible, the City shall give the School District second priority in scheduling the use of the City Facilities (subsequent to the City who has first priority). However, as with any scheduling of the City Facilities, whether by the School District or other individuals or entities, city related programs, activities, and events will take precedence. Emergency or unforeseen circumstances that require the use of the City Facilities by the City, as determined to be in the best interests of the City, will take precedence over any prior scheduling by the School District or any other individuals or entities. In the event the School District disagrees with the City's determination that there is an "emergency or unforeseen circumstance" which has taken precedence over the School District's prior scheduled use of the City Facilities, the School District shall attempt to resolve the issue with the City at the lowest level possible beginning with the Spanish Fork City Parks & Recreation Director and continuing up to the City Manager. Use of the City Facilities by the School District shall be in accordance with all the terms, conditions, rules, and regulations set forth in City's Facility Use Policy, which policy is incorporated fully herein and made a part of this Agreement. The School District's use of the City Facilities shall also be in accordance with the reasonable rules, regulations, and directions imposed by City supervisors. Upon giving reasonable prior notice to the School District, the City may prohibit the use of any of its Facilities in the event the Facility is

in need of maintenance, repair, or restoration; the physical condition of the Facility is unsafe for the intended activity(ies); or for any other reason relating to the condition of the Facility deemed to be in the best interests of the City as determined in its sole and absolute discretion. In consideration of the services and expenditures provided by the School District for the use of the City Facilities as set forth in Exhibit "B" hereto, there will be no rent charged for the School District's use of the City Facilities. However, the School District shall be responsible to pay any and all costs for the employment of City personnel, such as supervisors, custodians, and technicians. The School District shall be entitled to use the City Facilities subject to the following conditions:

1. The School District shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations.
2. The School District shall not commit or suffer to be committed any destruction or damage, beyond reasonable wear and tear.
3. The School District shall not commit or suffer to be committed any public or private nuisance.
4. The School District shall maintain the City Facilities in a reasonably clean and safe condition.

#### **SECTION FIVE** **MANNER OF FINANCING**

This Agreement and the matters contemplated herein shall not receive separate financing, nor shall a separate budget be required. Each party shall be responsible for its own obligations under this Agreement, and shall follow any applicable rules and regulations adopted by the Committee.

#### **SECTION SIX** **CUSTODIAL & MAINTENANCE SERVICES**

**A. School District Facilities:** The School District shall be responsible to hire and pay for all custodial and maintenance services associated with the operation, maintenance, and repair of the School District Facilities. In addition, the City shall, as necessary and appropriate, provide and pay for custodial and maintenance services as a result of the City's use of the School District Facilities. In the event a City activity or event creates an extraordinary or excessive amount of Facility clean-up which then causes the School District to incur additional custodial and maintenance costs above and beyond normal duties, the City agrees to be responsible to reimburse the School District for said custodial and maintenance costs which are incurred as a direct result of the City's use of the School District Facilities. Such additional custodial and maintenance costs shall be mutually determined by the City Recreation Supervisor or his/her designee and the School District Maintenance Supervisor or his/her designee. In the event the foregoing individuals are unable to mutually agree upon the additional custodial and maintenance costs, the matter shall be presented to the Committee for a decision in accordance with the procedures set forth in Section Two of this Agreement. Any such reimbursement shall be due and payable by the City to the School District within thirty (30) days following receipt of a written invoice therefore.

**B. City Facilities:** The City shall be responsible to hire and pay for all custodial and maintenance services associated with the operation, maintenance, and repair of the City Facilities. In addition, the School District shall, as necessary and appropriate, provide and pay for custodial and maintenance services as a result of the School District's use of the City Facilities. In the event a School District activity or event creates an extraordinary or excessive amount of Facility clean-up which then causes the City to incur additional

custodial and maintenance costs above and beyond normal duties, the School District agrees to be responsible to reimburse the City for said custodial and maintenance costs which are incurred as a direct result of the School District's use of the City Facilities. Such additional custodial and maintenance costs shall be mutually determined by the City Recreation Supervisor or his/her designee and the School District Maintenance Supervisor or his/her designee. In the event the foregoing individuals are unable to mutually agree upon the additional custodial and maintenance costs, the matter shall be presented to the Committee for a decision in accordance with the procedures set forth in Section Two of this Agreement. Any such reimbursement shall be due and payable by the School District to the City within thirty (30) days following receipt of a written invoice therefore.

**SECTION SEVEN**  
**SUPERVISION AND SECURITY**

**A. School District Facilities:** The City shall be responsible to provide and pay for all necessary and appropriate supervision and security during the City's use of the School District Facilities. The persons responsible for such supervision and security shall have undergone and been cleared through a criminal history check by the Utah Bureau of Criminal Identification or other equivalent service.

In the event the School District has any concerns with a specific City supervisor, the School District shall discuss and attempt to resolve said concerns with the City. In the event the concerns cannot be adequately resolved, the School District may request the City to replace the individual with another City supervisor.

**B. City Facilities:** The School District shall be responsible to provide and pay for all necessary and appropriate supervision and security during the School District's use of the City Facilities. The persons responsible for such supervision and security shall have undergone and been cleared through a criminal history check by the Utah Bureau of Criminal Identification or other equivalent service.

In the event the City has any concerns with a specific School District supervisor, the City shall discuss and attempt to resolve said concerns with the School District. In the event the concerns cannot be adequately resolved, the City may request the School District to replace the individual with another School District supervisor.

**SECTION EIGHT**  
**PERSONAL PROPERTY**

Each party shall be responsible to provide its own athletic equipment and other personal property (herein referred to as "Personal Property") to be used in conjunction with the use of the other party's Facilities. Each party shall be the owner of its respective items of Personal Property. Each party shall be responsible for any loss, damage, or destruction incurred to its respective items of Personal Property, and to maintain insurance on the same. Unless otherwise authorized in writing by the other party, no Personal Property owned by one party may be left or stored at the other party's Facilities, and in the event such Personal Property is left or stored at the other party's Facilities, the parties hereby acknowledge and agree that the other party shall not be liable for any loss or damage to said Personal Property from whatever cause. The parties further acknowledge and agree that there may be items of Personal Property (i.e., wrestling mats, volleyball nets, etc.) that are jointly owned by the School District and the City. Such jointly owned Personal Property may be used by both parties, and both parties are jointly responsible for its care, maintenance, and repair. In addition, there may be items of Personal Property that are inherently connected with the use of a party's particular facility for which the other party may be authorized to use in connection therewith.

**SECTION NINE**  
**ADMINISTRATION OF AGREEMENT**

Pursuant to Utah Code Annotated, Section 11-13-101, et seq., the parties hereby agree that the Joint Governance Committee, as set forth in Section Two above, shall be responsible for administering this Agreement. This Agreement does not anticipate nor provide for any organizational changes in the School District or the City.

**SECTION TEN**  
**FILING OF AGREEMENT**

A copy of this Nebo School District & Spanish Fork City - Master Facility Use Interlocal Cooperation Agreement shall be placed on file in the Office of the City Recorder of the City and with the Business Administrator of the School District and shall remain on file for public inspection during the term of this Agreement.

**SECTION ELEVEN**  
**INSURANCE**

**A. City Insurance:** The City shall procure and maintain in force at its expense during the term of this Agreement public liability insurance providing insurance coverage for the City's use of the School District Facilities. Such insurance shall provide for such coverages, protections, insurable amounts, etc. which would be standard and reasonable for the uses contemplated hereunder, and which are available through the Utah Risk Management Mutual Association ("URMMA").

**B. School District Insurance:** The School District shall procure and maintain in force at its expense during the term of this Agreement public liability insurance providing insurance coverage for the School District's use of the City Facilities. Such insurance shall provide for such coverages, protections, insurable amounts, etc. which would be standard and reasonable for the uses contemplated hereunder, and which are available through the State of Utah Risk Management ("State Risk Management").

**C. Property Insurance:** Each party shall procure and maintain in force at its expense during the term of this Agreement property insurance for each party's Facilities.

**SECTION TWELVE**  
**NOTICE OF DEFAULT; CORRECTIVE ACTION**

The failure of either party to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. Either party shall have thirty (30) days after receipt of written notice from the other of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the thirty (30) day period, within a reasonable time if corrective action is commenced within ten (10) days after receipt of the notice.

**SECTION THIRTEEN**  
**RIGHTS AND REMEDIES**

In the event of any breach hereunder and after the lapse of the cure period as per Section Twelve above, the non-breaching party shall have all the rights and remedies available under the laws of the State of Utah in effect. The rights and remedies of the parties hereto shall not be mutually exclusive, but shall be cumulative in all effects. The respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

**SECTION FOURTEEN**  
**LIABILITY FOR INJURY, LOSS, OR DAMAGE TO PERSONS OR PERSONAL PROPERTY**

**A. City Use:** The City shall, subject to the limits and caps set forth in the Governmental Immunity Act of Utah, defend, indemnify and hold harmless the School District for any death, personal injury, loss, or damage to persons or personal property (hereinafter “losses”) arising out of the City’s use of the School District Facilities, except for losses arising out of the sole negligence of the School District.

**B. School District Use:** The School District shall, subject to the limits and caps set forth in the Governmental Immunity Act of Utah, defend, indemnify and hold harmless the City for any death personal injury, loss, or damage to persons or personal property (hereinafter “losses”) arising out of the School District’s use of the City Facilities, except for losses arising out of the sole negligence of the City.

**SECTION FIFTEEN**  
**DAMAGE OR DESTRUCTION TO FACILITIES**

**A. City Use:** If the School District Facilities are damaged or destroyed as a result of the use thereof by the City, repair or replacement costs up to Ten Thousand Dollars (\$10,000) will be determined and payable by the City as specified in the Joint Governance Committee guidelines and rules to be developed as stated in Section Two of this Agreement. Responsibility for and payment of damages or costs rising above that amount will be determined and payable through normal dispute resolution procedures, including, but not limited to, mediation, arbitration, or lawsuits, dependent upon the fault of the parties or others, subject to subrogation principles.

**B. School District Use:** If the City Facilities are damaged or destroyed as a result of the use thereof by the School District, repair or replacement costs up to Ten Thousand Dollars (\$10,000) will be determined and payable by the School District as specified in the Joint Governance Committee guidelines and rules to be developed as stated in Section Two of this Agreement. Responsibility for and payment of damages or costs rising above that amount will be determined and payable through normal dispute resolution procedures, including, but not limited to, mediation, arbitration, or lawsuits, dependent upon the fault of the parties or others, subject to subrogation principles.

**SECTION SIXTEEN**  
**GOVERNING LAW, JURISDICTION, AND VENUE**

All questions with respect to the construction of this Agreement and all rights and liability of the parties hereto shall be governed by the laws of the State of Utah. Jurisdiction and venue for the enforcement of this Agreement shall be found in the courts of Utah County, State of Utah.

**SECTION SEVENTEEN**  
**COSTS OF ENFORCEMENT**

In the event of a breach of this Agreement, the non-breaching party shall be entitled to recover from the breaching party all of the non-breaching party's costs (including, but not limited to, court fees and expert witness costs) and attorneys' fees associated with the enforcement of this Agreement.

**SECTION EIGHTEEN**  
**NOTICE**

Any written notice which must or may be given relating to this Agreement shall be sufficient if mailed postage prepaid, registered or certified mail, in the United States mail addressed to a party at the address given above. In the case of the School District, notice shall be mailed to the attention of the Superintendent at the above address. In the case of the City, notice shall be mailed to the attention of the City Manager at the above address. Either party may notify the other to designate a different address for mailing.

**SECTION NINETEEN**  
**ANNUAL REVIEW**

The Committee set forth in Section Two shall meet annually to review this Agreement. The Committee shall specifically review and assess the usage of the School District Facilities and the City Facilities and the considerations given in exchange therefore as set forth in Exhibits "A" and "B" hereto. The objective of the Committee during their annual review is to make any necessary revisions or amendments to Exhibits "A" and "B" of this Agreement in order to achieve an acceptable level of "fundamental fairness" between the parties for the use of their respective Facilities.

**SECTION TWENTY**  
**TERMINATION**

Either party may terminate this Agreement at any time and for any or no reason by giving the other party at least one (1) year prior written notice of the same.

**SECTION TWENTY-ONE**  
**ACCEPTANCE OF FACILITY CONDITION**

**A. City Acceptance:** The City agrees to use the School District Facilities in their "AS IS" condition. If repairs or maintenance are necessary or desirable, the City may request the School District to make such repairs and maintenance, but the School District is not under any obligation to do so. If the City makes repairs or conducts maintenance it shall be at its own cost.

**B. School District Acceptance:** The School District agrees to use the City Facilities in their "AS IS" condition. If repairs or maintenance are necessary or desirable, the School District may request the City to

make such repairs and maintenance, but the City is not under any obligation to do so. If the School District makes repairs or conducts maintenance it shall be at its own cost.

**SECTION TWENTY-TWO**  
**GENERAL PROVISIONS**

**A. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**B. Entire Agreement.** This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties. All prior understandings, negotiations, or agreements are merged herein and superceded hereby.

**C. Amendments.** This Agreement may be modified only by a writing signed by each of the parties hereto.

**D. Not Assignable.** This Agreement is specific to the parties hereto and is therefore not assignable.

**E. Captions.** The captions to the various Sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

**F. Exhibits.** The following Exhibits attached hereto, and any Exhibits subsequently attached hereto from time to time, shall be considered to be binding upon all parties.

**G. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**H. Gender and Number.** The singular number include the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, limited liability company, partnership, or other legal entity when the context so requires.

**I. Waiver or Forbearance.** No delay or omission in the exercise of any right or remedy by any party hereto shall impair such right or remedy or be construed as a waiver. Any waiver of any breach must be in writing and shall not be a waiver of any other breach concerning the same or any other provision of this Agreement.

**J. No Partnership, Joint Venture, or Third Party Rights.** Except as specifically set forth herein, nothing in this Agreement shall be construed as creating any partnership, joint venture, or business arrangement among the parties hereto, nor any rights or benefits to third parties.

**K. No Waiver of Governmental Immunity.** Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act of Utah.

**L. Effect on Previous Contracts and Interlocal Cooperation Agreements.** This Agreement shall not supercede any previous Contracts and/or Interlocal Cooperation Agreements entered into between the School District and the City regarding the shared use of School District Facilities or City Facilities. This Agreement

shall have the effect of supplementing and clarifying the parties' respective roles, duties, and responsibilities in relation to each other with the shared use of School District Facilities and City Facilities that may be specifically addressed in previous Contracts and/or Interlocal Cooperation Agreements. The parties hereby acknowledge and agree that the following Contracts and/or Interlocal Agreements are currently in effect as of the date of this Agreement which concern the Facilities of the School District and the City:

1. Contract - Tennis Courts (Spanish Fork City - Sports Park), dated July 2000.
2. Swimming Pool Contract (Spanish Fork High School), dated September 20, 1995.
3. Technology Building Interlocal Cooperation Agreement (Spanish Fork City - Technology Building), dated August 23, 2000; and Addendum to Technology Building Interlocal Cooperation Agreement, dated October 3, 2000.

**- SIGNATURES ON FOLLOWING PAGE -**

IN WITNESS WHEREOF, the parties have signed and executed this Nebo School District & Spanish Fork City - Master Facility Use Interlocal Cooperation Agreement, after resolutions duly and lawfully passed, on the dates listed below.

DATED this \_\_\_\_ day of July, 2007.

**SPANISH FORK CITY**

By: \_\_\_\_\_  
**JOE L THOMAS, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**KENT R. CLARK, City Recorder**

**APPROVED AS TO FORM AND COMPATIBILITY  
WITH THE LAWS OF THE STATE OF UTAH:**

\_\_\_\_\_  
**S. JUNIOR BAKER,**  
**Spanish Fork City Attorney**

DATED this \_\_\_\_ day of July, 2007.

**BOARD OF EDUCATION OF  
NEBO SCHOOL DISTRICT**

By: \_\_\_\_\_  
**R. DEAN ROWLEY, Board President**

**ATTEST:**

By: \_\_\_\_\_  
**TRACY D OLSEN, Business Administrator**

**APPROVED AS TO FORM AND COMPATIBILITY  
WITH THE LAWS OF THE STATE OF UTAH:**

\_\_\_\_\_  
**REED B. PARK,**  
**Nebo School District Legal Counsel**

**EXHIBIT "A"**

<b>CITY USE OF SCHOOL DISTRICT FACILITIES</b>	
<b>SPANISH FORK HIGH SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Auditorium	Fiesta Days Patriotic Program. Fiesta Days Community Theater. Miss Spanish Fork Pageant. Reasonable use for Spanish Fork City Arts Council activities and events, <u>as specifically approved in writing by the City and the School District.</u>
Auxiliary Gymnasiums	Adult basketball and volleyball leagues; youth basketball leagues and camps; youth baseball and softball team selections; youth wrestling matches and tournaments; youth volleyball camps; and special events.
Cafeteria	Youth baseball and softball coaches meetings.
Community School Offices & Storage Room	City Recreation Offices.
Classrooms	Youth and adult sport coaches meetings (primarily classrooms C-10 and C-11).
Dance Studio	Youth and adult baseball and softball umpire training meetings.
Football Field	Youth Hershey Track and Field meets; and summer youth track team.
Main Gymnasium	Adult basketball leagues; youth basketball leagues and camps; youth baseball and softball team selections; youth wrestling matches and tournaments; and special events.
Soccer Fields	Occasional youth soccer games.
Track	Youth Hershey Track and Field meets and summer youth track team.
Wrestling Room	Youth wrestling practices and matches; and summer registration (2 days).
Parking Lots	Parking for all City sponsored activities and events.
<b>SPANISH FORK JUNIOR HIGH SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Main Gymnasiums (2)	Youth basketball games and practices; open gym nights (Monday evenings during the winter); occasional adult volleyball games and practices; and dodge ball tournament (Thanksgiving).
Football Field	Youth tackle football league games and practices.
Playing Fields	Youth sports teams practice areas (i.e., soccer, baseball, softball, and football).
Wrestling Room	Youth & intermediate wrestling matches and practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>SPANISH FORK MIDDLE SCHOOL / DIAMOND FORK JUNIOR HIGH SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasiums (2)	Adult basketball games; youth basketball games and practices; adult volleyball games; and youth volleyball clinics and games.
Playing Fields	Youth soccer games and practices; and youth football practices;
Cafeteria	Pictures for youth sport teams.
Parking Lots	Parking for all City sponsored activities and events.
<b>LANDMARK HIGH SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Occasional adult basketball games; and youth basketball games and practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>BROCKBANK ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>CANYON ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Playground	Use as a city water retention basin in addition to the city property which is located on the east portion of the playground.
Parking Lots	Parking for all City sponsored activities and events.

<b>EAST MEADOWS ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>LARSON ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>PARK ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>REES ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
<b>RIVERVIEW ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices (Future).
Playing Fields	Youth baseball, softball, soccer, and football practices (Future).
Parking Lots	Parking for all City sponsored activities and events.
<b>SPANISH OAKS ELEMENTARY SCHOOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Gymnasium	Youth basketball clinics, games, and practices.
Playing Fields	Youth baseball, softball, soccer, and football practices.
Playground	Use as city water retention basin in addition to the city property which is located on the southwest portion of the playground.
Parking Lots	Parking for all City sponsored activities and events.
<b>CITY CONSIDERATIONS</b>	
<ul style="list-style-type: none"> <li>• Pay one-half (½) the costs for additional items that are used by both the City and the School District (i.e., score boards, wrestling mats, rims, backboards, volleyball equipment, nets, soccer goals, etc.).</li> <li>• Pay for all office equipment (i.e., computer, printer, desks, filing cabinets, etc.) for the City Recreation/Community School offices.</li> <li>• Pay for all secondary pressurized irrigation water assessments and fees for the football field, practice field, and soccer fields at Spanish Fork High School.</li> <li>• Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Spanish Fork Junior High School.</li> <li>• Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Spanish Fork Middle School / Diamond Fork Junior High School.</li> <li>• Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Larsen Elementary School.</li> <li>• Pay for all culinary water assessments and fees at Larsen Elementary School.</li> <li>• Assist the School District with football field maintenance, including, but not limited to, aerating, spraying, mowing, and field preparation during the Spanish Fork High School football team season and at other times as requested.</li> <li>• Provide labor and organization of all Hershey Track and Field meets.</li> <li>• Coordinates and compiles information for the Nebo School District / Spanish Fork City Activity Guides for Fall, Winter, and Spring/Summer.</li> <li>• Pay for the costs on all scoreboard repairs (i.e., lights, cords, controls, and Nevco equipment) at Spanish Fork High School, Spanish Fork Junior High School, and Spanish Fork Middle School / Diamond Fork Junior High School.</li> <li>• School District use of City Facilities.</li> <li>• General good faith cooperation and considerations to the School District.</li> </ul>	

## EXHIBIT "B"

<b>NEBO SCHOOL DISTRICT USE OF CITY FACILITIES</b>	
<b>RUSSELL SWENSON MEMORIAL PARK</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Baseball Fields	Spanish Fork High School baseball teams for practices and games.
Storage Facilities	Spanish Fork High School baseball teams to store athletic equipment.
Batting Cages	Spanish Fork High School baseball teams for practices.
Parking Lots	Parking for all School District sponsored activities and events.
<b>SPORTS PARK</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Softball Fields	Spanish Fork High School softball teams for practices and games.
Storage Facilities	Spanish Fork High School athletic teams to store athletic equipment.
Batting Cages	Spanish Fork High School athletic teams for practices.
Pavilions	Spanish Fork High School and Maple Mountain High School (future) athletic teams for banquets or other special functions.
Tennis Courts	Spanish Fork High School, Spanish Fork Junior High School, and Diamond Fork Junior High School boy's and girl's tennis teams for games and practices. <i>Also governed by a separate Contract dated July, 2000.</i>
Baseball Fields	Spanish Fork High School and Maple Mountain High School (future) baseball teams for practices and games.
Parking Lots	Parking for all School District sponsored activities and events.
<b>SPANISH OAKS GOLF COURSE</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Golf Course	Spanish Fork High School, Maple Mountain High School (future), Spanish Fork Junior High School, and Diamond Fork Junior High School (future) golf teams for practices and matches. <i>Also governed by the Memo, dated December 1, 2004, executed by the Golf Professionals from East Bay, Spanish Oaks, Gladstan, Hobble Creek, and Cascade Golf Courses.</i>
Parking Lots	Parking for all School District sponsored activities and events.
<b>HIGH CHAPARELL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Meeting Rooms	Spanish Fork High School athletic teams for banquets or other special functions.
Parking Lots	Parking for all School District sponsored activities and events.
<b>INDOOR TENNIS COURTS</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Tennis Courts	Spanish Fork High School, Maple Mountain High School (future), Spanish Fork Junior High School, and Diamond Fork Junior High School (future) physical education classes and boy's and girl's tennis teams for practices and games.
Parking Lots	Parking for all School District sponsored activities and events.
<b>SWIMMING POOL</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Swimming Pool	Spanish Fork High School swim team for off-season practices. Spanish Fork High School physical education classes and swim team during school hours. <i>Also governed by a separate Contract dated September 20, 1995.</i>
<b>TECHNOLOGY BUILDING</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Studio	Nebo Education Television channel. HVAC System. <i>Also governed by a separate Technology Building Interlocal Cooperation Agreement dated September 5, 2000.</i>
<b>EAST PARK / SKATE BOARD PARK</b>	
<b>FACILITY</b>	<b>AUTHORIZED USES</b>
Grass Area	Cross-country course for practices and events for school teams from Spanish Fork High School, Maple Mountain High School (future), Spanish Fork Junior High School, and Diamond Fork Junior High School (future).
Parking Lots	Parking for all School District sponsored activities and events.

**CITY PARKS**

<b>FACILITY</b>	<b>AUTHORIZED USES</b>
City Pavilions	Reasonable use for School District activities and events, <u>as specifically approved in writing by the School District and the City.</u>
Parking Lots	Parking for all School District sponsored activities and events.

**CANYON ELEMENTARY SCHOOL**

<b>FACILITY</b>	<b>AUTHORIZED USES</b>
City Water Retention Basin	Elementary school playground for recess and school activities on city property located in the east portion of school playground.

**SPANISH OAKS ELEMENTARY SCHOOL**

<b>FACILITY</b>	<b>AUTHORIZED USES</b>
City Water Retention Basin	Elementary school playground for recess and school activities on city property located in the southwest portion of school playground.

**NEBO SCHOOL DISTRICT CONSIDERATIONS**

- Pay one-half (½) the costs for additional items that are used by both the School District and the City (i.e., score boards, wrestling mats, rims, backboards, volleyball equipment, nets, soccer goals, etc.).
- Pay for one (1) telephone line at the City Recreation/Community School offices.
- Provide timers and scorekeepers for the Hershey Track and Field meets.
- Printing and mailing of Nebo School District / Spanish Fork City Activity Guides for Fall, Winter, and Spring/Summer.
- City use of School District Facilities.
- General good faith cooperation and considerations to the City.

# ORDINANCE NO.

## ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
MATT D. BARBER <i>Councilmember</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>		
STEVEN M. LEIFSON <i>Councilmember</i>		
SETH V. SORENSEN <i>Councilmember</i>		
CHRIS W. WADSWORTH <i>Councilmember</i>		

I MOVE this ordinance be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

## ORDINANCE

### AN ORDINANCE AMENDING THE MUNICIPAL CODE CONCERNING ELECTIONS

WHEREAS, Spanish Fork City has adopted a Municipal Code, one part of which addresses elections; and

WHEREAS, the 2007 Utah State Legislature, in House Bill 347, amended the municipal filing date for candidates for municipal office and also municipal primary elections dates, necessitating a change in the municipal code;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

Section 2.48.020(B) of the Spanish Fork Municipal Code is hereby amended to read as follows:

**2.48.020 Nominations**

(B) To become a candidate for elective office at a November election of the City, a declaration of candidacy or nomination petition shall be filed with the City Recorder between the dates set forth in Utah Code Annotated Section 20a-9-203, as it may be amended from time to time. In the event the closing day for filing for candidacy falls on a weekend or a holiday, the deadline shall be extended to the next business day. The declaration for candidacy shall comply with the forms set forth in Utah Code Annotated Section 20a-9-203(3)(1953 as amended).

**II**

Section 2.48.030 of the Spanish Fork Municipal Code is hereby amended to read as follows:

**2.48.030 Primary Elections**

Primary Elections shall be held on the date as designated in Utah Code Annotated Sections 20a-1-201.5(2) and 20a-9-404(1)(1953 as amended) to determine the candidates for elective office at the municipal election. If the number of candidates for a particular office, however, does not exceed twice the number of offices to be filled at the election, no primary election for that office shall be held and the candidate is deemed nominated for the final election.

**III**

This ordinance shall be effective twenty days after passage and publication.

---

JOE L THOMAS, Mayor

ATTEST:

---

KENT CLARK, City Recorder

## MEMO

To: Mayor and City Council  
From: S. Junior Baker  
Date: 2 July 2007  
Re: Wasatch Wind Consent Items

The July 17 council agenda contains two consent items for Wasatch Wind. One is a First Amendment to Ground Lease, and the second is a Notice of Lease. The amendment to the lease corrects some legal descriptions and clarifies the easements. This amends the lease for the wind turbines, which was entered into several months ago. These are very minor changes and were needed immediately by Wasatch Wind for their closing with their investor. Since these changes are so minor and insignificant, I had the mayor sign them. We are now seeking your ratification of that action.

**FIRST AMENDMENT  
TO  
WIND ENERGY GROUND LEASE**

This FIRST AMENDMENT TO WIND ENERGY GROUND LEASE (“**First Amendment**”) is made and entered into as of \_\_\_\_\_, 2007 (the “**Effective Date**”) by and between SPANISH FORK CITY, a Utah municipality (“**Landlord**”) and SPANISH FORK WIND PARK 2, LLC, a Utah limited liability company (“**Tenant**”). Landlord and TENANT are sometimes referred to in this First Amendment individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. Landlord and Tenant entered into a Wind Energy Ground Lease dated as of April 6, 2006 (the “**Lease**”), relating to certain real property located in Utah County, Utah.

B. Landlord and Tenant desire to amend certain provisions of the Lease as provided in this First Amendment.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby amend the Lease as follows:

**1. Recital A; Corrected Acreage and Legal Description.**

**1.1 Recital A.** Recital A to the Lease is deleted in its entirety and replaced with the following:

A. Landlord owns that certain real property located in Utah County, as more particularly described on Exhibit A attached hereto and by this reference incorporated herein and as depicted on the map on Exhibit A-1 attached hereto and by this reference incorporated herein (the “**Premises**”), comprising approximately 12.12 acres.

**1.2 Corrected Acreage and Corrected Exhibits A and A-1.** Exhibit A and Exhibit A-1 to the Lease are hereby deleted and replaced in their entirety with the attached Exhibit A and Exhibit A-1.

**2. Corrected Exhibit B.** Exhibit B to the Lease is hereby deleted and replaced in its entirety with the attached Exhibit B. Landlord and Tenant agree that the proposed location of turbines and the Staging Area Zones (as defined in the Lease) are shown on Exhibit B.

3. **Corrected Exhibit C.** Exhibit C to the Lease is hereby deleted and replaced in its entirety with the attached Exhibit C, which Exhibit C describes certain real property owned by Landlord subject to the Overhang Easement granted in Section 7.7 of the Lease (the “**Overhang Easement Property**”). For the avoidance of doubt, Landlord and Tenant hereby agree that the Overhang Easement Property does not, in whole or in part, comprise any portion of the Premises but is subject to certain terms of the Lease as more particularly set forth in Section 7.7 thereof.

4. **Access over Adjacent Property; New Exhibit E.** Section 7.4 of the Lease is amended as follows: Immediately preceding the last sentence of the Section, the following sentence is added:

“The Access Easement shall be located on the real property described on **Exhibit E**, attached hereto and incorporated by this reference herein.”

The first sentence of Section 7.4 is amended and restated in its entirety as follows:

“For good and valuable consideration, the receipt of which is hereby acknowledged by Landlord, Landlord hereby grants to Tenant, its licensees, agents, invitees and assigns, the right of ingress to and egress from the Windpower Facilities and any windpower facilities on adjacent property, over and across the Premises as well as adjacent property controlled by Landlord by means of all existing roads and lanes (the “Access Easement”), as long as in so doing Tenant does not unreasonably interfere with Landlord’s use of the Premises.”

In addition, the last sentence of Section 7.4 is amended to add the word “final” before the word “location.”

5. **Transmission Easement.** Section 10.1 of the Lease is amended as follows: Immediately following the first sentence and preceding the second sentence of the Section, the following bracketed sentence is added:

“(The Transmission Easement shall be located on the real property described on **Exhibit E**, attached hereto and incorporated by this reference herein.)”

6. **Miscellaneous.**

6.1 **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning given to them in the Lease.

6.2 **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

**6.3 Effect of Amendment.** Except as amended by this First Amendment, the Lease and all terms, provisions and conditions set forth therein are hereby ratified and confirmed by the parties hereto and shall remain in full force and effect. In the event of any conflict or discrepancy between this First Amendment and the Lease, the terms and conditions of this First Amendment shall control and supersede the terms and conditions of the Lease.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, Landlord and Tenant have caused this First Amendment to Wind Energy Ground Lease to be executed on the first date set forth above.

LANDLORD:

**SPANISH FORK CITY,**  
a Utah Municipality

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TENANT:

**SPANISH FORK WIND PARK 2, LLC,**  
a Utah limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of Utah )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say: That s/he resides in \_\_\_\_\_, that s/he is the \_\_\_\_\_ of the City of Spanish Fork, the Utah municipality that executed the above instrument and which is described therein; that s/he signed the above mentioned instrument on behalf of said municipality; that s/he was authorized to do so.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

State of Utah )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally appeared J. Tracy Livingston, to me known, who, being by me duly sworn, did depose and say: That he resides in \_\_\_\_\_, Utah, that he is the Manager of Spanish Fork Wind Park 2, LLC, the company that executed the above instrument and which is described therein; that he signed the above mentioned instrument on behalf of said company; that he was authorized to do so.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE**

**(LEGAL DESCRIPTION)**

Certain real property located in Utah County, Utah, more particularly described as follows:

**SPANISH FORK LEASE PARCEL BOUNDARY DESCRIPTION**

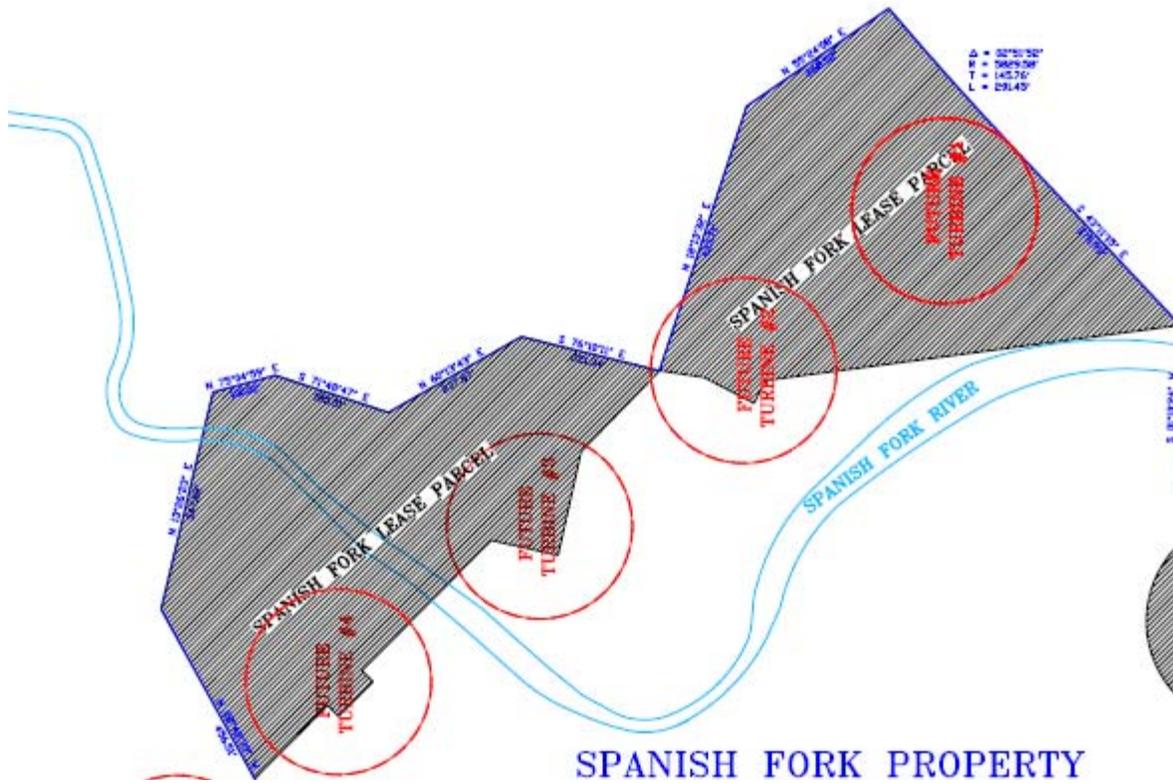
BEGINNING AT A POINT WHICH IS NORTH 256.36 FEET AND EAST 5.29 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 82°23'39" WEST 650.22 FEET; THENCE SOUTH 27°29'11" WEST 40.06 FEET; THENCE NORTH 62°30'49" WEST 87.23 FEET; THENCE NORTH 81°16'05" WEST 70.54 FEET; THENCE SOUTH 44°03'00" WEST 175.26 FEET; THENCE SOUTH 12°30'25" WEST 165.58 FEET; THENCE NORTH 77°29'35" WEST 106.74 FEET; THENCE SOUTH 44°43'09" WEST 285.81 FEET; THENCE SOUTH 44°51'10" EAST 24.56 FEET; THENCE SOUTH 45°08'50" WEST 76.00 FEET; THENCE NORTH 44°51'10" WEST 23.99 FEET; THENCE SOUTH 44°43'09" WEST 160.88 FEET; THENCE NORTH 28°48'34" WEST 301.83 FEET; THENCE NORTH 13°26'03" EAST 347.24 FEET; THENCE NORTH 74°48'08" EAST 100.33 FEET; THENCE SOUTH 71°48'47" EAST 185.51 FEET; THENCE NORTH 60°13'43" EAST 237.87 FEET; THENCE SOUTH 76°10'11" EAST 221.34 FEET; THENCE NORTH 18°13'32" EAST 433.71 FEET; THENCE NORTH 55°24'08" EAST 268.58 FEET; THENCE ON A 5829.58 FOOT RADIUS CURVE TO THE LEFT 291.47 FEET, HAVING A CENTRAL ANGLE OF 2°51'53" AND WHOSE LONG CHORD BEARS SOUTH 41°45'19" EAST 291.44 FEET; THENCE SOUTH 43°10'48" EAST 378.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.12 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE (NAD 1927)

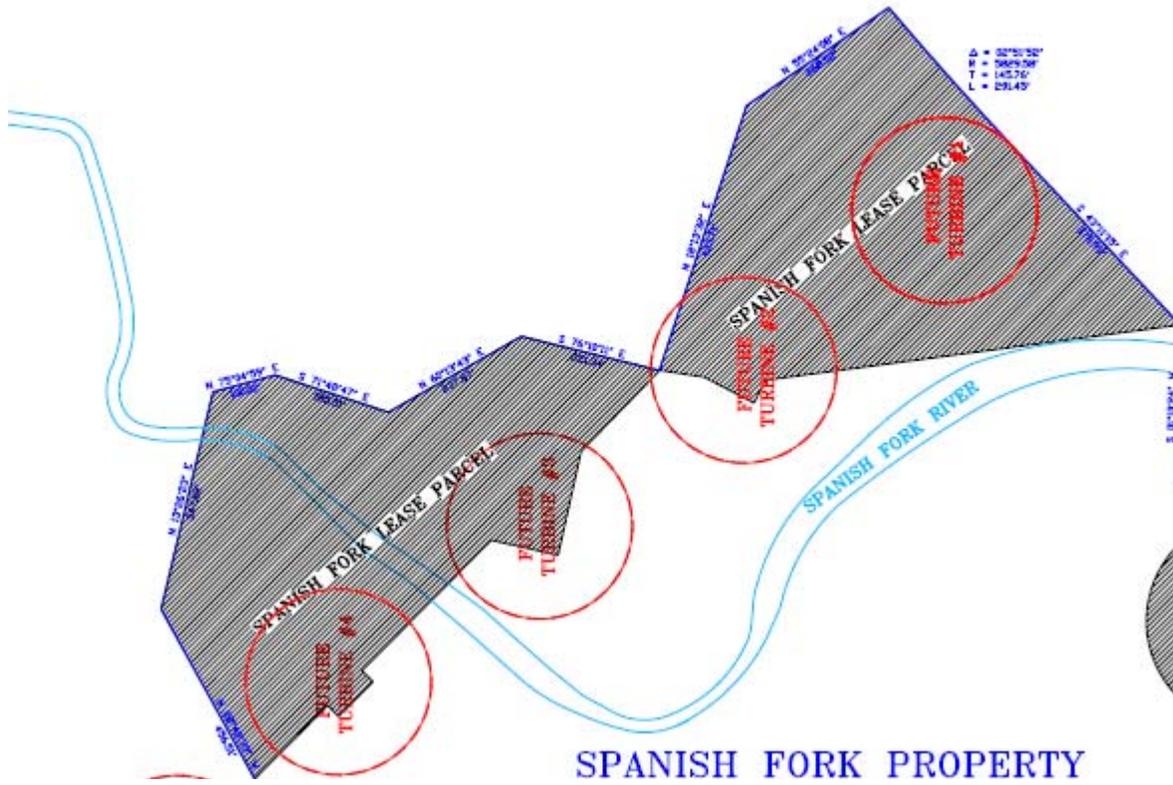
**EXHIBIT A-1  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE**

**(MAP OF LEASED PREMISES INDICATED AS AREA DESCRIBED BY SPANISH FORK LEASE PARCEL WITH CROSS HATCHING)**



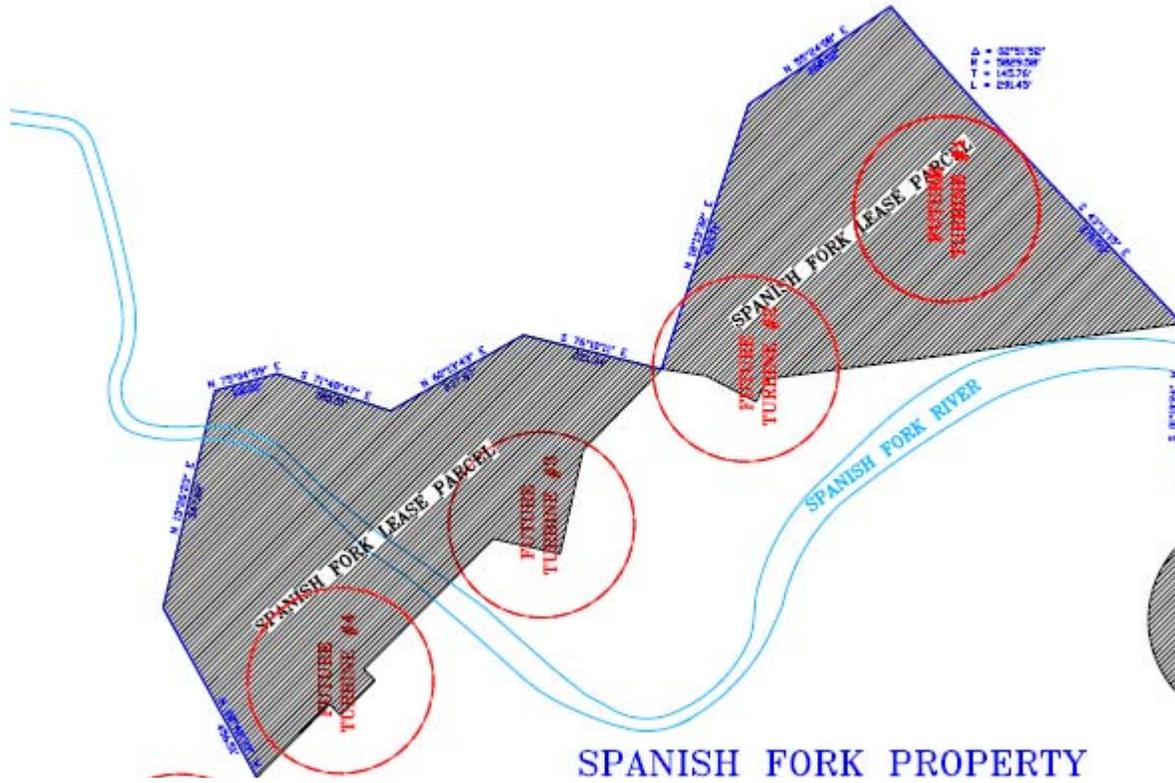
**EXHIBIT B  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE  
(TURBINE LOCATIONS AND STAGING AREA ZONES)**

**TURBINE LOCATIONS FOR TURBINES 1,2,3 & 4**



## STAGING AREA ZONE

The Staging Area Zone is the Premises (as shown in cross-hatches).



**EXHIBIT C  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE  
  
(OVERHANG EASEMENT PROPERTY)**

TURBINE SWEEP AREA DESCRIPTIONS BEYOND THE BOUNDARY OF THE SPANISH FORK LEASE BOUNDARY.

TURBINE #2

BEGINNING AT A POINT WHICH IS NORTH 184.82 FEET AND WEST 530.41 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 434.51 FEET HAVING A CENTRAL ANGLE OF 172°24'26" AND WHOSE LONG CHORD BEARS SOUTH 87°24'39" WEST 288.16 FEET; THENCE NORTH 44°03'00" EAST 19.37 FEET; THENCE SOUTH 81°16'05" EAST 70.54 FEET; THENCE SOUTH 62°30'49" EAST 87.23 FEET; THENCE NORTH 27°29'11" EAST 40.06 FEET; THENCE NORTH 82°23'39" EAST 109.77 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.64 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE (NAD 1927)

TURBINE #3

BEGINNING AT A POINT WHICH IS NORTH 68.78 FEET AND WEST 917.95 FEET FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 527.00 FEET, HAVING A CENTRAL ANGLE OF 209°06'26" AND WHOSE LONG CHORD BEARS SOUTH 45°06'31" WEST 279.53 FEET; THENCE NORTH 44°43'09" EAST 69.98 FEET; THENCE SOUTH 77°29'35" EAST 106.74 FEET; THENCE SOUTH 12°30'25" EAST 165.58 FEET; THENCE NORTH 44°03'00" EAST 12.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.79 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE.

TURBINE #4

BEGINNING AT A POINT WHICH IS SOUTH 206.15 FEET AND WEST 1192.86 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 424.81 FEET, HAVING A CENTRAL ANGLE OF 168°33'32" AND WHOSE LONG CHORD BEARS SOUTH 44°43'09" WEST 287.36 FEET; THENCE NORTH 44°43'09" EAST 104.81 FEET; THENCE SOUTH 44°51'10" EAST 24.00 FEET; THENCE NORTH 45°08'50" EAST 76.00 FEET; THENCE NORTH 44°51'10" WEST 24.56 FEET; THENCE NORTH 44°43'09" EAST 106.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.61 ACRES

BASIS OF BEARING: UTAH STAT PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE

**EXHIBIT E  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE  
(ACCESS AND TRANSMISSION EASEMENTS)**

That real property located in Utah County, Utah, as described herein, also containing the Premises described in Exhibit A (in the event of any conflict, the parties agree that this Exhibit E shall include the Premises described in Exhibit A):

BEGINNING AT A POINT WHICH IS SOUTH 89°35'33" EAST 4.00 FEET ALONG THE SECTION LINE AND NORTH 195.47 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 84°15'20" WEST 141.94 FEET; THENCE SOUTH 75°10'54" WEST 177.77 FEET; THENCE SOUTH 43°35'39" WEST 235.95 FEET; THENCE SOUTH 35°25'58" WEST 221.80 FEET; THENCE SOUTH 71°43'07" WEST 286.00 FEET; THENCE SOUTH 45°57'18" WEST 282.93 FEET; THENCE SOUTH 33°31'46" EAST 249.30 FEET; THENCE SOUTH 49°07'42" WEST 181.90 FEET; THENCE NORTH 71°33'54" WEST 63.06 FEET; THENCE NORTH 49°05'08" WEST 297.74 FEET; THENCE NORTH 28°48'39" WEST 456.51 FEET; THENCE NORTH 13°25'43" EAST 347.50 FEET; THENCE NORTH 74°56'19" EAST 100.23 FEET; THENCE SOUTH 71°52'34" EAST 185.46 FEET; THENCE NORTH 60°16'11" EAST 237.75 FEET; THENCE SOUTH 76°12'22" EAST 221.34 FEET; THENCE NORTH 18°13'38" EAST 433.57 FEET; THENCE NORTH 55°24'08" EAST 268.68 FEET; THENCE ON A 5829.58 FOOT RADIUS CURVE TO THE LEFT 291.50 FEET, HAVING A CENTRAL ANGLE OF 2°51'54" AND WHOSE LONG CHORD BEARS SOUTH 41°45'18" EAST 291.46 FEET; THENCE SOUTH 43°09'51" EAST 378.87 FEET; THENCE SOUTH 1°10'24" WEST 60.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 21.55 ACRES

TOGETHER WITH AN 18' WIDE INGRESS AND EGRESS EASEMENT TO THE MET TOWER LEASE PARCEL

AN 18.00' WIDE EASEMENT WITH CENTERLINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH 234.83 FEET AND WEST 155.95 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 15°34'42" EAST 138.58 FEET; THENCE ON A 500 FOOT RADIUS CURVE TO THE LEFT 337.98 FEET, HAVING A CENTRAL ANGLE OF 38 °43' 47" AND WHOSE LONG CHORD BEARS SOUTH 34°56'36" EAST 331.58 FEET, THENSE SOUTH 54°18'29" EAST 58.55 FEET TO THE TOWER.



WHEN RECORDED MAIL TO:

J. Tracy Livingston  
Ascension Enterprises, L.C.  
357 West 910 South, Suite A  
Heber City, UT 84032

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**NOTICE OF WIND ENERGY GROUND LEASE AS AMENDED**

This NOTICE OF WIND ENERGY GROUND LEASE AS AMENDED ("**Notice**") is dated this \_\_\_ day of June, 2007 by and between CITY OF SPANISH FORK, a Utah municipality ("**Landlord**"), and SPANISH FORK WIND PARK 2, LLC, a Utah limited liability company ("**Tenant**").

**WITNESSETH**

1. Landlord and Tenant are parties to that Wind Energy Ground Lease ("**Original Lease**") dated April 6, 2006 (the "**Effective Date**") a Notice of which was recorded in the records of the Utah County Recorder (the "**Records**") on January 3, 2007 as Document Number 563:2007 ("**Original Notice**"), relating to certain real property located in Utah County, Utah.

2. Landlord and Tenant amended the Original Lease on June \_\_\_, 2007 by that certain First Amendment to Wind Energy Ground Lease for the purpose of, among other matters: (i) correcting the legal description of the real property that is the subject of the Original Lease, (ii) correcting the legal description of the real property owned by Landlord that is subject to a turbine overhang easement and an access easement granted to Tenant, and (iii) correct the location of the Staging Area Zone (as defined in the Original Lease). The Original Lease as amended by the First Amendment is referred to hereinafter as the "**Lease**."

3. The parties desire to enter into this Notice, which is to be recorded, (i) in order that third parties may have notice of the interests of Landlord and Tenant in the Premises (defined below) and the Lease and of the existence of the easements set forth in the Lease, (ii) to correct the Effective Date of the Lease as set forth in the Original Notice, and (iii) to correct the legal description attached to the Original Notice. Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Lease.

4. Corrected Effective Date. The Original Notice is hereby corrected to delete each instance of “March 28, 2006” and replace said dates with “April 6, 2006,” which date is the Effective Date.

5. Corrected Acreage and Corrected Exhibits A and A-1.

a. Exhibit A and Exhibit A-1 to the Original Lease are deleted and replaced in their entirety with the attached Exhibit A and Exhibit A-1 (the “**Premises**”).

b. The Original Notice is corrected as follows: (i) “11.54 acres” is hereby deleted and replaced in its entirety with “12.12 acres”; and (ii) the legal description attached to the Original Notice is hereby deleted and replaced with the attached Exhibit A.

6. Corrected Exhibit B. Exhibit B to the Original Lease is deleted and replaced in its entirety with the attached Exhibit B. Landlord and Tenant agree that the proposed location of turbines and the Staging Area Zones (as defined in the Lease) are shown on Exhibit B.

7. Corrected Exhibit C. Exhibit C to the Original Lease is deleted and replaced in its entirety with the attached Exhibit C, which Exhibit C describes certain real property owned by Landlord subject to the Overhang Easement granted in Section 7.7 of the Lease (the “**Overhang Easement Property**”). For the avoidance of doubt, Landlord and Tenant hereby agree that the Overhang Easement Property does not, in whole or in part, comprise any portion of the Premises but is subject to certain terms of the Lease as more particularly set forth in Section 7.7 thereof..

8. Premises Subject to Easements. Pursuant to the Lease, Landlord has granted Tenant and Tenant’s licensees, agents, invitees and assigns the following easements on, across, and under the Premises:

a. Access. The right of ingress to and egress from the Windpower Facilities and any windpower facilities on adjacent property, over and across the Premises as well as adjacent property controlled by Landlord by means of all existing roads and lanes (the “**Access Easement**”), as long as in so doing Tenant does not unreasonably interfere with Landlord’s use of the Premises. The Access Easement includes the right to strengthen existing roads and lanes and to install temporary roads. The Access Easement runs with the Premises and adjacent properties and inures to the benefit of and is binding upon Landlord and Tenant and their respective transferees, successors and assigns, and all persons claiming under them. All temporary roads will be returned to original site condition within 60 days of the installation of the Turbines on the Property upon Landlord’s written request. The Access Easement is located on the real property described and shown on **Exhibit E**, attached hereto and incorporated by this reference herein. The final location of the Access Easement and the size of the Access Easement must both be approved by Landlord no later than 90 days prior to Tenant’s first scheduled turbine installation. The term of the Access Easement shall be for the life of the Lease unless terminated by Tenant by written notice to Landlord. Tenant, and any Assignee (as defined in the Lease), shall have the right, without need for Landlord’s consent, to assign or convey all or any portion of the Access Easement to an assignee on an exclusive or nonexclusive basis.

b. Transmission. An exclusive easement (the “**Transmission Easement**”) in, on, along and under the Premises and Landlord’s adjacent property for the right to erect, construct, reconstruct, replace, improve, alter the voltage of, remove, maintain and use the following from time to time, whether located on the Premises, on Landlord’s adjacent property or elsewhere: (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables (which shall be buried at least three (3) feet underground), for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with such towers, wires and cables on, along and in the Premises; (b) one or more substations or interconnection or switching facilities from which Tenant or others that generate energy (whether on the Premises or elsewhere) may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights of way on, along and in the Premises; and (c) facilities and/or wires requested to be built or owned by the interconnecting utility (collectively, “**Transmission Facilities**”). (The Transmission Easement is located on the real property described on **Exhibit E**, attached hereto and incorporated by this reference herein.) The final location of the Transmission Facilities must be approved by Landlord prior to installation and shall not unreasonably interfere with Landlord’s use of the Premises. The term of the Transmission Easement is coextensive with the term of the Lease and may be made perpetual, as provided in the Lease, unless terminated by Tenant by written notice to Landlord, and shall not expire or be terminable by Landlord under any circumstances. Tenant and any Assignees have the right, without need for Landlord’s consent, to assign or convey all or any portion of the Transmission Easement to an Assignee on an exclusive or nonexclusive basis. The Transmission Easement runs with the Premises and inures to the benefit of and is binding upon Landlord and Tenant and their respective transferees, successors and assigns, and all persons claiming under them. The Transmission Easement also includes the right of ingress to and egress from the Transmission Facilities (whether located on the Premises, on Landlord’s adjacent property, or elsewhere), over and along the Premises by means of roads and lanes thereon.

c. Overhang Easement. An irrevocable easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of Landlord’s property (the “**Overhang Easement Property**”) at a height of at least 70 feet above the ground (“**Overhang Easement**”), as identified on Exhibit C attached to this Notice. Landlord shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

d. Staging. An easement across the Premises and Landlord’s adjacent property for purposes of constructing the turbines, provided the staging activities do not interfere with Landlord’s water collection facilities or activities.

9. No Conflict. In the event of a conflict between the terms of this Notice and the terms of the Lease, the terms of the Lease shall control.

10. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

**[Signature Pages Follow]**

The parties hereto have set their hands and seals, this \_\_\_\_ day of June, 2007.

LANDLORD:

**CITY OF SPANISH FORK**

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

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

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

TENANT:

**SPANISH FORK WIND PARK 2, LLC**

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

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

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

State of Utah )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say: That s/he resides in \_\_\_\_\_, that s/he is the \_\_\_\_\_ of the City of Spanish Fork, the municipality which executed the above instrument and which is described therein; that s/he signed the above mentioned instrument on behalf of said company; that s/he was authorized to do so.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

State of Utah )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally appeared J. Tracy Livingston, to me known, who, being by me duly sworn, did depose and say: That he resides in \_\_\_\_\_, that he is the Manager of Spanish Fork Wind Park 2, LLC, the company which executed the above instrument and which is described therein; that he signed the above mentioned instrument on behalf of said company; that he was authorized to do so.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
TO  
NOTICE OF WIND ENERGY GROUND LEASE, AS AMENDED**

**(LEGAL DESCRIPTION)**

Certain real property located in Utah County, Utah, more particularly described as follows:

**SPANISH FORK LEASE PARCEL BOUNDARY DESCRIPTION**

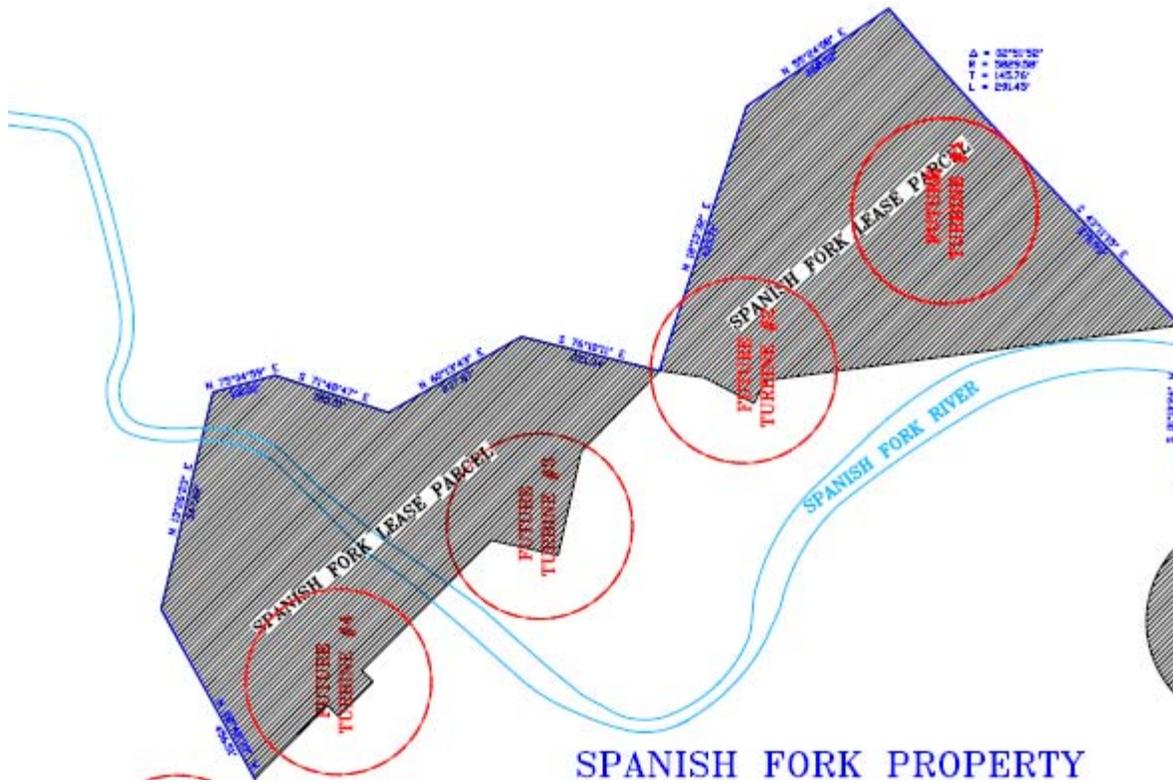
BEGINNING AT A POINT WHICH IS NORTH 256.36 FEET AND EAST 5.29 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 82°23'39" WEST 650.22 FEET; THENCE SOUTH 27°29'11" WEST 40.06 FEET; THENCE NORTH 62°30'49" WEST 87.23 FEET; THENCE NORTH 81°16'05" WEST 70.54 FEET; THENCE SOUTH 44°03'00" WEST 175.26 FEET; THENCE SOUTH 12°30'25" WEST 165.58 FEET; THENCE NORTH 77°29'35" WEST 106.74 FEET; THENCE SOUTH 44°43'09" WEST 285.81 FEET; THENCE SOUTH 44°51'10" EAST 24.56 FEET; THENCE SOUTH 45°08'50" WEST 76.00 FEET; THENCE NORTH 44°51'10" WEST 23.99 FEET; THENCE SOUTH 44°43'09" WEST 160.88 FEET; THENCE NORTH 28°48'34" WEST 301.83 FEET; THENCE NORTH 13°26'03" EAST 347.24 FEET; THENCE NORTH 74°48'08" EAST 100.33 FEET; THENCE SOUTH 71°48'47" EAST 185.51 FEET; THENCE NORTH 60°13'43" EAST 237.87 FEET; THENCE SOUTH 76°10'11" EAST 221.34 FEET; THENCE NORTH 18°13'32" EAST 433.71 FEET; THENCE NORTH 55°24'08" EAST 268.58 FEET; THENCE ON A 5829.58 FOOT RADIUS CURVE TO THE LEFT 291.47 FEET, HAVING A CENTRAL ANGLE OF 2°51'53" AND WHOSE LONG CHORD BEARS SOUTH 41°45'19" EAST 291.44 FEET; THENCE SOUTH 43°10'48" EAST 378.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.12 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE (NAD 1927)

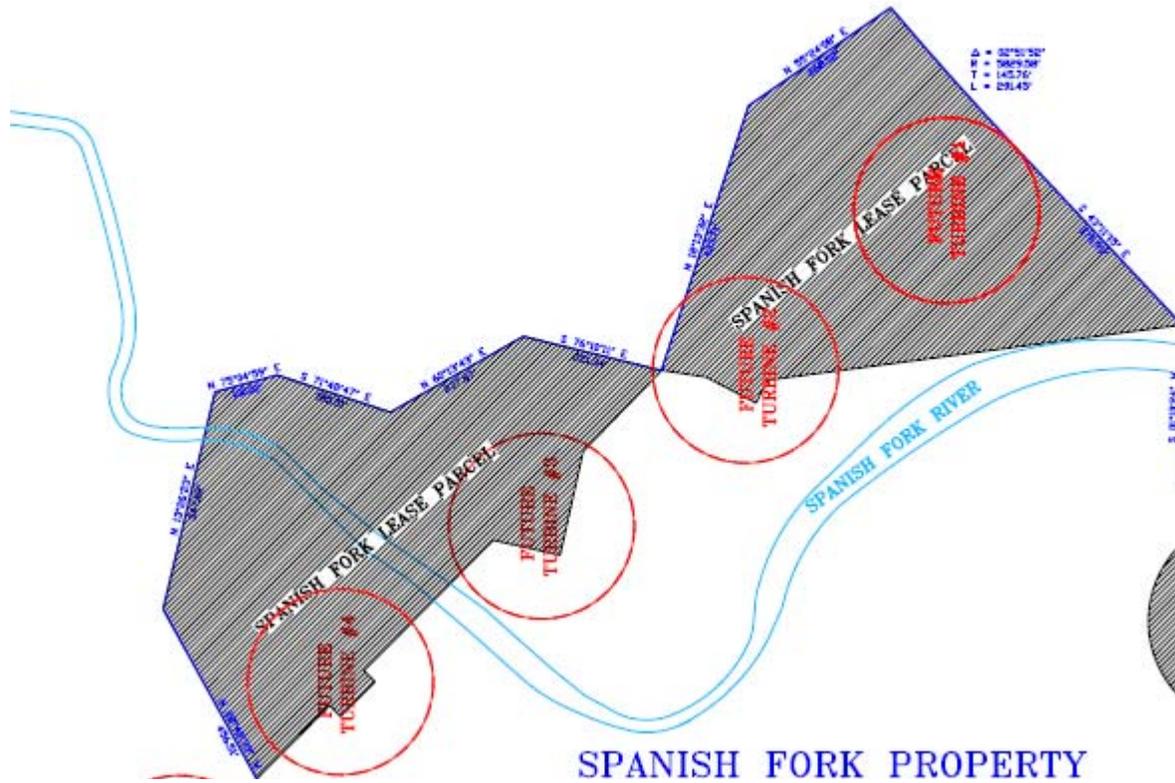
**EXHIBIT A-1  
TO  
NOTICE OF WIND ENERGY GROUND LEASE, AS AMENDED**

**(MAP OF LEASED PREMISES INDICATED AS AREA DESCRIBED BY SPANISH FORK LEASE PARCEL WITH CROSS HATCHING)**



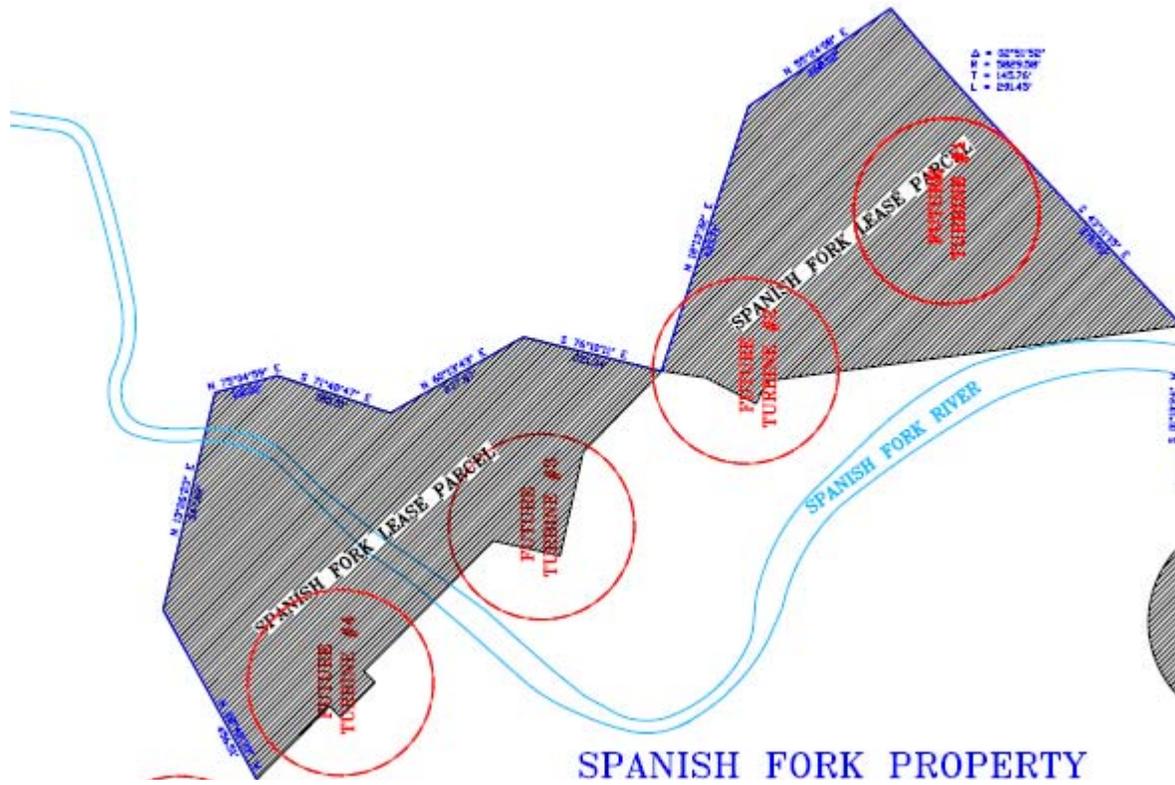
**EXHIBIT B  
TO  
NOTICE OF WIND ENERGY GROUND LEASE, AS AMENDED  
(TURBINE LOCATIONS AND STAGING AREA ZONES)**

**TURBINE LOCATIONS FOR TURBINES 1,2,3 & 4**



## STAGING AREA ZONE

The Staging Area Zone is the Premises (as shown in cross-hatches).



**EXHIBIT C  
TO  
NOTICE OF WIND ENERGY GROUND LEASE, AS AMENDED  
  
(OVERHANG EASEMENT PROPERTY)**

TURBINE SWEEP AREA DESCRIPTIONS BEYOND THE BOUNDARY OF THE SPANISH FORK LEASE BOUNDARY.

TURBINE #2

BEGINNING AT A POINT WHICH IS NORTH 184.82 FEET AND WEST 530.41 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 434.51 FEET HAVING A CENTRAL ANGLE OF 172°24'26" AND WHOSE LONG CHORD BEARS SOUTH 87°24'39" WEST 288.16 FEET; THENCE NORTH 44°03'00" EAST 19.37 FEET; THENCE SOUTH 81°16'05" EAST 70.54 FEET; THENCE SOUTH 62°30'49" EAST 87.23 FEET; THENCE NORTH 27°29'11" EAST 40.06 FEET; THENCE NORTH 82°23'39" EAST 109.77 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.64 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE (NAD 1927)

TURBINE #3

BEGINNING AT A POINT WHICH IS NORTH 68.78 FEET AND WEST 917.95 FEET FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 527.00 FEET, HAVING A CENTRAL ANGLE OF 209°06'26" AND WHOSE LONG CHORD BEARS SOUTH 45°06'31" WEST 279.53 FEET; THENCE NORTH 44°43'09" EAST 69.98 FEET; THENCE SOUTH 77°29'35" EAST 106.74 FEET; THENCE NORTH 12°30'25" EAST 165.58 FEET; THENCE NORTH 44°03'00" EAST 12.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.79 ACRES

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE.

TURBINE #4

BEGINNING AT A POINT WHICH IS SOUTH 206.15 FEET AND WEST 1192.86 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ON A 144.40 FOOT RADIUS CURVE TO THE RIGHT 424.81 FEET, HAVING A CENTRAL ANGLE OF 168°33'32" AND WHOSE LONG CHORD BEARS SOUTH 44°43'09" WEST 287.36 FEET; THENCE NORTH 44°43'09" EAST 104.81 FEET; THENCE SOUTH 44°51'10" EAST 24.00 FEET; THENCE NORTH 45°08'50" EAST 76.00 FEET; THENCE NORTH 44°51'10" WEST 24.56 FEET; THENCE NORTH 44°43'09" EAST 106.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.61 ACRES

BASIS OF BEARING: UTAH STAT PLANE COORDINATE SYSTEM, UTAH CENTRAL ZONE

**EXHIBIT E  
TO  
FIRST AMENDMENT TO WIND ENERGY GROUND LEASE**

**(ACCESS AND TRANSMISSION EASEMENTS)**

That real property located in Utah County, Utah, as described herein, also containing the Premises described in Exhibit A (in the event of any conflict, the parties agree that this Exhibit E shall include the Premises described in Exhibit A):

BEGINNING AT A POINT WHICH IS SOUTH 89°35'33" EAST 4.00 FEET ALONG THE SECTION LINE AND NORTH 195.47 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 84°15'20" WEST 141.94 FEET; THENCE SOUTH 75°10'54" WEST 177.77 FEET; THENCE SOUTH 43°35'39" WEST 235.95 FEET; THENCE SOUTH 35°25'58" WEST 221.80 FEET; THENCE SOUTH 71°43'07" WEST 286.00 FEET; THENCE SOUTH 45°57'18" WEST 282.93 FEET; THENCE SOUTH 33°31'46" EAST 249.30 FEET; THENCE SOUTH 49°07'42" WEST 181.90 FEET; THENCE NORTH 71°33'54" WEST 63.06 FEET; THENCE NORTH 49°05'08" WEST 297.74 FEET; THENCE NORTH 28°48'39" WEST 456.51 FEET; THENCE NORTH 13°25'43" EAST 347.50 FEET; THENCE NORTH 74°56'19" EAST 100.23 FEET; THENCE SOUTH 71°52'34" EAST 185.46 FEET; THENCE NORTH 60°16'11" EAST 237.75 FEET; THENCE SOUTH 76°12'22" EAST 221.34 FEET; THENCE NORTH 18°13'38" EAST 433.57 FEET; THENCE NORTH 55°24'08" EAST 268.68 FEET; THENCE ON A 5829.58 FOOT RADIUS CURVE TO THE LEFT 291.50 FEET, HAVING A CENTRAL ANGLE OF 2°51'54" AND WHOSE LONG CHORD BEARS SOUTH 41°45'18" EAST 291.46 FEET; THENCE SOUTH 43°09'51" EAST 378.87 FEET; THENCE SOUTH 1°10'24" WEST 60.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 21.55 ACRES

TOGETHER WITH AN 18' WIDE INGRESS AND EGRESS EASEMENT TO THE MET TOWER LEASE PARCEL

AN 18.00' WIDE EASEMENT WITH CENTERLINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH 234.83 FEET AND WEST 155.95 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 15°34'42" EAST 138.58 FEET; THENCE ON A 500 FOOT RADIUS CURVE TO THE LEFT 337.98 FEET, HAVING A CENTRAL ANGLE OF 38 °43' 47" AND WHOSE LONG CHORD BEARS SOUTH 34°56'36" EAST 331.58 FEET, THENSE SOUTH 54°18'29" EAST 58.55 FEET TO THE TOWER.

## LEAD ABATEMENT CONTRACT

Contract made 07/02/2007 between Spanish Fork Gun Club, Spanish Fork Utah. Here referred to as owner, and William Enstrom, 720 S. Spruce St, Gardner KS 66030 here referred to as contractor.

### RECITALS

A. Owner owns and operates a Gun Club at the address set forth above, and owner desires to have the following services performed at owner's place of business, lead shot removal.

B. Contractor agrees to perform these services for owner under the terms and conditions set forth in this contract.

In consideration of the mutual promises set forth in this contract, it is agreed by and between owner and contractor:

### SECTION ONE.

#### DESCRIPTION OF WORK

The work to be performed by contractor includes all services generally performed by contractor in contractor's usual line of business, including, but not limited to, the following: Lead shot to be removed from the shoot zone at the ~~Helper Trap~~ Club. *Spanish Fork Gun*

The ground will be screened and sifted and lead shot will be removed, contained in 55 gallon drums. The ground will be stripped of vegetation in this process, and is not liable for the replanting of vegetation in or around the lead abatement site. The lead shot will be shipped off site to Granite City Ill. for payment.

### SECTION TWO.

#### PAYMENT

William Enstrom will retain 65% of lead shot for payment of service of lead abatement. Spanish Fork Gun Club will receive 35% of lead shares for payment.

Spanish Fork Gun Club is responsible for shipping costs of the trap clubs share of lead.

### SECTION THREE.

#### RELATIONSHIP OF PARTIES

The parties intend that an independent contractor-employer relationship will be created by this contract. Owner is interested only in the results to be achieved, and the conduct and control of the work will lie solely with contractor. Contractor is not to be considered an agent or employee of owner for any purpose, and the employees of contractor are not entitled to any of the benefits that owner provides for owner's employees. It is understood that owner does not agree to use contractor exclusively. It is further understood that contractor is free to contract for similar services to be performed for other owners while under contract with owner.

#### SECTION FOUR.

##### LIABILITY

The work to be performed under this contract will be performed entirely at contractor's risk, and contractor assumes all responsibility for the condition of tools and equipment used in the performance of this contract. Contractor agrees to indemnify owner for any and all liability or loss arising in any way out of the performance of this contract.

#### SECTION FIVE.

##### DURATION

Either party may cancel this contract on 60 days' written notice; otherwise, the contract shall remain in force for a term of one(1)year from date. Estimate time for completion is three months from start date.(weather permitting)

In witness whereof, the parties have executed this agreement at Spanish Fork Utah, the day and year first above written.

\_\_\_\_\_

\_\_\_\_\_

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of July, 2007, by and between SPANISH FORK CITY, a Municipal Corporation, Utah County, State of Utah, hereinafter called "CITY" and Comlink Land Services, LLC, hereinafter referred to as "ENGINEER" hereby acknowledge and reduce in writing an agreement made on or about the above date.

THAT WHEREAS, CITY recognizes the need for professional and technical services to plan and prepare an Electrical System Strategic Plan; and

WHEREAS, CITY recognizes the ENGINEER as having the necessary expertise and experience to perform the services for the PROJECT and that it is properly qualified and licensed in the State of Utah for this work;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the parties agree as follows:

### SECTION I - Basic Services of Engineer

ENGINEER shall provide the basic services described as follows:

- Location of future substations.
- Location of future transmission and distribution lines.
- System voltage upgrades and recommendations - Timing of upgrades.
- Possible voltage upgrades to accommodate future growth.
- Conductor sizes and substation KVA rating.
- Power Factor Correction Study.

It is hereby understood and agreed that the ENGINEER will provide engineering services to the CITY in accordance with the Basic Services of Engineer. For all services and materials pertinent hereto, the CITY agrees to pay the ENGINEER the specific rates up to a maximum of \$18,800.00; Eighteen Thousand Eight Hundred Dollars; as indicated on the attached Cost Estimate and Scope of Work.

1. ENGINEER'S billing to CITY shall indicate the percentage of work on each task. ENGINEER shall be reimbursed an amount equal to ninety percent (90%) of the billed amount no later than thirty (30) days following City's receipt of invoice from ENGINEER for the billed work. CITY will retain ten percent (10%) of such estimated value of work done as part security for the fulfillment of the Agreement.

After the completion of all work under the Agreement, CITY shall pay the remaining sum, up to the total contract amount, less any payments previously made. All prior payments shall be subject to

correction in the final payment.

## SECTION II - Additional Services of Engineer

If authorized in writing by CITY, ENGINEER shall furnish additional services which are in addition to basic services. As further additional services are requested by CITY, this Agreement may be modified subject to mutual consent by execution of an addendum by authorized representatives of both parties, setting forth the additional scope of services to be performed, the performance time schedule, and the compensation for said services. ENGINEER shall not proceed to perform any such additional service until CITY has determined that such service is beyond the scope of the basic services to be provided by ENGINEER, is required, and has given its written authorization to perform or obtain it.

This Engineering Services Agreement shall remain in effect throughout the duration of the Project.

## SECTION III - Time of Performance

ENGINEER shall commence work within Ten (10) Days following issuance of a Notice to Proceed by the CITY to the ENGINEER. The various items involved in the PROJECT shall be completed by September 15, 2007. ENGINEER shall complete the performance of its obligations under this Agreement within the specified time period, unless an extension of time is granted in writing by CITY, which extension, if any, shall be granted only for good cause as determined at the sole discretion of CITY.

## SECTION IV - Compliance with Laws, Rules, Regulations

ENGINEER shall exercise usual and customary care to assure that all services performed pursuant to this Agreement are performed in accordance with and in full compliance with all applicable Federal, State or City statutes, and any rules or regulations promulgated thereunder.

## SECTION V - Responsibility of Engineer

By executing this Agreement, ENGINEER warrants to CITY that he/she possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities to provide to CITY the services contemplated under this Agreement. ENGINEER further warrants that he/she will follow the best current, generally accepted practice of the engineering profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

## SECTION VI - Term

The term of this Agreement shall commence upon CITY'S issuance to ENGINEER of a Notice to Proceed for all or a portion of the work to be performed under this Agreement.

#### SECTION VII - Subcontracting

ENGINEER shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement, without the prior written approval of CITY.

#### SECTION VIII - Independent Contractor

ENGINEER and CITY agree that ENGINEER is an independent contractor. ENGINEER shall be solely responsible for the conduct and control of the work performed under this Agreement. ENGINEER shall be free to render consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish ENGINEER'S ability to fulfill the obligations established herein to CITY.

#### SECTION IX - Equal Employment Opportunity

In connection with the execution of this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. ENGINEER shall take affirmative action to ensure that applicants are employed, and the employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selected for training, including apprenticeship. ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60), and any other applicable Federal and State laws and regulations relating to equal employment opportunity.

#### SECTION X - Title VI Compliance

ENGINEER shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR 21 through Appendix C and 23 CFR 710.405(b).

During the performance of this Agreement, the ENGINEER, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance with Regulations: The ENGINEER shall comply with the Regulations relative to nondiscrimination in federally-assisted programs, Title 49, Code of Federal Regulations, Parts 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: The ENGINEER, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. The ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. ENGINEER is hereby notified by the CITY of the ENGINEER'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

4. Information and Reports: The ENGINEER shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions.

5. Sanctions for Noncompliance: In the event of the ENGINEER'S non compliance with the nondiscrimination provisions of this Agreement, CITY shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

A. Withholding of payments to the ENGINEER under the Agreement until the ENGINEER complies, and/or

B. Cancellation, termination or suspension of the Agreement, in whole or in part.

6. The ENGINEER shall take such action with respect to SUBCONTRACTORS as CITY may direct as a means of enforcing such provisions including sanctions for noncompliance. The ENGINEER may request the United States to enter into any resulting litigation to protect the interests of the United States.

## SECTION XI- Insurance Required

Without in any way limiting ENGINEER'S liability pursuant to the indemnification described below, ENGINEER shall maintain, during the term of this contract and for a three-year period following completion of the project, the following insurance:

1. Workers' Compensation and Employer's Liability Insurance as prescribed by applicable law.

2. Comprehensive General Liability Insurance (bodily injury and property damage), the limits of which shall not be less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate, whichever is greater, and which includes the following supplementary coverages:

A. Primary contractual liability to cover liability assumed under the contract and

Section IV hereinabove;

B. Personal injury liability with the "Employee" and "Contractual" exclusions deleted;

3. Broad form property damage liability insurance; and

4. Automobile bodily injury and property damage liability insurance, the limits of which shall not be less than one million dollars (\$1,000,000) combined single limit per occurrence, and annual aggregate, whichever is greater. Such insurance shall extend to owned, non-owned and hired automobiles used by ENGINEER'S employees, agents or assigns in the performance of this contract.

5. The insurance policies specified above shall be endorsed to require that the insurer provide CITY with thirty (30) days' written notice prior to the effective date of any cancellation of the insurance; and contain a waiver of subrogation in favor of the indemnities.

6. Professional Liability Insurance covering negligent acts, errors or omissions of ENGINEER, the limits of which shall not be less than two-hundred and fifty thousand (\$250,000) per occurrence. This professional liability policy shall contain a contractual liability endorsement sufficient to cover all liability assumed herein.

## SECTION XII - Indemnification

The ENGINEER agrees to hold harmless and indemnify CITY, its officers, boards and commissions and employees against all claims, damages, losses, and costs, including costs of defense, arising out of the negligent performance of services under this Agreement.

It is acknowledged and agreed that the documents and computer programs and files prepared by the ENGINEER pursuant to this Agreement are instruments of professional service intended for use on this project only. Nevertheless, they shall become the property of CITY.

## SECTION XIII - Publication

Any and all reports published by ENGINEER shall acknowledge that it was prepared in cooperation with CITY.

## SECTION XIV- Copyrights

ENGINEER shall be free to copyright material developed under this Agreement with the provision that ENGINEER and CITY reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material.

## SECTION XV - Ownership of Documents

Original documents, methodological explanations, computer programs, drawings, designs and reports generated by this Agreement shall belong to and become the property of CITY in accordance with accepted standards relating to public work contracts. Any additional copies, not otherwise provided for herein, shall be the responsibility of CITY. CITY will not sell originals or copies of any computer programs for profit without the written authorization of the ENGINEER.

#### SECTION XVI - Documentation/Access to Records

ENGINEER shall document the results of the work to the satisfaction of CITY. Such documentation may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of contract objectives.

ENGINEER shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment to ENGINEER. Such materials shall be available for inspection by authorized representatives of CITY, or the copies thereof shall be furnished if requested.

#### SECTION XVII - Interest of Officials and Engineer

ENGINEER hereby covenants that he or she has, at the time of the execution of this Agreement, no interest, and that he or she shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. ENGINEER further covenants that in the performance of this work no person having any such interest shall be employed.

#### SECTION XVIII - Termination for Convenience of City

CITY may terminate this Agreement at any time by giving notice to ENGINEER of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents and other materials shall, at the option of CITY become its property. If this Agreement is terminated by CITY as provided herein, ENGINEER shall be paid a total amount that is the ratio of completed tasks to total services as determined by CITY and ENGINEER, less payments already made under this contract.

#### SECTION XIX - Termination of Agreement for Cause

1. CITY may, by written notice to ENGINEER, terminate the whole or any part of this Agreement in any one of the following circumstances:

A. If ENGINEER fails to perform the services called for by this Agreement within

the time(s) specified herein, or any extension thereof, or

B. If ENGINEER fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two **circumstances does** not correct such failure within a period of five (5) days (or such longer period as CITY may authorize in writing) after receipt of notice from CITY specifying such failure.

2. In the event CITY terminates this Agreement in whole or in part as provided in Paragraph "A" above, CITY may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3. ENGINEER shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or negligence of ENGINEER. Such causes include, but are not limited to, acts of God or of the public enemy, acts of government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions and strikes.

4. Should the Agreement be terminated as provided in Paragraph "A" above, ENGINEER shall provide CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by ENGINEER pursuant to this Agreement. Upon termination as provided in Paragraph "A" above, ENGINEER shall be paid the value of the work performed, as determined by CITY and ENGINEER, less payments of compensation previously made.

## SECTION XX - Dispute Resolution

Any Claim arising out of or related to the Contract, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with Rules of the Utah State Bar Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## SECTION XXI - Jurisdiction

Except as otherwise specifically provided, this Agreement shall be administered and interpreted under the laws of the State of Utah. Jurisdiction of litigation arising from this Agreement shall be in that State. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect.

## SECTION XXII - Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. ENGINEER shall not assign, delegate or transfer the rights and duties under this Agreement or any part thereof without the prior written consent of CITY.

## SECTION XXIII - Notices

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

1. To ENGINEER:

Ed Yoshinaga  
Comlink, L.S., L.L.C.  
860 East 4500 South  
Suite 312  
Salt Lake City, Utah 84107

2. To CITY:

Richard J. Heap  
Public Works Director/City Engineer  
Spanish Fork City  
40 South Main Street  
Spanish Fork, UT 84660

## SECTION XXIV - Miscellaneous Provisions

This Agreement is subject to the following special provisions:

1. The titles used in this Agreement are for general reference only and are not a part of the Agreement.
2. This Agreement shall be interpreted as though prepared by both parties.
3. Any provision of this Agreement held to violate any law shall not invalidate the remainder of this Agreement.
4. Any failure to require strict compliance with any provision of this Agreement shall not be a waiver of strict compliance with regard to subsequent performance of such provision, or of any other provision of this Agreement.

SECTION XXV - Integration

This agreement represents the entire understanding of CITY and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by CITY and ENGINEER.

SECTION XXVI - Attorney's Fees

In the event of a breach of this agreement, the non-breaching party is entitled to recover its attorney's fees and any costs incurred.

DATED the day and year first written above.

SPANISH FORK CITY by:

\_\_\_\_\_  
Joe L Thomas, Mayor

ATTEST:

\_\_\_\_\_  
Kent R. Clark, Recorder

COMLINK, L.S., L.L.C. by:

\_\_\_\_\_  
Ed Yoshinaga, Owner/Manager

ATTEST:

\_\_\_\_\_  
Corporate Secretary





**MEMO  
SPANISH FORK CITY  
PUBLIC WORKS DEPARTMENT**

**DATE:** July 12, 2007

**TO:** Mayor Thomas and City Council

**FROM:** Richard J. Heap, Public Works Director

**RE:** Spanish Fork River FEMA Study RFQ/RFP  
Spanish Fork River Parkway Trail Design RFQ/RFP

We received RFP/RFQ's on July 12, 2007 for the Spanish Fork River FEMA Study and the Spanish Fork River Parkway Trail Design. We are reviewing the submittals and will be making a determination. We will bring a recommended contract to council meeting for your approval.

These studies are required as a condition on the federal grant for the trail in the Riverbottoms area.

## AGREEMENT

THIS AGREEMENT, made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between LANDMARK DESIGN, INC., a Utah Corporation, hereinafter referred to as "Consultant" and SPANISH FORK CITY CORPORATION, hereinafter referred to as "Client."

### WITNESSETH

WHEREAS, the Client desires to engage Consultant to provide professional and technical services to complete Construction Documents for North Park.

WHEREAS, the Consultant has the resources, expertise and the desire to perform such services for and on behalf of the Client.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for other good and valuable consideration, the parties agree as follows:

1. Agreement: The Client agrees to engage the Consultant as an independent contractor and agrees to provide its professional and technical services as hereinafter provided.

2. Scope of Services: The Client and the Consultant agree that the scope of service shall consist of Tasks shown on Attachment "A" attached hereto and incorporated herein. All work must be performed and completed to the satisfaction of the Consultant and the Client.

3. Commencement of Work: Work shall begin on the date of this agreement and will be completed on or before July 31, 2008 (hereinafter referred to as "Completion Date") or earlier, unless extended by mutual agreement of the Client and the Consultant.

4. Compensation: As total compensation and expenses, the Consultant shall be paid for services under this Agreement a sum of \$250,000 as shown in the Scope of Work, to be paid monthly for work completed to date. Client agrees to make payment within 30 days of receipt of invoice.

5. Amendments: This Agreement can only be modified or amended in writing. Any change in this Agreement, including any increase or decrease in the amount of Consultant's compensation, shall be mutually agreed upon by the Client and the Consultant and shall be set forth only in written amendments to this Agreement.

6. Independent Contractor Relationship: The legal relationship of the Client to the Consultant with respect to the services required under this Agreement shall be that of an independent contractor and not that of an agent or employee.

7. Representations and Notices: The following are designated as representatives of parties to this Agreement:

(a) The Consultant designates Jan Striefel, President of Landmark Design, Inc., as its representative in all matters under this agreement and all notices given to Consultant shall be by regular U.S. mail to:

Landmark Design Inc.  
2834 Highland Drive  
Salt Lake City, Utah 84106  
Attention: Jan Striefel

(b) The Client designates Dale Robinson as its representative in all matters under this Agreement and all notices given to Consultant shall be by regular U.S. mail to the above designated representative at:

Spanish Fork City  
Planning Department  
40 south Main Street  
Spanish Fork, Utah 84660  
Attention: David Anderson

8. Indemnification: The Consultant agrees and covenants to hold harmless and indemnify the Client from claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the Consultant, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

9. Insurance: The Consultant agrees to carry the following insurance policies:

- required
- (a) Workers' Compensation and employer's liability insurance as by State of Utah law.
  - (b) General liability in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate.
  - (c) Professional liability insurance in a minimum amount of \$1,000,000 per occurrence with a \$1,000,000 annual policy aggregate limit.

10. Successors: The Consultant agrees that the provisions of this Agreement shall be binding on heirs, permitted assigns and successors, subcontractors and agents.

11. Termination: Either party to this Contract has the right to terminate the agreement on 15 days notice. In the event such termination occurs, regardless of who initiates the termination, Consultant shall be permitted compensation for the work completed to date of termination. In such event, all unfinished work shall, at the option of the Consultant, become its property.

12. Entire Agreement: This Agreement including Attachment "A," contains the complete agreement and understanding of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements whether oral or written,

and may only be modified or amended in writing or executed by authorized individuals of Consultant and Client.

13. Jurisdiction: This agreement shall be governed by the laws of the State of Utah.

IN WITNESS THEREFORE, the Consultant and the Client have hereunto executed this Agreement the day and year first above written.

LANDMARK DESIGN, INC.

By \_\_\_\_\_  
Jan Striefel, President

SPANISH FORK CITY CORPORATION

By \_\_\_\_\_

Its Mayor

Attest: \_\_\_\_\_  
City Recorder

**Exhibit 'A'**

**Scope of Work for North Park Construction Documents**

The scope of work elements are as follows:

1.) Refinement of the existing concept plan. This will involve meeting with the City Parks and Recreation Committee on two occasions and once with the City Council. While these meetings will be open to the public they will not be public hearings.

2.) Preparation of Construction Documents to include architectural plans for all features and structures in the park. This would also include a final grading and drainage plan, plant schedule, planting plan, irrigation plan, lighting plan and construction plans for the parking lot. Once the concept is refined and approved, we will add a group of sub-consultants to our team which may include, but is not necessarily limited to architectural, structural, electrical, civil, and the interactive fountain (splash pad) consultant who must work closely with the health department.

3.) Preparation of bid documents to coincide with the Construction Documents.

4.) A third and final meeting with the Parks and Recreation Committee to receive approval on the Construction Documents.

5.) Construction Management will be based on "time and materials" or can be negotiated at a later date. We anticipate at a minimum to have an electrical, civil, and splash pad/interactive water feature consultant, and perhaps an architect and structural engineer. We also anticipate a pre-bid conference, pre-construction conference, about 12 on-site meetings (assuming it can be constructed in 3 months), and a final punch list/walk through.

**Project Schedule:** Timing on the project is still flexible; however, once the final concept is agreed-upon, we anticipate three months to complete the construction documents and have them ready to bid. Depending on weather conditions and other unknown factors, construction can begin as quickly after bidding as possible. For purposes of establishing a completion date, we propose July 31, 2008 as end of construction and project close-out.

**Remuneration**

Assuming that the construction budget is \$4.2 million dollars, we propose a fee of \$250,000 to complete the work outlined above.

## NORTH PARK CDA INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** is entered into as of this \_\_\_ day of \_\_\_\_\_, 2007, by and between the **REDEVELOPMENT AGENCY of SPANISH FORK CITY** (the "**Agency**") and **SPANISH FORK CITY, UTAH** (the "**CITY**") (collectively, the "**Parties**").

**WHEREAS**, the Agency was created and organized pursuant the provisions of the Utah Neighborhood Development Act, Utah Code Annotated 1953, as amended ("**UCA**") §§ 17A-2-1201 *et seq.* (2000), and continues to operate under the provisions of its extant successor statute, the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Title 17C of UCA (2006) (the "**Act**"), and is authorized and empowered there under to undertake various activities and actions pursuant to the Act; and

**WHEREAS**, TENEDOR L.L.C., a Utah Limited Liability Company, (hereinafter, the "**Developer**"), as a developer of the North Park Community Development Project Area (the "**Project Area**," the legal description and map of which is attached hereto as **Exhibit A** and incorporated herein by this reference), desires to construct new facilities and improvements in the Project Area and to install therein personal property in connection with its project (hereinafter, the "**Project**") that would result in the relocation and improvement of North Park and the development of a much needed commercial retail shopping center within the City; and

**WHEREAS**, in order to develop the Project, the North Park property and many parcels of improved land must be acquired within Project Area and various infrastructure improvements and utilities must be acquired, constructed, installed or extended to serve the Project Area; and

**WHEREAS**, the Developer seeks financial assistance from the Agency in order to purchase the necessary land and acquire, construct, install and extend the required infrastructure improvements within the Project Area; and

**WHEREAS**, the Agency anticipates providing tax increment (as defined in UCA § 17C-1-102(42) (hereinafter "**Tax Increment**")), created by the Project, to assist in the development and completion of the Project, as set forth in the Project Area Plan attached hereto as **Exhibit B** and incorporated herein by this reference; and

**WHEREAS**, Section 17C-4-201(1) of the Act authorizes the City to consent to the payment to the Agency of the City's share of Tax Increment and sales tax revenue generated from the Project Area for the purposes set forth therein; and

**WHEREAS**, UCA § 11-13-215 further authorizes the City to share its tax and other revenues with the Agency; and

**WHEREAS**, in order to facilitate development of the Project, the City may elect to pay to the Agency the City's share of Tax Increment and the City's sales tax revenue generated by the Project Area in accordance with the terms of this Agreement; and

**WHEREAS**, in order to facilitate development of the Project, the City may elect to pay to the Agency other revenues, including, but not limited to, qualifying impact fee monies and utility increment, as defined in the Supplemental Development Agreement entered into between the Agency and the Developer; and

**WHEREAS**, the provisions of applicable Utah State law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the "**Cooperation Act**").

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. City's Consent.**

The City hereby agrees and consents that it will pay to the Agency Four Million Dollars (\$4,000,000.00) in bond proceeds which it has earmarked for public infrastructure and park improvements in the Project Area. The Agency shall be required to spend those monies on public facilities, in accordance with the Bond Covenants, and for the purposes set forth in section 17C-4-201(1) of the Act.

The City hereby agrees and consents that it will create a General Service 2 electric rate, to be charged all utility customers within the Project Area. The difference between the General Service 2 electric rate and the General Service 1 electric rate shall be deemed "Electric Utility Increment" and shall be paid to the Agency, for the purposes set forth in section 17C-4-201(1) of the Act. The initial General Service 2 electric rate shall not exceed the amounts shown in Exhibit C, attached hereto and incorporated herein by this reference. The General Service 2 electric rate shall remain competitive with other utilities, as determined in the sole discretion of the City.

Pursuant to Section 17C-4-201(2)(b) of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency shall be paid 100% of the City's share of the Tax Increment (the "City Share") from the Project Area for future tax years, as triggered at the sole discretion of the City, for the purposes set forth in Section 17C-4-201(1) and to be disbursed as specified herein. The calculation of the Tax Increment shall be made using the City's [annual tax levy rate][2006 tax levy rate of .001164] and the 2006 base year taxable value of \$2,546,196, which taxable value is subject to adjustment as required by law. The City hereby authorizes and directs Utah County to pay directly to the Agency the City Share for the future tax years triggered by notice from the City to Utah County, pursuant to UCA § 17C-4-203.

The City hereby agrees and consents that the Agency may be paid a portion of the City's 1% local option sales and use tax generated by taxable sales made within the Project Area, at the

discretion of the City, and to the extent that those revenues exceed the amount pledged for City Sales Tax Revenue Bonds, for the purposes set forth in Section 17C-4-201(1) of the Act.

The City hereby agrees and consents that the Agency may be paid, at the sole discretion of the City, a pro-rata share of recreation and/or roadway impact fees for qualifying infrastructure improvements within the Project Area, if such impact fees are enacted, for the purposes set forth in section 17C-4-201(1) of the Act.

2. Authorized Uses of Tax Increment and Other Revenues.

The Parties agree that the Agency may apply the City Share of tax increment and other revenues for any of the uses authorized under the Act, including payments on obligations of the Agency, including any Bonds, used to finance the acquisition of land and the acquisition, construction, installation and extension of publicly-owned infrastructure and utilities to service the Project Area, and for other improvements within Project Area, including incentives to the Developer to undertake and complete the Project, with the exception of the Four Million Dollar (\$4,000,000.00) bond proceeds, which must be used for public facilities, in accordance with the Bond Covenants.

3. No Third Party Beneficiary.

Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of Developer or any other person or entity not a party to this Agreement. Except as otherwise specifically provided herein, no person or entity is an intended third party beneficiary under this Agreement.

4. Due Diligence.

Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts upon which this Agreement is based, including the Developer's representations concerning the Project and the Project's benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant facts, information, and representations, after having completed its own due diligence and investigation.

5. Interlocal Cooperation Act.

In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Interlocal Cooperation Act;

This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Interlocal Cooperation Act;

A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Interlocal Cooperation Act;

The Chair of the Agency is hereby designated the administrator for all purposes of the Interlocal Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

The term of this Agreement shall commence on the date of full execution of this Agreement by both Parties and

shall continue through the date on which the Agency's obligation to the Developer under the Supplemental Development Agreement, dated the 18<sup>th</sup> day of July, 2007, is fulfilled.

**6. Modification and Amendment.**

Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

**7. Further Assurance.**

Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

**8. Governing Law.**

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

**9. Interpretation.**

The terms "include," "includes," "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

**10. Severability.**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, such holding or action shall be strictly construed; such provision shall be fully severable; this Agreement shall be construed and enforced as if such provision had never comprised a part hereof; the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

**11. Authorization.**

Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

*[The balance of this page was left blank intentionally.]*

**ENTERED** into as of the day and year first above written.

**SPANISH FORK CITY REDEVELOPMENT AGENCY** by:

\_\_\_\_\_  
JOE L THOMAS, Chairman

Attest:

\_\_\_\_\_  
David A. Oyler, Executive Director

Attorney Review for Redevelopment Agency:

The undersigned, as counsel for the Spanish Fork City Redevelopment Agency, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

\_\_\_\_\_  
J. Craig Smith  
Attorney for the Spanish Fork City Redevelopment Agency

**SPANISH FORK CITY** by:

\_\_\_\_\_  
JOE L THOMAS, Mayor

Attest:

\_\_\_\_\_  
Kent R. Clark, City Recorder

Attorney Review for City:

The undersigned, as attorney for Spanish Fork City, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

\_\_\_\_\_  
S. Junior Baker  
Attorney for Spanish Fork City

**EXHIBIT A**

LEGAL DESCRIPTION AND MAP OF THE PROJECT AREA

**EXHIBIT B**

PROJECT AREA PLAN  
FOR THE  
NORTH PARK COMMUNITY DEVELOPMENT PROJECT AREA

# RESOLUTION NO. \_\_\_\_\_

## ROLL CALL

VOTING	YES	NO
JOE L THOMAS <i>Chairman</i>		
G. WAYNE ANDERSEN <i>Boardmember</i>		
MATTHEW D. BARBER <i>Boardmember</i>		
STEVE LEIFSON <i>Boardmember</i>		
SETH V. SORENSEN <i>Boardmember</i>		
CHRIS C. WADSWORTH <i>Boardmember</i>		

I MOVE this resolution be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

## RESOLUTION

### **A RESOLUTION AUTHORIZING THE CHAIRMAN OF THE REDEVELOPMENT AGENCY OF SPANISH FORK CITY TO EXECUTE CONTRACTS RELATED TO THE NORTH PARK COMMUNITY DEVELOPMENT AREA**

WHEREAS, the Redevelopment Agency of Spanish Fork City has created a community development area known as North Park; and

WHEREAS, the Agency has negotiated with a developer to develop the project area, which development is consistent with the purposes of the Agency to enhance economic development within Spanish Fork City; and

WHEREAS, in order to reimburse the developer for public infrastructure which is necessary for the economic development of the project area, funding from the City is necessary;

NOW THEREFORE, be it resolved by the Redevelopment Agency of Spanish Fork City as follows:

1. The Chairman of the Agency is hereby authorized to execute an interlocal

agreement with Spanish Fork City to provide funding for various improvements within the North Park CDA, consistent with the purposes of the various Redevelopment Acts.

2. The Chairman of the Agency is hereby authorized to execute a development agreement with Tenedor, LLC for the development of the North Park CDA.

DATED this \_\_\_\_ day of July, 2007

REDEVELOPMENT AGENCY OF  
SPANISH FORK CITY by:

---

Joe L Thomas, Chair

Attest:

---

David A. Oyler, Executive Director



## **REDEVELOPMENT AGENCY MEETING**

PUBLIC NOTICE is hereby given that the Redevelopment Agency of Spanish Fork, Utah, will hold a public meeting in the City Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **7:00 p.m. on July 17, 2007**

### **AGENDA ITEMS:**

#### **1. CALL TO ORDER:**

#### **2. NEW BUSINESS:**

- a. Interlocal Agreement with Spanish Fork City
- b. Development Agreement with Tenedor, LLC
- c. Assignment of the Tenedor Agreement

### **ADJOURN:**

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed executive meeting for any of the purposes identified in that Chapter.

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

# RESOLUTION NO. \_\_\_\_\_

## ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>		
MATTHEW D. BARBER <i>Councilmember</i>		
STEVE LEIFSON <i>Councilmember</i>		
SETH V. SORENSEN <i>Councilmember</i>		
CHRIS C. WADSWORTH <i>Councilmember</i>		

I MOVE this resolution be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

## RESOLUTION

### **A RESOLUTION AUTHORIZING THE MAYOR OF SPANISH FORK CITY TO EXECUTE CONTRACTS RELATED TO THE NORTH PARK COMMUNITY DEVELOPMENT AREA**

WHEREAS, Spanish Fork City has approved a North Park Community Development Project Area Plan, as part of the North Park Community Development Area; and

WHEREAS, the RDA has negotiated with a developer to develop the project area, which development is consistent with the purposes of the Agency to enhance economic development within Spanish Fork City; and

WHEREAS, in order to reimburse the developer for public infrastructure which is necessary for the economic development of the project area, funding from the City is necessary;

NOW THEREFORE, be it resolved by the City Council of Spanish Fork City as follows:

1. The Mayor of Spanish Fork City is hereby authorized to execute an interlocal agreement with the Redevelopment Agency of Spanish Fork City to provide funding for various improvements within the North Park CDA, consistent with the purposes of the North Park Community Development Project Area Plan.

DATED this \_\_\_\_ day of July, 2007

SPANISH FORK CITY by:

---

Joe L Thomas, Mayor

Attest:

---

Kent R. Clark, City Recorder