



CITY COUNCIL AGENDA

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 November 3, 2009**.

AGENDA ITEMS:

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

- a. Pledge
- b. Recognition – For Ethan Morley
- c. Recognition – Fiesta Days
- d. Presentation of Awards – Miss Spanish Fork
- e. Retirement Presentation

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. 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 – October 20, 2009](#)
- b. * [Nebo School District Facilities Use Agreement, Exhibit Amendments](#)
- c. * [Ordinance Cleaning Up References to the Positions of Recorder and Finance Director](#)

5. NEW BUSINESS:

- a. Ratification of Mayor Pro Tem Signing the Master Utility Agreement for the I-15 Project
- b. Board Appointments:
 - i. Fiesta Day's Vice Chairman Mike & Amber Mendenhall
 - ii. Library Board

ADJOURN:

* Supporting documentation is available on the City's website www.spanishfork.org

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.
- This agenda is also available on the City's webpage at www.spanishfork.org

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 804-4530.

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Tentative Minutes
Spanish Fork City Council Meeting
October 20, 2009

Elected Officials Present: Mayor Pro Tem G. Wayne Andersen Councilmember's Steven M. Leifson, Rod Dart, Richard M. Davis, Jens P. Nielson

Staff Present: Dave Oyler, City Manager; Seth Perrins, Assistant City Manager; Junior Baker, City Attorney; Kent Clark, Finance Director; Dave Anderson, Don Thomas, Emergency Preparedness Officer; Community Development Director, Kimberly Robinson, City Recorder

Citizens Present: Danielle Jameson, Mathew Jameson, Jeff Hansen, Lana Creer Harris, Rodger Hardy, Taylor Adams, Devan Lord, McKay Snell, Chandler Scott, Conner Jensen, Michael Burton, Jen Allen, Adam Wakeland, Kelly Long, Treece Long, Cait Earnest, Alex Orton, Braedon Ashton, Pat Parkinson, Ian Heber, Aaron Heber, Cody Wheeler, Jeric Gunn, David J. Robinson, Matt McEwen, Chase Wilson, Trennen Rasmussen, Megan Clark, Sherman Huff

CALL TO ORDER, PLEDGE:

Mayor Pro Tem Andersen called the meeting to order at 6:00 p.m.

Scout Chandler Scott led in the pledge of allegiance.

Youth Council

Mayor Pro Tem Andersen explained the Youth Council was present and turned the time over to Councilman Davis.

Councilman Davis is excited to have the Youth Council here, they have held their elections for this year.

Alicia Norris

Ms. Norris introduced the youth council and explained the purpose and agenda for the year. She then introduced the Youth Mayor, Council and Committee members:

Nola Iketau – Mayor

Kellie Orton – Parks & Recreation

Bree Norris – Historian

Kristen Blunck – Beautification

Logan Wells – Safety

Kristie Stoneman – Streets & Sewer

Committee Members:

Evan Anderson, Deven Skaggs, Justine Davis, Austin Vincent, Brook Norris, Katie Tanner, Ashley Davies, Tammirra Mathison, Libby Froerer, Kayla Adams, Abigail Lemmon, Hannah Carson, Marissa Clegg, Seth Mitchell, Lisa Elaine Raule

49
50 Mayor Pro Tem Andersen administered the oath of office to the Youth Council Officials.
51

52 **PUBLIC COMMENT:**

53
54 There was no public comment given.
55

56 **COUNCIL COMMENTS:**

57
58 Councilman Davis complimented the Youth Council. He feels they will shine this year
59 and are taking it to the next level. The Council met with local legislative representatives
60 regarding the north main street interchange, they hope to get that interchange moved up
61 in the priorities. He thanked Councilman Andersen for the work he has done on this
62 committee. They have worked hard and hopefully can get the project completed.
63

64 Councilman Leifson reported the Parks and Recreation Committee met and reviewed
65 their policies, they will be bringing changes to the Council at a later date.
66

67 Councilman Dart thanked Mr. Perrins for his public service program on channel 17. He
68 feels the city does a good job keeping the citizens informed. He was able to tour the
69 North Park project with Councilman Andersen and thinks it will be a great addition to the
70 community.
71

72 Mayor Pro Tem Andersen explained they met with legislative representatives, business
73 owners, and City Council, and feels they had one of the best meetings so far. They are
74 trying to encourage UDOT to rethink their priorities, instead of constructing HOV lanes
75 they could use that money to address the situation for the Main street off ramp. He
76 appreciates everyone involved and their enthusiasm. He noted this Thursday is another
77 meeting with the same group to try to move forward and take care of the situation.
78

79 Councilman Davis said a scout was asking what they can do to help get the interchange
80 through. He told them to write their Legislative Representatives and he encourages all to
81 write their representatives about the situation.
82

83 **PUBLIC HEARING:**

84
85 Councilman Leifson made a **Motion** to open the public hearing for the proposed
86 amendments to the transportation element of the General Plan. Councilman Davis
87 **Seconded** and the motion **Passed** all in favor at 6:15 p.m.
88

89 **Proposed Amendments to the Transportation Element of the General Plan**
90

91 Mr. Dave Anderson gave some background regarding the changes. They have been
92 working with developers and respective business owners, over the last year since this
93 has been adopted, there are a few items they feel can improve the document. There are
94 four changes to the map and some different changes to the cross section of the
95 document. He then reviewed the changes and the need for them.
96

97 Ms. Pat Parkinson asked a question to clarify regarding the areas being changed for
98 those that would not know.

99
100 Councilman Dart made a **Motion** to move out of public hearing. Councilman Davis
101 **Seconded** and the motion **Passed** all in favor at 6:29 p.m.

102
103 Councilman Leifson made a **Motion** to adopt the Amendments to the Transportation
104 Element of the General Plan. Councilman Nielson **Seconded** and the motion **Passed** by
105 roll call vote all in favor.

106
107 Councilman Dart made a motion to open the public hearing. Councilman Leifson
108 **Seconded** and the motion **Passed** by roll call vote all in favor at 6:30 p.m.

109
110 **Salary Range Adjustment for All City Employee's**

111
112 Mr. Seth Perrins explained the changes to the salary ranges this year. He then gave
113 background regarding the current salary system. This year they are recommending a 1 -
114 1 1/2% adjustment and 0% for management. This year with the budget process there are
115 no salary increases for the employees. With this proposal there is no money to adjust
116 salaries for the employees, no employees would receive a raise because of the range
117 change. The personnel committee discussed the issue. There are minimal changes in
118 the range and no money to adjust the ranges, the committee recommend no change in
119 the ranges. He noted again with the decision tonight either way there is no money
120 budgeted, nor will employees receive either a cost of living or a performance raise.

121
122 Ms. Parkinson does not understand why they are paying someone to study the raises
123 when they are not getting raises. To her this is an odd thing to do and makes her wonder
124 what they are really doing, they will study it in the future and she doesn't understand why
125 they are spending the money or the time on something that doesn't matter.

126
127 Councilman Leifson explained they spent a lot of time and effort to implement this
128 system. He noted no one is getting a raise but they are maintaining the integrity of the
129 system.

130
131 Mayor Pro Tem Andersen pointed out before this survey was implemented all ranges
132 were done by employees, because of the doubt of the citizenry it was best to go to an
133 outside consultant the Hay Group and implement a system.

134
135 Councilman Leifson made a **Motion** to close the Public Hearing. Councilman Dart
136 **Seconded** and the motion **Passed** all in favor by a roll call vote at 6:50 p.m.

137
138 Councilman Nielson feels it shows the employees we plan to stick to the structure, and
139 the citizens know regardless of the range there will be no raises given.

140
141 Councilman Nielson made a **Motion** to approve the salary range adjustment for all city
142 employees. Councilman Leifson **Seconded** and the motion **Passed** all in favor by roll
143 call vote.

144

145 **CONSENT ITEMS:**

146

147 **a. Minutes of Spanish Fork City Council Meeting – October 6, 2009**

148 **b. Dennis Stone Infrastructure Agreement**

149 **c. Utility Cost Management Consultants Audit**

150

151 Councilman Leifson made a **Motion** to approve the consent items. Councilman Davis
152 **Seconded** and the motion **Passed** all in favor.

153

154 **NEW BUSINESS:**

155

156 **Don Thomas – H1N1 Presentation**

157

158 Mr. Don Thomas gave a presentation regarding the H1N1 flu. He added that no one is
159 immune to this flu. He then reviewed the rates and ways to prevent getting the flu. If you
160 go to our website www.spanishfork.org there is H1N1 information. He also explained the
161 symptoms to look for.

162

163 Councilman Dart stated this is just another example of what our staff does to keep the
164 people informed.

165

166 **Second Amended Development Agreement Concerning North Park and
167 Supplement**

168

169 Mr. Junior Baker explained they reviewed most of this item with the Council a few
170 months ago. The city would move forward with the improvements, but it would not
171 change the expenses to the City. This Supplement to the agreement is an additional
172 modification to the contract. He then explained the changes to the supplement
173 agreement. This supplement obligates the principals of Tenedor, LLC, who is the
174 developer, to pay to the City one million dollars if Target stores do not come to the
175 project within six years. The initial incentive from the city to the developer includes one
176 million dollars to compensate for additional construction costs Target would incur in
177 these soils. The developer had a contract with Target at that time, subject to conditions.
178 The conditions were not met, and the contract expired. The Supplement will guarantee
179 the City gets the bargain it negotiated for, either a Target Store or one million dollars
180 returned to the city. Given the state of the economy, six years was felt a fair time to allow
181 the developer to bring Target. We have now identified a due date the amounts are
182 payable by. It is staff's recommendation to approve the Second Amended Development
183 Agreement with the Supplement as it helps to protect the city.

184

185 Councilman Leifson likes the fact we have a legal document in place for payment.

186

187 Councilman Davis commended staff for the hard work they did on this, it was a lot of
188 work and meetings to get this through.

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190 Councilman Davis made a **Motion** to approve the Second Amended Development
191 Agreement Concerning North Park and Supplement. Councilman Nielson **Seconded**
192 and the motion **Passed** all in favor.

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First Amendment Spanish Fork Wind Park Agreement

Mr. Baker explained the lease agreement regarding the data gathered on the test windmill. They are asking that the initial agreement where the test windmill was, to be extended through July of 2028, an addition of 19 years. There will be an increase in the amount every three years starting with \$500.

Councilman Davis made a **Motion** to approve the First Amendment Spanish Fork Wind Park Agreement. Councilman Leifson **Seconded** and the motion **Passed** by a roll call vote all in favor.

Presentation for the Municipal General Election on Tuesday, November 3, 2009

Kimberly Robinson
Ms. Robinson gave a presentation regarding the election process in Spanish Fork and recent election changes in the state law.

Appointment of Alternate Election Poll Worker List

Ms. Robinson explained in addition to the list given last meeting, there have been a few names added as alternates.

Councilman Dart made a **Motion** to accept the alternate election poll workers list. Councilman Leifson **Seconded** and the motion **Passed** by a roll call vote all in favor.

Board Appointments – Fiesta Day’s Vice Chairman, Mike & Amber Mendenhall; Library Board

This item was moved to the next meeting.

ADJOURN:

Councilman Dart made a **Motion** to adjourn. Councilman Davis **Seconded** and the motion **Passed** all in favor at 7:35 p.m.

ADOPTED:

Kimberly Robinson, City Recorder

MEMO

To: Mayor and City Council
From: S. Junior Baker
Date: 21 Oct. 2009
Re: Nebo Facilities Agreement Amendment Consent Item

The November 3 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 key to the agreement is the exhibits. We anticipate amending the exhibits from time to time, as circumstances and needs change. These changes are in response to changed needs and our purchase of the District's share of the Technology Building. The electronic copy you have contains redlines of the changes so you can see them. 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 supersede 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 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 **Coordinator of Operations** 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 superseded 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 supersede 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.

- 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 November, 2009.

SPANISH FORK CITY

By: _____
JOE L THOMAS, Mayor

ATTEST:

By: _____
KIMBERLY ROBINSON, 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 November, 2009.

**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"

**CITY USE OF
SCHOOL DISTRICT FACILITIES
SPANISH FORK HIGH SCHOOL**

FACILITY	AUTHORIZED USES
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.
Dance Studio	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>
Football Field	Youth Hershey Track and Field meets; and summer youth track team.
Main Gymnasium	Adult basketball leagues; men's basketball league tournament; 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.

SPANISH FORK JUNIOR HIGH SCHOOL

FACILITY	AUTHORIZED USES
Main Gymnasiums (2)	Youth basketball games and practices; men's basketball league tournament; 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.

DIAMOND FORK JUNIOR HIGH SCHOOL

FACILITY	AUTHORIZED USES
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. 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>
Parking Lots	Parking for all City sponsored activities and events.

LANDMARK HIGH SCHOOL

FACILITY	AUTHORIZED USES
Gymnasium	Occasional adult basketball games; and youth basketball games and practices.
Parking Lots	Parking for all City sponsored activities and events.

BROCKBANK ELEMENTARY SCHOOL

FACILITY	AUTHORIZED USES
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.

CANYON ELEMENTARY SCHOOL

FACILITY	AUTHORIZED USES
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.
EAST MEADOWS ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
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.
LARSEN ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
Gymnasium	Youth basketball clinics, games, and practices. 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>
Playing Fields	Youth baseball, softball, soccer, and football practices.
Parking Lots	Parking for all City sponsored activities and events.
PARK ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
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.
REES ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
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.
RIVERVIEW ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
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.
SPANISH OAKS ELEMENTARY SCHOOL	
FACILITY	AUTHORIZED USES
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.
CITY CONSIDERATIONS	
<ul style="list-style-type: none"> • 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.). • . • Pay for all secondary pressurized irrigation water assessments and fees for the football field, practice field, and soccer fields at Spanish Fork High School. • Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Spanish Fork Junior High School. • Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Diamond Fork Junior High School. • Pay for all secondary pressurized irrigation water assessments and fees for the playing fields at Larsen Elementary School. • Pay for all culinary water assessments and fees at Larsen Elementary School. • 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. • Provide labor and organization of all Hershey Track and Field meets. • 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 Diamond Fork Junior High School. • School District use of City Facilities. • General good faith cooperation and considerations to the School District. 	

EXHIBIT "B"

NEBO SCHOOL DISTRICT USE OF CITY FACILITIES	
RUSSELL SWENSON MEMORIAL PARK	
FACILITY	AUTHORIZED USES
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.
SPORTS PARK	
FACILITY	AUTHORIZED USES
Softball Fields	Spanish Fork High School and Maple Mountain High School softball teams for practices and games.
Storage Facilities	Spanish Fork High School and Maple Mountain High School athletic teams to store athletic equipment.
Batting Cages	Spanish Fork High School and Maple Mountain High School athletic teams for practices.
Pavilions	Spanish Fork High School and Maple Mountain High School 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 baseball teams for practices and games.
Parking Lots	Parking for all School District sponsored activities and events.
SPANISH OAKS GOLF COURSE	
FACILITY	AUTHORIZED USES
Golf Course	Spanish Fork High School, Maple Mountain High School, Spanish Fork Junior High School, and Diamond Fork Junior High School 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.
HIGH CHAPARELL	
FACILITY	AUTHORIZED USES
Meeting Rooms	Spanish Fork High School and Maple Mountain High School athletic teams for banquets or other special functions.
Parking Lots	Parking for all School District sponsored activities and events.
INDOOR TENNIS COURTS	
FACILITY	AUTHORIZED USES
Tennis Courts	Spanish Fork High School, Maple Mountain High School, Spanish Fork Junior High School, and Diamond Fork Junior High School 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.
SWIMMING POOL	
FACILITY	AUTHORIZED USES
Swimming Pool	Spanish Fork High School and Maple Mountain High School swim team for off-season practices. Spanish Fork High School and Maple Mountain High School physical education classes and swim team during school hours. <i>Also governed by a separate Contract dated September 20, 1995.</i>

EAST PARK / SKATE BOARD PARK	
FACILITY	AUTHORIZED USES
Grass Area	Cross-country course for practices and events for school teams from Spanish Fork High School, Maple Mountain High School, Spanish Fork Junior High School, and Diamond Fork Junior High School.
Parking Lots	Parking for all School District sponsored activities and events.
CITY PARKS	
FACILITY	AUTHORIZED USES
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	
FACILITY	AUTHORIZED USES
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	
FACILITY	AUTHORIZED USES
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	
<ul style="list-style-type: none"> • 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.). • Provide timers and scorekeepers for the Hershey Track and Field meets. • Printing and mailing of postcards for Nebo School District Community Education and Spanish Fork City Recreation programs for Fall, Winter, and Spring/Summer. • City use of School District Facilities. • General good faith cooperation and considerations to the City. 	

MEMO

To: Mayor and Council
From: S. Junior Baker
Date: 30 Oct. 2009
Re: Recorder/Finance Director Ordinance Clean Up

A few months ago the City Council split the responsibilities of the Recorder and Finance Director. At that time, we amended certain ordinances and created others concerning their respective duties. However, as time has moved on, we have discovered other sections of the Municipal Code which reference duties of the recorder and/or finance director. On the City Council agenda, for November 3, is an ordinance which cleans up (to my knowledge), the balance of the Code sections. In nearly every instance the change is merely changing the name of the responsible party to either Recorder, Finance Director, or Community Development Director, who has business license responsibilities previously performed by the Recorder. The lone exception is changing the requirement that the mayor sign all business licenses, to having them signed by the Community Development Director or designee.

As this is very minor and reflects the changes made by the Council some months ago, it appears as a consent item.

ORDINANCE NO. _____

ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>		
ROD DART <i>Councilmember</i>		
RICHARD M. DAVIS <i>Councilmember</i>		
STEVE LEIFSON <i>Councilmember</i>		
JENS P. NIELSON <i>Councilmember</i>		

I MOVE this ordinance be adopted: _____
I SECOND the foregoing motion _____

ORDINANCE No.

**AN ORDINANCE UPDATING THE MUNICIPAL CODE BASED ON
THE INDIVIDUAL RESPONSIBILITIES BETWEEN THE CITY
RECORDER AND THE CITY FINANCE DIRECTOR**

WHEREAS, Spanish Fork City has split the offices of City Recorder and City Finance Director pursuant to the provisions of Utah Code Annotated §10-6-157; and

WHEREAS, at the time the division of the responsibilities between the Recorder and Finance Director took place, the Municipal Code with respect to those specific sections was amended; and

WHEREAS, other provisions of the Municipal Code refer to the responsibilities of the Recorder and/or Finance Director, but were not amended at that time, but have since been

discovered; and

WHEREAS, in order for the Municipal Code to be current and updated it is necessary to amend other sections of the Code to reflect the division of responsibilities between the City Recorder and the Finance Director;

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

I.

Spanish Fork Municipal Code Section 2.20.110 is hereby repealed

II.

Spanish Fork City Municipal Code Section 2.08.090 is hereby amended as follows:

2.08.090 Audit of Accounts - Report.

The City Council shall require an annual audit of the accounts of all officers of the City having the care, management, collection, or disbursement of money belonging to the City or appropriated by law or otherwise for the use and benefit of the City. The annual audit shall be performed by or under the direction of a competent public account, not an officer of the City, and shall be prepared within 180 days following the close of the fiscal year. Copies of all audit reports made pursuant to this section shall be filed in the office of the City Finance Director and with the State Auditors Office, and may be used in addition to or in lieu of the annual report of the City Finance Director as may be required by the City Council.

III.

Spanish Fork City Municipal Code Section 3.16.020 is hereby amended as follows:

3.16.020 Maintenance.

The City Council shall create and maintain said special improvement guaranty fund by

appropriation from the general fund or by the levy of a tax not to exceed one mill in any one year or by the issuance of general obligation bonds or by appropriation from such other sources as may be determined by the City Council to provide the money necessary for that purpose. Said funds shall be held by the City Treasurer and shall be kept by him or her separate and apart from all other funds held by him or her. Payments out of said funds shall be made only by checks or warrants drawn by the City Finance Director.

IV.

Spanish Fork City Municipal Code Section 3.16.030 is hereby amended as follows:

3.16.030 Interest and Penalties - Deposit in Fund.

All excess charges and penalties collected by the City Treasurer for the benefit of or credit of any special improvement fund and remaining on hand after all of the bonds or warrants, together with interest thereon, drawn against said special improvement funds have been fully paid and cancelled, shall be transferred by the City Finance Director to the said special improvement guaranty fund.

V.

Spanish Fork City Municipal Code Section 3.16.040 is hereby amended as follows:

3.16.040 Payment of Bonds or Warrants.

When any bond, warrant, or coupon drawn against any special improvement fund is presented to the City Treasurer for payment and there is not a sufficient amount in said special improvement fund against which it is drawn to pay the same, unless otherwise requested by the holder, payment therefore shall be made by warrant drawn upon the City Finance Director against the special improvement guaranty fund.

VI.

Spanish Fork City Municipal Code Section 3.16.060 is hereby amended as follows:

3.16.060 Finance Director to Issue Warrants.

Warrants drawing interest at a rate not to exceed eight percent (8%) per annum may be issued by the City Finance Director against said fund to meet any financial liabilities accruing against it; but at the time of making its annual tax levy, the City Council shall provide for the levy of a sum sufficient with the other resources of the fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed one mill in any one year.

VII.

Spanish Fork City Municipal Code Section 5.04.030 is hereby amended as follows:

5.04.030 License Assessor and Collector.

The City Community Development Director, or designee, is designated and appointed as ex officio assessor of business licenses for the City. Upon receipt of any application for a business license, the City Community Development Director, or designee, shall assess the amount due thereon and shall collect all license fees based upon the rates established by ordinance. Violations shall be processed and treated just as any other criminal violation by report and referral to the appropriate prosecuting office.

VIII.

Spanish Fork City Municipal Code Section 5.04.040 is hereby amended as follows:

5.04.040 Payment Dates.

All licenses shall be payable before each calendar year, in advance, shall commence from the first day of January of each year and shall expire on the 31st day of December of each year.

All license fees shall be due the first day of each calendar year and shall become delinquent if not paid by February 1st of each year. The proceeds of all licenses shall be remitted by the City Community Development Director, or designee, to the City Treasurer.

IX.

Spanish Fork City Municipal Code Section 5.04.050 (B) is hereby amended as follows:

5.04.050 Applications.

B. Applicants for licenses to conduct business as an itinerant merchant shall provide the following information to the City Community Development Director, or designee;

1. [no change]
2. [no change]
3. [no change]
4. [no change]
5. [no change]
6. [no change]
7. [no change]
8. [no change]
9. [no change]
10. [no change]

X.

Spanish Fork City Municipal Code Section 5.04.070 is hereby amended as follows:

5.04.070 Certificate.

All certificates of license shall be signed by the Community Development Director, or designee, and shall contain the following information:

A. [no change]

B. [no change]

C. [no change]

XI.

Spanish Fork City Municipal Code Section 5.08.010 is hereby amended as follows:

5.08.010 Defined - License Required.

An auctioneer as contemplated in this chapter is a person who conducts a public competitive sale of property by outcry to the highest bona fide bidder. An auctioneer's license shall cost \$50.00 per day. It is an infraction for any person to engage in the business of an auctioneer within the City without first procuring a business license to do so as provided in Chapter 5.04 of this title. Such auctioneer shall execute a bond to the City, with corporate surety, in the sum of \$1,000.00, conditional for the faithful observance of all laws and ordinances of the City and the honest performance of all duties required by ordinance, and the protection of all persons dealing with such auctioneer against all fraud, deception, and imposition, said bond to be approved by the City Council and filed with the Community Development Director, or designee.

XII.

Spanish Fork City Municipal Code Section 5.12.020 is hereby amended as follows:

5.12.020 Permit Required.

It shall be unlawful for any person to sell, offer to sell, or provide to the public any type of alcoholic beverage without first obtaining a permit to do so from the City. An applicant need not have a permit issued by the Department of Alcoholic Beverage Control, but shall be qualified

in all respects to obtain a State License from the Department of Alcoholic Beverage Control upon the issuance of a City license. All licensees shall comply with the Alcoholic Beverage Control Act, Utah Code Annotated §32a-1-101 et seq., as it may be from time to time be amended, and the rules and regulations promulgated thereunder by the Department of Alcoholic Beverage Control. An alcoholic beverage permit shall be in addition to the business license required under Title 5 of the Spanish Fork City Municipal Code. The permit granted herein shall expire on the 31st day of December of each year. A new permit is required each year. An new permit must be obtained within 30 days of the expiration of any prior permit.

Applications shall be made available at the City offices and permits may be issued by the Community Development Director's office upon a showing of meeting of all of the requirements set forth herein and the Alcoholic Beverage Control Act.

A permittee holding a Class A Permit (as defined in the next section) for off-premise consumption shall require any and all employees involved in the transaction of retail beer sales to obtain a beer handlers permit from the Utah County Health Department, complying with all of the ordinances, rules, and regulations promulgated by the Health Department for issuance of such permits. All employees of a permittee involved in the transaction of retail beer sales will be required to possess and wear a beer handlers permit while on duty. This permit shall be worn in a conspicuous place such that the permit shall be clearly visible to any person.

New employees of a permittee shall obtain a beer handlers permit within 30 day of hire. During this 30 day period, the employee may sell alcoholic beverages in accordance with the Utah Alcoholic Beverage Control Act, the regulations of the Alcoholic Beverage Control Commission, and the provisions of this Chapter.

The permittee is required to inform the Utah County Health Department of any employee possessing a beer handlers permit whose employment is terminated for conduct that would be punishable under the statutes or ordinances regulating alcoholic beverages. Permittees shall permit law enforcement officers and Utah County Health Department employees to conduct random beer handlers permit compliance checks on permittee's premises.

An employee possessing a beer handlers permit who is convicted of any law involving the sale of an alcoholic beverage is not only subject to the penalties in section 5.12.090 of this Chapter, but shall incur a suspension of the employee's beer handlers permit in accordance with the ordinances, rules, and regulations as adopted by the Utah County Health Department applicable to such permit.

XIII.

Spanish Fork City Municipal Code Section 5.12.060(A) is hereby amended as follows:

5.12.060 Revocation-Hearing Examiner.

A. Any permit issued hereunder may be revoked following notice and a hearing before the Hearing Examiner. The City Community Development Director is hereby appointed to act as Hearing Examiner. Appeals from the decision of the Hearing Examiner shall be filed, in writing, within 10 days of the decision of the Hearing Examiner. A filing fee of \$150.00 shall accompany the notice of appeal. Appeals shall be heard before the City Council. Decisions by the City Council are final and non-appealable.

XIV.

Spanish Fork City Municipal Code Section 5.18.110 is hereby amended as follows:

5.18.110 Application Fee.

Each initial application shall be accompanied by a non-refundable filing fee in the amount of \$1,000.00, which shall be payable to Spanish Fork City and remitted to the City Finance Director.

XV.

Spanish Fork City Municipal Code Section 5.28.140 is hereby amended as follows:

5.28.140 License - Bond.

Each application for a sexually oriented businesses license shall post with the City Finance Director a cash bond in the amount of \$2,000.00. Any fines assessed against the business, officers, or managers for violations of City Ordinances shall be taken from this bond if not paid in cash within 10 days after the notice of the fine, unless an appeal is filed as provided by this Chapter. In the event that the funds are drawn against the cash bond to pay such fines the bond shall be replenished to \$2,000.00 within 15 days of the date of the notice against it. In the event that the bond is not replenished within the 15 days, the license granted by this Chapter shall automatically be suspended until such time as the bond is replenished.

XVI.

Spanish Fork City Municipal Code Section 5.28.400 is hereby amended as follows:

5.28.400 Violation - Penalty.

In addition to revocation or suspension of a license, as provided in this Chapter, each violation of this Chapter shall, upon citation by the City Community Development Director, or designee, require the licensee to pay a civil penalty in the amount of \$500.00. Such fine shall be deducted from the cost bond posted pursuant to this Chapter, unless paid within 10 days of notice of the fine or final determination after any appeal. In addition to the civil fines provided

in the

Chapter, the violation of any provision of this Chapter shall be a Class B Misdemeanor. Each day of violation shall be considered a separate offense.

DATED this _____ day of November, 2009.

JOE L THOMAS, Mayor

ATTEST:

Kimberly Robinson, City Recorder