



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 July 2, 2013**.

AGENDA ITEMS:

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

- a. Pledge, led by invitation
- b. Swearing in of Youth City Council
- c. Employee of the 4th Quarter 2012

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.

- a. * [Agenda Request – LeGrand Adams](#)
- b. * [Agenda Request – William Denison](#)

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 – June 18, 2013](#)
- b. * [Agreement with East Bench Irrigation Company for the Powerhouse Road Diversion](#)
- c. * [Professional Services Agreement, Atlas Engineering](#)
- d. * [Grade Crossing Improvement Agreement, Plaza Center Dr 2300 North](#)
- e. * [Easement Purchase Agreement with Gary Ellis for the 1850 North Waste Water Sewer Siphon](#)
- f. * [Mountainland Association of Government FY 2013-2014 Contract for Aging Services](#)
- g. * [Justice Center and SFCN Janitorial Service Agreements, RBM Building Services](#)
- h. * [Utah County Municipal Recreation Grant Agreement](#)

5. NEW BUSINESS:

- a. Approval of 2013 Election Judges

6. CLOSED SESSION:

The Spanish Fork City Council may temporarily recess the regular meeting and convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205

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 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.



AGENDA REQUEST FORM

Date of Meeting Requested to Attend: July 2, 2013

All forms must be completed and returned by NOON the Tuesday before the Council Meeting requested. Thank you.

Name: LeGrand Adams

Address: 1925 E Powerhouse Rd

Phone Number: [REDACTED]

Please list the subject and detailed information regarding your request:

Water Hookup ~~to~~ Commitment For proposed
building permit For the North End of the
property. We drilled a well 200 ft deep
Several years ago and were unable to find
water. The County will not move forward on
my building permit without a commitment
from Spanish Fork City to allow Water Connection.


Signature

June 26th 2013
Date

Angie Warner

Sent: Thursday, June 27, 2013 2:38 PM
To: awarner@spanishfork.org; webmaster@spanishfork.org
Subject: Agenda RequestagendaSubject

Values submitted by the user:

first_name - William

last_name - Denison

address [REDACTED]

city - Spanish Fork

state - UT

zip - 84660

contactphone [REDACTED]

email [REDACTED]

agendaSubject - Mobile Food Truck

detailed - My husband is a 30 year disabled combat vet who decided to open a foodtruck business in his hometown. Being the only foodtruck in town whose owners live in town, and taxes would come to this town, he thought it would be much easier to get work. Everywhere we go, it seems, walls are being put up preventing him from supporting our family. We cannot work at North Park, unless we ask Cosco. Why, our tax dollars help build that park. We were turned down for the Fiesta Days Rodeo, Farmers Market....I know out of state trucks etc were brought in, this is wrong when we could have worked. At this point his only avenue may be to involve the VA lawyers and the newspapers. Disabled vets should be given some priority status, esp in their hometown. I have made many attempts to contact the mayor, his voicemail has been full for 2 weeks. I am sure the newspapers would love to hear about a hometown vet who spent 11, yes eleven years deployed, only to come back to a town making it so hard for him to make money and support his family. He doesn't need all the stress and jumping through hoops as people change their minds on a whim, or say come to next month's meeting when we need to make money and pay the mortgage no

secCode - 12660

submit - submit

**Tentative Minutes
Spanish Fork City Council Meeting
June 18, 2013**

Elected Officials Present: Mayor G. Wayne Andersen, Councilmembers Rod Dart, Richard Davis, Brandon Gordon. Absent: Councilmembers Steve Leifson, Keir A. Scoubes.

Staff Present: David Oyler, City Manager; Junior Baker, City Attorney; Seth Perrins, Assistant City Manager; Dave Anderson; Community Development Director; Chris Thompson, Public Works Director; Dale Robinson, Parks & Recreation Director; Kent Clark City Recorder/Finance Director; John Bowcut, IS Director; Sergeant Phil Nielsen; Angie Warner, Deputy Recorder; Bryan Perry, Assistant IS Director; Pam Jackson, Library Director.

Citizens Present: Connie Muhlestein, Christie Muhlestein Solomon, Clint Muhlestein, Britten Redd, Gabriel Tale, Payton Redd, Michael Luther, Troy A. Jackson, Christine Muhlestein, Lynette Muhlestein, Teresa Argyle, Chad Argyle, Richard A. Evans, Jesse Conway, Jed Morley, Mike Mendenhall, Jim Wilbur, Rick Salisbury, Bret Jackson, Kamilyn Jackson, Janice Ottesen, Dan Davis, Lynn Jones, Duane Hutchings, Scott Peterson, Jacob Farnsworth, Scott Woolston, Benjamin Knowlton, Joseph Curtis.

CALL TO ORDER, PLEDGE, RECOGNITION:

Mayor Andersen called the meeting to order at 6:00 p.m.
Dale Robinson led in the pledge of allegiance.

PUBLIC COMMENTS:

Agenda Request – Rick Salisbury

Mr. Salisbury said he applied for a building permit and the plan was rejected because of the roof pitch variation. In discussion with the building department the City said it had to be 6:12 roof pitch. The home was designed in the Legacy Farms guidelines which has variations of roof pitch. Mr. Salisbury would like direction if the City is following the Legacy Farms guidelines or the City Code.

Mayor Andersen said that he remembers that the homes would be built according to the Legacy Farms guidelines, but staff will meet to review the issue.

Greg Magleby from LEI explained the roof pitch details of the Legacy Farms guidelines for the development and said that a 6:12 roof pitch could not be met for each area of the roof.

COUNCIL COMMENTS:

Councilman Gordon said the Youth City Council will hold their elections this Thursday. Councilman Gordon thanked the outgoing Mayor, Tamyra Mathison. Councilman Gordon invited the youth to join the Youth City Council.

Councilman Davis reminded the public that Fiesta Days is one month away. The chairs are Randy & Carla Tuckett; past chairs, Lew & Diane Woolford; vice chairs, Lamont & Chris Leavitt; the Grand Marshal is Donna Christensen Stevens.

48 Councilman Dart said he and Mayor Andersen attended the Nebo Economic Summit last week
49 and things in South County are going to start happening.

50
51 Mayor Andersen announced a new event that will be coming to the Spanish Fork Fairgrounds a
52 year from now. The Pro Rodeo Cowboys Association has developed an event that is the top 10
53 cowboys against the top 10 stock. It will be the 1st Saturday after Memorial Day.

54
55 **SPANISH FORK 101:** John Bowcut –SFCN Digital Conversion & Whole Home DVR

56
57 **CONSENT ITEMS:**

- 58 a. Minutes of Spanish Fork City Council Meeting – June 4, 2013
59 b. Easement Agreement for 1800 North 200 East
60 c. Chip Seal Interlocal Agreement
61 d. Spanish Fork River Trail MAG Grant, Contract for Engineering & Environmental Work
62 e. Moreton Asset Management Contract

63
64 Councilman Gordon made a **Motion** to **approve** the consent items including the written statement
65 from Mr. Barber.

66 Councilman Dart **Seconded** and the motion **Passed** all in favor.

67
68 **PUBLIC HEARING:**

69 **Ordinance #09-13 Making Various Amendments to the Land Use Ordinance**

70 Junior Baker reviewed the proposed changes:

71
72 *Spanish Fork Municipal Code §§15.4.16.020 and 110 are hereby amended as follows:*

73
74 **15.4.16.020 Unavailability of Adequate Public Facilities**

75 *A. In the event that the city engineer determines that adequate public facilities are not available and*
76 *will not be available by the time of approval, so as to assure that adequate public services are*
77 *available at the time of occupancy, the following alternatives may be elected, at the discretion of the*
78 *city council:*

- 79 1. *Allowing the developer to voluntarily construct those public facilities which are*
80 *necessary to service the proposed development and provide adequate facilities as*
81 *determined by the city engineer and by entering into an appropriate form of connector's, or*
82 *developers agreement, which may include, as deemed appropriate by the city engineer,*
83 *provisions for recoupment of any expenses incurred above and beyond those reasonably*
84 *necessary for or related to the need created by or the benefit conferred upon the proposed*
85 *development, and the method and conditions upon which recoupment is to be obtained.*
86 *Any connector's agreement authorized by this paragraph must be requested within 30 days*
87 *of the completion and acceptance by the City of the improvements.*
88 2. *Requiring the timing, sequencing, and phasing of the proposed development*
89 *consistent with the availability of adequate public facilities;*
90 3. *Deferring approval and the issuance of building permits until all necessary public*
91 *facilities are adequate and available; or*
92 4. *Denying approval and allowing the applicant to reapply when adequate public*
93 *facilities are available.*

94 *B. In the event the City installs infrastructure improvements which benefits specific properties, it*
95 *may also recover reimbursement on a pro-rata basis from the benefitted properties when they*
96 *develop, on the same basis as a developer would recover reimbursement with a connector's*
97 *agreement as set forth in paragraph A.*

98 *C. When a connector's agreement is granted, or the City installs infrastructure for which it will be*
99 *reimbursed, the City will record a notice against the benefitted properties so that a future*
100 *owner/developer will be on notice of development costs associated with that parcel.*

101
102 **15.4.16.110 Security for Improvements Required**

103 *The owners and/or developers of property shall deposit security with the City to guarantee*
104 *proper installation of all required improvements in accordance with the plans, specifications, time*
105 *limitations, and conditions relating thereto as meets with the approval of the Council or such*
106 *personnel as the Council shall designate. The amount of the security shall be 125% of the City's*
107 *estimated costs of the improvements. Security shall be in the form of cash in the minimum amount*
108 *of ten percent (10%) of the City's bond amount. The balance of the security shall be in the form of*
109 *cash, an irrevocable letter of credit, or an escrow bond.*

110 *Irrevocable letters of credit or escrow bonds shall be executed by financial institutions acceptable to*
111 *the City and authorized to conduct business in the State of Utah, and must be in the form approved*
112 *by the City. The bond or letter of credit as required by this section must be posted prior to*
113 *recording. Upon completion, inspection, approval, and acceptance of the improvements, the*
114 *security, less ten percent (10%), shall be released to the developer. Ten percent (10%) of the*
115 *security amount shall be held for a period of one (1) year following final inspection and acceptance*
116 *to warrant improvements for this time period.*

117 *The ten percent retained for the warranty period shall be in cash. The cash amount may be released*
118 *one year after installation, final inspection, and acceptance by City, if no repairs or replacement are*
119 *required to the infrastructure installed.*

120
121
122 Councilman Davis made a **Motion** to move into Public Hearing.

123 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 6:36p.m.

124
125 Mayor Andersen welcomed public comment.

126 There was none.

127
128 Councilman Davis made a **Motion** to move out of Public Hearing.

129 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 6:36p.m.

130
131 Councilman Davis made a **Motion** to **approve** the Ordinance #09-13 Making Various
132 Amendments to the Land Use Ordinance.

133 Councilman Dart **Seconded** and the motion **Passed** all in favor with a roll call vote.

134
135 Mayor Andersen excused Councilman Leifson and Councilman Scoubes from the meeting, as
136 they were out of town.

137
138 **FY 2013 Budget Revision #3**

139 Kent Clark said staff has proposed a transfer of \$205,000 from the General Fund to the capital
140 project funds for Canyon Creek to secure some right-of-ways and land.

141
142 Councilman Dart made a **Motion** to move into Public Hearing.

143 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 6:40p.m.

144
145 Mayor Andersen welcomed public comment.

146 There was none.

147
148 Councilman Gordon made a **Motion** to move out of Public Hearing.

149 Councilman Davis **Seconded** and the motion **Passed** all in favor at 6:40p.m.

150
151 Councilman Davis made a **Motion** to **adopt** the FY 2013 Budget Revision #3.

152 Councilman Gordon **Seconded** and the motion **Passed** all in favor.

153
154 **FY 2014 Budget**

155 Kent Clark said that the FY2014 budget starts July 1st. One change is the state tax commission
156 and county assessor's office has sent the property tax assessment rolls. If the City Council
157 decides to have a truth in taxation hearing it would be held August 6th. Mr. Clark reviewed the
158 new budget and said there is a decrease compared to last year's budget. This budget has the
159 property tax information, in total the whole amount did not change. The property tax needed to
160 be adjusted down, so the City estimated high knowing we could move it down after knowing the
161 tax rate. At the same time the sales tax was evaluated and needed to go up. So it was a wash,
162 one revenue went up one revenue went down.

163 Mr. Clark explained the certified tax rate and the formula that figures the tax rate. If the Council
164 decides to go above the certified tax rate, a truth in taxation public hearing will need to be held.
165 Spanish Fork City has the lowest property tax rate and staff recommends maintaining the same
166 rate as last year. The impact to maintain the rate would be a \$1.73 increase per year per house
167 which is 14 cents per month. This would assume a home value of \$185,000.

168 Mr. Clark highlighted that the garbage, recycling and electric rates will go up. Mr. Clark said
169 staff had a request to add the Boys & Girls Home to the donation fee waiver list for a swimming
170 pool pass.

171 Mr. Clark said the total proposed budget for FY2014 is \$62,146,209. If the City Council agrees
172 to have a truth in taxation hearing to raise the property tax rate 1.4%, then the council needs to
173 adopt a new tentative budget and state the proposed property tax rate hearing will be on August
174 6, 2013.

175
176 Councilman Dart made a **Motion** to move into Public Hearing.

177 Councilman Davis **Seconded** and the motion **Passed** all in favor at 7:04p.m.

178
179 Mayor Andersen welcomed public comment.

180
181 Michael Luther with Templer Knights motorcycle club holds a charitable "fallen patriot" ride every
182 year. This year they ended their ride at the Spanish Fork Fairgrounds in the large indoor arena.
183 Mr. Luther would like to request a donation waiver of the \$350.00 fee for the rental of the arena
184 facility for their 2014 ride. The money that they raise goes towards the Folds of Honor
185 Foundation which provides scholarships for families of fallen and disabled veterans.

186
187 Councilman Gordon made a **Motion** to move out of Public Hearing.

188 Councilman Davis **Seconded** and the motion **Passed** all in favor at 7:07p.m.

189
190 Mayor Andersen supports maintaining the property tax rate and agrees to hold a truth in taxation
191 hearing.

192
193 Councilman Davis agreed to have a truth in taxation but would like to wait and look into the fee
194 waiver request from Mr. Luther.

195
196 Councilman Gordon made a **Motion** to **adopt** the FY2014 Tentative Budget with the proposed
197 property tax rate which is greater than the certified tax rate and to hold truth in taxation hearing
198 on August 6, 2013 at 6:00pm.

199 Councilman Davis **Seconded** and the motion **Passed** all in favor.

200
201 Dave Oyler asked to take a minute and follow up on a few items from last meeting pertaining to
202 the ball parks concessions and the reservoir. Mr. Oyler turned the time over to Dale Robinson to
203 give a report.

204
205 Dale Robinson said to help with the issue at the reservoir staff is currently putting up 12 posts
206 with buoys all around the reservoir. Also, regarding the moss and slippery cement sides, staff will

207 install manufactured hand rails that would assist in getting out of the reservoir. The rails will be
208 approximately 20 feet long down into the water.
209 Mr. Robinson gave a history of the ball park concessions operation. Mr. Robinson pointed out
210 that this is not just a weekend event; the concessions are open 5 days a week and all day on
211 Saturdays. Mr. Robinson checked into running the concessions with volunteers. The City does
212 have volunteer groups that are interested in doing fundraisers. The volunteers are interested in
213 one or two events that are 2-4 days long and then they are done. People are too busy and they
214 do not want to commit to 7-8 months of a year 6 days a week. Mr. Robinson explained that staff
215 has researched the competition and decided to raise a few of the item prices to help with
216 operation costs and still be cheaper than the competitors. Mr. Robinson complimented Janice
217 Ottesen and her staff on an excellent job.

218
219 **Proposed Zone Change for the Trailside Subdivision, the proposal involves changing the zoning**
220 **of a parcel located at 335 West 100 South from R-1-8 to R-1-6 with the Infill Overlay**

221 Dave Anderson said that this property is next to the trail and needs some attention. If the zone
222 change is approved with the infill overlay, it would allow for 3 single family homes to be
223 constructed. Some concerns were the fencing along the trail and the traffic of the driveway onto
224 100 South. The State has also approved their driveway access onto 100 South, which is a State
225 road.

226
227 Councilman Dart made a **Motion** to move into Public Hearing.
228 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:46p.m.

229
230 Mayor Andersen welcomed public comment.

231
232 Jim Wilbur, who lives on Escalante Drive, expressed his concerns of the traffic on 100 South and
233 that it has become the collector road instead of Center Street. Adding these homes would just
234 add to the problem. Mr. Wilbur has stated his concerns before about the short cut that drivers
235 take on Escalante Drive.

236
237 Jed Morley said he feels the sizes of the lots are compatible to the area to be able to get single
238 family homeowners.

239
240 Councilman Davis made a **Motion** to move out of Public Hearing.
241 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:53p.m.

242
243 Councilman Dart commented that the reason we started infill overlay is to take care of distressed
244 properties like this one.

245
246 Councilman Gordon feels this will improve the area. Councilman Gordon asked how the
247 driveways are constructed, if they are backing out onto 100 South or pulling out forward.

248
249 Dave Anderson said that the driveways are constructed to pull out forward onto 100 South.

250
251 Councilman Davis agrees this will clean up the property.

252
253 Councilman Dart made a **Motion** to **approve** the Trailside Subdivision Zone Change at 335 West
254 100 South to R-1-6 & the Preliminary Plat with the provision that a see through fence is
255 constructed along the trail.

256 Councilman Davis **Seconded** and the motion **Passed** all in favor.

257

258 **Proposed Zone Change for the Muhlestein Subdivision, the proposal involves changing the**
259 **zoning of a parcel located at 1300 South Mill Road from Rural Residential to R-1-12**
260 Dave Andersen said this property is about 6 ½ acres and is proposing the zone change to R-1-12
261 for a standard 16 lot subdivision. The general plan calls for low density residential for this area
262 with the density range of 1.5 - 3.5 units per acre. This proposal has zoning options; it also
263 qualifies for R-1-15 and R-1-20 zoning designations. The Development Review Committee and
264 Planning Commission recommended approval.
265
266 Councilman Gordon made a **Motion** to move into Public Hearing.
267 Councilman Davis **Seconded** and the motion **Passed** all in favor at 8:04p.m.
268
269 Mayor Andersen welcomed public comment.
270
271 Dan Davis is a resident who lives on Mill Road asked to stick to the 1/3 acre requirement for the
272 development. There was decisions made in the past and thinks the City should stick to those
273 plans.
274
275 Dean Ingram, developer of the Muhlestein Subdivision, highlighted some details regarding the
276 development.
277
278 Clint Muhlestein said that the development is great but would like to know when the engineering
279 of the road would happen and the details of the road changes. There are at least 3 of the
280 properties that will be affected by the widening of the road.
281
282 Chris Thompson said now that a new road is being built from American Leadership Academy to
283 Mill Road, the City has moved up the maintenance plan for Mill Road. The plan is to do some
284 shouldering work and overlay the road at the end of the summer.
285
286 Councilman Davis asked about obtaining easements for the road.
287
288 Chris Thompson said staff is only working on the area where the road narrows.
289
290 Councilman Davis asked if the road can handle the extra density.
291
292 Chris Thompson said it will not affect it,
293
294 Clint Muhlestein stated that he still wants to see plans for Mill Road. If Mill Road is widened, he
295 is not going to have a driveway.
296
297 Mayor Andersen discussed details from a meeting several years ago with the Leland residents
298 and how they wanted it developed. Mayor Andersen read a few comments from that meeting.
299 Mayor Andersen questions why the neighbors are changing now. Mayor Andersen would not
300 have a problem rezoning the property to R-1-15.
301
302 Councilman Dart commented that if we approve the R-1-12 zone, then Old Mill Estates is going
303 to come back and want their development zoned the same.
304
305 Dean Ingram said that he held the required neighborhood meeting and received positive support.
306 Mr. Ingram commented that the first one to go through is usually the hardest change.
307
308 Mayor Andersen supports the decision made several years ago before development started and
309 does not want to change it.

310

311 Scott Woolston said one problem with zoning is that it tries to manage what happens. This is
312 private property but doesn't feel that it is right to be telling them what to do with their property.

313

314 Brian Redd, a longtime resident of Leland, said when you look at other subdivisions in the area
315 they are still functioning with one ingress. We were told that there would not be a road from the
316 school to Mill Road but one is now 75% done. Mr. Redd said there is some diversity in this
317 proposal and is in favor of this proposal.

318

319 Dan Davis agrees that it is a property rights issue. Not every road needs to be a freeway but if it
320 does need to be widened then we need to make sure that it does not encroach on the property of
321 the residents.

322

323 Connie Muhlestein, the property owner, commented that this project has gotten a lot bigger than
324 she thought. Ms. Muhlestein gave a little history of her property and she thought this would be
325 an opportunity where they could leave a legacy for her husband. Ms. Muhlestein decided to do
326 this because her home is very old and falling apart and she cannot keep up the property. She
327 understands the increased traffic but the traffic started with the school.

328

329 Jed Morley was an original developer for the American Leadership Academy. Mr. Morley said as
330 the school was developed the road to Mill Road would not be approved. With the new road that
331 he was surprised to see, Mill Road will need to be widened. Mr. Morley said his biggest concerns
332 are the canal and the traffic on Mill Road.

333

334 Councilman Gordon made a **Motion** to move out of Public Hearing.
335 Councilman Davis **Seconded** and the motion **Passed** all in favor at 8:52p.m.

336

337 Councilman Davis said that with the process of Old Mill Estates, Mr. Neiderhouser was upset
338 when he left planning commission. If this zone change is approved Mr. Neiderhouser will
339 probably come back to see if he can change his project at Old Mill Estates to R-1-12.

340 Councilman Davis does not agree with the proposal for the zone change to R-1-12. Councilman
341 Davis suggested tabling the Muhlestein proposal.

342

343 Councilman Dart agreed with Councilman Davis and thinks we need to be fair.

344

345 Councilman Davis made a **Motion** to **Deny** the Zone Change for the Muhlestein Subdivision.
346 Councilman Dart **Seconded** and the motion **Passed** all in favor.

347

348 Mayor Andersen asked the developer and the Muhlestein's if they would like to go discuss a
349 different zone change and then come back in about 10 minutes and present it to the council.

350

351 *City Council took a 5 minute break at 8:58pm.*

352

353 **ADJOURN TO REDEVELOPMENT AGENCY:**

354 Councilman Gordon made a **Motion** to adjourn out of City Council Meeting and into Redevelopment
355 Agency Meeting.

356 Councilman Davis **Seconded** and the motion **Passed** all in favor at 9:03p.m.

357

358 **ADJOURN BACK TO CITY COUNCIL**

359 Councilman Davis made a **Motion** to adjourn Redevelopment Agency meeting and reconvene back to City
360 Council meeting.

361 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 9:05p.m.

362

363 **CONTINUE:**

364 **Proposed Zone Change for the Muhlestein Subdivision, the proposal involves changing the**
365 **zoning of a parcel located at 1300 South Mill Road from Rural Residential to R-1-12**

366

367 Clint Muhlestein proposed the new zone change request be to the R-1-15 zone.

368

369 Councilman Davis made a **Motion to Approve** the Muhlestein Subdivision Zone Change from
370 Rural Residential to R-1-15.

371 Councilman Dart **Seconded** and the motion **Passed** all in favor.

372

373 Dave Anderson added that the Muhlestein Preliminary Plat would need to be continued so the
374 developer can make the changes and then return to a future meeting for approval.

375

376 Councilman Dart made a **motion to continue** the Muhlestein Preliminary Plat to next City Council
377 meeting or until the plat is ready.

378 Councilman Davis **Seconded** and the motion **passed** all in favor.

379

380 **ADJOURN:**

381 Councilman Dart made a **Motion to adjourn** to Closed Session to discuss legal matters.

382 Councilman Davis **Seconded** and the motion **Passed** all in favor at 9:09 p.m.

383

384 **ADOPTED:**

385

386

Angie Warner, Deputy Recorder



Memo

To: Mayor and City Council
From: Chris Thompson P.E., Public Works Director/City Engineer
Date: June 24, 2013
Re: Agreement with East Bench Irrigation Company for the Powerhouse Road Diversion

Staff Report

This is a modification to an agreement already signed earlier this year. We have added two points of diversion to match our actual change application and included the understanding that the city intends to take Strawberry Water from the East Bench Canal Company at the new Powerhouse Road Diversion.

We recommend that the city council approve this agreement with East Bench Irrigation Company.

Attached: agreement



AGREEMENT

This agreement is made and entered into the _____ day of July, 2013, by and between SPANISH FORK CITY, (City) and EAST BENCH IRRIGATION COMPANY, (Company).

RECITALS:

WHEREAS, City desires to be able to divert water based on City's shareholder interest in Company at two additional points of diversion, Strawberry Power Diversion Dam and Weeping Rock Diversion; and

WHEREAS, the parties have resolved Company's concerns surrounding the use of Company water as proposed by the City.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. Company will not object or file any type of protest to change applications for Spanish Fork River water to add the following points of diversion: Darger Springs Collection Box, Cold Springs Collection Box, Strawberry Power Diversion Dam, and Weeping Rock Diversion as points of diversion with the Southfield/Salem Canal Ditch Powerhouse Rd diversion as a point of rediversion.

2. Company hereby authorizes Strawberry Water Users Association to allow City to take its Strawberry water (both its owned shares and the use rights it has in shares under dedication agreements) from the Power Diversion Dam and/or Weeping Rock Diversion structure.

3. City agrees to remain a shareholder in Company and be obligated to pay Company assessments in accordance with Company articles of incorporation, by-laws, and rules and regulations.

4. City will prepare all agreements and water rights filings required to add these points of diversion.

5. The accounting and delivery requests for the water will be the same as heretofore, through Company.

6. Any additional maintenance to Company facilities, located at these diversion points, required because of the addition of the two diversions will be reimbursed to Company by City. Company will be required to show the amount of additional cost, plus the cost was incurred by reason of the two added diversions.

7. Allocation of yearly water issue and quantities shall be the same for all stock regardless of point of diversion, including seepage loss and carriage water.

8. It is mutually understood that the river stock recharges the strawberry pool on high water years. In the event that City uses more river water on a high year than issued by the company while the tunnel is open, that excess will be deducted from the next season balance unless other arrangements are made mutually agreeable by Company and City. River water used before and after the tunnel closing shall be billed at the regular company rate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SPANISH FORK CITY by:

G. WAYNE ANDERSEN, Mayor

Attest:

KENT R. CLARK, City Recorder

EAST BENCH IRRIGATION COMPANY by:

Fred Vincent
FRED VINCENT, President

Attest:

J. Merrill Hallam
J. MERRILL HALLAM, Secretary



Memo

To: Mayor and City Council
From: Chris Thompson P.E., Public Works Director/City Engineer
Date: June 24, 2013
Re: Professional Services Agreement, Atlas Engineering

Staff Report

We need to hire Atlas Engineering to do a small amount of engineering work along Mill Road. Before we do so we would like to have our standard professional services agreement in place with them. This will allow us to approve work with Atlas Engineering according to our purchasing policy and budget. We recommend that the City Council approve this agreement with Atlas Engineering.

Attached: agreement



**MASTER AGREEMENT FOR PROFESSIONAL SERVICES
ATLAS ENGINEERING**

This AGREEMENT, dated July 2, 2013, is made and entered into between Spanish Fork City (herein called OWNER) and Atlas Engineering, a Utah Corporation (herein called ENGINEER). From time to time OWNER may request that ENGINEER provide professional services for Specific Projects. Each work engagement will be documented by an individual Task Order. This AGREEMENT sets forth the general terms and conditions that will apply to all Task Orders duly executed under this AGREEMENT.

In consideration of the mutual promises herein contained, ENGINEER and OWNER agree as follows:

1. TERM AND AUTHORIZATION TO PROCEED

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 8 years from the Effective Date of the AGREEMENT.
- B. This AGREEMENT may be extended or renewed by the Parties, with or without changes, by written instrument.
- C. Execution of individual Task Orders by OWNER will be authorization for the ENGINEER to proceed with the authorized work associated with the Specific Projects (PROJECT), pursuant to the terms and conditions of this AGREEMENT.

2. ENGINEER'S SERVICES

- A. The ENGINEER agrees to provide engineering services to the OWNER on an as needed basis. The scope of services, period of performance, and basis of ENGINEER's compensation are to be defined in individual Task Orders. Each duly executed Task Order shall be subject to the terms and conditions of this AGREEMENT. A standard task order form is included as Attachment A. The ENGINEER will perform the defined services in a professional manner using the degree of care and skill that is normally employed by professional engineers or consultants on similar projects of equal complexity.
- B. The relationship of the ENGINEER to the OWNER is that of an independent contractor and nothing in this AGREEMENT or the attachments hereto, creates any other relationship. As an independent contractor, the ENGINEER shall have the sole responsibility for paying taxes, workers compensation, employee benefits (if any), and all similar obligations.

- C. This AGREEMENT is not a commitment by Owner to Engineer to issue any Task Orders.

3. COMPENSATION AND PAYMENT

- A. OWNER and ENGINEER shall agree on the basis of compensation for each Task Order. If hourly rates are to be used as the basis of compensation, those rates will be defined in each Task Order. Hourly rates are updated on January 1 of each calendar year by the ENGINEER. Updated hourly rates will be used for all task orders. Additionally, ENGINEER will be reimbursed for actual costs and expenses incurred in performance of the PROJECT.
- B. Invoicing will occur following the last Friday of each month. Payments shall be due within 30 days of receipt of the invoice.
- C. A service charge of 10 percent will be applied to expenses incurred in performance of the PROJECT. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be reimbursed to ENGINEER.
- D. An interest rate of 1.5% per month will be applied to all invoices that are not paid in full after 30 days following the invoice date. Payments will be applied to the outstanding interest first and then to the principal.
- E. The ENGINEER may discontinue work on the PROJECT by issuing the OWNER a written seven-day notice if full payment for an invoice is not received within 60 days of the date of the invoice. Suspension of work will continue until full payment is made for all outstanding invoices including interest. The ENGINEER accepts no liability for damages or delays that result from its suspension of work. The OWNER may not use information or work product provided by the ENGINEER until full payment is made including applicable interest.

4. INSURANCE

- A. The ENGINEER will maintain insurance coverage throughout the term of the AGREEMENT. Insurance coverage will include:
 - 1) Worker's Compensation
 - State Statutory
 - Employer's Liability \$100,000
 - 2) Comprehensive General Liability
 - Bodily Injury and Property Damage \$1,000,000
 - Combined Single Limit \$1,000,000

3) Automobile Liability Combined Single Limit	\$1,000,000
4) Professional Liability	\$1,000,000.

5. LIMITATION OF LIABILITY

- A. The ENGINEER shall not be liable for damages or delays resulting from actions or inaction of a third party that is not under the direct control of the ENGINEER, such as government agencies that have review and permit authority.
- B. The OWNER shall defend, indemnify and hold harmless the ENGINEER, its subcontractors, agents and employees for all liability, other than that caused by the negligent acts, errors, or omissions of the ENGINEER.
- C. The OWNER shall defend, indemnify and hold harmless the ENGINEER, its subcontractors, agents and employees for all liability resulting from construction of the PROJECT, if the ENGINEER is not retained to perform construction phase services on the PROJECT.
- D. To the fullest extent permitted by law, and notwithstanding any other provision of this AGREEMENT, the total liability, in the aggregate, of the ENGINEER and the ENGINEER's officers, directors, partners, employees and subconsultants, and any of them, to OWNER, for any and all claims, losses, costs, or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to a Specific Project or Task Order, or this AGREEMENT, from any cause or causes shall not exceed the total compensation received by the ENGINEER under this AGREEMENT, or the total amount of \$1,000,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- E. The ENGINEER is not responsible for delays or damages caused by acts of God such as floods or earthquakes, or other circumstances beyond control of ENGINEER.
- F. The ENGINEER, its subcontractors, agents and employees shall not be liable for consequential damages or indirect liability from a third party. The OWNER will defend, indemnify and hold harmless the ENGINEER, its subcontractors and agents from such an occurrence.

6. TERMINATION

- A. This AGREEMENT may be terminated by either party in the event that the other party has not performed any material covenant or has otherwise breached any material term of this AGREEMENT (i) upon receipt of written notice thereof if the nonperformance or breach is incapable of cure, or (ii) upon the expiration of ten (10) calendar days (or such additional cure period as the non-defaulting party may authorize) after receipt of written notice thereof if the nonperformance or breach is capable of cure and has not been cured.
- B. Upon termination, ENGINEER is entitled to full compensation as computed under this AGREEMENT for the work completed
- C. Either party may terminate this AGREEMENT without cause at any time upon thirty (30) days prior written notice to the other party.

7. ASSIGNMENT

This AGREEMENT shall be binding on the heirs, successors and assignees of the parties. This AGREEMENT may not be assigned, transferred, conveyed, or encumbered, whether voluntarily or by operation of law, by either party without the prior written consent of the other party. Unauthorized assignment is void and nonbinding.

8. OPINION OF PROBABLE CONSTRUCTION COST

Opinions of probable construction cost prepared by the ENGINEER are based on its experience with past projects of similar construction. It is understood that the ENGINEER has no control over economical factors or unknown conditions that may have a significant impact on actual PROJECT cost. The ENGINEER does not guarantee its cost estimates and accepts no liability for problems created by the difference in actual costs and opinions of probable construction cost.

9. DOCUMENTS

Contract documents, calculations, electronic information and survey information created by the ENGINEER as “instruments of service” are the property of the ENGINEER. OWNER’s use of the documents and other “instruments of service” on any other project is prohibited and the ENGINEER accepts no liability for such action.

10. CONSTRUCTION PHASE SERVICES

- A. The ENGINEER has based its cost to provide construction phase services, on the ENGINEER, its employees, subcontractors and agents being named

as additional insured under any construction contractor(s) (herein CONTRACTOR) General Liability and Builder's All Risk Insurance. The OWNER shall include in any contract with the CONTRACTOR a statement to defend, indemnify and hold harmless the ENGINEER; its employees, subcontractors and agents for any and all action resulting from construction activity.

- B. Observations performed by the ENGINEER or its agents are intended to assist the OWNER to obtain the best project possible and not to assume the CONTRACTOR's responsibility to comply with the requirements of any contract documents. The parties to this AGREEMENT recognize that the CONTRACTOR has sole responsibility to ensure that any contract requirements are met. The CONTRACTOR is responsible for all methods used to complete the PROJECT and is responsible to follow all applicable safety procedures.
- C. "Record" documents prepared by the ENGINEER are based on information supplied by the CONTRACTOR and its agents and are only as accurate as the information provided by the CONTRACTOR. The ENGINEER does not assume responsibility for the accuracy of the "record" documents.

11. ADHERENCE TO APPLICABLE LAWS

- A. The laws of the State of Utah shall govern all aspects of this AGREEMENT.
- B. The ENGINEER shall comply with the applicable requirements of the Equal Employment Opportunity Laws, 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 710.450(b), and the Fair Labor Standards Act.

12. HAZARDOUS WASTE

OWNER will indemnify ENGINEER from all claims, damages, losses, and costs, including attorney's fees, arising out of or relating to the presence, discharge, release, or escape of hazardous substances or contaminants from the PROJECT. OWNER recognizes that ENGINEER assumes no risk and/or liability for waste or the waste site.

13. ATTORNEY'S FEES

In the event any action or proceeding is brought by any party against any other party under this AGREEMENT, the prevailing party shall be entitled to recover attorney's fees and costs in such amount as the court may adjudge reasonable.

14. SEVERABILITY

The provisions of this AGREEMENT are severable, and should any provision hereof be void, overly broad or unenforceable, such void, overly broad or unenforceable provision shall not affect any other portion or provision of this AGREEMENT.

15. WAIVER

Any waiver by any party hereto of any breach of any kind or character whatsoever by any other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this AGREEMENT on the part of the other party.

16. NOTICES

All notices, demands, and requests required or permitted to be given hereunder shall be in writing and shall be deemed duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to the following:

ENGINEER: Scott Peterson, P.E.
 Atlas Engineering LLC
 507 North 1500 West
 Orem, Utah 84057

OWNER: Chris Thompson, P.E.
 Public Works Director/City Engineer
 Spanish Fork City
 40 South Main Street
 Spanish Fork, Utah 84660

Either party shall have the right to specify in writing another address to which subsequent notices to such party shall be given. Any notice given hereunder shall be deemed to have been given as of the date delivered or mailed to the other party.

17. ATTACHMENTS

The following attachments are included as part of the AGREEMENT:

Attachment A – Standard Task Order Form
Task Orders, as awarded.

This AGREEMENT constitutes the entire understanding and AGREEMENT between the parties and supersedes all prior AGREEMENTS and understandings, whether written or oral, and may only be changed by written amendment executed by both parties.

Approved for Spanish Fork City

Accepted for Atlas Engineering

By _____
Title _____
Date _____

By _____
Title _____
Date _____

ATTEST:

KENT R. CLARK, Recorder



Memo

To: Mayor and City Council
From: Chris Thompson P.E., Public Works Director/City Engineer
Date: June 24, 2013
Re: Grade Crossing Improvement Agreement, Plaza Center Dr 2300 North

Staff Report

The extension of Canyon Creek Parkway north to 2700 North requires a railroad crossing at 2300 North. This agreement is between the city and UTA to make the improvements related to the railroad crossing. We recommend that the City Council approve this agreement with UTA.

Attached: agreement



GRADE CROSSING IMPROVEMENT AGREEMENT

UTA Contract # TI/U/2376/G
Mile Post Location: 2.0
Spanish Fork, Utah

THIS GRADE CROSSING IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2013 (to be dated after the final executing signature by UTA), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Spanish Fork City Corporation, a Utah Corporation, with a principal address of 40 South Main Street Spanish Fork, UT 84660 (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the entirety of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system; and

WHEREAS, Licensee would like to close a private farm crossing and replace it in another location with a quiet zone compliant at-grade new public roadway approximately 350 feet south of the current private crossing; and

WHEREAS, Licensee intends to make crossing improvements to that new at-grade crossing located on the Right of Way at approximately 1100 E 2300 N Spanish Fork, Utah (approximate Mile Post 2.0) which will consist of installing concrete panels, crossing arms, curb, gutter, sidewalk, and asphalt (the "Crossing Improvements") which will cross the Right of Way; and

WHEREAS, Union Pacific Railroad ("UP") operates and maintains a portion of this railroad corridor and Licensee must obtain permission from UP before any Crossing Improvements are constructed; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Crossing Improvements.

ROADWAY AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

ARTICLE I INCORPORATED TERMS AND DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 "Construct" and "Construction" mean the initial installation of the Crossing Improvements in or otherwise materially affecting the Right of Way, as well as any subsequent

reconstruction, relocation, restoration or rehabilitation of the Crossing Improvements in or otherwise materially affecting the Right of Way.

1.2 "Crossing Improvements" means the installation of concrete panels, crossing arms, curb, gutter, sidewalk, and asphalt to be performed by Licensee pursuant to this Agreement and located on the surface of the Right of Way at Milepost Number 2.0 (Latitude 40.170233, Longitude -111.63749) of the Tintic Line in Spanish Fork City, Utah. The term "Crossing Improvements" shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Crossing Improvements that are authorized and approved by UTA pursuant to this Agreement (unless they are the subject of a separate agreement that does not incorporate the terms hereof).

1.3 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at **1-888-UPRR-COP (888-877-7267)**. UTA may change the designated Emergency Access Manager from time to time by delivery of notice in accordance with Article XVI of this Agreement.

1.4 "Freight Operator" means any entity using the Right of Way, or any portion thereof, to provide common carrier freight operations.

1.5 "Governmental Authority" means any federal, state, municipal, local or other division of government, or any agency thereof, having or asserting jurisdiction with respect to any matter related to this Agreement.

1.6 "Hazardous Materials" mean any materials or substances: (i) which are present in quantities and in forms which require investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 (23) and (24)) under any applicable federal, state or local environmental law, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereof, previously enforced or subsequently amended (each hereafter an "Environmental Law"); or (ii) which are defined as "hazardous wastes," "hazardous substances," "pollutants" or "contaminants" under any Environmental Law.

1.7 "Losses" mean any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs resulting from: (i) loss of or damage to the property of any Party or Third Person; (ii) death or personal injury to the agents of any Party or to any Third Person; or (iii) the cleanup or other requirements regarding any incident involving Hazardous Materials.

1.8 "Maintain" and "Maintenance" mean the performance of any repair, restoration, rehabilitation, refurbishment, retrofitting, inspection, monitoring, observation, testing, or similar work with respect to the Crossing Improvements in or otherwise materially affecting the Right of Way.

1.9 "Master Interlocal Agreement" means that certain Master Interlocal Agreement Regarding Fixed Guideway Systems Located Within Railroad Corridors, effective February 13, 2004, entered by and among UTA and the various municipalities and counties within which UTA's rights of way are situated.

1.10 "Party" and "Parties" mean UTA or Licensee, and UTA and Licensee, respectively.

1.11 "Third Person" means any individual, corporation or legal entity other than UTA and Licensee.

1.12 "Track Improvements" mean any and all tracks, rails, ties, switches, frogs, end of track barricades or bumpers and other barricades or bumpers, derail devices, tie plates, spikes, wires, fastenings and any other appurtenances related thereto, drainage structures, grading, ballast, subgrade stabilization, crossings, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, communications systems or facilities, catenary systems and wires, poles and all other operating and non-operating appurtenances located within the Right of Way.

1.13 "Utility" and "Utilities" mean and include all properties, facilities, utilities, crossings, encroachments, lines and similar appurtenances located within the Right of Way by permissive or prescriptive authority including, but not limited to, pipelines, tubelines, water and gas lines or mains, electrical conduits, ditches and other drainage facilities, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all similar installations.

1.14 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Crossing Improvements within the Right of Way is permissible. UTA may, at any time and at UTA's sole discretion, determine that the Work Window shall not be concurrent with any passenger operations within the Right of Way.

ARTICLE II GRANT OF LICENSE AND REAL ESTATE USAGE CHARGE

2.1 UTA customarily assesses a standard administrative fee reflecting the clerical, administrative and handling expense incurred in connection with the processing of this Agreement. The standard administrative fee has been waived consistent with the provisions of the Master Interlocal Agreement.

2.2 In consideration of the covenants and agreements to be kept, observed and performed by Licensee hereunder, UTA hereby grants Licensee a license to Construct and Maintain the Crossing Improvements in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 12/06/2012, approval date 12/11/2012, and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Licensee agrees to remove the private farm crossing at Licensee's expense.

2.4 This Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

ARTICLE III ACCESS TO THE RIGHT OF WAY

3.1 Except in the event of an emergency (as provided in Section 3.2 below), Licensee shall request permission from UTA at least ten days (or such shorter period as may be approved by UTA) prior to performing any Construction or Maintenance in or otherwise materially affecting the Right of Way. Licensee's request to access the Right of Way shall be specific as to the time, date and activities for which Licensee seeks permission. The request shall also include a summary of the method and manner in which the Construction or Maintenance will be performed. As part of the application process, UTA may require Licensee (and its contractors or other agents seeking access to the Right of Way) to attend any track access coordination meetings, safety training or other instruction as may be deemed necessary by UTA. Once granted, UTA's permission to enter the Right of Way shall be formalized in writing and delivered to Licensee. After permission has been granted, Licensee shall comply with all conditions, instructions and requirements of such permit and with all instructions or directions given by UTA including, if required, daily telephone notification to the applicable rail dispatch center prior to each entry into the Right of Way. All contact with UTA shall be coordinated through the person designated by UTA from time to time as set forth in Article XVI of this Agreement. Provided that Licensee complies with the provisions of this Section, UTA agrees not to unreasonably withhold, condition, or delay its approval of Licensee's request.

3.2 Licensee shall have the right to enter the Right of Way in the event of an emergency to make repairs necessary to protect against imminent and serious injury or damage to persons or property. Licensee shall take all precautions necessary to ensure that such emergency entry does not compromise the safety of any operations conducted in the Right of Way by UTA or Freight Operator. **Licensee must notify the Emergency Access Manager and Union Pacific Railroad of the emergency access and the work being performed prior to entering the Right of Way.**

ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE CROSSING IMPROVEMENTS

4.1 All Construction and Maintenance with respect to the Crossing Improvements shall be performed to the satisfaction of UTA and in accordance with the conceptual, engineering and/or design plans ("Design Plans") previously approved by UTA and attached hereto as Exhibit "A." All Construction and Maintenance with respect to the Crossing Improvements shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. **The initial Construction of the Crossing Improvements shall not be performed by the Licensee.** UTA may impose requirements in addition to or more stringent than industry or legal standards if UTA deems such requirements necessary for the safety of operations conducted in the Right of Way. UTA may also require additional fabrication methods, staging requirements or other precautions. All Construction and Maintenance with respect to the Crossing Improvements shall be performed during the designated Work Window. UTA shall have the right, but not the obligation, to observe any and all work performed in or otherwise materially affecting the Right of Way in connection with the Crossing Improvements to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Crossing Improvements, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. Licensee shall submit to UTA plans setting out the method and manner of handling all work to be performed under the Track Improvements including, without limitation, the shoring and cribbing, if any, required to protect the operations of UTA, the Freight

Operator or the owner of any adjacent tracks. Licensee shall not proceed with any such work until Licensee's proposed methods have been approved by UTA.

4.2 Various Utilities exist on, over and under the surface of the Right of Way. Prior to commencing any Construction or Maintenance with respect to the Crossing Improvements, Licensee shall properly investigate and determine the location of all such Utilities. In addition to the required investigation, Licensee shall have all Utilities in the area of the Crossing Improvements "blue-staked" and clearly marked prior to any excavation. Licensee shall make arrangements for the protection of all Utilities and shall commence no excavation, boring or other penetration in the Right of Way until all such protection has been accomplished.

4.3 Fiber optic cable systems may be buried in the Right of Way. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone UNION PACIFIC RAILROAD COMPANY during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried near the location of the Crossing Improvements. If so, Licensee will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, make arrangements for relocation or other protection of the fiber optic cable. Licensee shall not commence any work until all such protection and/or relocation (if applicable) have been accomplished. In addition to other indemnity provisions in this Agreement, Licensee shall indemnify, defend and hold the UTA Indemnitees (as defined in Section 8.1 of this Agreement) harmless from and against all Losses arising out of any act or omission of Licensee, its contractors, agents and/or employees, that causes or contributes to: (a) any damage to or destruction of any telecommunications system in the Right of Way; and/or (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees in the Right of Way. Licensee shall not have or seek recourse against UTA for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using UTA's property or a customer or user of services of the fiber optic cable on UTA's property.

4.4 Licensee shall be solely responsible for obtaining any property rights, easements, rights of way or other permission from Third Persons (collectively "Third Person Property Rights") as may be necessary to Construct or Maintain the Crossing Improvements including, without limitation, any needed permission from the owner of any adjacent railroad corridor. Licensee shall also be solely responsible for obtaining any necessary franchises, permits or other necessary approvals from Governmental Authorities (collectively "Approvals"). Licensee agrees to pay any and all costs and expenses that may be asserted against UTA relating to such Third Person Property Rights or Approvals, and to assume any and all liability therefore.

4.5 Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Construction or Maintenance contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety requirements, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform, fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Right of Way.

4.6 Licensee shall Construct and Maintain the Crossing Improvements in compliance with all requirements imposed by any Governmental Authority including, without limitation, the requirements of the Federal Railroad Administration, the Occupational Safety and Health

Administration and the Utah Department of Transportation. Licensee shall also Construct and Maintain the Crossing Improvements in compliance with all applicable environmental laws. Licensee shall take all suitable precautions to prevent any interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If the Crossing Improvements for any reason causes interference with the operation of Track Improvements or any other UTA or Third Person installations or facilities, Licensee shall, upon notification by UTA and at Licensee's sole cost and expense, take such action as may be necessary to eliminate the interference including, without limitation, the removal of the Crossing Improvements.

4.7 Upon completion of any Construction or Maintenance relating to the Crossing Improvements, Licensee shall restore the surface of the Right of Way to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Licensee disturbed or removed from the Right of Way.

4.8 If a contractor is to perform any Construction or Maintenance contemplated in this Agreement, then the Licensee shall cause its contractor to comply with all applicable provisions of this Agreement. Additionally, Licensee shall require its contractor to execute UTA's form Contractor's Right of Entry Agreement (the "Contractor Agreement"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Crossing Improvements are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE V
CONSTRUCTION OBSERVATION BY UTA – LICENSEE TO BEAR ALL COSTS

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, flaggers or other persons are required given the nature of the Construction or Maintenance to be performed, UTA may, at its sole discretion, provide such personnel and Licensee shall, within 30 days, reimburse UTA for the reasonable costs thereby incurred.

ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO CROSSING IMPROVEMENTS

Licensee shall be solely responsible for any and all costs incurred with respect to any Construction, Maintenance or other work related to the Crossing Improvements. Such costs shall include, without limitation, the cost of any modifications to UTA's Track Improvements and other facilities that may be necessary to accommodate or facilitate the Crossing Improvements.

ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF CROSSING IMPROVEMENTS

7.1 The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use the Right of Way, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing Track Improvements upon, along, above, or across any or all parts of the Right of Way and other UTA property, all or any of which may be freely done at any time or times by UTA without liability to Licensee for compensation or damages. The grant of license for the

Crossing Improvements is made without covenants of title or quiet enjoyment. UTA makes no warranties, either express or implied, regarding the nature, extent or status of its title to the Right of Way or regarding the existence or nonexistence of Third Person rights which may be superior to the license granted pursuant to this Agreement.

7.2 Licensee shall, at its sole cost and expense and within 30 days after receipt of written notice from UTA, modify the Crossing Improvements, relocate all or any portion of the Crossing Improvements to such new location in the Right of Way as UTA may designate, or (if neither modification nor relocation is practicable) remove the Crossing Improvements entirely from the Right of Way whenever, in furtherance of its needs and requirements, UTA shall find such action necessary or desirable. All the terms, conditions and stipulations herein expressed with reference to the Crossing Improvements on UTA's property in the location described herein shall, so far as the Crossing Improvements remains on UTA property, apply to the Crossing Improvements as modified or relocated pursuant to this Section. Licensee shall not be entitled to any damages or other compensation as the result of UTA's exercise of its rights under this paragraph. UTA agrees to exercise its rights under this Section in good faith.

7.3 The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to Third Parties by UTA, or its predecessors in interest, and the right of UTA to renew and extend the same.

ARTICLE VIII INDEMNITY AND RELEASE

8.1 As additional consideration for this Agreement, Licensee agrees to protect, defend, release, indemnify and hold harmless UTA, and any affiliates, successors, contractors, officers, directors, agents and employees of UTA (the "UTA Indemnitees") from and against any and all Losses proximately caused by: (a) the prosecution of any work contemplated by this Agreement by Licensee, or any employees, principals, contractors or agents of Licensee, including, without limitation, the Construction or Maintenance of the Crossing Improvements, or any portion thereof; (b) the presence, operation or use of the Crossing Improvements or any portion thereof; or (c) Licensee's breach of any provision of this Agreement.

8.2 Licensee acknowledges that the Right of Way may be subject to prospective purchaser agreements and covenants not to sue that UTA has entered with the Utah Department of Environmental Quality and the United States Environmental Protection Agency. Pursuant to such agreements, UTA is required to characterize any excavated soil that appears to contain (or has the potential to contain) Hazardous Materials and to handle and dispose of any such soil in compliance with applicable state and federal laws. Under these agreements, UTA is not required to excavate any soil except as required for its rail construction activities within its Right of Way. Accordingly, any excavation contemplated in this Agreement exposes UTA to potential environmental liability that would not otherwise be present. As consideration for the rights granted to Licensee hereunder, Licensee agrees to assume all potential liability and responsibility for, and to indemnify and hold UTA harmless with respect to, any Losses related to the characterization and removal of any Hazardous Materials discovered during the performance of any Construction or Maintenance. Licensee agrees to perform any such characterization and removal in full compliance with all applicable state and federal environmental laws.

8.3 Licensee hereby releases UTA from, and agrees not to seek recourse against UTA with respect to, any claims, damages, fees, expenses or other losses proximately caused by

Third Persons including, without limitation, Third Persons having licenses or other interests in the Right of Way.

8.4 The provisions of this Article shall survive the termination of this Agreement.

ARTICLE IX CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES

9.1 Licensee shall fully pay for all materials joined or affixed to the Right of Way in connection with the Crossing Improvements, and for all labor performed with respect to the Crossing Improvements. Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

9.2 Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Crossing Improvements to prevent the same from becoming a charge or lien upon the Right of Way and so that any taxes, charges and assessments levied upon or with respect to such property shall not be increased because of the Crossing Improvements, appliances, or fixtures connected therewith.

ARTICLE X TERMINATION

10.1 UTA may terminate this Agreement if: (a) Licensee ceases to use the Crossing Improvements in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 30 days after UTA delivers written notice to Licensee identifying the nature of Licensee's breach of this Agreement; provided, however that if the nature of Licensee's breach is such that it cannot be cured within such 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Crossing Improvements from the Right of Way.

10.2 In addition to the provisions of Section 10.1, either Party may terminate this Agreement upon delivery of 360 days written notice to the other Party, with or without cause.

10.3 Termination of this Agreement for any reason shall not affect any of the rights, obligations or liabilities that have accrued prior to or concurrent with such termination.

ARTICLE XI INSURANCE

11.1 During the life of this Agreement, Licensee shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Licensee will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number TI/U/2376/G issued by its insurance carrier confirming the existence of such insurance and indicating that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or

associated with the pipeline crossing located on railroad right of way at Mile Post 2.0 at or near Spanish Fork, Utah County, Utah”

11.2 Failure to maintain insurance as required shall entitle, but not require UTA to terminate this License immediately.

11.3 If Licensee is a public entity subject to any applicable statutory governmental immunity laws, the limits of insurance described in Exhibit “B” shall be the limits the Licensee then has in effect or that are required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of UTA. Licensee does not waive any of its rights of entitlements to governmental immunity and limitations on liability to Third Persons under the Utah Governmental Immunity Act.

11.4 Licensee hereby acknowledges that it has reviewed the requirements of Exhibit “B”, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

ARTICLE XII REMOVAL OF CROSSING IMPROVEMENTS UPON TERMINATION OF AGREEMENT

Upon termination of this Agreement howsoever, Licensee shall, at Licensee’s sole cost and expense, remove the Crossing Improvements from the Right of Way and shall restore, to the satisfaction of UTA, such portions of the Right of Way to at least as good a condition as such were in at the time that Licensee first entered the Right of Way. If Licensee fails to do the foregoing within a reasonable time, UTA may, at its option, perform such removal and restoration work at the expense of Licensee. Licensee shall reimburse UTA for the costs incurred in any restoration or removal work performed under this Article within 30 days after receipt of the bill therefore. In the event UTA removes the Crossing Improvements pursuant to this Article, UTA shall in no manner be liable to the Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any other right of action, including the recovery of damages, that UTA may have against the Licensee. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE XIII ASSIGNMENT

Licensee may not assign this Agreement, in whole or in part, or any rights herein granted, without UTA’s written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Licensee may assign this Agreement and its rights hereunder as part of a sale to any entity that: (a) is a corporate parent to Licensee; (b) is merged or consolidated with Licensee; or (c) that purchases substantially all of the assets or capital stock of Licensee provided, however, that in any of the above instances such entity seeking an assignment under this Article must, as a condition to such assignment, assume all terms and conditions of this Agreement without limitation.

**ARTICLE XIV
SUCCESSORS AND ASSIGNS**

Subject to the provisions of Article XIII, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns.

**ARTICLE XV
SEVERABILITY**

This Agreement is executed by the Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

**ARTICLE XVI
NOTICES**

Except as specifically provided elsewhere in this Agreement, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

If to UTA:

Utah Transit Authority
Attn: Property Management
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Spanish Fork City Corp.
Attn: City Manager
40 S Main Street
Spanish Fork City, UT 84660

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair any future ability of UTA to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by UTA, nor the exercise or failure to exercise such right, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

**ARTICLE XVIII
ENTIRE AGREEMENT - COUNTERPARTS**

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**ARTICLE XIX
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Salt Lake County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

**ARTICLE XX
SPECIAL PROVISIONS**

Special provisions, if any, are included in the attached Exhibit "C" (Exhibit "C" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

Space Intentionally Left Blank.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTA Engineering

UTA Legal

UTAH TRANSIT AUTHORITY

By: _____
Paul Edwards
Senior Program Manager

By: _____
Mailia Lauto'o
Manager, Property Administration

LICENSEE

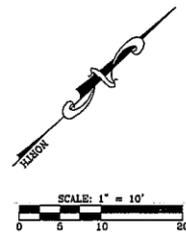
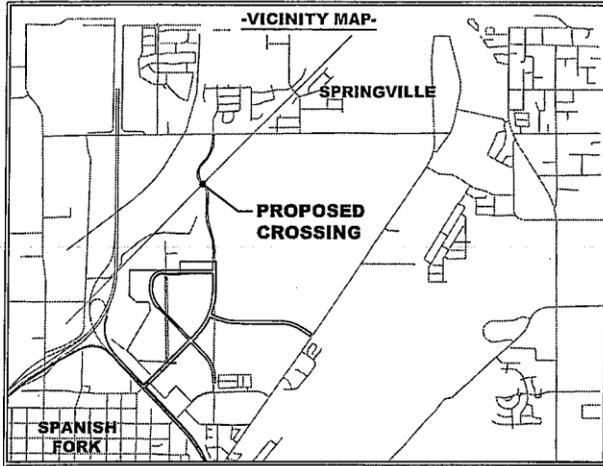
By: _____
G. Wayne Andersen
Mayor of Spanish Fork City

ATTEST:

By: _____
Kent R. Clark
City Recorder

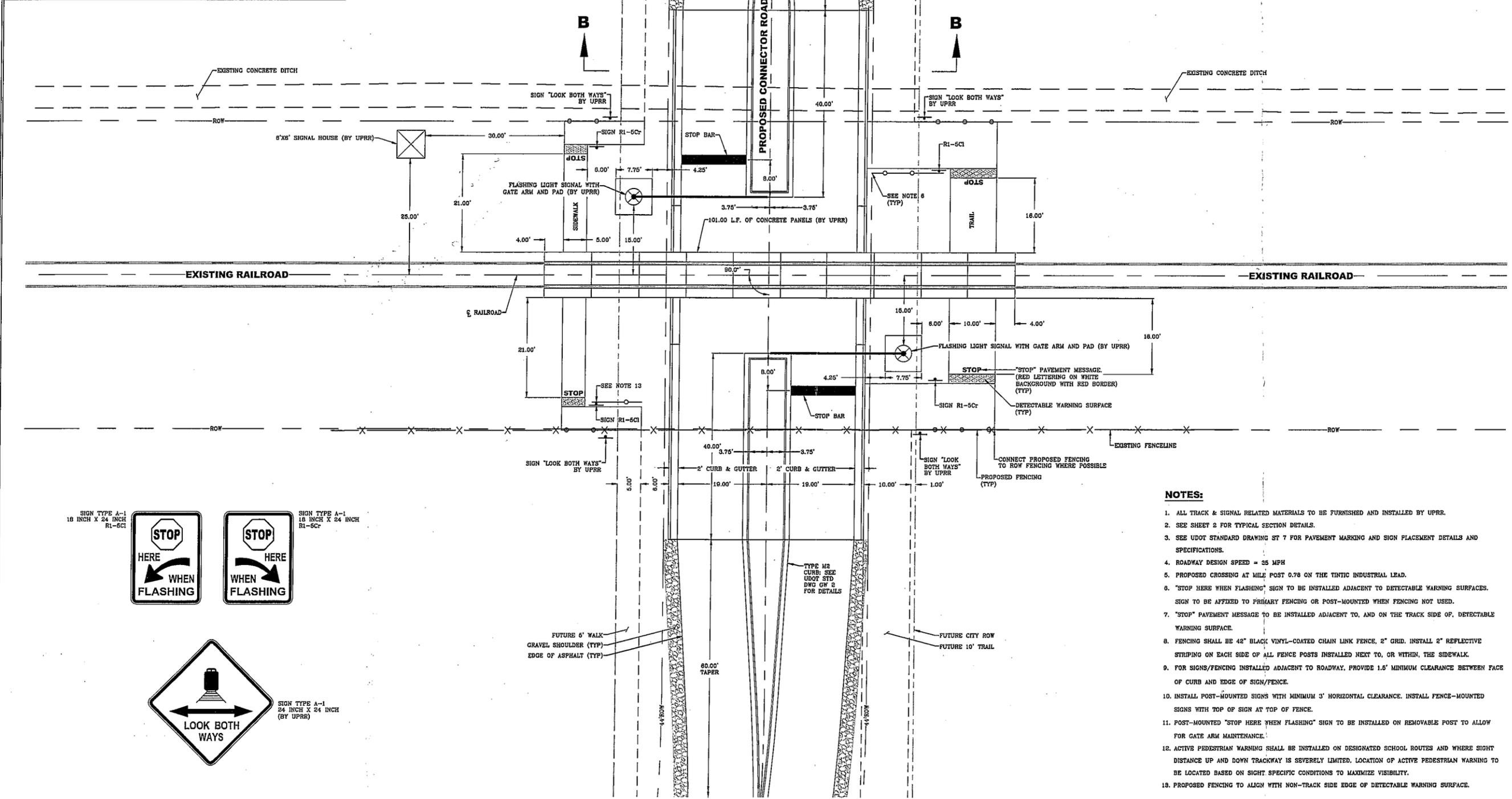
EXHIBIT "A"
DESIGN PLANS

[Insert engineering drawings showing the proposed crossing including proposed construction methods, shoring and cribbing requirements and milepost location]



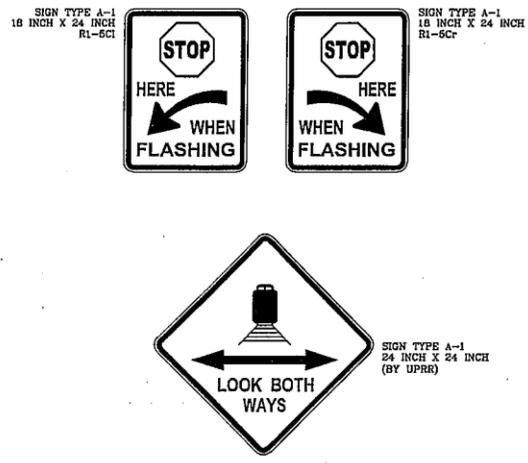
LEI
 ENGINEERS
 SURVEYORS
 PLANNERS

3302 N. Main Street
 Spanish Fork, UT 84660
 Phone: 801.798.0555
 Fax: 801.798.9393
 office@lei-eng.com
 www.lei-eng.com



NOTES:

- ALL TRACK & SIGNAL RELATED MATERIALS TO BE FURNISHED AND INSTALLED BY UPRR.
- SEE SHEET 2 FOR TYPICAL SECTION DETAILS.
- SEE UDOT STANDARD DRAWING ST 7 FOR PAVEMENT MARKING AND SIGN PLACEMENT DETAILS AND SPECIFICATIONS.
- ROADWAY DESIGN SPEED = 35 MPH
- PROPOSED CROSSING AT MILE POST 0.78 ON THE TINTIC INDUSTRIAL LEAD.
- "STOP HERE WHEN FLASHING" SIGN TO BE INSTALLED ADJACENT TO DETECTABLE WARNING SURFACES. SIGN TO BE AFFIXED TO PRIMARY FENCING OR POST-MOUNTED WHEN FENCING NOT USED.
- "STOP" PAVEMENT MESSAGE TO BE INSTALLED ADJACENT TO, AND ON THE TRACK SIDE OF, DETECTABLE WARNING SURFACE.
- FENCING SHALL BE 42" BLACK VINYL-COATED CHAIN LINK FENCE, 2" GRID. INSTALL 2" REFLECTIVE STRIPING ON EACH SIDE OF ALL FENCE POSTS INSTALLED NEXT TO, OR WITHIN, THE SIDEWALK.
- FOR SIGNS/FENCING INSTALLED ADJACENT TO ROADWAY, PROVIDE 1.5' MINIMUM CLEARANCE BETWEEN FACE OF CURB AND EDGE OF SIGN/FENCE.
- INSTALL POST-MOUNTED SIGNS WITH MINIMUM 3' HORIZONTAL CLEARANCE. INSTALL FENCE-MOUNTED SIGNS WITH TOP OF SIGN AT TOP OF FENCE.
- POST-MOUNTED "STOP HERE WHEN FLASHING" SIGN TO BE INSTALLED ON REMOVABLE POST TO ALLOW FOR GATE ARM MAINTENANCE.
- ACTIVE PEDESTRIAN WARNING SHALL BE INSTALLED ON DESIGNATED SCHOOL ROUTES AND WHERE SIGHT DISTANCE UP AND DOWN TRACKWAY IS SEVERELY LIMITED. LOCATION OF ACTIVE PEDESTRIAN WARNING TO BE LOCATED BASED ON SIGHT SPECIFIC CONDITIONS TO MAXIMIZE VISIBILITY.
- PROPOSED FENCING TO ALIGN WITH NON-TRACK SIDE EDGE OF DETECTABLE WARNING SURFACE.



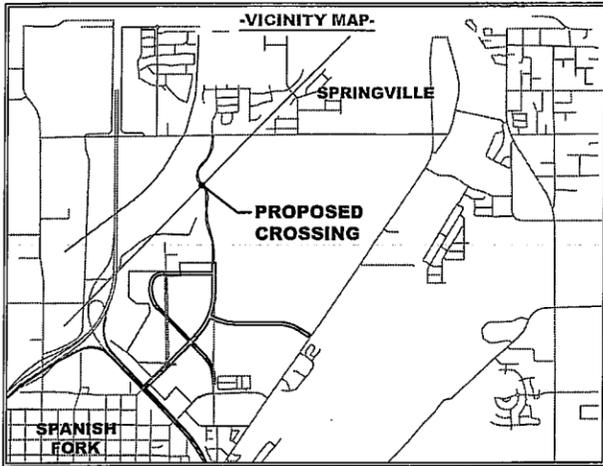
2700 NORTH CONNECTOR
 SPANISH FORK, UTAH
 RAILROAD CROSSING INSTALLATION

REVISIONS	
1.	
2.	
3.	
4.	
5.	

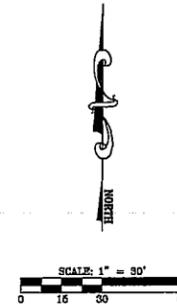
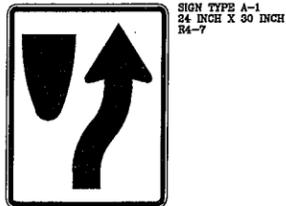
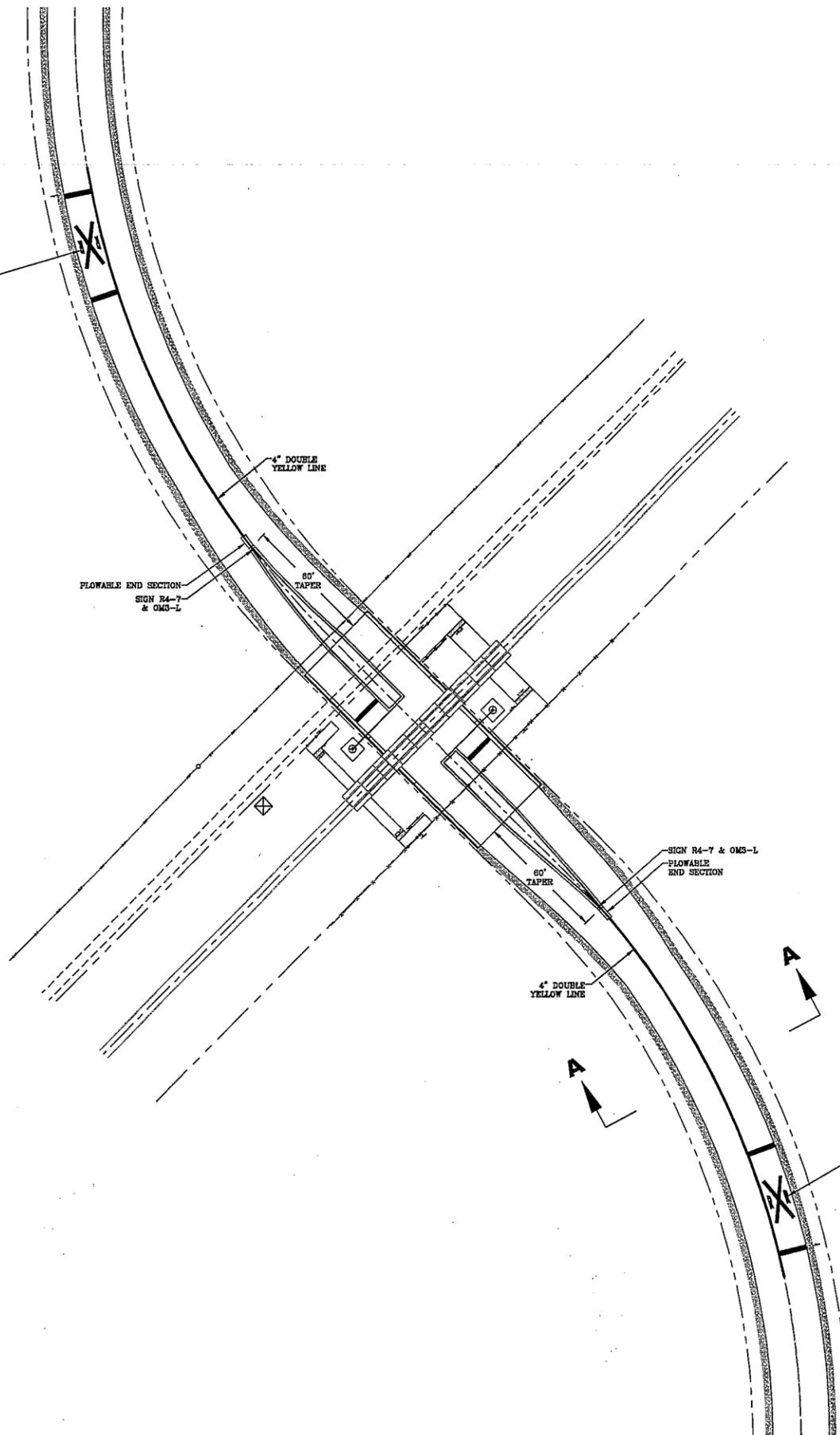
LEI PROJECT #:
 10-0672
 DRAWN BY:
 JSR
 CHECKED BY:
 BTG
 SCALE:
 1" = 10'
 DATE:
 12/06/2012
 SHEET

RR-1

TWS 12/11/12



PAVEMENT MARKING AND SIGNS PER UDOT
STD DWG ST 7, DETAIL ST 7-1, FOR SPACING
TABLE USE SPEED LIMIT OF 35 - 40 MPH.



ENGINEERS
SURVEYORS
PLANNERS

3302 N. Main Street
Spanish Fork, UT 84660
Phone: 801.798.0555
Fax: 801.798.9393
office@lei-eng.com
www.lei-eng.com

2700 NORTH CONNECTOR
SPANISH FORK, UTAH
RAILROAD CROSSING SIGNING AND STRIPING

REVISIONS

1	
2	
3	
4	
5	

LEI PROJECT #

10-0672

DRAWN BY:

JSR

CHECKED BY:

BTG

SCALE:

1" = 30'

DATE:

12/06/2012

SHEET

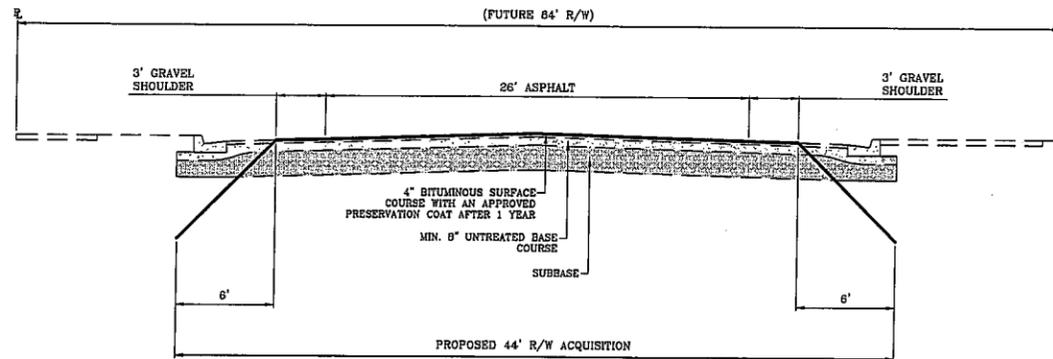
RR-2

TWS 12/11/12

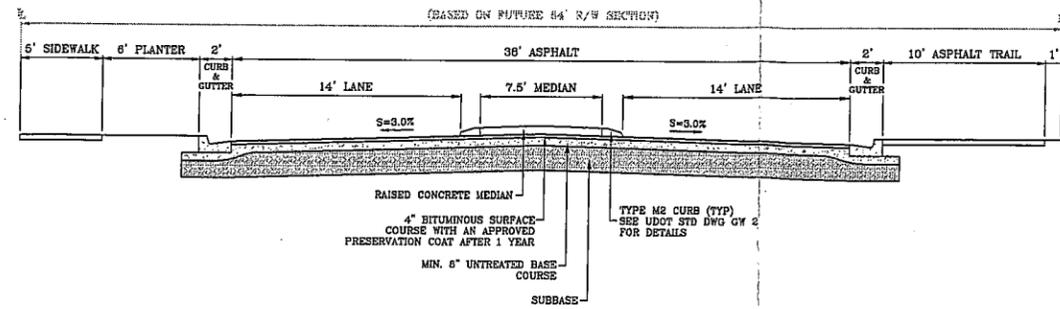


**ENGINEERS
SURVEYORS
PLANNERS**

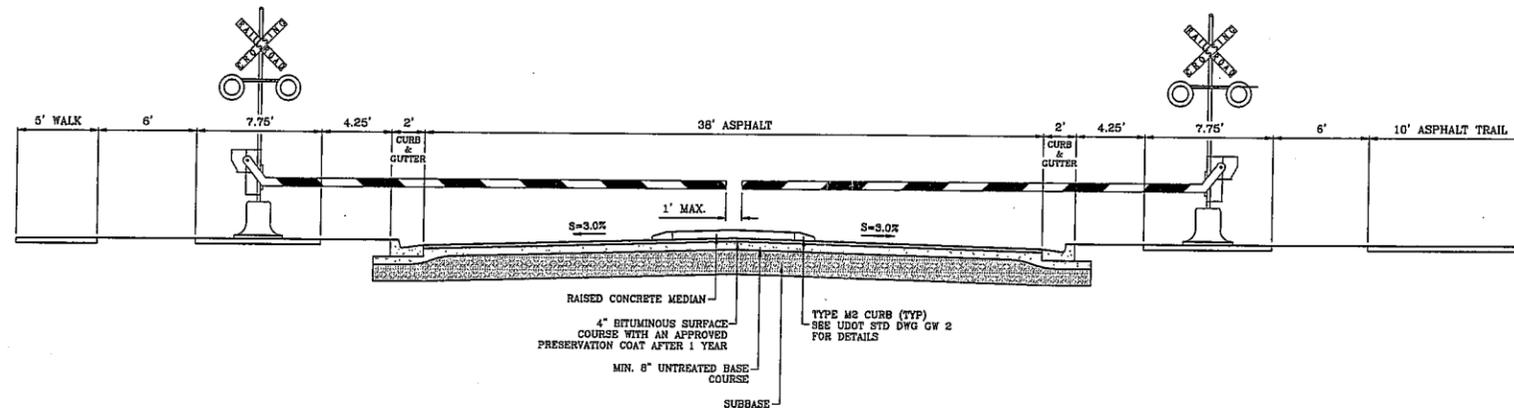
3302 N. Main Street
Spanish Fork, UT 84680
Phone: 801.798.0555
Fax: 801.798.9393
office@lei-eng.com
www.lei-eng.com



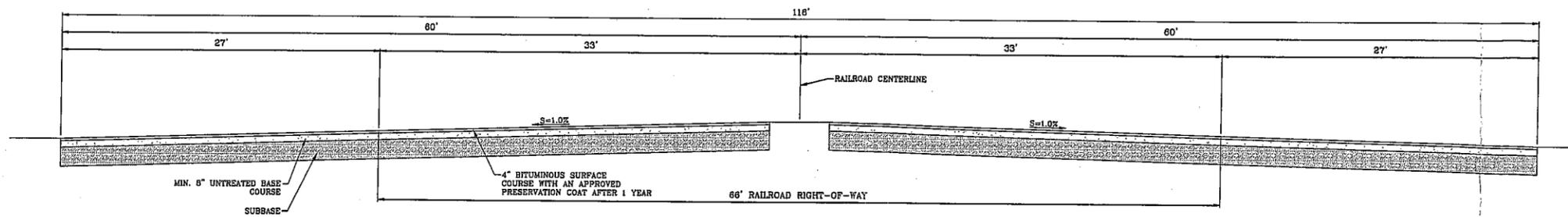
SECTION A-A



SECTION B-B



CROSSING ELEVATION



CROSSING PROFILE

2700 NORTH CONNECTOR
SPANISH FORK, UTAH
RAILROAD CROSSING INSTALLATION

REVISIONS	
1.	
2.	
3.	
4.	
5.	

LEI PROJECT #
10-0672
DRAWN BY:
JSR
CHECKED BY:
BTG
SCALE:
1" = 5'
DATE:
12/06/2012

SHEET

RR-3

Tab 12/1/12

EXHIBIT "B"
INSURANCE REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Licensee in the Agreement. Exclusions for railroads (except where the Pipeline is in all places more than 50 feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
 - a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.

- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.

- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.

- D. **Railroad Protective Liability Insurance:** Licensee must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
 - a. The definition of "JOB LOCATION" AND "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.

- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

- F. **Other Insurance Provisions:**
 - a. Licensee and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Licensee's insurance shall be primary with respect to any insurance carried by UTA. Contractor

will furnish UTA at least 30 days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.

- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE**
(\$2,000,000 per occurrence/ \$6,000,000 aggregate)

Application forms for inclusion in Utah Transit Authority's Blanket Railroad Protective Liability Insurance Policy may be obtained from a Property Administrator.

If you have questions regarding railroad protective insurance (i.e. premium quotes, application) please contact David Pitcher at:

Phone: (801) 287-2371
Email: dcpitcher@rideuta.com

Send Checks and Applications to the following address:

Utah Transit Authority
Attn: David Pitcher
3600 South 700 West
P.O. Box 30810
Salt Lake City, UT 84130-0810

EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must contact Union Pacific Railroad to gain access to UTA property. The contact person for Union Pacific Railroad is Bill Ince at (801) 212-3939 or Mike Stanton at (801) 212-2744.



Memo

To: Mayor and City Council
From: Chris Thompson, Public Works Director/City Engineer
Date: June 26, 2013
Re: Easement Purchase Agreement with Gary Ellis for the 1850 North Waste Water Sewer Siphon

Staff Report

The waste water masterplan indicates that the sewer siphon at 1850 North going in to the treatment plant needs both capacity and redundancy. We are currently bidding out a project to construct a new siphon at this location to meet the requirements of the masterplan.

This easement is required in order to construct the new siphon. The cost would be \$2,057.00 as appraised and is within existing city budgets. We recommend that the city council approve this purchase agreement.

Attached: agreement



1850 NORTH SEWER SIPHON EASEMENT AGREEMENT

This agreement is entered between GARY W. ELLIS and PAT ELLIS (Owner) and SPANISH FORK CITY (City) for the purpose of constructing a new sewer siphon approximately 1850 North 100 East through the property owned by Owner.

WHEREAS, Owner is the owner of real property in Spanish Fork, Utah, Parcel Serial# 38:439:0001, Lot 1, Ellis G Plat "A" Recorded September 20, 2010; and

WHEREAS, City is desirous of obtaining an easement through property owned by Owner for the purpose of constructing and maintaining Public Utilities.

THEREFORE, the parties mutually agree to the following terms and conditions:

1. The easement is described as follows:

BEGINNING AT A POINT WHICH IS LOCATED EAST 567.93 FEET AND SOUTH 665.07 FEET FROM THE WEST QUARTER CORNER OF SECTION 7, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S24°15'59"W 47.19 FEET; THENCE S88°39'52"E 33.07 FEET; THENCE ALONG THE ARC OF A 523.69 FOOT RADIUS CURVE TO THE LEFT 46.74 FEET (CHORD BEARS: N22°52'53"E 46.72 FEET); THENCE N88°39'52"W 31.84 FEET TO THE POINT OF BEGINNING.

CONTAINING: 0.033 ACRES

2. When the City installs utilities through the easement granted herein, the contractor doing the installation shall be required to haul away and dispose of any debris which is removed during excavation. City shall cause the excavated site to be restored to the same or similar condition which existed prior to excavation.
3. City shall repair and replace all grass, flowers, shrubs, trees, fences, sprinkler systems, parking areas, walkways, asphalt concrete and any other improvements located on the easement property or adjacent property of Owner that may be damaged in the prosecution of any work City, its agents, servants, employees, or contractors, and shall otherwise restore the surface condition to the same or substantially the same condition that it was in prior to such work by City and leave the easement and adjacent property of Owner in a clean condition free of litter and debris.
4. City and Owner agree that the stock pile of dirt located east of the Owner's building shall be used as fill for the proposed sewer trunk line installed south of the proposed sewer siphon. Any remaining fill or debris shall be removed and hauled away by City. City shall replace said fill with asphalt millings for access and maintenance of sewer siphon.

5. City shall be responsible for all improvements and costs associated with this agreement.
6. Owner agrees that this is a Public Utility Easement in perpetuity for the installation, maintenance, repair and replacement of public utilities, sidewalks, and appurtenant parts thereof and the right to reasonable access to Owners property for the above described purposes. The easement shall run with the real property and shall be binding upon the Owner and the owner's successors, heirs and assigns.
7. Owner agrees and grants to the City reasonable access through the Owner's property for maintenance of sewer siphons and structures once the project is complete.
8. In the case that the proposed inverted siphon inlet structure produces a foul or annoying odor, City agrees to place a solid lid over structure to help reduce smells.
9. City agrees to pay Owner \$2,057.00 for this agreement. Price is based on an appraisal dated January 31, 2013 prepared by Nielsen and Company Real Estate Appraisers and Consultants. Report # 13.018.C
10. City shall pay Owner within 30 days of recording said easement.

DATED this _____ day of _____, 2013

SPANISH FORK CITY By:

G. WAYNE ANDERSEN, Mayor

ATTEST:

KENT R. CLARK, Recorder



GARY W. ELLIS



PAT ELLIS



M O U N T A I N L A N D

ASSOCIATION OF GOVERNMENTS

Serving Summit, Utah and Wasatch Cities & Counties

AGING & FAMILY SERVICES DEPARTMENT

June 13, 2013

Joyce Webb
Spanish Fork Senior Center
96 South 400 West
Spanish Fork, UT 84660

Dear Joyce,

Enclosed are duplicate original contracts between Mountainland Association of Governments and Spanish Fork City covering information assistance and nutrition services to individuals who are 60 years of age or older. We have also enclosed a Checklist that provides information about completing the contract process.

Please follow the steps listed on the Checklist in processing these contracts through your City for signature, and return both contracts to me as follows:

Heidi DeMarco
Mountainland Association of Governments
586 East 800 North
Orem, UT 84097

If you have any questions, please contact me at 801-229-3806. Upon completion of signature by MAG, we will return one fully executed copy to you and to the City for your records.

Thank you for your assistance in this regard. We appreciate the opportunity to work with you and appreciate the wonderful service you provide to seniors in your community.

Best wishes,

Heidi DeMarco
Department of Aging and Family Services

Enclosures

FISCAL YEAR 2013-2014 CONTRACT FOR AGING SERVICES

CHECKLIST FOR EXECUTION OF CONTRACT

Two copies of your contract for 2013-2014 are included with this checklist. **The two copies must be processed as originals.**

Please follow the procedure outlined below in obtaining final approval from your jurisdiction and returning your contract proposal. Upon completing each step of the procedure, the responsible person will initial in the space indicated.

1. ___ Review all Parts to be certain that you are in agreement with reporting and fiscal provisions; record keeping responsibilities; with the budget; indemnification responsibilities; compliance with DHS Code of Conduct; conflict of interest; and with the description of services you will be obligated to provide.
2. ___ Submit the contract to your fiscal control officer to ensure that Part III: Contract Costs, Billing and Payment Information will be complied with.
3.  ___ **On Part II, Page 2, No. 7, (b): Demonstrate how you will provide outreach to elderly low-income minority individuals in your area.**
4. ___ After completing Step 3 above, submit the contract to your governing board along with any comments, concerns, or assurances of your fiscal officer and legal counsel. Once approved by the governing board, the chief executive officer must sign in the designated signature block, which signing must be witnessed or attested. Please make sure signature of witness is affixed.
5. ___ If someone not already a signatory to the contract will be signing or authorizing invoices coming to MAG, the person's signature must appear in the designated signature block.
6. ___ Submit the following documents with the contract:
 - A. Liability Insurance
 - B. Worker's Compensation Insurance

When the contract has received final approval, and has been signed as required above, **submit BOTH copies with original signatures to MAG** along with this checklist. If you have any questions, please contact Heidi DeMarco, 801-229-3806.

Thank you for your assistance and for the wonderful service you provide to our seniors!



M O U N T A I N L A N D

ASSOCIATION OF GOVERNMENTS

Serving Summit, Utah and Wasatch Cities & Counties

AGING & FAMILY SERVICES DEPARTMENT

1. **CONTRACTING PARTIES:** This contract is between Mountainland Association of Governments, 586 East 800 North, Orem, Utah 84097, referred to as MAG, and Spanish Fork City Corporation, 40 South Main, Spanish Fork, Utah 84660, referred to as CONTRACTOR.
2. **PURPOSE AND SCOPE OF CONTRACT:** To provide access and nutrition services to individuals who are 60 years of age and older (including spouses of any age of such individuals) as described in Part II.
3. **CONTRACT PERIOD:** This Contract is effective as of July 1, 2013 and terminates on June 30, 2014, unless terminated sooner in accordance with the terms and conditions of this Contract.
4. **PART I:** General Provisions
5. **PART II:** Description of Services
6. **PART III:** Contract Costs, Billing, and Payment Information
7. **CONTRACTOR HAS NOT ALTERED THIS CONTRACT:** By signing this Contract, the Contractor represents that neither it nor its employees or representatives have in any way altered the language or provisions in the Contract, and that this contract contains exactly the same provisions that appeared in this document and its attachments when MAG originally sent it to the Contractor.
8. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
 - A. All documents specified in this Contract and its attachments; MAG's Standard Operating Procedure;
 - B. All statutes, regulations, or governmental policies that apply to the Contractor or to the services performed under this contract, including any applicable laws relating to fair labor standards, the safety of the Contractor's employees and others, zoning, business permits, taxes, licenses, and incorporation or partnership. The Contractor acknowledges that it is responsible for familiarizing itself with these laws and procedures and complying with them.
9. **AUTHORITY OF PERSON SIGNING FOR THE CONTRACTOR:** The Contractor represents that the person who has signed this Contract on behalf of the Contractor has full legal authority to bind the Contractor and to execute this Contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR:

MAG:

Contractor Signature Date

Andrew K. Jackson Date
Executive Director

Type/Print Contractor's Name and Title

APPROVED AS TO COMPLIANCE WITH AREA PLAN:

WITNESS:

Witness Signature Date

Scott McBeth Date
Director, Aging and Family Services Dept.

Employee or officer authorized by contractor to sign reports and invoices (if not already signatory above).

APPROVED AS TO AVAILABILITY OF FUNDS:

Joyce Webb *6-25-13*

Signature Date

Heidi DeMarco Date
Budget and Contracts Manager

Please print or type name.

Joyce Webb

APPROVED AS TO FORM:

Robert J. Schumacher Date
Attorney at Law
Legal Counsel

PART I - GENERAL PROVISIONS

1. PROTECTION AGAINST LIABILITY- GOVERNMENTAL ENTITY

- A. **Contractor and the Utah Governmental Immunity Act:** Consistent with the terms of the Governmental Immunity Act (Title 63, Chapter 30 of the Utah Code), the Contractor and DHS/MAG are each responsible and liable for any wrongful or negligent acts which that party itself commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act. If the Contractor has a subcontractor, that subcontractor shall comply with the insurance and indemnification requirements of this Contract, unless the subcontractor is also a Utah governmental entity, in which case this paragraph (a) shall apply.
- B. **Indemnification:** Regardless of the type of insurance required by this section, the Contractor and (where applicable, the Subcontractor) shall provide the following indemnification:

Indemnification by the Contractor and Sub-contractor: The Contractor and DHS/MAG shall defend, hold harmless and indemnify each other and their respective employees, agents, volunteers and invitees from and against all claims resulting from their negligent or wrongful conduct under this Contract, but in no event shall the indemnification obligation of either party exceed the amount set forth in Section 63-30-34 of the Utah Governmental Immunity Act or any similar statute in effect when a judgment is entered. Personal injury or property damage shall have the same meaning as defined in the Utah Governmental Immunity Act. This Contract shall not be construed with respect to third parties as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. If the Subcontractor is a governmental entity of the State of Utah, this paragraph shall apply.

The Contractor shall provide MAG with a copy of its liability insurance.

2. **WORKER'S COMPENSATION ACT:** The Contractor and its subcontractors shall comply with the Utah Workers' Compensation Act (Title 34A, Chapter 2 of the Utah Code) which requires employers to provide workers' compensation coverage for their employees. Contractor will provide MAG with a copy of the insurance and provide MAG with a copy of its sub-contractors' worker's compensation insurance.
3. **EMERGENCY MANAGEMENT AND BUSINESS CONTINUITY PLAN:** The Contractor shall use qualified personnel to perform all services in conformity with the requirements of this Contract and generally recognized standards. The Contractor represents that it has developed an emergency management and business continuity plan that allows the Contractor to continue to operate critical functions or processes during or following an emergency, and the Contractor acknowledges that DHS/MAG may rely upon this representation. The Contractor shall evaluate its emergency management and business continuity plan at least annually, and shall modify that plan as appropriate.
4. **COMPLIANCE WITH LICENSING STANDARDS AND OTHER LAWS:** The Contractor represents that it currently meets all applicable licensing standards and other requirements of federal and state law, and all applicable ordinances of the city or county in which services or care is provided. The Contractor shall continue to comply with all such applicable standards, requirements and ordinances during the term of this Contract, and if the Contractor fails to do so, MAG may terminate this Contract immediately.
5. **COMPLIANCE WITH DHS' PROVIDER CODE OF CONDUCT:** The Contractor shall follow and enforce DHS' Provider Code of Conduct. The DHS Provider Code of Conduct may be found at the following web site: <http://www.dhs.state.ut.us/policy.htm> (Select "Department Policy Manual"; then select "Section V -- Security/Risk Management/Liability"; then select "Provider Code of Conduct").

6. **RESTRICTIONS ON CONFLICTS OF INTEREST:** The purpose of this Section is to assure that the goods and services provided to MAG under this Contract afford MAG a commercially reasonable level of quality and cost. These provisions prohibit Contractors and anyone acting on their behalf from using their employment with the State of Utah or MAG or their relationship with others, including potential subcontractors, to enter into any transaction or arrangement that is improper or gives the appearance of being improper because of that person's State or MAG's employment or relationship with a third party.
7. **MONITORING AND REPORTING REQUIREMENT FOR CONFLICT OF INTEREST:**
 - A. Give MAG a Certificate of Compliance before entering into this Contract or a subcontract relating to this Contract.
 - B. Give MAG a Disclosure Form that identifies any existing and new conflicts of interest that relate to this Contract and are worth \$2,000 or more, and then obtain prior approval from MAG before entering into transactions or decisions involving these conflicts of interest.
8. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Contractor shall retain all records related to this Contract in accordance with the rules and regulations of the Utah Government Records Access and Management Act ("GRAMA": Title 63, Chapter 2 of the Utah Code). In addition, the Contractor shall comply with all reporting requirements of this Contract. The Contractor shall maintain or shall supervise the maintenance of all records necessary for the proper and efficient operation of the programs covered by this Contract, including records relating to applications, determination of clients' eligibility (if applicable), the provision of services and administrative costs, and any other records, such as statistical and fiscal records, necessary for complying with the reporting and accountability requirements of this Contract.
9. **RETENTION AND DESTRUCTION OF RECORDS RELATED TO THIS CONTRACT:** The Contractor shall retain all records related to this Contract for at least the following periods of time:
 - A. **Protecting DHS/MAG's Continuing Access Rights to Contract-Related Records.** The Contractor acknowledges that DHS/MAG is entitled to have ready access to all records relating to this Contract, and the Contractor shall not do anything to limit or interfere with DHS/MAG's access rights, except as expressly provided by law. DHS/MAG and the Contractor acknowledge, however, that entities other than DHS/MAG may also have access rights to the records, especially if those entities provided part of the funding for the programs or services covered by this Contract.
 - B. **Permission for Early Destruction of Records.** The Contractor shall not destroy or relocate any records relating to this Contract or the services provided under this Contract for the six-year period defined in subsections (a) and (b) of this Paragraph ("Retention and Destruction of Records Related to This Contract"), unless the Contractor gives MAG thirty days' written notice and obtains MAG's prior written consent to the proposed destruction or relocation of the records. (As used in this Paragraph, the term "relocate" means to move the records to a site which is not either the site where the Contractor provides the services under this Contract or a site operated by the Contractor in the geographic area covered by this Contract.) As a condition of consenting to the Contractor's early destruction or relocation of the records, MAG may require the Contractor to provide MAG with photocopies of the records, and the Contractor shall pay for the costs of photocopying the records, or the Contractor shall deliver the originals to MAG at the Contractor's own expense.
 - C. **Method for Destruction of Client Records.** If the contractor maintains any client records under this Contract, and if this Contract or MAG retention schedule indicates that such client records are to be destroyed after a certain period of time, the Contractor shall shred or burn the records to protect client confidentiality. In the case of electronic records, the Contractor shall use a technique of destroying the records that adequately prevents unauthorized persons from reading or accessing the records. If the Contractor is unsure whether a particular technique will adequately destroy the electronic records, the Contractor shall consult with MAG and its technical specialists before using that technique.

10. **GENERAL ACCESS TO THE CONTRACTOR'S RECORDS:** The Contractor shall provide DHS/MAG with ready access to any records produced or received by the Contractor in connection with the services or programs provided under this Contract, unless such access is expressly prohibited by state or federal law. The Contractor acknowledges that some of its records, including this Contract, may be available to the public and to the Contractor's clients pursuant to GRAMA and other state and federal laws, including the federal "Protection and Advocacy for Individuals with Mental Illness Act," 42 U.S.C §§ 10801 *et seq.* Therefore, upon receiving a request for records or information from any individual or entity other than DHS/MAG, the Contractor shall immediately notify MAG about the request. Except as otherwise directed by DHS/MAG or authorized by this Paragraph (5), the Contractor's non-governmental subcontractors and any Contractor or governmental subcontractor that lacks expertise in responding to GRAMA requests shall consult with DHS/MAG before responding to a record request to determine the appropriate response under this Contract and federal and state laws, including GRAMA. In such circumstances, if the requested records come within the scope of GRAMA and if DHS/MAG so requests, the Contractor shall deliver copies of the requested records to DHS/MAG, and allow DHS/MAG to respond directly to the records-request.
11. **AUDITORS' AND MONITORS' ACCESS TO THE CONTRACTOR'S RECORDS:** Upon request, the Contractor shall allow independent, state and federal auditors or contract reviewers to have access to any records related to this Contract, including all financial records (such as accounting records and supporting documentation) for audit review and inspection.
12. **MONITORING OF CONTRACTOR'S PERFORMANCE:** MAG shall have the right to monitor the Contractor's performance of all services under this Contract. Monitoring of Contractor's performance shall be at the complete discretion of MAG, who will rely on the criteria set forth in this Contract. Performance monitoring may include both announced and unannounced visits.
13. **CONTRACT RENEGOTIATIONS OR MODIFICATIONS:** The parties may amend, modify or supplement this Contract only by a written amendment signed by the parties and approved by MAG. The amendment shall be attached to the original signed copy of this Contract. MAG shall not pay for any services provided by the Contractor unless such payments are specifically authorized by this Contract or an approved written amendment to this Contract.
14. **CONTRACT TERMINATION:**
 - A. **Right to Terminate Upon Thirty Days Notice.** Either party may terminate this Contract, with or without cause, in advance of the Contract's expiration date by giving the other party at least thirty (30) days written notice.
 - B. **Immediate Termination.** In addition, if the Contractor's violation of this Contract creates or is likely to create a risk of harm to the clients served under this Contract, or if any other provision of this Contract (including any provision in the attachments) allows MAG to terminate the Contract immediately for a violation of that provision, MAG may terminate this Contract immediately by notifying the Contractor in writing.
 - C. **Cooperative Efforts to Protect the Clients.** If either party elects to terminate this Contract, both parties will use their best efforts to provide for uninterrupted client services.
 - D. **Processing Payments and Records Access After Termination.** Upon termination of the Contract, the parties shall use the financial and accounting arrangements set forth in this Contract to process the accounts and payments for any services that the Contractor rendered before the termination. In addition, the Contractor shall comply with the provisions of this Contract relating to the Contractor's record-keeping responsibilities, and shall ensure that the Contractor's staff properly maintains all records (including financial records and any client treatment records).

- E. **Attorneys' Fees and Costs.** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the action or failure to act of the other party, the prevailing party shall receive from the unsuccessful party all court costs and its reasonable attorneys' fees, regardless of whether such fees are incurred in connection with litigation.
- F. **Remedies for Contractor's Violation.** The Contractor acknowledges that if the Contractor violates the terms of this Contract, MAG is entitled to avail itself of all available legal, equitable and statutory remedies, including money damages, injunctive relief and debarment as allowed by state and federal law.
15. **GRIEVANCE PROCEDURES:** The Contractor shall have a grievance procedure in place and shall notify MAG of any grievance submitted to the Contractor by any participant of the program covered by this Contract.
16. **REVIEW OF CONTRACTOR'S REPORTS AND BILLS:** All billings and reports submitted by the Contractor will be reviewed by MAG at MAG's discretion.
17. **STANDARD OPERATING PROCEDURE:** Contractor agrees to comply with MAG's Department of Aging and Family Services Standard Operating Procedure.
18. **LOBBYING:** If you are required to disclose lobbying activities and/or expenditures under 31 UCS Section 1352, complete a Disclosure of Lobbying Activities form, available upon request from MAG.
19. **CHANGE IN SENIOR CENTER DIRECTOR:** Contractor shall notify MAG of the vacancy in the Center Director's position.
20. **CITING MAG IN ADVERTISING:** In all written and oral discussions or advertising for the programs covered by this contract (including all brochures, flyers, informational materials, interviews and talk shows), the CONTRACTOR shall acknowledge that MAG and the Department of Human Services provided for the programs.
21. **TRAINING:** The Center staff shall attend an annual training meeting if offered by MAG.

PART II: DESCRIPTION OF SERVICES AND ADDITIONAL CONDITIONS

1. **POPULATION TO BE SERVED:**

For Older Americans Act services: Individuals 60 years of age and older (including spouses of any age of such individuals) with social and/or economic need, targeting low income minorities.

2. **METHODS OF PROVISION:**

Services shall be provided as specified below. A unit of service is described hereafter for each service, and shall form the basis for payment and evaluation by MAG.

3. **SPECIFIC SERVICES:**

SERVICE CODE	SERVICE NAME	DESCRIPTION	UNIT OF SERVICE
SAO	Outreach/Client Finding	Intervention initiated by CONTRACTOR to identify clients and encourage the use of existing services and benefits. Only applicable to a first-time contact with a new client who has not previously used aging services or who has not used any services for an extended period of time. CONTRACTOR will place special emphasis on rural elderly with greatest economic or social need, with particular attention to low-income minority individuals, and older individuals with severe disabilities, informing such persons of the availability of service.	1 UNIT = 1 CONTACT
SAI	Information/ Assistance	Includes the provision of concrete information to a client about available public and voluntary services/resources and linkage to ensure the service will be delivered to the client. Includes contact with the provider. Does <u>not</u> include mass media contacts, newsletters or other similar contact.	1 UNIT = 1 CONTACT
CMM	Congregate Meals Site Management	All activities that are connected to the overall management of the meals site, including, but not limited to, supervision of kitchen staff, preparation of meal site, and the serving of meals.	1 UNIT = 1 DAY
CMM	Congregate Meals Meal Preparation	Providing one hot or other appropriate meal per day, which assures a minimum of one-third USRDA, in a congregate setting.	1 UNIT = 1 MEAL SERVED

4. **FOCAL POINT OBLIGATION:** The Contractor agrees, whenever it has been designated by MAG in the approved area plan as a focal point as defined by the Older Americans Act or pursuant to Federal rules, that it will perform all focal point tasks for its designated community required by MAG, with special emphasis on establishing linkages with, and coordinating in behalf of, the older residents of its community, all services available for such older persons.
5. **SPECIAL MEAL CONSIDERATIONS:** The Contractor agrees, whenever it is under contract to provide meal service to eligible older persons, that it will offer meals on the same basis as they are provided to elderly recipients, to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with and accompany older individuals who are eligible under the Older Americans Act.
6. **IMPOSITION OF FEES:** The CONTRACTOR will not impose any fees upon client given services under this contract except as authorized by MAG.
7. **COMPLIANCE WITH OLDER AMERICANS ACT:** CONTRACTOR will comply with all provisions of Public Law 89-73, Older Americans Act of 1965 with all amendments thereto that have been passed into law, and with responsibilities of service providers required by Public Law 100-175, Older Americans Act Amendments of 1987 and 1992, as specified hereafter, and shall:
 - (a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning coordination, evaluation and reporting requirements established by the State;
 - (b) Specify in the space immediately below how the provider intends to satisfy the service needs of older low income minority and older persons residing in rural areas:

through word of mouth and flyers and newspaper articles and tours to other places. We provide rides to and from our center. We provide hot homemade meals and entertainment. We will also provide interpreters if needed. We are a friendly senior center and we welcome everyone
 - (c) Provide recipients with an opportunity to contribute to the cost of the service;
 - (d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;
 - (e) Where feasible and appropriate make arrangements for the availability of services to older persons in weather related emergencies;
 - (f) Assist participants in taking advantage of benefits under other programs;
 - (g) Assure that all services funded hereunder are coordinated with other appropriate services in the community and that these services do not constitute an unnecessary duplication of services provided by other sources; and
 - (h) Comply with all policies, procedures and/or directives addressing service providers and subcontractors and specified within the current Standard Operating Procedures Manual of the MAG Department of Aging and Family Services, and any additions, revisions or deletions thereto as notified by MAG.

8. **OPPORTUNITY FOR CONTRIBUTION:** Contractor shall (a) Provide each older person with an opportunity to contribute voluntarily to the cost of the service; (b) Protect the privacy of each older person with respect to his or her contributions; (c) Establish appropriate procedures to safeguard and account for all contributions; (d) Use all supportive services contributions only to expand the services provided under this part; and (e) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(C)(ii) of the Older Americans Act; and (f) Comply with MAG policies relative to settling and handling of suggested contribution amounts. Contractor may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.
9. **PRIORITY OF SERVICE:** Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this contract.
10. THE SPOUSE of the older person regardless of age or condition may received a home-delivered meal if, according to criteria determined by MAG, receipt of the meal is in the best interest of the homebound older person.

PART III: CONTRACT COSTS, BILLING AND PAYMENT INFORMATION

1. **CONTRACTOR'S SPECIFICS:**

a. Billing name and address of the Contractor:

Spanish Fork City Corporation
40 South Main
Spanish Fork, UT 84660

b. Address/location where the services will be provided:

Spanish Fork Senior Center
167 West Center
Spanish Fork, UT 84660

2. **CONTRACT PAYMENT:** MAG agrees to reimburse the Contractor in accordance with following table, upon receipt of itemized billing for approved service activities given and supported by information contained on reimbursement forms supplied by MAG. The line item allocations for services under this Contract are specified in the following table:

SERVICE CATEGORY	UNITS	RATE	MAG	LOCAL MATCH	TOTAL	PROJECT INCOME
Information & Assistance	50	.75	\$37.50	\$25.13	\$62.63	
Project Management	13,200	.85	\$11,220.00	\$7,405.90	\$18,625.90	
Meals Site Preparation	13,200	1.78	\$23,496.00	\$15,507.36	\$39,003.36	\$18,300.00
TOTAL			\$34,753.50	\$22,938.39	\$57,691.89	\$18,300.00

If the Contractor experiences a shortfall in operating revenues due to a decline in the number of meals served, the Contractor may request a one-time adjustment to the reimbursement rates through contract amendment. MAG will consider such adjustment based on balance of contract and available revenues.

3. **METHOD AND SOURCE OF PAYMENTS TO THE CONTRACTOR:** To obtain payment for the services provided under this Contract, the Contractor shall submit to MAG, on a monthly basis, an itemized billing for its authorized services, together with supporting documentation. The Contractor shall bill MAG only for actual costs allowable under the federal and DHS cost principles referred to in Part IV ("Cost Accounting Principles and Financial Reports"), and the Contractor shall maintain records that adequately support the allowability of these costs.
4. **BILLING DEADLINES:** The Contractor shall submit all billings and claims for services rendered during a given billing period within TEN (10) days after the last date of that billing period. All final billings under a contract must be received within TEN (10) days of termination of the contract, regardless of the billing period. If the Contractor fails to meet these deadlines, MAG may deny payment for such delayed billings or claims for services.

MAG's Fiscal Year is from July 1 through June 30. The Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 10th of the following fiscal year, regardless of the termination date of the contract. MAG may delay or deny payment for services performed in a given fiscal year if it receives the Contractor's billing for those services later than July 10th of the following fiscal year.

5. **NON-FEDERAL MATCH:** For those contracts requiring a non-federal match, that match shall comply with the provisions of Title 45 of the Code of Federal Regulations, Part 74, Sub-part G.
6. **OVERPAYMENTS, AUDIT EXCEPTIONS AND DISALLOWANCES:** If an independent CPA audit or a fiscal review by DHS/MAG determines that MAG has over-paid the Contractor for services under this Contract because: (a) the Contractor's expenditures under this Contract are ineligible for reimbursement as they were not authorized by this Contract; or (b) the Contractor's expenditures are inadequately documented, the Contractor shall immediately refund such excess payments to MAG upon written request. Furthermore, MAG shall have the right to withhold any or all subsequent payments under this or other contracts with the Contractor until MAG fully recoups any overpayments made to the Contractor.
7. **PAYMENT WITHHOLDING:** MAG may withhold funds from the Contractor for contract non-compliance, failure to comply with MAG directives regarding the use of public funds, misuse of public funds or monies, or failure to comply with state and federal law or policy in the Contractor's subcontracts with private providers. If an audit finding or judicial determination is made that the Contractor or its subcontractor misused public funds, MAG may also withhold funds otherwise allocated to the Contractor to cover the costs of any audits, attorney's fees and other expenses associated with reviewing the Contractor's or the subcontractor's expenditure of public funds. MAG shall give the Contractor prior written notice that the payment(s) will be withheld. The notice shall specify the reasons for such withholding and the actions that the Contractor must take to bring about the release of any amounts withheld.



Staff Report to City Council

Agenda Date:	July 2, 2013
Staff Contacts:	Bill Bushman, Dale Robinson
Reviewed By:	Junior Baker, Kent Clark
Subject:	Justice Center and SFCN Building Janitorial Service Agreement

Background Discussion:

On June 1, 2013 Spanish Fork City received a janitorial services contract termination notice from ISS, the janitorial services company currently cleaning the Justice Center and the SFCN Building effective June 30, 2013. Spanish Fork City posted a request for bid (RFB) by Email solicitation to the Janitorial Vendors on the City Bidder's List on June 12, 2013 for Janitorial Services for the Justice Center and the SFCN Building. We received three bids for each.

Janitorial Services Request for Bid Bid Opening Report 6/19/2013

Facility	Four Star Janitorial	Jan Pro Cleaning Systems	RBM Building Services
1. Justice Center	\$41,400.00	\$38,265.00	\$42,587.04
2. SFCN Building	\$13,000.00	\$8,565.00	\$8,292.24
Totals	\$54,400.00	\$46,830.00	\$50,879.28

1. The two bids requested were issued independent of each other and will be awarded independently.
2. The three vendors on the City Bidder's List were invited to provide bids. All three were present at the mandatory site tour for both facilities. All three provided bids.
3. The bid amounts were within the range expected.

RBM Building Services is recommended for the janitorial services for the Justice Center and the SFCN Building. Based on their proposal preparation, positive references and their extensive experience in secured facilities similar to ours we feel they will provide the greatest value to Spanish Fork City in both facilities. Jan Pro which is the lowest bid for the Justice Center has not done anything of this nature or magnitude. RBM currently requires a BCI background check on all employees and they already have people trained and in place to take on this job.

We propose the bid for both facilities be awarded to RBM Building Services for a July 1, 2013 start date. This is a one year contract with an option to renew for 2 additional one-year periods.

Budgetary Impact:

These new agreements will slightly increase the FY14 budget amounts. The Justice Center budget will increase \$2,514.63 per year and the Police budget will increase \$1,295.41 per year. This contract has not been changed since opening the building 5 years ago so we are pleased with the minimal increase. This adjustment will be made in a subsequent FY14 budget revision.

Alternatives:

Award the contract to the next lowest bid. However, we do not consider this bid to be a responsible bid based on the vendor's perceived capacity to accomplish the contract specifications and requirements.

Recommendation:

We recommend that the Council authorize the Mayor to sign the Agreements with RBM Building Services to provide Janitorial Services at the Justice Center and the SFCN Building.

Attachments:

Agreements

AGREEMENT

This Agreement, made this ____ day of _____, 2013, by and between Spanish Fork City hereinafter called "Owner" and **RBM Building Services** doing business as (a partnership, corporation or individual) hereinafter called "CONTRACTOR". Witnesseth: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and conduct the **Spanish Fork City Justice Center Janitorial Services.**

2. The CONTRACTOR will furnish all of the chemicals, supplies, tools, equipment, labor and other services necessary for Janitorial Services of the Facility described herein.

3. The CONTRACTOR will commence the work required by the Contract Documents within **3** calendar days after the date of the Notice To Proceed (NTP). **No later than July 1, 2013.**

4. The CONTRACTOR agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sum of **\$42,587.04** or as shown in the Bid Schedule.

5. The term "Contract Documents" means and includes the following:
- (A) Notice of Request for Bid
 - (B) Request for Bid Documents
 - (C) Agreement
 - (D) Notice of Award
 - (E) Notice to Proceed
 - (F) Change Order
 - (G) Drawings prepared by Spanish Fork City
 - (H) Addenda: No. _____ Dated _____.

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the Request for Bid.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

In witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (duplicate) each of which shall be deemed an original on the date first above written.

OWNER:
Spanish Fork City Corporation

By: _____
G. WAYNE ANDERSEN, Mayor

Attest:

KENT R. CLARK, City Recorder

CONTRACTOR:
RBM Building Services
1515 North Riverside Ave.
Provo, Utah 84604

By: _____

Subscribed and sworn to me this _____ day of _____, 2013.

Attest:

Notary Public

NOTICE TO PROCEED (NTP)

DATE: _____, 2013

TO: RBM Building Services
1515 North Riverside Ave.
Provo, Utah 84604

PROJECT DESCRIPTION:

Spanish Fork City Justice Center Janitorial Services

You are hereby notified to commence **Janitorial Services on July 1, 2013** in accordance with the Agreement dated _____, 2013

SPANISH FORK CITY CORPORATION
OWNER

BY: _____
G. WAYNE ANDERSEN, Mayor

"ACCEPTANCE OF NOTICE"

RECEIPT OF THE ABOVE NOTICE TO
PROCEED IS HEREBY ACKNOWLEDGED BY

THIS THE ____ DAY OF _____, 2013.

AGREEMENT

This Agreement, made this 2 day of July, 2013, by and between Spanish Fork City hereinafter called "Owner" and RBM Building Services doing business as (a partnership, corporation or individual) hereinafter called "CONTRACTOR". Witnesseth: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and conduct the **Spanish Fork City SFCN Building Janitorial Services**.
2. The CONTRACTOR will furnish all of the chemicals, supplies, tools, equipment, labor and other services necessary for Janitorial Services of the Facility described herein.
3. The CONTRACTOR will commence the work required by the Contract Documents within 3 calendar days after the date of the Notice To Proceed (NTP). **No later than July 1, 2013.**
4. The CONTRACTOR agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sum of \$8,292.24 or as shown in the Bid Schedule.
5. The term "Contract Documents" means and includes the following:
 - (A) Notice of Request for Bid
 - (B) Request for Bid Documents
 - (C) Agreement
 - (D) Notice of Award
 - (E) Notice to Proceed
 - (F) Change Order
 - (G) Drawings prepared by Spanish Fork City
 - (H) Addenda: No. _____ Dated _____.

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the Request for Bid.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

In witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (duplicate) each of which shall be deemed an original on the date first above written.

OWNER:
Spanish Fork City Corporation

By: _____
G. WAYNE ANDERSEN, Mayor

Attest:

KENT R. CLARK, City Recorder

CONTRACTOR:
RBM Building Services
1515 North Riverside Ave.
Provo, Utah 84604

By: _____

Subscribed and sworn to me this _____ day of _____, 2013.

Attest:

Notary Public

NOTICE TO PROCEED (NTP)

DATE: July 2, 2013
TO: RBM Building Services
1515 North Riverside Ave.
Provo, Utah 84604

PROJECT DESCRIPTION:

Spanish Fork City SFCN Building Janitorial Services

You are hereby notified to commence **Janitorial Services on July 1, 2013** in accordance with the Agreement dated July 2, 2013

SPANISH FORK CITY CORPORATION
OWNER

BY: _____
G. WAYNE ANDERSEN, Mayor

"ACCEPTANCE OF NOTICE"

RECEIPT OF THE ABOVE NOTICE TO
PROCEED IS HEREBY ACKNOWLEDGED BY

THIS THE ____ DAY OF _____, 2013.



Staff Report to City Council

Agenda Date:	July 2, 2013
Staff Contacts:	Dale Robinson
Reviewed By:	
Subject:	Municipal Recreation Grant Agreement with Utah County

Background Discussion:

At the May 7, 2013 council meeting you authorized the Mayor to sign a Municipal Recreation Grant Application with Utah County to construct Mountain Bike Trails in the area above the reservoir. Our application was approved by the county and we now need to have the mayor sign the agreement with them in order to proceed. This is a standard agreement that we have entered into the last several years and we have been able to fund some good projects with this grant.

Budgetary Impact:

This was not included in the FY14 budget (because we just now got the approval) so we will include it with the first budget revision after July. The project is 100% reimbursed upon completion and has to be done by the end of October of this year.

Recommendation:

Staff recommends that the council authorize the Mayor to sign the agreement.

Attachments:

Agreement (original copy for signature is being mailed)

AGREEMENT

This Agreement is made and entered into by and between Utah County, a political subdivision of the State of Utah, with its office located at 100 East Center Street, Provo, Utah 84606, hereinafter referred to as COUNTY and SPANISH FORK CITY, located at 40 South Main Street, Spanish Fork, Utah, hereinafter referred to as CITY.

RECITALS

WHEREAS, the Board of County Commissioners, Utah County, Utah has adopted policy guidelines and procedures for approving applications for Utah County Community Activities Fund grants which comply with the provisions of Title 59, Chapter 12, Part 6, Utah Code Annotated, 1953 as amended, and

WHEREAS, COUNTY has reviewed the Utah County Community Activities Grant application submitted by CITY and has determined that CITY should be awarded a Utah County Community Activities Grant;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, it is agreed by and between COUNTY and CITY as follows:

1. COUNTY hereby agrees to make a Utah County Community Activities Grant to CITY in an amount not to exceed \$20,632.81 through funds derived from the Tourism, Recreation, Cultural and Convention Facilities Tax of the County of Utah for the development of mountain biking trails near Spanish Oaks Reservoir and Campground.
2. CITY hereby agrees that the grant received from COUNTY shall be used exclusively in funding the above-mentioned project.

3. The parties agree that all funds granted by COUNTY to CITY shall be given only for documented reimbursable costs incurred by CITY for the purpose stated above, and that payments by COUNTY to CITY will be made only upon presentation by CITY to COUNTY of appropriate receipts or other permitted documentation of reimbursable costs made by CITY. Presentation of all said appropriate receipts or other permitted documentation shall be made to COUNTY prior to October 31, 2013. No reimbursement for any costs submitted after October 31, 2013 will be made by COUNTY to CITY.

4. CITY also agrees that all publicity generated by CITY for the above-mentioned approved project shall display the language, "Sponsored in part by the Utah County Community Activities Fund."

5. The parties agree that COUNTY by virtue of this Agreement is making a grant only to CITY and is not responsible for any actions of CITY, or any other entity, in the construction of the project and the completion of the project stated above.

6. It is agreed by the parties that COUNTY may audit the records of CITY concerning the above-mentioned approved project at any time.

7. It is agreed by the parties that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

8. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement

9. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

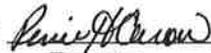
DATED this 18th day of June, 2013.

BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH



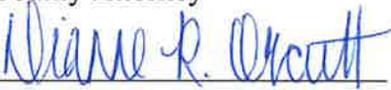
DOUG WITNEY, Chairman

ATTEST:
Bryan E. Thompson
Utah County Clerk/Auditor

By: 

Deputy

APPROVED AS TO FORM:
Timothy L. Taylor
Utah County Attorney

By: 

Deputy

DATED this _____ day of _____, 2013.

SPANISH FORK CITY

By: _____
Mayor

ATTEST:

By: _____