



CITY COUNCIL AGENDA

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a **work session at 5:15 p.m.**, preceding its 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 May 20, 2014.**

5:15pm WORK SESSION:

1. Public Comments & Open Meeting Training – Junior Baker

6:00pm AGENDA ITEMS:

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

- a. Motivational/Inspirational Message
- b. Pledge, led by invitation
- c. OUTRAGE of Utah County –Anti-tobacco Youth Group

2. PUBLIC COMMENTS:

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

3. COUNCIL COMMENTS:

4. SPANISH FORK 101: Spanish Fork Play Unplugged-Seth Perrins & Cary Hanks Champions Challenge Rodeo-Dale Robinson

5. CONSENT ITEMS:

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

- a. * Minutes of Spanish Fork City Council Meeting – May 6, 2014
- b. * Spanish Fork River Trail Easement Agreement-Mark McKell Property
- c. * Warren Call Access Agreement for the 2014 MAG Grant Spanish Fork River Trail Project
- d. * Butters Property Exchange Agreement for the 2014 MAG Grant Spanish Fork River Trail Project
- e. * UDOT Local Government Contract with R.B.&G. Engineering for the Construction Management of the MAG River Trail Project
- f. * Utah Public Works Emergency Management Mutual Aid Agreement
- g. Utah County Visitor's Bureau Contract for SpanishForkTix

6. PUBLIC HEARING:

- a. * Ordinance #10-14 Making Various Amendments to the Landscape Requirements of Spanish Fork City

7. NEW BUSINESS:

- a. * Ordinance #11-14 Authorizing an Ethics Commission

* 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.

8. DISCUSSION ITEMS:

- a. Mill Road Master Plan Review

9. CLOSED SESSION:

- a. Land Acquisition

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:

**Tentative Minutes
Spanish Fork City Council Meeting
May 6, 2014**

1 Elected Officials Present: Mayor Steve Leifson, Councilmembers Rod Dart, Richard Davis,
2 Brandon Gordon, Mike Mendenhall. Absent: Councilmember Keir A. Scoubes.

3
4 Staff Present: David Oyler, City Manager; Junior Baker, City Attorney; Seth Perrins, Assistant
5 City Manager; Dave Anderson; Community Development Director; Chris Thompson, Public
6 Works Director; Dale Robinson, Parks & Recreation Director; Kent Clark City Recorder/Finance
7 Director; Steve Adams, Public Safety Director; Pam Jackson, Library Director; John Bowcut, IS
8 Director; Angie Warner, Deputy Recorder.

9
10 Citizens Present: Emily Wilson, Megan Johnson, Raychellene Talbot, Joseph Lee, Clark Rowley,
11 Cindy Lee, Chase Jones, Kyson Pulham, Jonathan Nelson, Amparo Sanchez, Brad unknown,
12 Darus Ashton, Alex unknown, Ashley Chidester, Anya Nielson, Shane Bunker, Mark W., Cesar
13 Sanchez, Kyle Clark, Quincy Rogers, Brady Rogers, Lori Warner, Keith Warner, Jesse Brimhall,
14 Jacob Anderson, Zac Peterson, Joshua James, Luke Konchan, Parker Smith, Tyler Mendenhall,
15 Kevin Parker, Ken Peay, Wayne Andersen, Jessica Ivie, Jamie Udell, Stephanie Acerson, Tate
16 Stewart Chester, McKinzie Taylor, Kaylie McGee, Rachel Cannon.

17
18 **5:15pm WORK SESSION:**

19 *Discussion took place regarding the item(s) listed below; no formal actions are taken in a work*
20 *session meeting.*

21 1. Historic Preservation –Dave Anderson

22 Mr. Anderson said at the first of this year the Mayor appointed a citizen to the Historic
23 Preservation Committee. Mr. Anderson presented some models of how other cities run their
24 historic preservation committee.

25
26 **6:00pm CALL TO ORDER, PLEDGE, OPENING CEREMONY, RECOGNITION:**

27 Mayor Leifson called the meeting to order at 6:00 p.m.

28
29 Motivational/Inspirational Message given by Mark Leifson.

30 Johnathan Nelson led in the pledge of allegiance.

31
32 **Miss Pleasant Grove –Strawberry Days**

33 Miss Pleasant Grove Stephanie Acerson, 1st attendant Tate Stewart Chester, 2nd attendant
34 McKinzie Taylor, 3rd attendant Kaylie McGee, 4th attendant Rachel Cannon. Miss Pleasant Grove
35 Roylaty invited all to the Strawberry Days being held June 17-21 and highlighted some of the fun
36 events that will be going on.

37
38 **Miss Spanish Fork Royalty**

39 Miss Spanish Fork Megan Johnson spoke about her platform, suicide prevention and awareness
40 and 3rd attendant Emily Wilson spoke about her platform, building future leaders in our
41 community.

42
43 **Fiesta Days Rodeo Royalty**

44 Steve Money introduced the Rodeo Committee Kevin Parker, Ken Peay, and Wayne Andersen.
45 Mr. Money introduced the Fiesta Days Rodeo Royalty: Queen Jessica Ivie, 2nd attendant Jamie
46 Udell. Mr. Money reminded everyone to get tickets for the Champions Challenge Rodeo that will
47 be held May 31st.

48

49 **PUBLIC COMMENTS:**

50 Ashley Chidester & Anya Nielson with the Youth City Council said they will be holding their
51 annual yard sale this Saturday at 7am at the City Office and that all proceeds will go to Tabitha's
52 Way.

53

54 **COUNCIL COMMENTS:**

55 Councilman Davis attended the Mt. Nebo Water Agency meeting where they are looking at the
56 projects coming up. Fiesta Days is moving forward and is only a couple months away. On May
57 22nd at 3:00pm, is a great opportunity for volunteers to come help set up the flags and crosses at
58 the cemetery for Memorial Day. This year there will be approximately 1600 crosses and flags to
59 set up.

60

61 Councilman Dart thanked the public safety employees and volunteers.

62

63 Councilman Mendenhall also thanked the public safety department as well as the recreation
64 department.

65

66 Mayor Leifson invited the citizens to the flower planting on Main Street this Saturday and next
67 Saturday and thanked all those volunteers that help.

68

69 **SPANISH FORK 101: Library Summer Reading Program –Pam Jackson**

70

71 **CONSENT ITEMS:**

72 *Department Directors gave a brief summary of their item(s) listed below:*

73 a. Minutes of Spanish Fork City Council Meeting – April 15, 2014

74 b. Malcomb Springs Diversion 2014 Change Order #1

75 c. Airport Hangar Lease Amendment

76

77 Councilman Gordon made a **Motion** to **approve** the consent items.

78 Councilman Mendenhall **Seconded** and the motion **Passed** all in favor.

79

80 **PUBLIC HEARING:**

81 **Ordinance #06-14 Vacating a Portion of Cal Pac Avenue**

82 Junior Baker pointed out the area on Cal Pac Avenue that it was realigned for safety. This
83 proposal is to vacate the old portion of the street and return the property back to the underlying
84 owner.

85

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

87 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 6:46 p.m.

88

89 Mayor Leifson welcomed public comment.

90

91 There was none.

92

93 Councilman Dart made a **Motion** to move out of Public Hearing.
94 Councilman Davis **Seconded** and the motion **Passed** all in favor at 6:46 p.m.

95
96 Councilman Davis made a **Motion** to **approve** the Ordinance #06-14 Vacating a Portion of Cal
97 Pac Avenue.

98 Councilman Dart **Seconded** and the motion **Passed** all in favor with a roll call vote.
99

100 **Proposed General Plan and Zoning Map Amendments for properties found in the vicinity of 2550**
101 **the East Canyon Road intersection. The proposed General Plan Amendment would change Low**
102 **and Medium Density Residential designations to Mixed Use and High Density Residential. The**
103 **proposed Zone Change would change the zoning from R-1-6 to R-3.**
104

105 **Proposed Preliminary Plat for the Ridge, a 166-unit Master Planned Development to be located**
106 **at approximately 2700 East Canyon Road (Public Hearing not required for this item)**
107

108 Dave Anderson said this project, The Ridge, has 3 proposals tonight. A General Plan
109 Amendment, a Zone Change, and a Preliminary Plat. Mr. Anderson pointed out the location on
110 the map. The Planning Commission has reviewed this twice before recommending it onto the City
111 Council. One concern is the traffic at 2550 East Canyon Road. The City is in the process of
112 obtaining property to realign and complete improvements at that intersection. A traffic study was
113 performed and the results presented that it performs at a level F. If this development was
114 approved and if UDOT agreed to put a traffic light, it would take it up to a level B. A second
115 concern is the height of the homes. Proposed is a three story at 40-45 feet tall with the
116 exception that some will only be two story at 35 feet. The Development Review Committee and
117 Planning Commission recommend approval to amend the General Plan for 14 acres for The Ridge
118 Development to the high density residential and mixed use; zone change from R-1-16 to R-3; and
119 the preliminary plat.
120

121 Jesse Brimhall the developer for the Ridge presented the design and details for the proposal.
122

123 Councilman Dart made a **Motion** to move into Public Hearing.
124 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:21 p.m.

125
126 Mayor Leifson welcomed public comment.
127

128 Keith Warner lives next to the proposed development. Mr. Warner does not agree with the height
129 of the 45 foot homes, the density and the traffic issue. Mr. Warner attended the Planning
130 Commission meeting where other concerns were addressed.
131

132 Todd McCarg lives on 2700 East. Mr. McCarg thanked the developer for listening to their
133 concerns and making changes. Mr. McCarg's concerns are traffic, paving the sides of the roads,
134 and to point out that these homes will be taller than the Somerset Development to the East so
135 they will be more visible and a wind breaker.
136

137 Keith Warner commented that if the zone for his property was changed to R-3 it would be an
138 advantage to him.
139

140 Councilman Gordon made a **Motion** to move out of Public Hearing.
141 Councilman Davis **Seconded** and the motion **Passed** all in favor at 7:33 p.m.
142

143 Mr. Anderson added that the developer has added approximately 100 more parking spaces than
144 what is required. Also, the applicant has proposed to do all the amenities with the first phase so
145 there will be no need for a development agreement.

146
147 Councilman Davis asked about the property between the proposed development and Somerset
148 that does not have improvements.

149
150 Mr. Anderson said this comes up a lot; the City does not have the funding for curb, gutter and
151 sidewalk, they are completed with development. Staff has applied for federal funding to try to
152 help with that since Canyon Road is a state road.

153
154 Councilman Gordon made a **Motion** to **approve** the Ordinance #09-14 Changing the General Plan
155 Designation and Amending the Official General Plan Map of Spanish Fork City for The Ridge.
156 Councilman Dart **Seconded** and the motion **Passed** all in favor with a roll call vote.

157
158 Councilman Dart made a **Motion** to **approve** the Zoning Ordinance #Z03-14 Changing the Zoning
159 Designation and Amending the Official Zoning Map of Spanish Fork City for The Ridge to R-3.
160 Councilman Gordon **Seconded** and the motion **Passed** all in favor.

161
162 Councilman Dart made a **Motion** to **approve** the Preliminary Plat for The Ridge, a 166-unit Master
163 Planned Development to be located at approximately 2700 East Canyon Road.
164 Councilman Davis **Seconded** and the motion **Passed** all in favor.

165
166 **NEW BUSINESS:**

167 **Recommended Changes to the Personnel Policy Manual**

168 Seth Perrins reviewed the proposed changes to the travel and training; city vehicle use; education
169 assistance; holiday hours; and CDL:

170 1. *Section 1.20.55.020 (A), (B), and (C) Conferences, Seminars and Conventions is amended as*
171 *follows:*

172
173 *A. Employees or volunteers participating in a job or city-related conference, seminar or convention, must*
174 *complete a "Request for Training/Education" form and submit it to their supervisor and the finance office for*
175 *approval.*

176
177 *B. Payment and Reimbursement. Travel expenditures will be paid or reimbursed as follows:*
178 *1. Meals. Paid at the prevailing federal per diem rate (M&IE). Per diem for breakfast, lunch or dinner*
179 *will only be paid for overnight training. No per diem will be paid if meals are included with training*
180 *registration. Employees, volunteers or elected officials should include a schedule of the conference so*
181 *that included meals can be excluded from the per diem.*

182
183 *2. Lodging. Paid at actual room rate. In extenuating circumstances, if an employee, volunteer, or*
184 *elected official places room rental on their personal charge card, approved reimbursement will take*
185 *place upon presentation of receipt. Employees should always attempt to use direct pay or a city credit*
186 *card or check so that Utah State taxes can be recovered by the City.*

187
188 *Cost and convenience should be considered when selecting hotels for travel. If an employee chooses*
189 *to stay at another hotel for personal reasons, the city will reimburse the employee for the actual cost*
190 *of the hotel and taxes, not to exceed the cost of the conference hotel(s).*

191
192 *The employee or volunteer shall reimburse the city for the cost of additional night stays beyond the*
193 *necessary nights for the city business.*

194
195 *3. Travel/Mileage Reimbursement. Reimbursed at the prevailing federal rate. When an employee,*
196 *volunteer or elected official must fly to a travel destination, the city shall pay for the plane ticket in*
197 *whole. If the option is given to fly or to drive, the employee, volunteer or elected official will be*

198 reimbursed a mileage amount not to exceed the cost of air travel to the same destination. The human
199 resource or finance office will assist in calculating the reasonable reimbursed amount.
200

201 *C. Registration. Paid at rate noted on registration form. Non-essential activities that are not included with the*
202 *regular cost of registration shall be paid for by the employee. When a volunteer or elected official, serving on*
203 *behalf of the city, attends a conference that has a spouse agenda, the city may pay the cost of the spouse's*
204 *registration.*
205

206 2. Section 1.20.55.040. (A) and (B) City Vehicle Use is amended as follows:
207

208 *A. The on-call employee in the water, streets, and SFCN divisions are required to take a city vehicle home.*
209 *This is to allow employees to respond more readily and to more quickly address emergency situations with*
210 *proper equipment and tools during non-working hours. All vehicles/employees in this category shall be*
211 *authorized by the city manager upon recommendation of the department director.*
212

213 *B. City owned vehicles that are taken home are to be used only for commuting to and from work or when*
214 *performing official city duty. City-owned vehicles are not to be used for personal purposes of any kind, unless*
215 *otherwise noted. When going to lunch, employees should use their personal vehicle, unless traveling to change*
216 *vehicles is out of the way, or the potential to be called back to work during lunch is present.*
217

218
219 3. Section 1.20.55.010 (B) Higher Education Assistance is amended as follows:
220

221 *B. Employees desiring to participate in this program must submit a request in writing to the employee's*
222 *department director before commencing the education training. Such requests should describe how the desired*
223 *education is related to the employee's current job and how the education will benefit Spanish Fork City. The*
224 *request must then be reviewed with the human resource director for final approval. Pre-approval is necessary*
225 *for reimbursement. Course work or degrees approved for reimbursement must be related and pertinent to the*
226 *employee's current position. Final determination shall be made by the human resource manager with input from*
227 *the department director.*
228

229 4. Section 1.20.40.010 (D). Holidays is added as follows:
230

231 *(D)Police Officers assigned in the Patrol Division will be given 4 days (40 hours) of personal holiday hours on*
232 *January 1 and 6 days (60 hours) on July 1. The officer has the discretion when to use those hours anytime in*
233 *the six month period immediately following the receipt of such hours, subject to receiving approval from his/her*
234 *supervisor. The officer will designate on their individual timecard when they use their personal holiday hours. At*
235 *the end of each 6 month period, the city will buy-out, at full cash value, up to 20 hours in June and 30 hours in*
236 *December. Any remaining hours above these amounts will be forfeited.*
237

238 5. Section 1.20.95.100 (C) Driver's License is rewritten as follows:
239

240 *C. The City will reimburse the employee for the driver's license fee incurred in obtaining the license.*
241 *Employees required to obtain a physical in order to obtain a CDL are required to submit the costs of the*
242 *physical through their personal health insurance company. The City will reimburse employees for any license*
243 *fees, insurance copays, or other costs not covered by the insurance upon presentation of a receipt(s). Physicals*
244 *must be taken at a certified medical examiner's office as listed on the DOT's national registry.*
245

246 Councilman Dart made a **Motion** to **approve** Resolution #14-09 Amending the Spanish Fork City
247 Employee Personnel Manual.

248 Councilman Davis **Seconded** and the motion **Passed** all in favor with a roll call vote.
249

250 **Ordinance #07-14 Amending the Parking Requirements on Main Street**

251 Junior Baker said that currently parking restrictions prohibit overnight parking on Main Street
252 and further limit parking to 3 hours from 400 South to I-15. This proposal is recommending
253 extending the parking restrictions south to the Spanish Fork River.
254

255 **10.16.010 Parking Prohibited.**

256 A. It shall be unlawful for any person to park any vehicle on either side of Main Street south of I-15 or north of

257 *the Spanish Fork River between the hours of 11:00 p.m. and 5:00 a.m. It shall also be unlawful for any*
258 *person to park a vehicle on either side of the street between the hours of 11:00 p.m. and 5:00 a.m. on*
259 *Center Street between Main Street and 100 East, on 100 East between Center Street and 100 South, and*
260 *on 100 South between 100 East and Main Street.*

261 *B. It shall be unlawful for any person to park any vehicle on either side of Main Street, between 5:00 a.m. and*
262 *11:00 p.m., south of I-15 or north of the Spanish Fork River for a period of time longer than three*
263 *consecutive hours.*

264
265 Councilman Davis made a **Motion to approve** Ordinance #07-14 Amending the Parking
266 Requirements on Main Street.

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

268
269 **Ordinance #08-14 Amending Business License Revocations**

270 Junior Baker reviewed that the current ordinance requires a hearing before the City Council to
271 revoke a business license. This recommendation is to change the required hearing to be before
272 the Community Development Director and the process.

273
274 **5.04.100 Revocation**

275 *A. The issuance of a license under this Title grants only a revocable privilege to engage in business and confers*
276 *no vested rights of any kind upon a licensee. The licensee agrees, as a condition of license issuance, to*
277 *operate the licensed business or activity in conformity with the ordinances of the City and other applicable*
278 *laws.*

279 *B. Licenses issued under the provisions of this Title may be revoked for failure upon the part of the licensee to*
280 *comply with the conditions and requirements under which said license is granted, because of illegal activities*
281 *thereunder, or for the following causes:*

- 282 *1. The violation of any provision in this Title;*
- 283 *2. The failure to pay, when due, any license fee (including renewal fee), tax, charge, or penalty*
284 *provided for by City ordinance or State statute;*
- 285 *3. Any fraud or misrepresentation of a material fact in the procurement of the license, including*
286 *falsification of any information or supporting documentation provided by the licensee with the*
287 *license application;*
- 288 *4. Noncompliance with building, fire, or health codes;*
- 289 *5. Any conduct at the licensed premises tending to render the premises a private or public nuisance, as*
290 *defined in the Spanish Fork Municipal Code, or a menace to the health, peace, or general welfare of*
291 *the City or its residents;*
- 292 *6. Activities, under the guise of conducting a business, that are fraudulent, deceptive, or constituting a*
293 *violation of City ordinances or other applicable law;*
- 294 *7. Failure of the licensee to retain the legal qualifications necessary for the license;*
- 295 *8. Violation of the zoning ordinances governing the licensed business or activity, including, but not*
296 *limited to, parking and landscaping requirements;*
- 297 *9. Conviction of any crime related to the licensed business, after the issuance of the license;*
- 298 *10. Refusal to allow City employees to make inspection of the licensed premises during the business'*
299 *operating hours.*

300 *C. No license shall be revoked under the provisions of this Title except after notice and hearing. The hearing*
301 *shall be conducted by the Community Development Director. The decision of the Director is final and non-*
302 *appealable. Notice shall be given by sending a copy of the notice by certified mail, return receipt requested,*
303 *to the applicant at the address shown on the applicant's last application for a business license. The notice*
304 *shall specify the date, time, and place of the hearing and contain a brief description of the reasons why the*
305 *license is subject to revocation. It is the applicant's duty to maintain a current address at all times with the*
306 *city business license administrator. Notice is deemed received if notice is sent to the last address on file*
307 *with the City and is returned unclaimed, unknown, moved, or for any other reason identified by the postal*
308 *service. The hearing shall be held within twenty (20) days after mailing of the notice. The applicant may*
309 *appear in person or may send a representative. The applicant has a right to be represented by counsel, but*
310 *has no right to be appointed counsel.*

311 *D. Licenses revoked shall be for a period of one year, unless they are for violations of numbers 2, 4, 7, 8, or 10*

312 *of the causes set forth in paragraph B, in which event the licensee may reapply when compliance with those*
313 *provisions has been met.*
314 E. *For purposes of revoking a business license, the licensee is responsible for the acts of their employees,*
315 *agents, or others acting under the license issued.*
316

317 Councilman Gordon made a **Motion** to **approve** Ordinance #08-14 Amending Business License
318 Revocations.

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

320

321 **Resolution #14-07 Approving an Interlocal Agreement with other Government Entities in Utah**
322 **County Creating a Municipal Ethics Commission, and Authorizing the Mayor to Execute the**
323 **Agreement**

324 Junior Baker said this change came about in the legislature. This lets a city dealing with a
325 municipal ethics violation to rely on this committee for the investigation. Mr. Baker reviewed
326 some of the details in the interlocal agreement as well as the State Municipal Ethics Act.

327

- 328 1. *Spanish Fork City hereby approves the interlocal agreement with other Utah County cities, as attached*
329 *hereto, to create a Municipal Ethics Commission, and hereby authorizes the mayor of Spanish Fork City to*
330 *execute the same.*
- 331 2. *The purposes, powers, duties, and functions of the Municipal Ethics Commission are set forth in the*
332 *interlocal agreement, as attached hereto, and which purposes, powers, duties, and functions the Council*
333 *hereby approves.*
- 334 3. *This Resolution shall become effective upon adoption and execution.*
335

336 Councilman Dart made a **Motion** to **approve** Resolution #14-07 Approving an Interlocal
337 Agreement with other Government Entities in Utah County Creating a Municipal Ethics
338 Commission, and Authorizing the Mayor to Execute the Agreement.

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

340

341 **Resolution #14-08 Approving an Interlocal Agreement with other Government Entities in Utah**
342 **County Concerning Utah Lake, Its Uses and Preservation, and Authorizing the Mayor to Execute**
343 **the Agreement**

344 Junior Baker said a committee was created called the Utah Lake Commission and this is an
345 interlocal agreement with that commission to give support in verifying if regulations that the
346 State are going to implement are justified.

347

- 348 1. *Spanish Fork City hereby approves the interlocal agreement with other Utah County cities, as attached*
349 *hereto, to join a separate legal entity known as The Utah Lake Commission, and hereby authorizes the*
350 *mayor of Spanish Fork City to execute the same.*
- 351 2. *The purposes, powers, duties, and functions of The Utah Lake Commission are set forth in the interlocal*
352 *agreement, as attached hereto, and which purposes, powers, duties, and functions the Council hereby*
353 *approves.*
- 354 3. *This Resolution shall become effective upon adoption and execution.*
355

356 Councilman Davis made a **Motion** to **approve** the Resolution #14-08 Approving an Interlocal
357 Agreement with other Government Entities in Utah County Concerning Utah Lake, Its Uses and
358 Preservation, and Authorizing the Mayor to Execute the Agreement.

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

360

361 **FY 2015 Tentative City Budget**

362 Kent Clark presented the FY2015 tentative budget. Mr. Clark said they will hold a public hearing
363 on June 3rd and then it will be proposed for approval on June 17th. Mr. Clark said this budget has
364 decreased from last year to \$62 million.

365

366 Councilman Dart made a **Motion** to **approve** the FY 2015 Tentative City Budget.

367 Councilman Mendenhall **Seconded** and the motion **Passed** all in favor.

368

369 **ADJOURN TO REDEVELOPMENT AGENCY:**

370 Board member Davis made a **Motion** to adjourn out of City Council Meeting and into
371 Redevelopment Agency Meeting.

372 Board member Dart **Seconded** and the motion **Passed** all in favor at 8:38 p.m.

373

374 Board member Davis made a **Motion** to adjourn Redevelopment Agency meeting and reconvene
375 back to City Council meeting.

376 Board member Gordon **Seconded** and the motion **Passed** all in favor at 8:41 p.m.

377

378 **ADJOURN:**

379 Councilman Dart made a **Motion** to **adjourn** to Closed Session to discuss Legal Issues.

380 Councilman Mendenhall **Seconded** and the motion **Passed** all in favor at 8:41 p.m.

381

382 ADOPTED:

383

Angie Warner, Deputy Recorder



Memo

To: Mayor and City Council
From: Chris Thompson, Public Works Director/City Engineer
Date: May 16, 2014
Re: McKell Easement Agreement for the 2014 MAG Grant Spanish Fork River Trail Project

Staff Report

RECOMMENDED ACTION

Approval of the McKell Easement Agreement for the 2014 MAG Grant Spanish Fork River Trail Project.

BACKGROUND

The Mountainland Association of Governments has selected the Spanish Fork River Trail project for \$1,800,000 of funding. This trail will connect the Sports Park Trail to the trail coming from Canyon View Park.

At Main Street the trail will come from the Sports Park on the north side of the river, pass under the Main Street river bridge and then a pedestrian bridge will be constructed across the river on the east side of Main Street.

DISCUSSION

This easement is required to construct the pedestrian river bridge on the east side of Main Street.

Attached: agreement



SPANISH FORK RIVER TRAIL PROJECT EASEMENT AGREEMENT

This agreement is entered between MARK A. MCKELL (Owner) and SPANISH FORK CITY (City) for the purpose of constructing a public trail system through property owned by Owner along the Spanish Fork River.

WHEREAS, Mark A. McKell is the owner of real property in Spanish Fork, Utah, Parcel Serial# 27:041:0043; and

WHEREAS, City is desirous of obtaining an easement through property owned by Owner for the purpose of constructing and maintaining a public trail system along the Spanish Fork River.

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

1. The easement is described as follows:

Beginning at the a point on the West line of Grantor's property, said point being 547.05 feet due North along the East Section line and 164.81 feet due West from the East Quarter Corner of Section 25, Township 8 South, Range 2 East, Salt Lake Meridian, and running thence along said West line the following two (2) calls; (1) North 51°00'00" West 38.30 feet; (2) North 70°30'00" East 31.03 feet; thence South 34°23'58" East 13.30 feet to a point on a 9.16 foot radius curve to the right; thence along the arc of said curve 4.44 feet, chord bears South 18°50'45" East 4.40 feet; thence South 23°32'17" West 21.08 feet to the point of beginning.

Contains 665 square feet more or less.

(See Attached Exhibit "A")

2. Owner agrees that this is an easement in perpetuity for the installation, maintenance, repair and replacement of a public trail, bridge and appurtenant parts thereof and the right to reasonable access to Owners property for the above described purposes. The easement is for access by the public and other public entities for public purposes. The easement shall run with the real property and shall be binding upon the Owner and the Owner's successors, heirs and assigns.
3. City has heretofore investigated the property and determined that it is suitable for its purposes. City therefore accepts this property/easement "as is."
4. City shall cause the contractor installing the trail to haul away and dispose of any rubbish, sticks, trash, cement, large rocks, or similar type of debris which is removed during excavation and shall cause the excavated site to be restored to a similar condition which existed prior to the excavation.

5. City shall repair and restore all Owner's property or adjacent property to the trail that may be damaged in the prosecution of any work by City, its agents, servants, employees, or contractors. City shall also restore the surface condition to the same or substantially the same condition that it was in prior to such work by City. City will further leave the property and adjacent property of Owner in a clean condition free of litter and debris.
6. City shall construct one (1) "Powder River" type double gate with a minimum of eight foot and a maximum ten foot panels. Gates shall be constructed at a location identified by Owner.
5. City shall provide an adequate asphalt access to the owner's property from existing access along SR-198. Bridge location and trail alignment shall be built in such a way to allow access to owner's property.

(See Attached McKell Property Exhibit)

6. The trail and bridge, when constructed, shall be for pedestrian use. No motorized vehicles shall be allowed except for maintenance and emergency vehicles. City may place appropriate bollards to keep motorized vehicles off the trail easement. City will post signs indicating the restriction concerning motorized vehicles.
7. By granting the easement identified herein, Owner has made his land available for recreational purposes and thus, is entitled to the protections and limits of liability of the Utah Limitation of Landowner Liability – Public Recreation Act, Utah Code Ann. §57-14-1 et seq.
8. City agrees to indemnify and hold harmless Owner from any and all liability arising from the public's use of the trail or easement, including defending any court action. This indemnity shall not extend to the intentional or grossly negligent acts of Owner.
9. City shall be responsible for all improvements and costs associated with this agreement and the construction of the river trail and bridge.
10. City agrees to pay Owner \$750.00 for this agreement.
11. City shall Owner within 30 days of recording said easement.
12. This document represents the entire agreement between the parties. All prior negotiations, representations, commitments, or understandings are merged herein and superseded hereby. This agreement may only be amended by written agreement entered into between the parties.

DATED this _____ day of May, 2014

SPANISH FORK CITY By:

STEVE LEIFSON, Mayor

Attest:

Kent R. Clark, City Recorder

MARK A. MCKELL FAMILY LIVING TRUST By:

MARK A. MCKELL, Trustee

Exhibit A McKell River Access & Trail Easements



1" = 100 Ft

Legend

- Trail And River Access Easement McKell To SFC 2014-Perpetual
- Roads
- Paved
- County SFParcels
- Rivers
- Spanish Fork Boundary

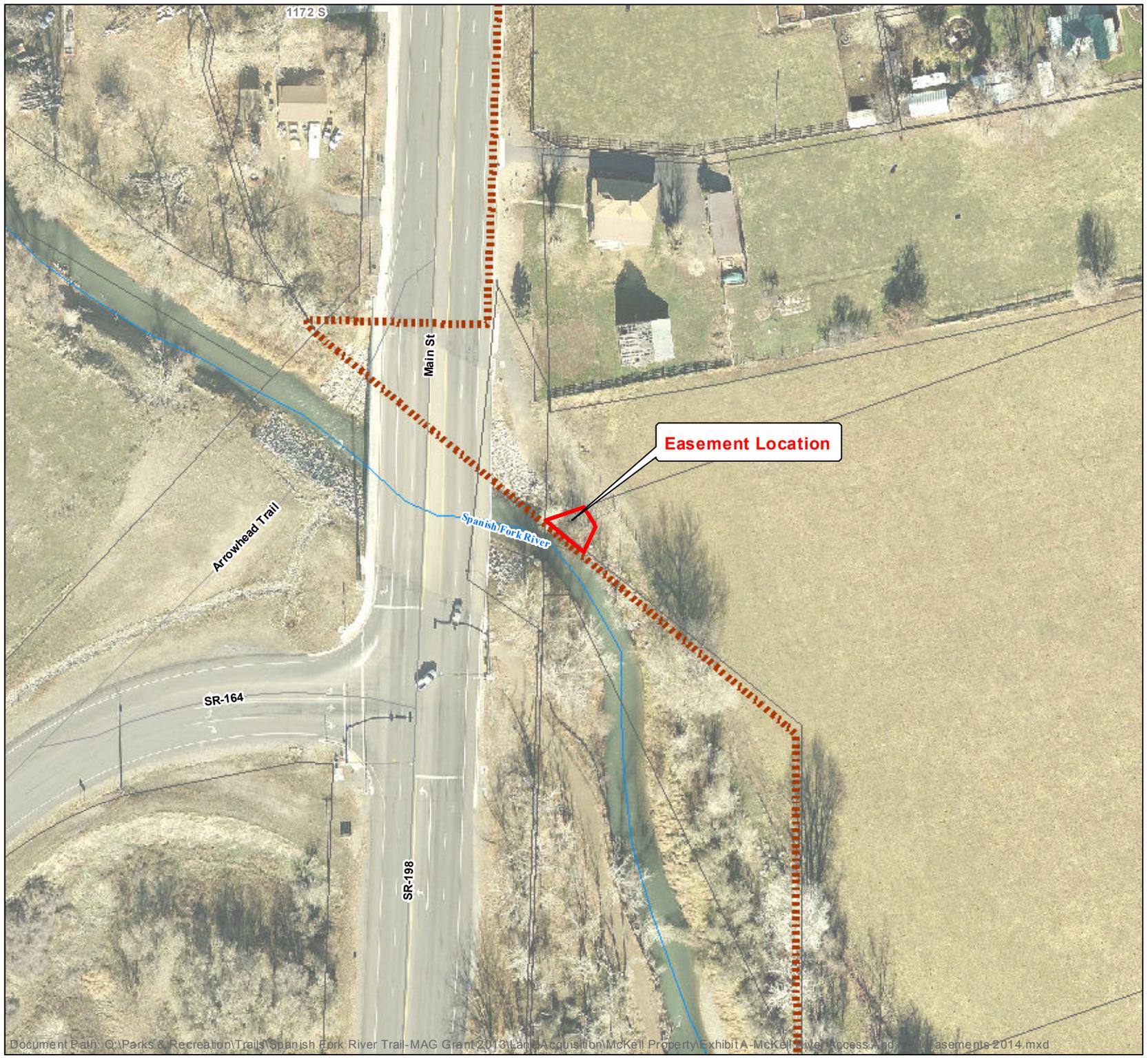
Print Date: 5/7/2014



GEOGRAPHIC INFORMATION SYSTEMS

Spanish Fork City GIS
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Spanish Fork, UT 84660
GIS Phone Numbers;
(801) 804-4571 (Administrator)
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(801) 804-4572 (Intern)

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Memo

To: Mayor and City Council
From: Chris Thompson, Public Works Director/City Engineer
Date: May 15, 2014
Re: Warren Call Access Agreement for the 2014 MAG Grant Spanish Fork River Trail Project

Staff Report

RECOMMENDED ACTION

Approval of the Warren Call Access Agreement for the 2014 MAG Grant Spanish Fork River Trail Project.

BACKGROUND

The Mountainland Association of Governments has selected the Spanish Fork River Trail project for \$1,800,000 of funding. This trail will connect the Sports Park Trail to the trail coming from Canyon View Park.

At Main Street the trail will come from the Sports Park on the north side of the river, pass under the Main Street river bridge and then a pedestrian bridge will be constructed across the river on the east side of Main Street.

DISCUSSION

The best access in to construct the trail just west of Main Street is through Warren Call's property. This agreement allows us that access.

Attached: agreement



**SPANISH FORK RIVER TRAIL PROJECT
TEMPORARY CONSTRUCTION ACCESS AGREEMENT**

This agreement is entered between WARREN CALL (Owner) and SPANISH FORK CITY (City) for the purpose of constructing a public trail system adjacent to property owned by Owner along the Spanish Fork River.

WHEREAS, Warren Call is the owner of real property in Spanish Fork, Utah, Parcel Serial# 25:027:0097 & 25:027:0038, and

WHEREAS, City is desirous obtaining access through property owned by Owner for the purpose of constructing a public trail along the Spanish Fork River.

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

1. Owner hereby grants and conveys to City, its agents, servants, employees and contractors reasonable access across Owner's property to construct a public trail system along the Spanish Fork River. (See Attached Exhibit "A")
2. City shall repair and restore all Owner's property or adjacent property to the trail that may be damaged in the prosecution of any work by the City, its agents, servants, employees, or contractors. City shall also restore the surface condition to the same or substantially the same condition that it was in prior to such work by City. City will further leave the property and adjacent property of Owner in a clean condition free of litter and debris
3. This document represents the entire agreement between the parties. All prior negotiations, representations, commitments, or understandings are merged herein and superseded hereby. This agreement can only be amended by written agreement entered into between the parties and will automatically terminate October 31, 2014. Owner reserves the right to terminate this agreement at any time by either written or verbal communication to the City.

DATED this _____ day of May, 2014

SPANISH FORK CITY By:

STEVE LEIFSON, Mayor

Attest:

Kent R. Clark, City Recorder



WARREN CALL

Exhibit A



1" = 100 Ft

Legend

- Temporary Construction Easement Warren Call Property
- 16Ft Trail Along Warren Call Property
- Roads
 - Paved
- County SF Parcels
- Rivers
- Spanish Fork Boundary

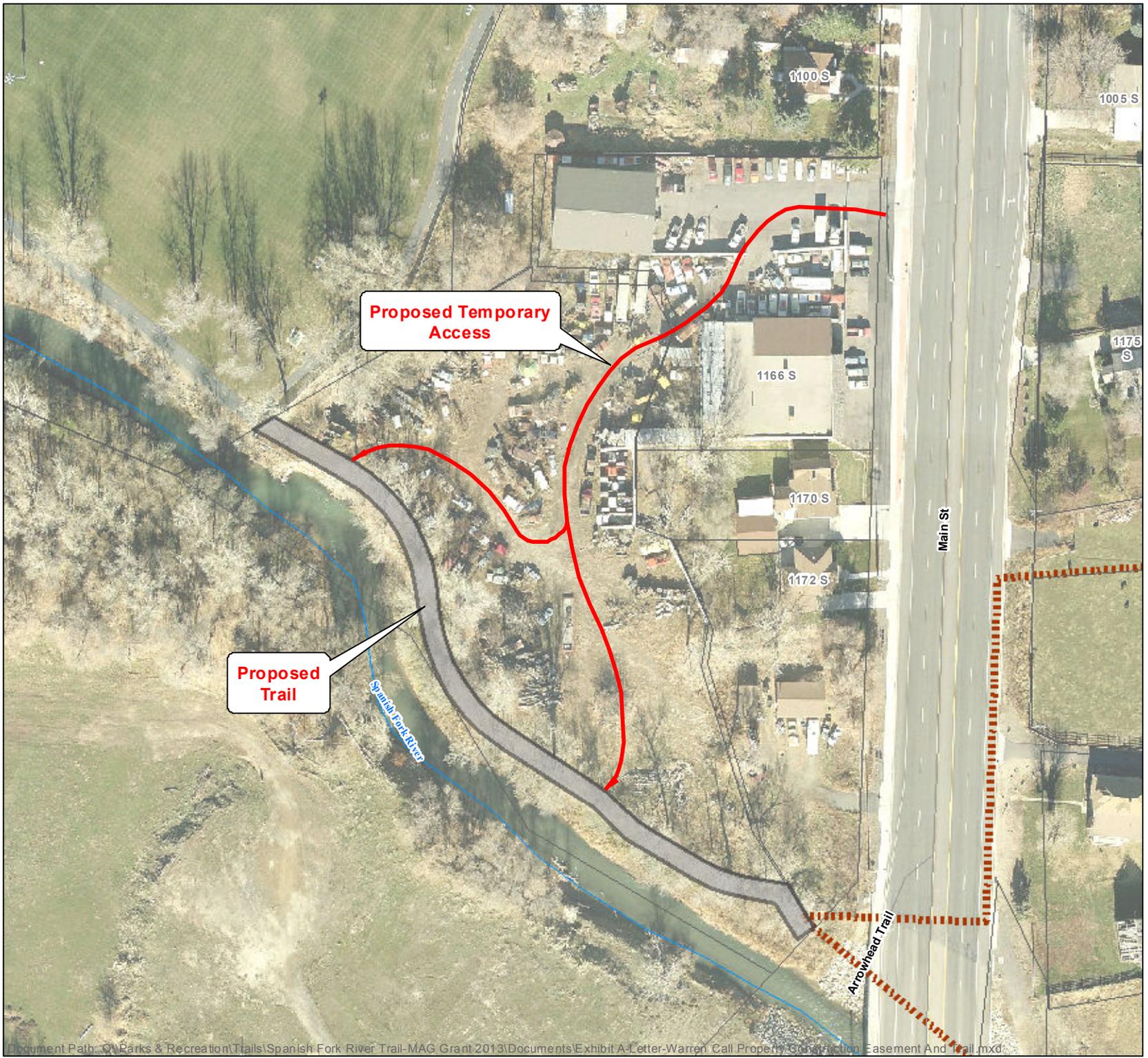
Print Date: 5/12/2014



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Memo

To: Mayor and City Council
From: Chris Thompson, Public Works Director/City Engineer
Date: May 16, 2014
Re: Butter Property Exchange Agreement for the 2014 MAG Grant Spanish Fork River Trail Project

Staff Report

RECOMMENDED ACTION

Approval of the Butter Property Exchange Agreement for the 2014 MAG Grant Spanish Fork River Trail Project.

BACKGROUND

The Mountainland Association of Governments has selected the Spanish Fork River Trail project for \$1,800,000 of funding. This trail will connect the Sports Park Trail to the trail coming from Canyon View Park.

At Main Street the trail will come from the Sports Park on the north side of the river, pass under the Main Street river bridge and then a pedestrian bridge will be constructed across the river on the east side of Main Street.

DISCUSSION

This property exchange is required to enable us to construct the access trail up to Main St. This ramp up to Main Street will be needed for Main Street access from the trail and for trail users during high water periods.

Attached: agreement



**SPANISH FORK RIVER TRAIL SYSTEM
BUTTERS & SPANISH FORK CITY
PROPERTY EXCHANGE AGREEMENT**

This agreement is entered between BAILEY BUTTERS, (Owner) and SPANISH FORK CITY, (City) for the purpose of exchanging property between both parties for the purpose of constructing a public trail system along the Spanish Fork River.

WHEREAS, Bailey Butters is the owner of real property in Spanish Fork, Utah, Parcel Serial# 25:027:0095, Warranty Deed Ent: 46494 Recorded June 5, 2012; and

WHEREAS, City is desirous of obtaining property along the Spanish Fork River owned by Owner for the purpose of constructing a public trail system. Owner has agreed to deed to the City property along the Spanish Fork River in exchange for property owned by City adjacent to Owner's property and to the west thereof.

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

1. Both parties agree to Convey and Quit-Claim all right, title and interest in their respective parcels to the other as follows. (See Attached Exhibit "A")

The property Owner is to deed to the City is described as follows:

BEGINNING AT THE A POINT ON THE SOUTH LINE OF GRANTOR'S PROPERTY, SAID POINT BEING 1940.36 FEET S00°12'30"E ALONG THE EAST SECTION LINE AND 356.16 FEET S89°47'30"W FROM THE NORTHEAST CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE MERIDIAN, AND RUNNING THENCE ALONG SAID SOUTH LINE THE FOLLOWING TWO (2) CALLS; (1) S43°17'25"W 15.86 FEET; (2) N33°02'07"W 19.43 FEET; THENCE S77°31'34"E 21.99 FEET ALONG AN EXISTING FENCE LINE TO THE POINT OF BEGINNING.

CONTAINS 150 SQUARE FEET MORE OR LESS.

The property City is to deed to the Owner is described as follows:

BEGINNING AT THE A POINT, SAID POINT BEING 1935.49 FEET S00°12'30"E ALONG THE EAST SECTION LINE AND 377.54 FEET S89°47'30"W FROM THE NORTHEAST CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE MERIDIAN, AND RUNNING THENCE N58°42'48"W 37.85 FEET TO A POINT ON A 100.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 22.71 FEET, CHORD BEARS S82°01'06"E 22.66 FEET; THENCE S30°58'00"E 19.26 FEET TO THE POINT OF BEGINNING.

CONTAINS 160 SQUARE FEET MORE OR LESS.

2. City has heretofore investigated the Owner's property and determined that it is suitable for its purposes. City therefore accepts this property "as is."
3. City shall contract to have a public trail constructed adjacent to Owner's property along the Spanish Fork River. (See Attached Exhibit "B")
4. City shall cause the contractor installing the trail to haul away and dispose of any rubbish, sticks, trash, cement, large rocks, or similar type of debris which is removed during excavation and shall cause the excavated site to be restored to a similar condition which existed prior to the excavation.
5. City shall repair and restore all Owner's property or adjacent property to the trail that may be damaged in the prosecution of any work by City, its agents, servants, employees, or contractors. City shall also restore the surface condition to the same or substantially the same condition that it was in prior to such work by City. City will further leave the property and adjacent property of Owner in a clean condition free of litter and debris.
6. Post trail construction City shall contract to install a Masonry Wall along the trail and a chain link fence between the adjacent Warren Call Property. (See Attached Exhibit "C")
7. City shall be responsible for all the costs associated with this agreement and costs associated with the construction of the trail.
8. This document represents the entire the entire agreement between the parties. All prior negotiations, representations, commitments, or understandings are merged herein and superseded hereby. This agreement may only be amended by written agreement entered into between the parties.

DATED this _____ day of May, 2014

SPANISH FORK CITY By:

STEVE LEIFSON, Mayor

Attest:

Kent R. Clark, City Recorder

BAILEY BUTTERS

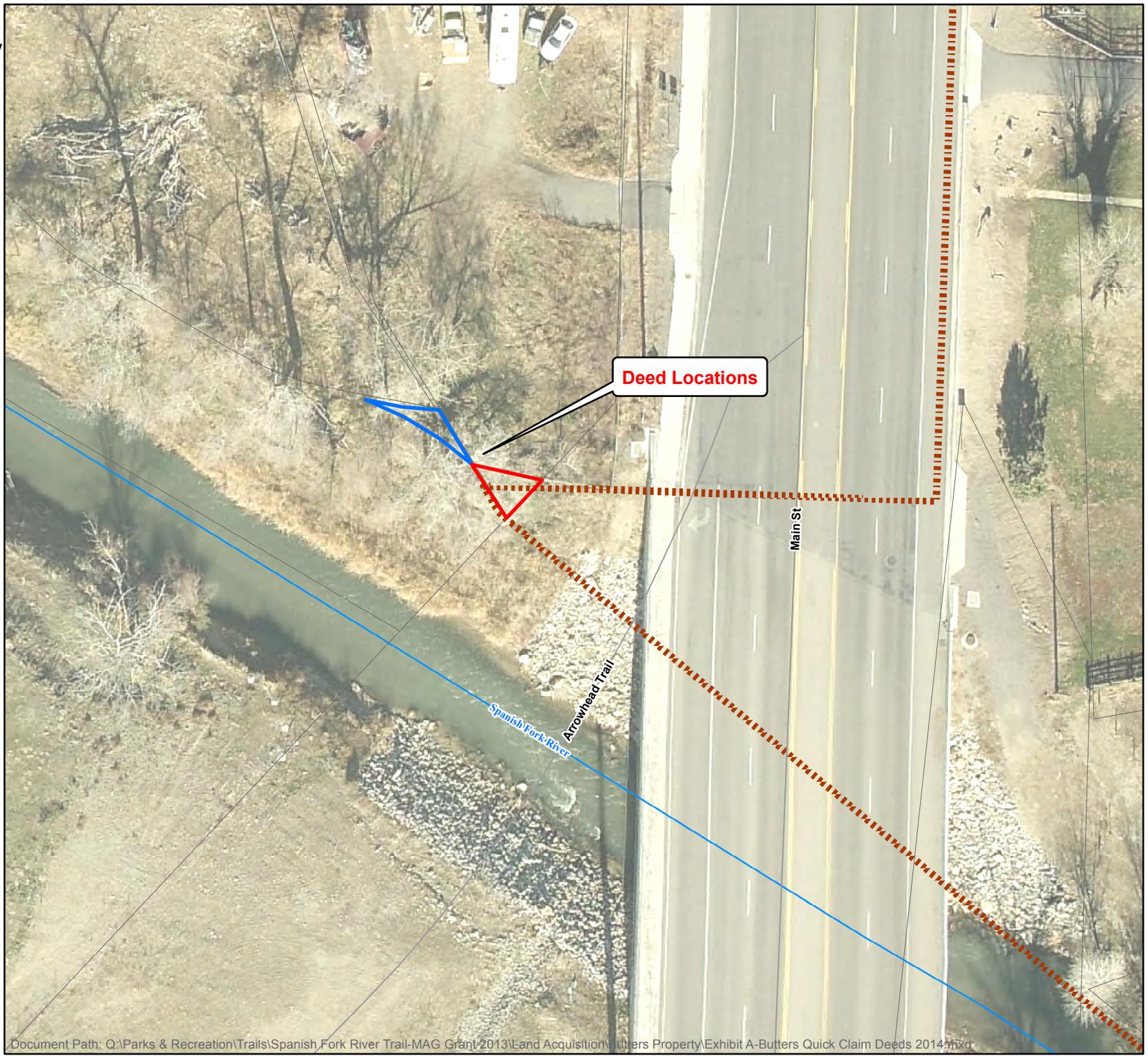
Exhibit A Butters Property Deeds to Spanish Fork



1" = 40 Ft

Legend

-  Butters to SFC 2014 QCD
-  SFC to Butters 2014 QCD
- Roads
 -  Paved
 -  County SF Parcels
-  Rivers
-  Spanish Fork Boundary



Print Date: 5/15/2014



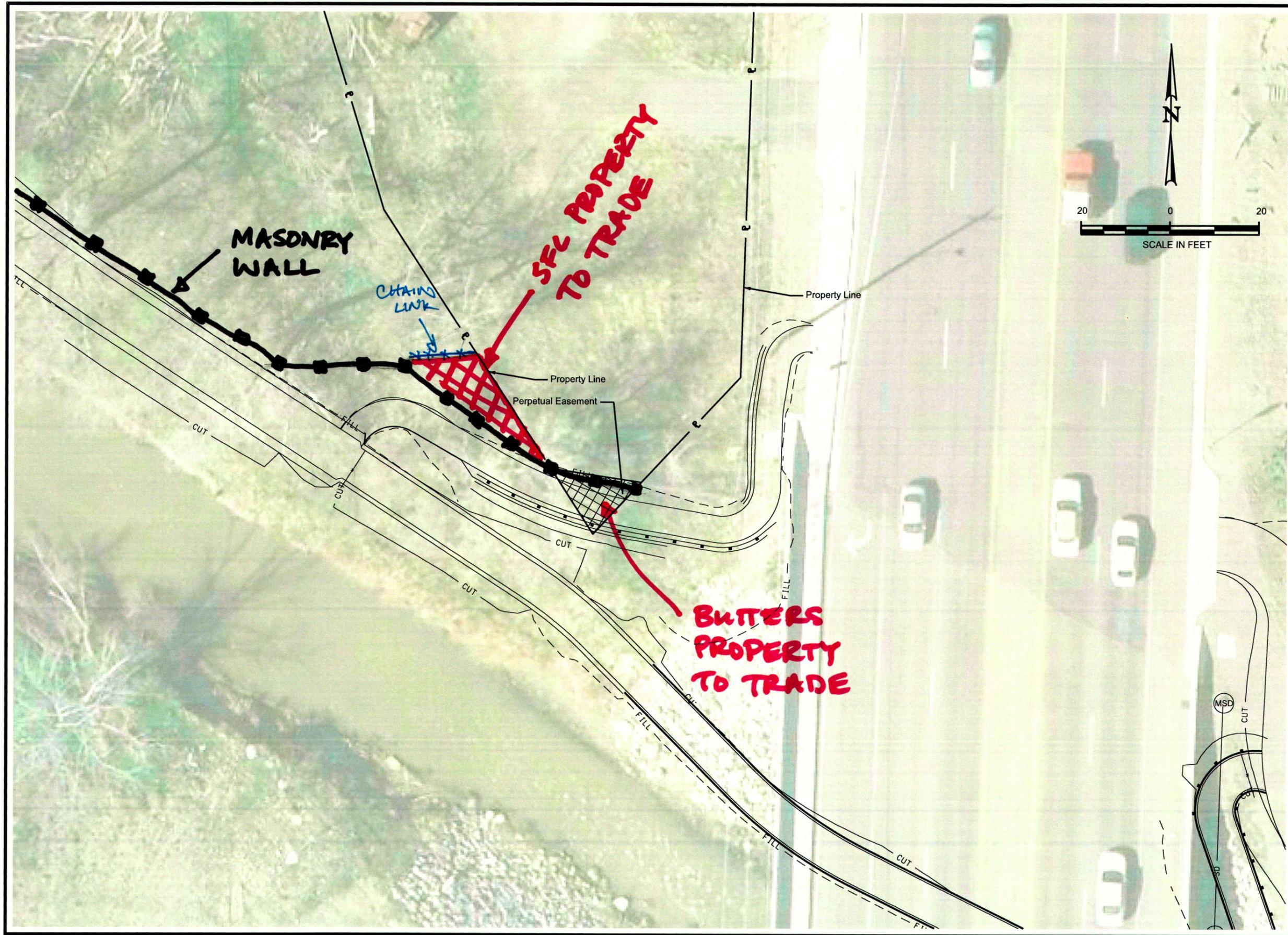
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PROJECT		SPANISH FORK RIVER TRAIL		UTAH DEPARTMENT OF TRANSPORTATION		REVISIONS	
PROJECT NUMBER		MAIN ST AND CENTRAL SECTIONS		ROADWAY DESIGN			
PROJECT NUMBER		F-LC49(142)		APPROVED			
PROJECT NUMBER		PIN 10962		DRAWN BY CHL			
PROJECT NUMBER		PIN 10962		QC CHECKED BY CRN			
PROJECT NUMBER		PIN 10962		PROFESSIONAL ENGINEER		NO. DATE APPROVED BY	
PROJECT NUMBER		PIN 10962		DATE		REMARKS	



PROJECT		SPANISH FORK RIVER TRAIL	
PROJECT NUMBER		MAIN ST AND CENTRAL SECTIONS	
PROJECT NUMBER		F-LC49(142)	PIN 10962
SHEET NO.		Butters Property Exhibit	
APPROVED		DATE	
DRAWN BY		CHL	
QC CHECKED BY		CRN	
PROFESSIONAL ENGINEER		DATE	
DATE		APPROVED BY	
NO.		REMARKS	
REVISIONS			



Memo

To: Mayor and City Council
From: Chris Thompson, Public Works Director/City Engineer
Date: May 15, 2014
Re: UDOT Local Government Contract with R.B.&G. Engineering for the Construction Management of the MAG River Trail Project

Staff Report

The Mountainland Association of Governments has selected the Spanish Fork River Trail project for \$1,800,000 of funding. The city and UDOT just completed an RFQ/RFP process and is recommending that RB&G Engineering be selected to do the construction management on this project.

We recommend that that the City Council approve this contract with UDOT and RB&G to do the construction management for the Spanish Fork River Trail project for the maximum cost of \$179,924.24. The city's match on this project is 6.67%, or a maximum of \$12,000.95 for this consulting work. The city already has included these costs in the budget.

Attached: contract



CS FILE COPY LOCAL GOVERNMENT CONTRACT

STATE OF UTAH
LOCAL GOVERNMENT
ENGINEERING SERVICES
2013-2016 LG POOL (RPLOQ)
COST PLUS FIXED FEE

CONTRACT NO. _____
EFFECTIVE DATE _____
TRACKING NO. _____

Project No.: F-LC49(142)
PIN Description: Spanish Fork River Trail
FINET Prog No.: 5385913C
PIN No.: 10962
Work Discipline: Construction Engineering Management

1. **CONTRACTING PARTIES:** This contract is between Spanish Fork City, referred to as LOCAL AUTHORITY and

R B & G Engineering Inc
1435 West 820 North
Provo, UT 84601

Legal Status of Consultant: For Profit Corporation

Fed ID No.: 87-0456052

referred to as CONSULTANT, and approved by the Utah Department of Transportation, referred to as DEPARTMENT.

2. **REASON FOR CONTRACT:** The LOCAL AUTHORITY does not have sufficient qualified staff to complete the work required in the suggested time frame and the CONSULTANT is professionally qualified and willing to assist the LOCAL AUTHORITY with Construction Engineering Management services as further described in Attachment C.

3. **PROJECT/CONTRACT PERIOD:** The project/contract will terminate August 31, 2015, unless otherwise extended or canceled in accordance with the terms and conditions of this contract.

4. **CONTRACT COSTS:** The CONSULTANT will be paid a maximum of \$179,924.24 for costs authorized by this Contract as further described in Attachment D.

5. **ATTACHMENTS INCLUDED AS PART OF THIS CONTRACT:**

- Attachment A – Certification of Consultant and Local Authority
- Attachment B – Standard Terms and Conditions
- Attachment C – Services Provided by the Consultant
- Attachment D – Fees
- Attachment E – Insurance

The parties below hereto agree to abide by all the provisions of this contract. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONSULTANT - R B & G Engineering Inc

LOCAL AUTHORITY - Spanish Fork City

By: [Signature] 5/12/2014
Title: VICE PRESIDENT Date

By: _____ Date

UTAH DEPARTMENT OF TRANSPORTATION

DEPARTMENT Comptroller's Office

By: [Signature] 9 May 14
Title: Engineer for Preconstruction Date
FOR

By: _____ Date
Title: Contract Administrator

CERTIFICATION OF CONSULTANT

I hereby certify that I, CARL L. COOK, am a duly authorized representative of R B & G Engineering Inc and that neither I nor the above CONSULTANT I hereby represent has:

- (a) employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Utah Department of Transportation and the Federal Highway Administration in connection with this contract involving participation of Federal-aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

5/12/2014
Date

Carl L. Cook / VICE PRESIDENT
CONSULTANT Signature/Title

CERTIFICATION OF LOCAL AUTHORITY

I hereby certify that I am the _____ of Spanish Fork City and that the above CONSULTANT or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Spanish Fork City Signature

**LOCAL GOVERNMENT
ENGINEERING SERVICES CONTRACT
STANDARD TERMS AND CONDITIONS**

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in Sections 27-12-21, 107 and 108; and 63-56 U.C.A. 1953, as amended, and the Utah State Procurement Regulations, which authorizes the LOCAL AUTHORITY and/or the DEPARTMENT to make purchases in accordance with said laws and regulations.
2. **CONTRACT JURISDICTION AND COMPLIANCE WITH LAWS:** The provisions of this contract shall be governed by the laws of the State of Utah. Also, the CONSULTANT and those engaged by the CONSULTANT shall comply with all Federal, State and local laws, regulations and other legally binding requirements that pertain to the services provided under this contract. Proof of the CONSULTANT'S compliance with licensing requirements shall be furnished to the LOCAL AUTHORITY and/or the DEPARTMENT upon request.
3. **RECORDS ADMINISTRATION:** The CONSULTANT shall maintain all books, papers, documents, accounting records and other evidence to support costs billed for under this contract. These records shall be retained by the CONSULTANT for a period of at least four (4) years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. These records shall be made available at all reasonable times during the four year period for audit and inspection by the LOCAL AUTHORITY and/or the DEPARTMENT and other authorized State and Federal auditors. The CONSULTANT'S records supporting the cost proposal shall also be retained and made available for review by authorized Federal or State staff. Copies of requested records shall be furnished to the LOCAL AUTHORITY and/or the DEPARTMENT upon request.
4. **CONFLICT OF INTEREST:** The CONSULTANT certifies that none of its officers or employees are officers or employees of the State of Utah unless disclosure has been made in accordance with Section 67-16-8, U.C.A. 1953, as amended. The CONSULTANT certifies that no engineer, attorney, appraiser, inspector, surveyor or survey crew, or other person performing services for the CONSULTANT has, directly or indirectly, a financial or other personal interest, other than his employment or retention by the LOCAL AUTHORITY and/or the DEPARTMENT, in any contract or subcontract in connection with this project (Reference 23 CFR § 1.33). An example of this situation would be the CONSULTANT subcontracts with the Contractor to perform survey work while contracted by the LOCAL AUTHORITY and/or the DEPARTMENT to perform construction engineering management services for the same project.

The CONSULTANT further warrants that it has no financial or other interest in the outcome of the work performed under the contract. Examples of this situation would be a Consultant who owns land, options to buy land, or some business enterprise that would be financially enhanced or diminished by any project alternatives.
5. **EMPLOYMENT OF DEPARTMENT EMPLOYEES:** The CONSULTANT agrees not to engage in any way the services on this contract of any present or former Utah Department of Transportation employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modification for this contract.
6. **CONSULTANT, AN INDEPENDENT CONTRACTOR:** The CONSULTANT shall be an independent contractor, and as such, shall have no authority, express or implied to bind the LOCAL AUTHORITY and/or the DEPARTMENT to any agreement, settlement, liability, or understanding whatsoever; and agrees not to perform any acts as agent for the LOCAL AUTHORITY, except as specifically authorized and set forth herein. Persons employed by the LOCAL AUTHORITY and acting under the direction of the LOCAL AUTHORITY shall not be deemed to be employees or agents of the CONSULTANT. Compensation provided to the CONSULTANT herein shall be the total compensation payable hereunder by the LOCAL AUTHORITY.
7. **INDEMNITY - LIABILITY:** The CONSULTANT shall hold harmless and indemnify the DEPARTMENT and the LOCAL AUTHORITY, their officers, agents and employees from and against any and all claims, suits and cost, including attorneys fees, for injury or damage of any kind to the extent arising out of the

negligent acts, wrongful acts, errors, or omissions of the CONSULTANT, or its subconsultants when acting within the scope of their subcontract, or their respective agents, employees or representatives.

The CONSULTANT is an independent contractor contracted with the LOCAL AUTHORITY and approved by the DEPARTMENT. Any periodic plan and specification review or construction inspection performed by the LOCAL AUTHORITY or DEPARTMENT arising out of the performance of the contract, does not relieve the CONSULTANT of its duty in the performance of the contract, or ensure compliance with customary standard of professional care.

8. **SEPARABILITY:** The declaration by any court, or other binding legal source, that any provision of this contract is illegal and void and shall not affect the legality and enforceability of any other provision of this contract, unless said provisions are mutually dependent.
9. **LIABILITY INSURANCE:** Services to be provided by the CONSULTANT under this contract are required to be covered by insurance. The CONSULTANT shall furnish the LOCAL AUTHORITY and the DEPARTMENT a Certificate of Insurance applying to this contract for each type of insurance required, to be approved by the DEPARTMENT and the LOCAL AUTHORITY, before the CONSULTANT begins work under this contract. The CONSULTANT'S insurer must be authorized to do business in Utah and must meet the specified A.M. Best rating or better at the time this contract is executed. The following insurance shall be maintained in force until all activities which are required by this contract or as changed by contract modification are completed and accepted by the LOCAL AUTHORITY and the DEPARTMENT:

- (a) General Liability and Automobile Liability insurance with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate and having an A.M. Best rating of A-class VIII or better. The limit if different for this contract will be as designated in Attachment C to this contract. If this coverage is written on a claims-made basis, the Certificate of Insurance shall so indicate.

The CONSULTANT represents that as long as commercially available the insurance shall remain in effect such that claims reported up to three (3) years beyond the date of substantial completion of this contract are covered.

- (b) Architect and/or Engineers Professional Liability (errors and omissions) insurance having an A.M. Best rating of A-class VIII or better, is required at the coverage amount of \$1,000,000 per claim and \$2,000,000 aggregate. If this coverage is written on a claims-made basis, the Certificate of Insurance shall so indicate. The CONSULTANT represents that as long as commercially available the insurance shall remain in effect such that claims reported up to three (3) years beyond the date of substantial completion of this contract are covered (on construction contracts or modifications for construction management the insurance, shall remain in effect for one (1) year after completion of the project).
- (c) Valuable Papers & Records Coverage and/or Electronic Data Processing (Data and Media) Coverage for the physical loss or destruction of the work product including drawings, plans, specifications and electronic data and media. Such insurance shall be of a sufficient limit to protect the CONSULTANT, its sub-consultants, the LOCAL AUTHORITY, and the DEPARTMENT from the loss of said information.
- (d) Aircraft Liability in the amount of \$1,000,000 per occurrence if aircraft are utilized in connection with this contract.
- (e) The CONSULTANT shall provide evidence that his employees and sub-consultant employees are covered by Workers Compensation. If they are covered by Workers Compensation Fund of Utah, then the A.M. Best rating is not required in this area.
- (f) The CONSULTANT shall require the insurance company that issues the Certificates of Insurance for the evidence of the required insurance coverage to endeavor to provide the DEPARTMENT and the LOCAL AUTHORITY with 30 days written notice in the event that coverage is canceled before the policy expiration date stated in the Certificate. The CONSULTANT further agrees to

provide the DEPARTMENT and the LOCAL AUTHORITY with 30 days written notice prior to making an alternation or material change to the required insurance coverage.

Policies referred to in 9(a) and 9(d) above are required to be endorsed naming the LOCAL AUTHORITY, UDOT, and the State of Utah as Additional Insureds and, on General Liability and Aircraft Liability, indicate they are primary and not contributing coverage. All required policies, endorsements, insurance companies issuing same, and self insured programs are subject to review and approval by the State of Utah, Risk Manager.

- 10. HEALTH INSURANCE:** The CONSULTANT agrees that if the CONSULTANT has an initial contract of 1.5 million dollars or more, or the contract and modifications are anticipated in good faith to exceed 1.5 million dollars, or the CONSULTANT has a subcontract at any tier that involves a sub-consultant that has an initial subcontract of \$750,000 or more, and/or the CONSULTANT has a subcontract at any tier that is anticipated in good faith to exceed \$750,000; hereby certifies the following.

The CONSULTANT and all applicable sub-consultants have and will maintain an offer of qualified health insurance coverage for their employees, as defined in UCA Section 34A-2-104 for the employees who live and/or work within the State of Utah, along with their dependents, during the duration of the contract. Employee, for purposes of these requirements, shall be no broader than the use of the term employee for purposes of State of Utah Workers' Compensation requirements.

The Executive Director or designee shall have the right to request a recertification by the CONSULTANT by submitting a written request to the CONSULTANT, and the CONSULTANT shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the CONSULTANT be required to demonstrate such compliance more than twice in any 12-month period. The CONSULTANT and all applicable sub-consultants will be subject to all applicable penalties. The CONSULTANT will provide these same requirements in all applicable subcontracts at every tier.

- 11. PROGRESS:** The CONSULTANT shall begin the work required by this contract within one week following official notification by the DEPARTMENT to proceed. The CONSULTANT shall prosecute the work diligently and to the satisfaction of the LOCAL AUTHORITY and the DEPARTMENT. If Federal Funds are used on this contract the work will be subject to periodic review by the Federal Highway Administration.

The CONSULTANT will prepare monthly progress reports following the format established by the LOCAL AUTHORITY and the DEPARTMENT in sufficient detail to document the progress of the work and support the monthly claim for payment. Payments will not be made without a supporting progress report. In addition, the CONSULTANT will update the DEPARTMENT'S "electronic Program Management" (ePM) system bi-weekly to reflect the status of the project.

Progress conferences will be held periodically. The CONSULTANT will prepare and present written information and studies to the LOCAL AUTHORITY and the DEPARTMENT so it may evaluate the features and progress of the work. Any one of the three parties may request a conference; to be held at the office of any, or at a place designated by the LOCAL AUTHORITY or the DEPARTMENT. The conferences shall also include inspection of the CONSULTANT'S services and work products when requested by the LOCAL AUTHORITY or the DEPARTMENT.

The CONSULTANT will be required to perform such additional work as may be necessary to correct errors caused by the CONSULTANT in the work required under the contract without undue delays and without additional cost to the LOCAL AUTHORITY and the DEPARTMENT.

At any time the CONSULTANT determines the contract work cannot be completed within the specified time or budget, the LOCAL AUTHORITY and the DEPARTMENT shall be immediately notified in writing. The LOCAL AUTHORITY and the DEPARTMENT may, at their sole discretion, extend the contract by written modification.

The LOCAL AUTHORITY or the DEPARTMENT may terminate this contract in accordance with termination provisions of this contract including failure of the CONSULTANT to make satisfactory progress of the contract work.

Should the LOCAL AUTHORITY or the DEPARTMENT desire to suspend the work, but not terminate the contract, this will be done by verbal notification followed by written confirmation from the LOCAL AUTHORITY or the DEPARTMENT. The work may be reinstated upon 30 days advance written notice from the LOCAL AUTHORITY or the DEPARTMENT.

Unless extended or terminated in writing, this contract will terminate on the expiration date, or at the end of the specified calendar days.

12. **REVIEW AND INSPECTION OF WORK:** It is expressly understood and agreed that authorized representatives of the LOCAL AUTHORITY, DEPARTMENT and, when Federal Funds are used, the Federal Highway Administration shall have the right to review and inspect the work in process, and the CONSULTANT'S facilities, at any time during normal business hours or by appointment.
13. **NON DISCRIMINATION PROVISIONS:** The CONSULTANT agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35 U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive order 11375 and as supplemented in Department of Labor Regulations (41CFR Part 60), which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap. The CONSULTANT agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place. Sections 49 CFR 21 through Appendix H and 23 CFR 710.405(b) are applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds. The CONSULTANT further agrees to furnish reports to the LOCAL AUTHORITY and/or the DEPARTMENT upon request for the purpose of determining compliance with these statutes identified in this section. The CONSULTANT shall comply with the Americans With Disabilities Act (ADA).

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federal-aid contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the DEPARTMENT deems appropriate. During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- (a) **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the 49 CFR Part 21, and the 23 CFR Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (b) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR § 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (c) **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status.
- (d) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT to be pertinent to ascertain compliance with such Regulations, orders and

instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the DEPARTMENT, and shall set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
- (1) withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. *(Provision revised July 29, 2013.)*

14. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

MATTERS: The CONSULTANT agrees to abide by the requirements of 49 CFR Part 29. By signing this contract the CONSULTANT certifies that to the best of their knowledge and belief that it or its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in subparagraph 14(b) of this certification; and
- (d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

Where the CONSULTANT is unable to certify to any of the statements in this certification, the CONSULTANT shall attach an explanation to this contract. Exceptions will not necessarily result in denial of award, but will be considered in determining CONSULTANT'S responsibility. Any exceptions noted shall identify to whom it applies, the initiating agency, and dates of the action. Providing false information may result in criminal prosecution or administrative sanctions.

15. CERTIFICATION OF COMPLIANCE ON LOBBYING RESTRICTIONS: The CONSULTANT agrees to conform with the lobbying restrictions established by Section 319 of Public Law 101-121 (Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990) for contracts exceeding \$100,000 in Federal Funds. The CONSULTANT certifies, by signing this contract, to the best of their knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONSULTANT also agrees by signing this contract that they shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

16. **CERTIFICATION OF COMPLIANCE ON DRUG AND ALCOHOL TESTING:** The CONSULTANT hereby certifies by executing this Contract, that the CONSULTANT shall comply with all applicable provisions of Rule 916-6 Drug and Alcohol Testing in State Construction Contracts and UCA Section 63G-6-604 throughout the term of this Contract. The CONSULTANT shall provide this requirement in its contracts with subconsultants.
17. **CONSULTANT COST CERTIFICATION:** The CONSULTANT hereby certifies by executing this Contract, that the CONSULTANT has previously submitted a CONSULTANT certification of final indirect costs in accordance with the Federal Acquisition Regulations (FAR) cost principles as described in the FHWA Order 4470.1A and in the DEPARTMENT Financial Screening Application.
18. **OWNERSHIP OF DOCUMENTS:** All tracings, plans, manuscripts, specifications, data, maps, etc., prepared or obtained by the CONSULTANT, as a result of working on this contract, shall be delivered to and become the property of the LOCAL AUTHORITY. All documents and data pertaining to work required by this contract shall be the property of the LOCAL AUTHORITY and shall be delivered to the LOCAL AUTHORITY within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation on their further use. Costs of all the above items shall be considered as included in the basic contract compensation for the work as described in ATTACHMENT C.

The CONSULTANT shall not be responsible for another party's application of information contained in the contract documents to other projects, or for uses other than that for which the information was intended. Should patentable discoveries or inventions result from work required by this contract, all rights to them shall be the sole property of the CONSULTANT. Except, the CONSULTANT agrees to grant to the United States Government and the State of Utah a non exclusive, non transferable, paid up, license to use the discovery or invention. The CONSULTANT is permitted to copyright reports and other contract products provided that the LOCAL AUTHORITY, the DEPARTMENT and the Federal Highway Administration have a royalty free, non exclusive, irrevocable right to reproduce, publish, or otherwise use and authorize others to use for governmental purposes.

19. **ASSIGNMENT AND SUBCONTRACTING:** The CONSULTANT shall not subcontract any of the work required by this contract, or assign monies to be paid to the CONSULTANT hereunder, without the prior written approval of the LOCAL AUTHORITY and/or the DEPARTMENT. The amount billed to the DEPARTMENT for subcontractor costs shall be the same amount the CONSULTANT actually pays subcontractor for services required by this contract. All payments made by the CONSULTANT to the subcontractor for services required by this contract shall be subject to audit by the LOCAL AUTHORITY and/or the DEPARTMENT. All subcontracts must include all the same terms and conditions and provisions included in this contract. However, the prime CONSULTANT is responsible for ensuring that all work performed by sub-consultants is insured under their insurance policy, or they require that the sub-consultants meet the insurance provisions required under this contract.

The CONSULTANT must perform work valued at not less than 60% of the total contract amount, excluding specialized services, with its own staff. Specialized services are those services or items that are not usually furnished by a consultant performing the particular type of service contained in this contract.

20. **PERSONNEL/STAFFING PLAN:** Any change in personnel from that specifically identified in Attachment C of this contract, must be approved by the DEPARTMENT through a modification to this contract or a Contract Management System (CMS) Alternative Staff Transaction prior to any work being performed by new personnel. Invoices submitted for payment with unauthorized personnel will not be paid. *(Provision revised July 29, 2013.)*
21. **DISPUTES:** Claims for services, materials, or damages not clearly authorized by the contract, or not ordered by the LOCAL AUTHORITY and the DEPARTMENT by prior written authorization, will not be paid. The CONSULTANT shall notify the LOCAL AUTHORITY and the DEPARTMENT in writing, and wait for written approval, before it begins work not previously authorized. If such notification and approval is not given or the claim is not properly documented, the CONSULTANT shall not be paid the extra compensation. Proper documentation alone shall not prove the validity of the claim. The parties agree to use arbitration or mediation after exhausting applicable administrative reviews to resolve disputes arising out of this contract where the sole relief sought is monetary damages \$100,000 or less, exclusive of interest and costs.
22. **CLAIMS - DELAYS AND EXTENSIONS:** The CONSULTANT agrees to proceed with the work previously authorized by the contract, or in writing, continually and diligently, and will make no charges or claims for extra compensation for delays or hindrances within its control during the progress of this contract. The LOCAL AUTHORITY and the DEPARTMENT may allow an extension of time for the contract, for a reasonable period as agreed by the parties, should a delay or hindrance occur. The LOCAL AUTHORITY and/or the DEPARTMENT shall not waive any of its rights under the contract by permitting the CONSULTANT to proceed with the contract after the established completion date.
23. **CONSULTANT'S ENDORSEMENT ON PLANS, ETC.:** The CONSULTANT (if a firm, the responsible principal) is required to endorse and affix its seal to plans, reports, and engineering data furnished to the LOCAL AUTHORITY and/or the DEPARTMENT under this contract.
24. **CONTRACT MODIFICATIONS:** This contract may be amended, modified, or supplemented, as it is mutually agreed to by the parties by written contract modification, executed by the parties hereto and attached to the original signed contract. If there is Federal funding as part of the revenue for this contract, the Federal Highway Administration must approve all changes.

Claims for services furnished by CONSULTANT, not specifically authorized by this contract or by appropriate modification, shall not be paid by the LOCAL AUTHORITY or the DEPARTMENT. When a contract modification has been agreed to by the parties no claim for the extra work done or material furnished shall be made by the CONSULTANT until the written modification has been fully executed. Any verbal agreements not confirmed in writing are non-binding.

25. **TERMINATION:** This contract may be terminated as follows:
- (a) Mutual agreement of the parties; in writing and signed by the parties.
 - (b) By either party for failure of the other party to fulfill its obligations, as set forth with the provisions of this contract and in particular with Attachment C, "Services Provided by the CONSULTANT" or Section 40, "Duties of the DEPARTMENT". Reasonable allowances will be made for circumstances beyond the control of the CONSULTANT and the LOCAL AUTHORITY or the DEPARTMENT. Written notice of intent to terminate is required and shall specify the reasons supporting termination.
 - (c) By the LOCAL AUTHORITY or the DEPARTMENT for the convenience of the State or the LOCAL AUTHORITY upon written notice to the CONSULTANT.
 - (d) Upon satisfactory completion of required contract services.

On termination of this contract all accounts and payments will be processed in accordance with contract terms. An appraisal of the value of work performed to the date of termination shall be made to establish the amount due to or from the CONSULTANT. If the contract fee type is Cost-Plus-Fixed-Fee-With-Fixed-Total-Additive-Rate and the contract is terminated for reasons other than (d), the final fixed fee amount will be paid in proportion to the percentage of work completed as reflected by the periodic invoices as of the date of termination of the contract. Upon determining the final amount due the CONSULTANT, or to be reimbursed by the CONSULTANT, in the manner stated above, the final payment will be processed in order to close out the contract.

26. **DESIGN/CONSTRUCTION:** The CONSULTANT will utilize all current DEPARTMENT standards and be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this contract. The CONSULTANT will, without additional compensation, correct or revise any errors or omissions in its design, drawings, specifications and other services. This contract may remain open for modifications for any unforeseen work that may be deemed necessary by the DEPARTMENT going into the construction phase to accommodate future work by the prime CONSULTANT or sub-consultant. CONSULTANT will perform the services in accordance with the customary standard of professional care.
27. **ELECTRONIC PLAN ROOM DOCUMENTATION:** All consultants will be expected to adhere to the current DEPARTMENT development standards on the web site. It is the CONSULTANTS responsibility to provide all plans, specifications, surveys, and associated data in the DEPARTMENT acceptable electronic formats on one or more CD's. All project data will be organized in the DEPARTMENT'S project directory structure as specified in the DEPARTMENT'S current CADD Standards. It is the CONSULTANT'S responsibility to be aware of all DEPARTMENT requirements and formats. The DEPARTMENT CADD standards are available at the Engineering Technology Services (ETS) sub-page of the DEPARTMENT website www.udot.utah.gov/ets.

Computer Aided Drafting and Design acceptable formats are as follows:

- (a) Drafting: MicroStation Design format (.dgn) by Bentley Systems Inc., version 8.5 or higher.
- (b) Civil Design: InRoads by Bentley Systems Inc. version 8.8 or higher acceptable formats are as follows: Geometry files (.alg), Surface or digital terrain models (.dtm), Template libraries (.itl), and Roadway Designer files (.ird).
- (c) Survey and Photogrammetry: InRoads Survey format (.fwd) by Bentley Systems Inc. version 8.8 or higher. Raw survey files will be in ASCII format, (point number, Northing, Easting, Elevation and code). Survey points will be coded using the DEPARTMENT feature codes located in the DEPARTMENT preference file (.xin) and Raster Images (aerial photos) will be in MicroStation compatible formats. Design and Survey work will adhere to the DEPARTMENT CADD Standards and "Mapping & Aerial Photogrammetry" Guide.
- (d) Plotting: In order for the project to be published into the DEPARTMENT Electronic Plan Room (EPR) system, the CONSULTANT will prepare a file to direct the DEPARTMENT's plotting software, InterPlot, by Bentley Systems Inc. to produce the correct output. This is the InterPlot Organizer's plot-set file (filename.ips). This file contains specifications for each sheet in the plan set and controls the order and name of each sheet as they will appear in the EPR system. Instructions for preparing this file can be found at the DEPARTMENT Engineering Technology Services (ETS) website as stated above.
- (e) Responsibility: Region Designers/Consultants, Action - When submitting electronic files for advertising, Region or consultant designers must deliver to the DEPARTMENT the design files on CD's in the established project directory structure. The following files must be included in the submittal: 1) Major design files, including roadway design, structure, striping, signing, signals, and profiles (Microstation format), 2) Existing topography and existing utilities (Microstation format), 3) Existing and proposed surfaces (dtm format), 4) InRoads alignments (alg), templates (itl), roadway designer files (ird) and preference files (xin), 5) Configuration and resource files including font and linestyle resource files.

- (f) Placement: Action – Project data must be delivered to the DEPARTMENT on CD's in the established project directory structure.

The CONSULTANT will be responsible for the accuracy of the translated data.

Technical and Standards support will be provided to the CONSULTANT through the Engineering Technology Services Group of the Project Development Division at UDOT.

28. **REQUIREMENTS FOR COMPUTER ELEMENTS:** Hardware, firmware and/or software elements that the CONSULTANT procures, furnishes, licenses, sells, integrates, creates and/or enhances for the LOCAL AUTHORITY and the DEPARTMENT under this contract shall achieve the specific objectives specified in the work plan. These elements shall be free of defects, or "bugs," that would prevent them from achieving the objectives specified in the work plan.

Computer software and applications created and/or enhanced under this contract shall include as deliverables; user instructions, program documentation, program listings, source code and executables in specified compiled formatted files. The program documentation shall include flow charts and detailed treatment of decision algorithms and their technical basis. Appropriate LOCAL AUTHORITY individuals will review "user instructions" and "program documentation" for acceptability. Formal sign-offs will record such events and be part of the project repository. Software development and operating system platforms shall be approved by the LOCAL AUTHORITY and the DEPARTMENT and specified in the work plan. Changes to these platforms shall only be allowed by written authorization by the LOCAL AUTHORITY and the DEPARTMENT.

29. **COST PRINCIPLES:** Regardless of the funding source, the costs allowable for reimbursement will be governed by the Federal Acquisition Regulations, Title 48, Part 31, as modified by Utah State law, administrative rules, and regulations on contract provisions.
30. **RIGHT OF WAY SUBMITTAL REQUIREMENTS:** Submission of right of way acquisition packages are required to follow the *UDOT Right of Way ProjectWise Naming Convention and Attributing Guide*, as amended, which is incorporated herein by this reference. The Guide may be found on the UDOT website www.udot.utah.gov/go/rowprojectwiseguide. (Provision revised September 30, 2013.)
31. **GOVERNMENT RECORDS AND ACCESS MANAGEMENT ACT:** Pursuant to the Government Records Access and Management Act, Title 63G, Chapter 2, Utah Code Annotated, the CONSULTANT understands that if it believes that any records it submits to the DEPARTMENT and/or LOCAL AUTHORITY should be considered confidential for business purposes under Utah Code Ann. §63G-2-309, it must attach written notice of that opinion to the record when it first submits it. The CONSULTANT understands that the DEPARTMENT and/or LOCAL AUTHORITY will not treat any such record as confidential under Section 63G-2-309 absent such written notification. Additionally, the CONSULTANT agrees that neither the State of Utah, the DEPARTMENT and/or LOCAL AUTHORITY, nor any of their agents or employees are responsible for disclosure of any record that the CONSULTANT considers confidential if either the State Records Committee or a court orders it released.
32. **WORK ACCEPTANCE:**
- (a) All work performed under this contract shall be performed in accordance with Standards, Specifications, Manuals of Instruction, Policies and Procedures established by the DEPARTMENT. All work shall be subject to the approval of the LOCAL AUTHORITY and the DEPARTMENT through its designated representatives. When the work is Federally funded, the LOCAL AUTHORITY and the DEPARTMENT will coordinate with the Federal Highway Administration (FHWA) to obtain concurrence in the work.
- (b) **Reviews and Quality Assurance:** All contracts require a quality control / quality assurance plan and checklist. For design projects specifically, the CONSULTANT shall provide a project specific QC/QA plan that meets or exceeds the DEPARTMENT'S standard QC/QA plan located on the DEPARTMENT web page at www.udot.utah.gov/go/qcqa which is hereby incorporated by reference into this contract. If the CONSULTANT elects to use its own QC/QA plan, that plan shall, as a minimum, contain the requirements of the DEPARTMENT'S plan and be approved by

the DEPARTMENT'S Project Manager. The CONSULTANT will meet all document retention requirements and schedules. (*Provision revised February 12, 2014.*)

33. **GENERAL CONTROL AND INSPECTIONS:** The CONSULTANT shall be represented at progress review meetings as may be scheduled by the LOCAL AUTHORITY and the DEPARTMENT. The CONSULTANT shall accompany LOCAL AUTHORITY and the DEPARTMENT personnel and other representatives on field inspections and at conferences as may be required.
34. **IF THIS CONTRACT IS FOR DESIGN:**
- (a) The design consultant will be retained to answer and clarify any questions on the design during construction. The consultants will be required to include this task in their cost proposal. The Construction Project Engineer will call on the CONSULTANT as he needs him. If the work required from the CONSULTANT is due to errors in the design, the CONSULTANT will not be reimbursed. To enhance the communication between the LOCAL AUTHORITY, the DEPARTMENT and Consultants, the LOCAL AUTHORITY and the DEPARTMENT are requiring that the CONSULTANT attend the following meetings: kickoff meeting, preconstruction meeting, and the final inspection meeting. These meetings should be included in the detail work plan.
 - (b) If the project requires horizontal and vertical control to be established and/or identifying existing surface features to develop a Digital Terrain Model (DTM) for the design of the project, the CONSULTANT will follow the narrative in the *Project Delivery Network* for Task 1B1 Develop Base Mapping/Existing Surface on the UDOT website www.udot.utah.gov/go/pdnpdn, which is incorporated herein by this reference. (*Provision revised September 30, 2013.*)
35. **IF THIS CONTRACT IS FOR CONSTRUCTION ENGINEERING MANAGEMENT:**
- (a) **Construction Administration**
Administration of any construction project delegated to the CONSULTANT. The CONSULTANT will perform activities for Construction Administration as identified and defined in the *UDOT Construction Manual of Instruction*. Deliverables and checklists for the project are based on project specifications. The CONSULTANT is required to comply with DEPARTMENT partnering requirements and oversee contractor participation. This includes but is not limited to attending DEPARTMENT training, leading the partnering effort on the project along with the contractor, participating in weekly updates on the partnering website, and monitoring and measuring partnering on the project. The CONSULTANT is responsible for required documentation for any item addressed in the project specifications and Construction contract. Items will include, but not be limited to, Materials Testing, Materials Certifications, Change Orders, Project and Materials Inspection, Civil Rights requirements, Engineer's Diary, Subcontracts, Payrolls, Meeting Minutes, Project Scheduling and Process Review summaries.
 - (b) **Materials Testing and Inspection**
The CONSULTANT will perform materials testing and inspection in accordance with the requirements of the project Construction contract. These requirements include the Materials Acceptance and Independent Assurance Programs, as outlined in the *UDOT Materials Manual of Instruction (MOI)*. The Materials Acceptance Program defines requirements for acceptance testing and verification testing. The Independent Assurance Program defines requirements for independent assurance testing, personnel qualifications and laboratory qualifications.
 - (c) **Acceptance Testing/Inspection**
Acceptance testing/inspection will be performed in accordance with the project specifications and *UDOT Minimum Sampling and Testing Requirements (MS&T)*. Minimum frequencies for materials acceptance testing and inspection are defined in the UDOT MS&T and are the absolute minimum for the identified materials, regardless of special provision requirements.
 - (d) **Independent Assurance Testing**
Requirements for Independent Assurance testing are outlined in the UDOT Materials MOI and project level requirements will be performed and documented by the CONSULTANT at the project level. Documentation will be provided for IA test results, personnel qualifications and laboratory

qualifications. Documentation for personnel and laboratory qualification will be performed prior to any sampling or testing being performed on the project.

- (e) **Project Inspection**
Project Inspection is a combination of the presence of the CONSULTANT, and the documentation of the project's daily activities. The CONSULTANT will perform inspection in accordance with project specifications and documentation will include, at a minimum, Inspector's Daily Reports, materials placement inspection reports, project diaries, measurement and payment information, and project visual reviews for items such as traffic control placement and conformance, etc.
- (f) **Project Closeout**
Project information obtained through contract administration, materials testing and project inspection will be collated and reviewed by the CONSULTANT to assure that all of the necessary documents are present to demonstrate compliance with the plans, specifications and Construction contract. Closeout will be performed in accordance with the comprehensive checklist in the UDOT Construction MOI and will include at a minimum, all C-106 forms, the project C-196 form, all change orders and all administrative requirements, such as payrolls and Civil Rights requirements.
- (g) The DEPARTMENT's Construction Manual of Instruction and Materials Manual of Instruction can be obtained from Central Construction and Materials Division 801-965-4346 or available at the sub-page of the DEPARTMENT website www.udot.utah.gov/ets.

36. INSPECTION OF INTELLIGENT TRANSPORTATION SYSTEMS (ITS) AND ELECTRICAL

CONSTRUCTION: In order to ensure complete impartiality in the performance of construction inspection, any consultant engineering companies who are concurrently performing or bidding on ITS or electrical construction work for the LOCAL AUTHORITY and/or DEPARTMENT will not be considered eligible to perform construction inspection of ITS or electrical work on any projects as part of a consultant contract.

Consultants who are selected to do ITS or electrical construction inspection as part of a consultant contract will be requested to affirm that they currently are not performing or bidding on any electrical or ITS construction work for LOCAL AUTHORITY and/or DEPARTMENT and will not for the duration of the relevant consulting contract.

For the purposes of this provision, ITS or electrical construction is defined as follows:

Work involving the installation or repair of underground electrical conduit, electrical cables, fiber-optic cable, or any other construction work involving 120 volt (or greater) current for which an electrician's license is required. Field work taking place inside an electrical cabinet, or involving low voltage detection or data circuits, will *not* be considered ITS or electrical construction. Diagnosis, testing, calibration, aiming, resplicing, or repair of low voltage detection circuits, fiber-optic cable, or detection equipment will *not* be considered ITS or electrical construction.

Consultant engineering companies who also perform ITS or electrical construction work under contract to LOCAL AUTHORITY and/or DEPARTMENT *will* be eligible to perform the following types of consulting work, provided that the work is on completely different projects, with no possibility for conflict of interest: design work, ITS system integration, software development.

- 37. NO THIRD PARTY BENEFICIARIES:** The parties enter in to this contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this contract.
- 38. COORDINATION WITH DEPARTMENT FUNCTIONAL MANAGERS:** In order to ensure programmatic consistency, if the project requires, the CONSULTANT will coordinate decisions with the Region and/or Central Functional Managers in addition to the DEPARTMENT Project Manager. It is important for consultants to seek input into decisions from the technical experts within the DEPARTMENT.
- 39. USE OF STATE SEAL AND UDOT LOGO:** The CONSULTANT will not misrepresent their employees as State of Utah employees. The CONSULTANT will not use the Utah State Seal or UDOT logo on business cards for their employees nor use Utah or UDOT letterhead on correspondence signed by their

employees with the following exception: the CONSULTANT may incorporate the UDOT logo on their business cards stating, "In partnership with UDOT" in addition to the CONSULTANT'S own logo. The CONSULTANT may prepare correspondence for the approval and signature of appropriate State of Utah employees.

40. DUTIES OF THE LOCAL AUTHORITY AND THE DEPARTMENT:

- (a) **Guarantee Access:** The LOCAL AUTHORITY and/or the DEPARTMENT shall guarantee access to and make all provisions for the CONSULTANT to enter upon all lands, both public and private which in the judgment of the parties hereto are necessary to carry out such work as may be required.
- (b) **Prompt Consideration:** The LOCAL AUTHORITY and the DEPARTMENT shall give prompt consideration to all reports, plans, proposals and other documents presented by the CONSULTANT.
- (c) **Documents:** The DEPARTMENT shall furnish Standards, Specifications, Manuals of Instruction, Policies and Procedures, and other available information, including any material previously prepared for this work. Specific materials related to this contract that will be furnished by the LOCAL AUTHORITY and the DEPARTMENT.
- (d) **Services:** The LOCAL AUTHORITY and the DEPARTMENT will perform standard services relating to this contract.

SERVICES PROVIDED BY THE CONSULTANT**1. SCOPE SUMMARY:**

Perform all construction Engineering and Material testing required to construct the Spanish Fork River Trail PIN 10962. This project is a 10' wide river trail that has several separate location of work along the main trail. Key items include a pre- fabricated pedestrian structure that crosses Spanish Fork River, trail paving, rip rap and slope grading.

The Project construction should start mid 2014 and finish by the end of the 2014 construction season.

2. SCOPE DOCUMENTS:

Following are the scope items contained in this attachment pages 2 through 15:

(a) Approval Memo

(b) Executive Summary

(c) Detailed Work Plan

(d) Personnel/Staffing Plan

(e) Schedule

(1) Completion: All work shall begin within seven (7) days of notice to proceed and shall be completed by August 31, 2015.

(2) Project/Contract Period: The project/contract will terminate August 31, 2015, unless otherwise extended or canceled in accordance with the terms and conditions of this contract. If additional time is required beyond the project completion date, the CONSULTANT shall submit a "Contract Time Extension Modification" to the LOCAL AUTHORITY and the DEPARTMENT'S Project Manager for approval and processing.



UDOT Consultant Services Contract Approval Memo



Memo Printed on: May 7, 2014 2:46 PM

PM Approval Date: May 5, 2014

UDOT PM: Justin Schellenberg

The Project Manager has reviewed and approved the contract/modification documents: Executive Summary, Work Plan, QC/QA Plan and Checklist, Staffing Plan, Work Schedule, and Cost Proposal.

PROJECT INFORMATION

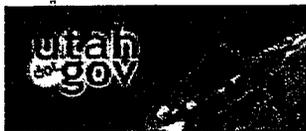
PIN: 10962
Project No.: F-LC49(142)
Job/Proj: 5385913C
PIN Description: Spanish Fork River Trail

CONTRACT INFORMATION

CS Admin: Devon Udot Tonks
Contract No.: New Construction Engineering
Mod No.:
Expiration Date: August 31, 2015
Contract/Mod Amount: \$179,924.24
Fee Type: COST PLUS FIXED FEE
Selection Method: POOL - GE / LG (RPLOQ)
Period: 2013-2016 GE / LG
Phase: CONSTRUCTION ENGINEERING
Discipline: CONSTRUCTION ENGINEERING MANAGEMENT

CONTACTS

Consultant	Local Government
R B & G ENGINEERING INC	Spanish Fork City
1435 WEST 820 NORTH	Cory Pierce
PROVO, UT 84601	40 S MAIN
	PO BOX 358
	SPANISH FORK, UT 84660
	(801) 804-4552
	CPIERCE@SPANISHFORK.UT



Devon Tonks <dtonks@utah.gov>

Fwd: FW: PIN 10962 Project No. F-LC49(142) Spanish Fork River Trail - Revised CEM contract docs

1 message

Justin Schellenberg <jschellenberg@utah.gov>
To: Devon Tonks <dtonks@utah.gov>

Thu, May 8, 2014 at 9:38 AM

Justin Schellenberg, P.E.
UDOT R3 - Project Manager
801-787-0787

----- Forwarded message -----

From: **Cory Pierce** <cpierce@spanishfork.org>

Date: Thu, May 8, 2014 at 8:16 AM

Subject: FW: PIN 10962 Project No. F-LC49(142) Spanish Fork River Trail - Revised CEM contract docs

To: Justing Schellenberg <jschellenberg@utah.gov>

Justin,

We have reviewed the attached scope and costs and are okay to proceed with the contract preparation. When the contract is ready, we will need to take it to City Council for approval and signatures. The next Council meeting is on May 20th. If we can get the documents by then, we can keep this moving.

Thanks,

Cory

From: Scott Hendricks [mailto:shendricks@rbgengineering.com]**Sent:** Friday, May 2, 2014 5:42 PM**To:** Cory Pierce**Cc:** jschellenberg@utah.gov**Subject:** Re: PIN 10962 Project No. F-LC49(142) Spanish Fork River Trail - Revised CEM contract docs

Cory,

Please see the attached revised contract attachment info reflecting what is contained in CMS for the CE contract on the Spanish Fork River Trail project. Per my conversation with Justin this is based on a 75 calendar day project assuming the contractor has from 7/28/14 to 10/12/14 to achieve substantial completion. Please let me know if you have any questions or concerns. Otherwise please send Justin notice you are okay with the attachments and to proceed with the contract preparation.

Attachment C 3 of 15

Thanks,

Scott

Scott Hendricks, P.E.

Project Manager

RB&G Engineering, Inc.

shendricks@rbgengineering.com

801-374-5771

RB&G
ENGINEERING, INC.

1435 West 820 North
Provo, Utah 84601-1343
801-374-5771 Provo
801-521-5771 Salt Lake City
801-374-5773 Fax

>>> Scott Hendricks 5/1/2014 12:50 PM >>>

Cory,

Please see the attached contract attachment info reflecting what is submitted in UDOT's CMS system for the CEM contract on the Spanish Fork River Trail project. This is based on a 90 calendar day project assuming the contractor has from 7/14/14 to 10/13/14 to achieve substantial completion. Ultimately you will need to send Justin notice you are okay with the cost proposal and contract attachments, and for UDOT to proceed with the contract preparation. However, please note Justin returned the CMS submission to me earlier today (before I got this follow up email sent off), because he had some concerns about the cost. I wanted to send you these attachments anyway so you can see what is contained, and also see my hourly summary; and then we can talk about the cost concerns. Please let me know if you have any other questions or concerns.

Thanks,

Scott

Scott Hendricks, P.E.

Project Manager

RB&G Engineering, Inc.

shendricks@rbgengineering.com

801-374-5771

RB&G
ENGINEERING, INC.

1435 West 820 North
Provo, Utah 84601-1343
801-374-5771 Provo
801-521-5771 Salt Lake City
801-374-5773 Fax

>>> ePM CMS <epmsystem@utah.gov> 4/25/2014 7:45 AM >>>

Re: Project No. F-LC49(142)

Spanish Fork River Trail

PIN No. 10962

Consultant R B & G ENGINEERING INC

Contract No. NEW - Construction Engineering

The above referenced contract request has been approved by UDOT Consultant Services. Please proceed to the CMS module in ePM and complete your contract documents on the CMS Doc Prep screen 914.

Upon completion of all required information, please submit the transaction to the UDOT Project Manager

Thank You,

Attachment C 4 of 15

UDOT Executive Summary

Contract Number:	NEW	Mod:			
Project Number:	F-LC49(142)	PIN:	10962	UDOT Project Manager:	Justin Schellenberg
PIN Description:	Spanish Fork River Trail				

Brief Description

This is a federal-aid, local government project sponsored by Spanish Fork City. The project construction scope, as described herein, includes federal construction funds, with UDOT oversight. The construction engineering management work for this project includes for construction of portions of the Spanish Fork River Trail, located in Spanish Fork, Utah. The project limits are along two segments of the Spanish Fork River, from 780 E to about 350 E (1.27 mile), and from the City Sports Park to underneath and just east of Main Street (0.25 mile). The scope of the project includes asphalt pavement multi-use trail (with some segments concrete, and with curbing), various connecting concrete sidewalks, a prefabricated pedestrian bridge, railing, some low height landscaping walls to limit cuts/fill slopes, associated grading/drainage, riprap, and re-vegetative/erosion protection work, along with some signing and striping, and limited landscaping elements, including fencing. Much of this work will be fairly difficult from an access standpoint requiring concerted coordination efforts.

The Consultant shall act as the Local Authority's consultant and shall confer with the Contractor for and in behalf of the Local Authority during the construction of the Spanish Fork River Trail project, in Spanish Fork City, Utah. The Consultant shall have fiduciary responsibility and administrative authority to enforce all contract provisions, specifications and plans and perform engineering and inspection duties and functions for the Local Authority as required under current FHWA and UDOT Construction policy and procedures.

The specific services for this work include the following efforts:

- PRECONSTRUCTION – Plan Review; Project Meetings; Fielding, Responding to and Documenting Advertising Questions; Preliminary Documentation.
- CONSTRUCTION - Inspection, Traffic Control Monitoring, DBE/WBE and Labor Compliance, Materials Acceptance, Documentation, Project Accounting, ProjectWise and Partnering/Project Meetings.
- PROJECT FINALIZATION - Finalizing Documentation.

Project Team

The Project Team consists solely of RB&G Engineering staffing as shown in the work plan. It is not anticipated to use any subconsultants.

Assumptions

It is anticipated that the project will commence construction about July 28, 2014, and achieve substantial completion by mid October 2014 (75 calendar days), physical work completion by mid November 2014, contract completion in December 2014, and contract closeout in January 2015.

The nature of the work is clear, although the exact length of the contract will be determined by competitive bidding and that makes the inspection time length somewhat uncertain. Likely scenarios have been contemplated and only significant project delay during construction, or acceleration causing significant overtime, would necessitate a contract modification for additional construction management costs. It is noted the likely 75 calendar days maximum time allocated to the project will likely take to the end of the construction season. The construction time assumed appears adequate; although, there is some potential that if the contractor is delayed very much in getting Notice to Proceed, or by weather impacts, unforeseen utility delays, or does not supply sufficient resources, when and where needed, the work could drag out into the next construction season. A little delay can be tolerated in the proposed budget; but any significant project delay during construction, especially causing work to extend into another construction season, would necessitate a contract modification for additional construction management costs. The biggest sources of delay outside of contractor control would be weather, or discovery of unknown conflicts. These sources may result in the project being extended longer, but only if significant, would result in additional construction management time requiring a Contract Modification. There are some potential utility conflicts identified, but these are not expected to be significant. While high water, wet, or extensive unsuitable weather conditions might also be a factor during construction, it is not anticipated that would be of such duration that construction management time would be significantly affected. Thus, it is not expected that these items or any other complications significantly delaying the project will arise, therefore no Contract Modification is anticipated, (subject to the below constraint).

It is proposed to make this a "Cost Plus Fixed Fee" contract, allowing an underrun if the work ends up running smoothly and the contractor achieves good efficiency of construction. It is noted the budget is based on 75 calendar days to substantial completion, which is assumed the maximum amount of time which the contractor can take for the project (by specification). Should the noted awarded contract time be less than the anticipated 75 calendar days, the inspection time target budget would effectively be reduced accordingly. Technician time is more based on quantities so it would only be slightly adjusted downward. However, should the actual contract time be significantly more than the anticipated 75 calendar days to substantial completion, (most likely due to change order), the inspection time target budget would probably require a contract modification to adjust up accordingly.

Surveying - None by the Consultant. The Contractor shall perform all survey required for the construction using control point data included in the plans.

Phasing

Preconstruction

Construction

Initiate construction work on about July 28, 2014

Project Finalization

Substantial completion by mid October 2014 (assumes 75 calendar day contract time)

Physical work completion by mid November 2014

Contract Completion by mid December 2014

Contract close out in January 2015

Fee Type

The consultant was RPLOQ selected for this project by Spanish Fork City from the UDOT pool. The type of contract requested for this project is a Cost-Plus-Fixed-Fee Contract. It is felt this type of contract gives a little more flexibility to adjust to the ultimate needs of the project; also allowing an underrun if the work ends up running smoothly and the contractor achieves good efficiency of construction. See the assumptions tab for limitations. Contract modifications can incorporate any changes to the project scope. Contract modifications would be prepared only under circumstances noted in Assumptions forcing significant changes to the project scope.

UDOT Work Plan

Contract Number:	NEW	Mod:			
Project Number:	F-LC49(142)	PIN:	10962	UDOT Project Manager:	Justin Schellenberg
PIN Description:	Spanish Fork River Trail				

Activity: 85C

85C Pre-Construction Review

- Plan Review
 - Specs
 - Quantities
- Up to and including Preconstruction Meeting

The Consultant will review and be knowledgeable and accountable for content of the contract documents, specifications, plans, utility agreements, and correspondence.

The Consultant shall conduct, coordinate and notify in writing all interested parties to attend a preconstruction conference prior to contractor mobilization on the project. The interested parties will include the UDOT Project Manager and misc other UDOT staff, the Contractor, Subcontractors, and affected Utilities and Railroads. The minutes of the preconstruction conference shall be transcribed by the consultant.

Activity: 87C

87C Construction Management

- Change Orders
- RFI's
- Coordination / Weekly Meetings
 - Owner
 - Contractor
- Partnering
- MOT Review
- RE field engineering activities

- Third Party Coordination
 - ROW
 - Utility
 - LG
 - Other stakeholders
- Submittal Reviews
- CPM Schedule Review
- Coordination with PI (UDOT and consultant)
- Review Structures Shop Drawings
- Obtain & Review as-built drawings
- Final Inspection / Walk-through / Punchlist
- Claims Review

The Consultant shall act as the Local Authority's consultant and shall confer with the Contractor for and in behalf of the Local Authority during the construction of the Spanish Fork River Trail project, in Spanish Fork, Utah. Also, UDOT's Project Manager shall exercise Level II control over the project.

The Consultant shall have fiduciary responsibility and administrative authority to enforce all contract provisions, specifications and plans and perform engineering and inspection duties and functions for the Local Authority as required under current FHWA and UDOT Construction policy and procedures.

All direction of orders to the Contractor shall be documented in writing.

The Consultant shall provide qualified personnel for engineering, inspection, material testing, and accounting, as noted here in, to complete the Construction Engineering Management.

Work Acceptance

All work performed under this Contract shall be performed in accordance with the Standards, Specifications, Manuals of Instruction, and Policies and Procedures established by the UDOT. All work shall be subject to the approval of UDOT through its designated representatives. When the work is federally funded, UDOT will coordinate with the Federal Highway Administration (FHWA) to obtain concurrence in the work.

Personnel

All personnel qualifications should meet UDOT certification requirements, in accordance with the Transportation Technician Qualification Program (TTQP), and the Laboratory Qualification Program (LQP), as well as having current UDOT certifications, including CEMT training as applicable.

Partnering/Project Meetings - The Consultant should hold periodic coordination meetings including formal weekly or bi-weekly partnering, with the Contractor's Construction Superintendent (Foreman), Spanish Fork City, other affected Local Governments (if any), and UDOT Project Manager, and update the schedules as needed. Material testing, utility, inspection and traffic control coordination must be established in advance. The Contractor or Consultant should take minutes of the meetings for distribution. Partnering documentation will be completed as applicable. The Consultant should indicate when Spanish Fork City, UDOT, Utilities, Railroads, and/or other affected Local Governments need to attend.

Activity: 89C

89C Project Administration

- Project Documentation
 - Set up and maintain files
 - ProjectWise
- Project Account (PDBS)
 - Partial Pay Estimates / Quantities
 - Prepare and submit final estimates
 - Monthly status of time reports
- Document Control
 - Certification
 - Pay Item Documentation
- Civil Rights
 - Employee Interviews
 - EEO / Labor Compliance
 - DBE / WBE
- Reimbursement Agreements
- Sub-contract coordination

Documentation - The Consultant shall keep all notations in black ink in bound diaries or files. Survey and pay quantities shall be documented daily in bound field books, or files, equivalent to those UDOT uses with no erasures. Pay quantities shall be measured and initiated for payment in quantity field books or files daily. Weight Tickets will be collected, tallied daily, and placed in the project files. All tickets entries will be verified, and tickets and calculation summaries will be signed and checked. Entries into UDOT's PDBS system and ProjectWise will be made as required.

Monthly progress reports shall be submitted to the UDOT.

The Consultant's Resident Engineer shall be responsible to keep daily records and time charges. Any contract time suspensions will be documented by memorandum to the Local Authority and UDOT.

The Consultant shall prepare progress and final payments in the format provided by UDOT. Payment will be made in accordance with contract documents and specifications.

Project Accounting - The project accounting will be done using UDOT's PDBS project accounting program. The Consultant must stay current in accepting pay quantities, do accurate monthly estimates, and submit partial payment estimates for the Contractor on time. The monthly estimates need to be cut off on a Saturday and submitted to Contractor for acceptance and to Spanish Fork City for review, and UDOT should receive these for payment within the following week. It is the Consultant's responsibility to keep Spanish Fork City and the UDOT Project Manager informed of any project overruns. Overruns/change orders will only be approved if within the original scope of work.

DBE/WBE and Labor Compliance - Where applicable, the Consultant will administer all Federal DBE and Labor Compliance in the Construction Contract and assure compliance. All of this work should be coordinated with UDOT's Civil Rights Section or civil rights specialist in the project engineer's office prior to beginning of the work. Adherence with training hour reports, wage rate compliance should be reviewed with the Construction Division and/or the UDOT district engineer's specialist.

Activity: 91C

91C Field Inspection

- At grade inspection
- Punchlist verification
- Survey verification
- MOT monitoring
- Field testing for small projects
- Environmental Compliance
- Field documentation
 - Daily reports
 - 348's and 138's
 - Visual inspection reports
 - Collect and assemble weight tickets
- Specialty Inspection
- Safety Compliance
 - Accident Prevention

Inspection - Consultant will keep current, thorough and complete documentation. A qualified inspector will inspect all portions of the Contractor's work that is addressed in plans and specifications. This generally anticipates nearly full time presence on site for inspection and documentation work. The active inspection will only occur for those parts of the work that cannot be inspected after placement, (such as (where applicable) certain types of excavation, fill and backfill, pipes, trench backfill, surfacing materials placement, or concrete work, etc.) Parts of the work that can be inspected after placement but prior to any covering will be done at discrete points which will enable the work to proceed compatible with the Contractor's schedule (such as landscape grading and miscellaneous features, checking forms and partial forms, reinforcing steel placement, etc.) These discrete point inspections, and Contractor coordination will be sufficiently frequent and timely, (anticipated daily), so as to prevent errors or misinterpretations of the plans from occurring in the work and delaying the schedule due to rework. The inspector cannot accept work for payment that does not meet plans and specifications. It is also understood that any shop drawings/calculations for any structures, etc. will be reviewed and approved by UDOT's designer, with the CE Consultant only passing along and ultimately filing/distributing the documents as necessary. UDOT designers will also be responsible to address inconsistencies or ambiguities in the plans that do not lend themselves to simple field judgment and direction.

The Consultant and the Consultant's on-site inspector will verify lines and grades meet the plan lines and grades within allowable limits specified.

Traffic Control - The Consultant will monitor the contractor's efforts to protect the safety of the traveling public. Reviews will be made to verify that the Contractor's traffic control follows MUTCD, UDOT and the Local Authority's policies. The Consultant will also monitor the Contractor efforts to adhere to all safety and health laws and ordinances and obtain any necessary permits. The Consultant will handle and dispose complaints concerning the project.

The Contractor's changes to the traffic control plans must be submitted and approved by the local authority and UDOT.

Activity: 93C

93C Materials Testing

- Acceptance Testing
- Field Sampling & Testing
- Lab Testing
- Off site Sampling & Testing
 - Batch Plant
 - Casting Yards
 - Material Source
- Lab Management Activities
 - Documentation
 - Lab Results
 - Internal QC
 - Coordination with RE

No material shall be incorporated in the project without certification or testing that verifies materials meet minimum UDOT specifications. The Consultant shall provide assurance testing required meeting the minimum standards.

Activity: 97C

97C QC/QA Control

- Internal & External reviews & audits
- LG Federal-aid Oversight activities
 - UDOT staff augmentation
 - Federal compliance
- Bi-monthly process reviews

These activities will be budgeted, performed and tracked as part of other tasks, as applicable.

Activity: 99C

99C Construction Closeout

- Final Forms
- Box preparation
- Closeout Checklist
- Construction Closeout to RCS
- Review project documentation & make recommendations to finalize project
- Independent audit
- Post-construction conference

Upon substantial completion of the project, the Consultant shall conduct, coordinate, and notify in writing all interested parties to attend a final inspection. The interested parties will include those that attended the preconstruction conference. The Consultant shall also schedule and conduct a post construction meeting if deemed necessary, typically following physical completion, and involving similar Consultant, UDOT and City attendees as the final inspection.

A punch list will be generated before, and at, the final inspection and the Consultant and Contractor will agree on the time needed to complete the punch list. Upon completion of all punch list items, the Consultant in agreement with the Local Authority and UDOT will accept the construction as physically complete. Within 30 days of completion in the field, the Consultant will obtain and/or provide final project documentation as required by UDOT and FHWA for final acceptance of the project. The Consultant shall provide a full set of plans marked up with any changes (record drawings) for both UDOT's and Spanish Fork City's records at the end of the project.

UDOT Staffing Plan

Contract Number:	NEW	Mod:	
Project Number:	F-LC49(142)	PIN:	10962
Project Location:		UDOT Project Manager:	Justin Schellenberg

Employee Name	Contract Job Title	Education/Certification	License Number	Hours	Current Rate	Proposal Rate	Approval Date
COOK, CARL	PRINCIPAL ENGINEER	BS CIVIL ENG	UT-165148-2203	4	\$51.50	\$53.00	NTP
HENDRICKS, SCOTT	RESIDENT ENGINEER	BS CIVIL ENG	UT-182770-2203	212	\$47.00	\$48.50	NTP
WILSON, RYAN	ADMINISTRATION OFFICE MANAGER	MBA		12	\$37.00	\$38.00	NTP
SMITH, MATT	FIELD ENGINEER	BS CIVIL ENG	UT-6288195-2203	352	\$37.00	\$38.00	NTP
SANBORN, CHRIS	ASST FIELD ENGINEER	BS CIVIL ENG	UT-266031-2202	668	\$33.75	\$34.75	NTP
GIBSON, KATIE	ASST OFFICE ENGINEER	BS CIVIL ENG	UT-7821397-2202	4	\$31.75	\$32.75	NTP
BOONE, JACOB	LAB MANAGER	AS		16	\$31.00	\$32.00	NTP
PARKER, FAYE	CLERICAL IA	HS		62	\$19.00	\$19.50	NTP
PRICE, LUCAS	GEOTECHNICAL TECHNICIAN IA	HS		20	\$18.00	\$19.00	NTP
PRUETT, LINDA	OFFICE MANAGER	BS		148	\$17.50	\$18.00	NTP
KUNTZ, ADAM	GEOTECHNICAL TECHNICIAN 1B	HS		536	\$14.50	\$15.00	NTP
Total Hours for R B & G ENGINEERING INC:				2,034			

Anticipated May 2014 annual wage raises.

Pay Rate Variance Explanation

FEES

**COST PLUS A FIXED FEE
WITH FIXED TOTAL ADDITIVE RATE**

1. **COST PLUS A FIXED FEE:** For all services and materials pertinent hereto and/or specifically described herein, except as otherwise explicitly cited, the LOCAL AUTHORITY agrees to pay the CONSULTANT for the actual allowable cost and the FIXED additives plus a fixed fee. Overhead rates have been reviewed, approved, and are limited to the costs which are allowable under Federal Acquisition Regulations, contained in Title 48 CFR, Part 31.

The contract cost includes direct labor expense, payroll additives; indirect costs and other direct non-salary costs as outlined below.

Guest meals (meals paid by a consultant or a consultant's employee for someone other than his/her self) shall not be eligible for reimbursement unless previously approved in writing by the DEPARTMENT Project Manager and the LOCAL AUTHORITY.

- (a) The direct labor expense is the actual salary expense for professional and technical personnel and principals for the time they are productively engaged in work necessary to fulfill the terms of this contract. The payroll additives and indirect costs are FIXED as 159.72% of the direct salary expense.
- (b) If necessary and DEPARTMENT approved, any additional direct expenses incurred in fulfilling the terms of this contract, including but not limited to travel and lodging, reproduction, telephone, equipment, supplies and fees of outside CONSULTANTS or sub-consultants will be reimbursed at actual costs.

If the CONSULTANT'S normal accounting practice is to include some of these costs as indirect expenses, then this contract will be consistent with that practice. These types of costs must be disclosed as part of your accounting practices and in conformance to Federal Cost Principles.

- (c) The fixed fee has been determined and agreed upon as 10.00% of the combined estimated direct labor and the Overhead amount, which represents the CONSULTANT'S profit of \$15,706.57. The fixed fee percentage is not a floating percent and should not be billed as a percent of labor. Rather, the fixed fee payment will be prorated and paid regularly in proportion to the percentage of work completed as reflected by the periodic invoices; that is, on the same ratio as the invoice cost bears to the originally estimated total for CONSULTANT'S actual cost which is the maximum amount payable minus the fixed fee. Any portion of the fixed fee payment not previously paid in the periodic payment will be covered in the final payment.

Overruns in the costs of the work do not warrant an increase in the fixed fee, but significant changes to the Scope of Work may require adjustment of the fixed fee in the contract as evidenced by a contract modification.

2. **MODIFICATIONS:** In the event the LOCAL AUTHORITY requires changes of services which materially affect the scope or work plan, with a resulting material increase in cost to the CONSULTANT, a contract modification for additional compensation and time for completion shall be entered into by the parties hereto prior to making such change. Any such work done without prior LOCAL AUTHORITY and the DEPARTMENT agreement shall be deemed ineligible for reimbursement by the DEPARTMENT. The LOCAL AUTHORITY will not entertain requests or claims for reimbursement and remuneration unless written approval is given prior to performance of the work.
3. **PROGRESS PAYMENTS:** Progress payments are based upon the approved percentage of work completed and are made pursuant to certified invoices received.
4. **INVOICES:** The CONSULTANT will submit monthly payment requests promptly and no later than 45 calendar days after each monthly billing cycle. Invoices are to reflect charges as they apply to the appropriate contract, project, and account number, and must be certified and executed by an official legally authorized to bind the firm. The invoice must be substantiated with appropriate supporting

documentation such as time sheets, labor reports, or cost accounting system print-out of employee time, receipts for direct expenses, and subconsultant invoices and supporting documentation that is reviewed and approved by the DEPARTMENT'S Project Manager and subject to final approval by the DEPARTMENT'S Comptroller's Office.

Payment requests for services performed on or before the last day of the Utah fiscal year (June 30), must be submitted no later than 30 calendar days after the billing cycle, see Utah Code Ann. § 63J-1-601.

The CONSULTANT acknowledges untimely billing may adversely affect the LOCAL AUTHORITY and DEPARTMENT due to federal funding requirements in 49 CFR § 18.23, and/or the state fiscal constraints imposed upon it as a department of state government by Title 63J, Chapter 1, Budgetary Procedures Act. The CONSULTANT waives payment, and waives the right to bring action in law or in equity to recover payment for services, for any and all payment requests the DEPARTMENT does not receive from the CONSULTANT within the timeframe provided under this contract. *(Provision revised June 27, 2012.)*

5. **FINAL PAYMENT:** Final invoice payment will be released only after all materials and services associated with this contract have been reviewed and approved by the DEPARTMENT'S Project Manager and finalized by the DEPARTMENT'S Comptroller's Office. The final invoice payment will not be released until a project evaluation form has been completed by the LOCAL AUTHORITY and the DEPARTMENT'S Project Manager and submitted to Consultant Services and the Comptroller's Office.

The DEPARTMENT'S Project Managers and the Comptroller's Office have the right to hold the final payment on certain projects when design and construction are performed by two separate Consultants or if there is a potential possibility of a design or construction error. The DEPARTMENT Comptroller's Office also has the right to hold the final invoice payment until the final audit is complete upon the request of the DEPARTMENT Project Manager.

6. **FINANCIAL SUMMARY:** The total maximum amount of disbursement pertinent to this contract shall not exceed \$179,924.24 Contract overruns will not be paid.
7. **COST PROPOSAL:** The overhead rate shown in the CONSULTANT'S and/or sub-consultant's cost proposal has been determined and agreed upon by the parties and is included in this contract. The CONSULTANT will invoice the DEPARTMENT using the actual Wage Rates, FIXED Overhead, prorated Fixed Fee, and any additional Direct Costs. Invoices submitted to the DEPARTMENT must reflect the staffing plan and associated hourly wage rates, labor hours used, and other costs submitted in the CONSULTANT cost proposal.

The Cost Proposal for the CONSULTANT and/or sub-consultant, if applicable, may be found in Attachment D, pages 3 through 5.

UDOT Cost Proposal

Contract Number:	NEW	Mod:			
Project Number:	F-LC49(142)	PIN:	10962	UDOT Project Manager:	Justin Schellenberg
Project Location:	Spanish Fork River Trail				
Labor Costs					
Employee Name	Contract Job Title	Hours	Proposal Rate	Labor Cost	
BOONE, JACOB	LAB MANAGER	16	\$32.00	\$512.00	
COOK, CARL	PRINCIPAL ENGINEER	4	\$53.00	\$212.00	
GIBSON, KATIE	ASST OFFICE ENGINEER	4	\$32.75	\$131.00	
HENDRICKS, SCOTT	RESIDENT ENGINEER	212	\$48.50	\$10,282.00	
KUNTZ, ADAM	GEOTECHNICAL TECHNICIAN 1B	536	\$15.00	\$8,040.00	
PARKER, FAYE	CLERICAL IA	62	\$19.50	\$1,209.00	
PRICE, LUCAS	GEOTECHNICAL TECHNICIAN IA	20	\$19.00	\$380.00	
PRUETT, LINDA	OFFICE MANAGER	148	\$18.00	\$2,664.00	
SANBORN, CHRIS	ASST FIELD ENGINEER	668	\$34.75	\$23,213.00	
SMITH, MATT	FIELD ENGINEER	352	\$38.00	\$13,376.00	
WILSON, RYAN	ADMINISTRATION OFFICE MANAGER	12	\$38.00	\$456.00	
Total Hours:		2,034			
Total Direct Labor:				\$60,475.00	
Overhead:			159.72%	\$96,590.67	
Total Direct Labor plus Overhead:				\$157,065.67	
Fixed Fee:			10.00%	\$15,706.57	
Burdened Labor Cost:				\$172,772.24	
Other Direct Charges					
ODC Item	Unit of Measure	Qty	Item Cost	Extended Cost	
NUCLEAR DENSOMETER GAUGE	WEEK	10.0	\$200.000	\$2,000.00	
MILEAGE REIMBURSEMENT	MILE	9,200.0	\$.560	\$5,152.00	
Total Other Direct Charges:				\$7,152.00	
Total Contract Cost:				\$179,924.24	

UDOT Hours Derivation

Contract Number: NEW	Mod:
Project Number: F-LC49(142)	PIN: 10962
Project Location: Spanish Fork River Trail	
UDOT Project Manager: Justin Schellenberg	

Employee Name	85C	87C	89C	91C	93C	97C	99C	Total
COOK, CARL	1	2	0	0	0	0	1	4
HENDRICKS, SCOTT	16	96	32	44	0	1	23	212
WILSON, RYAN	2	0	8	0	0	0	2	12
SMITH, MATT	24	92	80	116	0	0	40	352
SANBORN, CHRIS	8	64	148	428	0	0	20	668
GIBSON, KATIE	0	0	0	0	4	0	0	4
BOONE, JACOB	0	0	0	0	16	0	0	16
PARKER, FAYE	2	4	4	0	40	0	12	62
PRICE, LUCAS	0	0	0	0	20	0	0	20
PRUETT, LINDA	8	12	92	0	0	0	36	148
KUNTZ, ADAM	0	0	0	0	536	0	0	536

UDOT Hours Derivation

Contract Number:	NEW	Mod:	
Project Number:	F-LC49(142)	PIN:	10962
Project Location:	Spanish Fork River Trail		
	UDOT Project Manager:	Justin Schellenberg	

	85C	87C	89C	91C	93C	97C	99C	Total
Firm Activity Totals:	61	270	364	588	616	1	134	2,034
Transaction Activity	61	270	364	588	616	1	134	2,034
Totals:								

Insurance

As stated in Attachment B - Standard Terms and Conditions, services to be provided by the CONSULTANT under this contract are required to be covered by insurance. Insurance shall be maintained in force until all activities which are required by this contract or as changed by contract modification are completed and accepted by the DEPARTMENT.

Insurance	Waived	Expiration Date	Insurance Carrier	Policy Number	Each Occurrence Limit	General Aggregate Limit	Additional Endorsement
AUTOMOBILE LIABILITY	N	1/1/2015	HARTFORD CASUALTY INSURANCE CO	34UUNRA6055	\$1,000,000	\$0	Y
EXCESS/UMBRELLA LIABILITY	N	1/1/2015	HARTFORD CASUALTY INSURANCE CO	34XHURA5047	\$5,000,000	\$5,000,000	N
GENERAL LIABILITY	N	1/1/2015	HARTFORD CASUALTY INSURANCE CO	34UUNRA6055	\$1,000,000	\$2,000,000	Y
HEALTH INSURANCE HB 331-2009	N	11/8/2011	REGENCY BLUE CROSS	XXXXX	\$0	\$0	N
PROFESSIONAL LIABILITY	N	5/12/2014	XL SPECIALTY INSURANCE CO	DPR9709053	\$2,000,000	\$2,000,000	N
WORKERS COMPENSATION	N	1/1/2015	WORKERS COMPENSATION FUND	1462319	\$1,000,000	\$0	N



Memo

To: Mayor and City Council
From: Chris Thompson P.E., Public Works Director/City Engineer
Date: May 5, 2014
Re: Utah Public Works Emergency Management Mutual Aid Agreement

Staff Report

RECOMMENDED ACTION

Approval of the Utah Public Works Emergency Management Mutual Aid Agreement.

BACKGROUND

Through the Utah Chapter of the American Public Works Association a mutual aid agreement has been drafted to facilitate public works agencies helping each other in emergencies. This agreement is hoped to facilitate mutual aid as efficiently and quickly as possible when there is an emergency of any kind.

DISCUSSION

This agreement does not obligate us to come to the aid of any agency it just simplifies the process if we choose to do so. We feel like it is a great step forward in working together with surrounding communities to protect our residents.

Attached: agreement



MUTUAL AID INTERLOCAL AGREEMENT FOR UTAH PUBLIC WORKS EMERGENCY MANAGEMENT

THIS MUTUAL AID INTERLOCAL COOPERATION AGREEMENT is entered into this _____ day of _____, by _____ and the other Participating Agencies as described herein.

ARTICLE I. PURPOSE

This Agreement is made and entered into by those Public Works and Related Service Agencies who have adopted and signed this Agreement to provide mutual assistance in times of emergency. This Public Works Emergency Management Alliance mutual aid program is established to provide a method whereby Participating Agencies which sustain damage from natural or man-made disasters can obtain emergency assistance, in the form of personnel, equipment, materials, and other associated services, from other Agencies. This Agreement also provides a method whereby responding Agencies may be provided with reimbursement for personnel, equipment, materials and other associated services that are made available on an emergency basis. Nothing herein is intended to replace or terminate any pre-existing agreement between any of the Participating Agencies that provide assistance by one Participating Agency's department within the political boundaries of another on a regular or routine basis. Participating Agencies intend by this Agreement to commit to assist each other whenever possible, while allowing each Participating Agency the sole discretion to determine when its personnel and equipment cannot be spared for assisting other Participating Agencies.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree to provide mutual assistance to one another in times of emergency in accordance with the terms and conditions of this Agreement.

This document is intended to be a companion document to the UTAH WARN (Water, Wastewater Response Network) agreement and used in conjunction with the State of Utah Mutual Aid Agreement (Utah Administrative Code, R704-2, State Wide Mutual Aid Activation).

ARTICLE II. DEFINITIONS

- A. AGREEMENT - The Mutual Aid Interlocal Agreement for Utah Public Works Emergency Management. The original Agreement(s) and all signatory pages shall be kept at the Salt Lake County Public Works Administration Building located at 604 West 6960 South, Midvale, Utah 84047, or other location as directed by the Utah Chapter of the American Public Works Association.
- B. ALLIANCE - UTAH PUBLIC WORKS EMERGENCY MANAGEMENT ALLIANCE – The mutual aid network consisting of and available to the Participating Agencies as described in this Agreement and the administration of that network.
- C. APWA - American Public Works Association
- D. ASSISTING Agency – ANY Participating Agency which agrees to provide assistance to a Requesting Agency pursuant to this Agreement.
- E. AUTHORIZED REPRESENTATIVE – An employee of a Participating Agency authorized by that Agency to request or offer assistance under the terms of this Agreement.
- F. EMERGENCY – Any disaster or calamity involving the area of operation of the Participating Agency, caused by fire, flood, storm, earthquake, civil disturbance, terrorism, or other condition which is or is likely to be beyond the control or ability of the services, personnel, equipment and facilities of a Participating Agency or a “disaster”, “state of emergency” or “local emergency” as those terms are defined by the *Emergency Management Act* and the *Disaster Response and Recovery Act* as set forth in Title 53, Chapter 2a, *Utah Code*, as those sections currently exist or may hereafter be amended.
- G. EXPENSES – All costs incurred by the Assisting Agency during the Period of Assistance to provide personnel, equipment, materials and other associated services when responding to the Requesting Agency as described in Article VI.
- H. PARTICIPATING Agency or Agencies – ANY Agency which executes this Agreement. Participating Agencies may include, City Public Works, County Public Works, Public Utilities (including water, wastewater, power, gas, etc.), Public Services (including solid waste facilities, sanitation, etc.), Special Districts, State Agencies (including UDOT, DFCM, DEQ, etc.), Utah National Guard, and any other agency or group that provides services similar to standard public works type operations.
- I. PERIOD OF ASSISTANCE - The period of time beginning with the mobilization of any personnel of the Assisting Agency from any point for the purpose of traveling to the Requesting Agency in order to provide assistance and ending upon the demobilization of all personnel of the Assisting Agency, after providing the assistance requested, to their residence or place of work whichever is first to occur.

- J. REQUESTING Agency – ANY Participating Agency which sustains physical damage to its infrastructure due to natural or man-made causes that seeks assistance pursuant to this Agreement.
- K. SCHEDULE OF EQUIPMENT RATES – The latest rates published by the Federal Emergency Management Agency (FEMA) under the response and recovery directorate applicable to major disasters and emergencies or the pre-published schedule provided by a Participating Agency by January 15 of each year.
- L. WORK OR WORK-RELATED PERIOD – Any period of time in which either the personnel or equipment of the Assisting Agency are being used to render assistance to the Requesting Agency. Specifically included within such period of time are breaks when the personnel of the Assisting Agency will return to work within a reasonable period of time. Also included is mutually agreed upon rotation(s) of personnel and equipment.

ARTICLE III. APPLICABILITY

This Agreement is available to all Participating Agencies, upon signing of the Agreement and maintaining a current resource equipment list (as per Utah Administrative Code R704-2) and a schedule of equipment and manpower rates.

ARTICLE IV. ADMINISTRATION

The administration of the Utah Public Works Emergency Management Alliance (Alliance) will be through the Utah Chapter of APWA. The Utah APWA Emergency Management Committee acts as the committee representing the Utah Chapter of APWA.

The Utah Chapter of APWA, on behalf of the Participating Agencies (Alliance) shall:

- A. Sponsor an annual meeting for Participating Agencies (scheduled as part of the annual APWA Fall Conference).
- B. Maintain a data base of information.
- C. Meet as a committee to address and resolve concerns, create and modify procedures and address and resolve any additional policy or legal issues related to the Alliance.
- D. Maintain a web site to track Participating Agencies. (Currently, this website is located at <http://utah.apwa.net/>)
- E. The web site may be password protected for only the use of Participating Agencies if deemed appropriate by the APWA Emergency Management Committee.
- F. Facilitate and promote a minimum of one training exercise per year. Each Participating Agency is responsible to plan, coordinate, budget and execute one emergency exercise annually.

ARTICLE V. PROCEDURES

In the event that a particular Participating Agency becomes a Requesting Agency, the following procedures shall be followed:

- A. A Participating Agency shall not be held liable for failing to be an Assisting Agency.
- B. Each Assisting Agency shall respond, when practicable, to requests for emergency assistance by providing such resources as are reasonably available to the Assisting Agency. The Assisting Agency shall have the discretion of determining which resources are reasonably available.
- C. The execution of this Agreement shall not create any duty to respond on the part of any Participating Agency.
- D. The Requesting Agency may contact other participating members of the Alliance that may be able to provide the requested resources.
- E. Necessary information in accordance with the procedures defined in this Agreement shall be shared between Requesting and Assisting Agencies.
- F. When contacted by a Requesting Agency, the Authorized Representative of a Participating Agency shall assess if it is capable of providing assistance. If the Authorized Representative determines that the Participating Agency is capable and willing to provide assistance, the Authorized Representative shall notify the Requesting Agency and provide the Requesting Agency with the information as required.
- G. The personnel and equipment of the Assisting Agency shall remain, at all times, under the direct supervision of the designated supervisory personnel of the Assisting Agency. The Incident Commander or Unified Commander, as designated by the Requesting Agency, shall provide work assignments and suggest schedules for the personnel and equipment of the Assisting Agency; however, the designated supervisory personnel of the Assisting Agency shall have the exclusive responsibility and authority for assigning Work and establishing Work schedules for the personnel and equipment of the Assisting Agency. The designated supervisory personnel of the Assisting Agency shall maintain daily personnel time records and a log of equipment hours (including breakdowns, if any), be responsible for the operation and maintenance of the equipment furnished by the Assisting Agency, see to the safety of Assisting Agency personnel and report work progress to the Requesting Agency and/or the Incident Commander.
- H. When possible, the Requesting Agency shall supply reasonable food and shelter for the Assisting Agency personnel. If the Requesting Agency does not provide food and shelter for the Assisting Agency, the Assisting Agency's designated supervisor is authorized to secure, at the expense of the Requesting Agency, the resources

reasonably necessary to meet the needs of its personnel in coordination with the Requesting Agency's procedures. The cost for such resources must not exceed the state per diem rate for that area. Where costs exceed the per diem rate, the Assisting Agency must document and demonstrate that the additional costs were reasonable and necessary under the circumstances.

- I. The Requesting Agency shall provide a communications plan to the Assisting Agency prior to arrival.
- J. The command structure established during the Emergency shall comply with the requirements of the National Incident Management System (NIMS)
- K. The Incident Commander or Unified Commander shall, as soon as reasonably possible, release the personnel, equipment and materials of the Assisting Agency from the Emergency. The personnel, equipment and materials of the Assisting Agency shall, if practical, be released before the personnel, equipment and materials of the Requesting Agency are released.
- L. To the extent permitted by law, Assisting Agency personnel who hold valid licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.
- M. Personnel, equipment and materials of the Assisting Agency shall be released from the Emergency when it is determined by the Incident Commander or the Unified Commander that the services provided by the Assisting Agency are no longer required or when the supervisory personnel of the Assisting Agency informs the Incident Commander or the Unified Commander that the personnel, equipment and materials provided by the Assisting Agency are otherwise needed by the Assisting Agency.
- N. Credentialing; Each Participating Agency shall provide its own credentialing for identification purposes.

ARTICLE VI. REIMBURSABLE EXPENSES

The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be determined by standard and prevailing rates of the Participating Agencies. If the Assisting Agency and the Requesting Agency agree to the reimbursement of expenses, reimbursement shall be in accordance with the following provisions:

- A. PERSONNEL – During the Period of Assistance, the Assisting Agency shall continue to pay its employees according to its then prevailing rules, regulations, policies and procedures. The Requesting Agency shall reimburse the Assisting Agency for all direct and indirect payroll costs and expenses incurred during the Period of Assistance, including, but not limited to, employee pensions and benefits.

- B. EQUIPMENT – The Requesting Agency shall reimburse the Assisting Agency for the use of the Assisting Agency’s equipment during the Period of Assistance according to the *Schedule of Equipment Rates* established and published by FEMA. All Participating Agencies shall maintain a current list of equipment available (as per Utah Administrative Code R704-2) and the rates for that equipment upon executing this Agreement. If an Assisting Agency uses an alternate basis of rates for equipment listed on the FEMA *Schedule of Equipment Rates*, the rates of the Assisting Agency shall prevail.
- C. MATERIALS AND SUPPLIES – The Requesting Agency shall reimburse the Assisting Agency for all materials and supplies furnished by the Assisting Agency and used or damaged during the Period of Assistance, unless such damage is caused by the negligence of the Assisting Agency’s personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged. In the alternative, the parties may agree that the Requesting Agency will replace, with a like kind and quality as determined by the Assisting Agency, the materials and supplies used or damaged.
- D. PAYMENT – Unless mutually agreed otherwise, the Assisting Agency shall bill the Requesting Agency for all expenses no later than ninety (90) days following the release of the Assisting Agency’s personnel and equipment from the Period of Assistance. The Requesting Agency shall pay the bill in full no later than forty-five (45) days following the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46th) day following the billing date. The Assisting Agency may request additional periods of time within which to submit the itemized bill, and the Requesting Agency shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Agency.
- E. Each Assisting Agency and its duly authorized representatives shall have access to a Requesting Agency’s books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Agency and their duly authorized representatives shall have access to the Assisting Agency’s books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years where required by law.
- F. DISPUTED BILLINGS – Undisputed portions of a billing shall be paid under this payment plan. Disputed portions of the billing shall be coordinated and addressed as appropriate between the Agencies involved in the dispute.

ARTICLE VII. INSURANCE

Each Participating Agency shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance and in what amounts, it should carry. Nothing herein shall act or be construed as a waiver of any

sovereign immunity provided by the Governmental Immunity Act of Utah or other exemption or limitation on liability that a Participating Agency may enjoy.

ARTICLE VIII. NO SEPARATE ENTITY OR ACQUISITION OF PROPERTY

This Agreement is an interlocal cooperative agreement under Utah Code. This Agreement does not create any separate legal entity. To the extent this Agreement requires administration other than as set forth herein, it shall be administered by the Authorized Representatives of the Participating Agencies, acting as a joint board.

No real or personal property shall be acquired jointly by the Participating Agencies to perform the conditions of this Agreement unless such acquisition is specifically agreed to in writing by all Participating Agencies. To the extent that a Participating Agency acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, it shall do so in the same manner that it deals with other property of such Participating Agency.

ARTICLE IX. LAWFUL RESPONSIBILITY

This Agreement shall not relieve any Participating Agency of any obligation or responsibility imposed upon it by law or other agreement.

ARTICLE X. INDEMNIFICATION AND HOLD HARMLESS

- A. Consistent with Utah Code, the Requesting Agency shall indemnify and save harmless the Assisting Agency and the officers, employees and representatives of the Assisting Agency, if they are acting within the course and scope of their duties, from all claims, suits, actions, damages and costs of every kind, including but not limited to reasonable attorney's fees and court costs, arising or resulting from the performance or provision of services and materials by the Assisting Agency under this Agreement unless there is a determination that such claims are the result of negligence of the Assisting Agency or the officers, employees or representatives of the Assisting Agency. This Agreement shall not be construed to be a waiver of any rights or protections provided to any Participating Agency under the Governmental Immunity Act of Utah.
- B. The Assisting Agency shall hold harmless and indemnify the Requesting Agency and the officers, employees and representatives of the Requesting Agency against any liability for any and all claims arising from any damages or injuries caused by negligence of the Assisting Agency or the officers, employees or representatives of the Assisting Agency except to the extent of the negligence of the Requesting Agency or the officers, employees or representatives of the Requesting Agency. This agreement shall not be construed to be a waiver of any rights or protections

provided to any Participating Agency under the Governmental Immunity Act of Utah.

- C. Subject to the foregoing, nothing in this Agreement shall be construed as an agreement by a Participating Agency to indemnify or hold harmless, or in any way assume liability, if there is a determination that any personal injury, death or property loss or damage was caused by the negligence of any other Participating Agency or person.
- D. Nothing herein shall be construed to waive any of the privileges and immunities associated with public works services or other related services, including emergency or other services of any of the Participating Agencies. No party waives any defenses or immunity available under the Utah Governmental Immunity Act, nor does any party waive any limits of liability currently provided by the Act.
- E. Each Participating Agency shall be solely responsible for providing workers compensation, insurance, and benefits for its own personnel who provide assistance under this Agreement unless the parties otherwise agree. Each Participating Agency shall provide insurance or shall self-insure to cover the negligent acts and omissions of its own personnel rendering services under this Agreement.

ARTICLE XI. TERM

This Agreement shall have an initial term of fifty (50) years commencing upon the effective date of this Agreement.

ARTICLE XII. TERMINATION

Any Participating Agency may terminate its obligations under and participation in this Agreement, with or without cause, by giving the Alliance at least thirty (30) days prior written notice of the intent to terminate. The termination of this Agreement by any individual Participating Agency shall not affect the validity of this Agreement as to the remaining Participating Agencies. Withdrawal from this Agreement shall in no way affect a Requesting Agency's duty to reimburse the Assisting Agency for costs incurred during a Period of Assistance which occurred during the term of this Agreement, which duty shall survive such withdrawal.

ARTICLE XIII. WHOLE AGREEMENT, AMENDMENTS

This Agreement constitutes the whole agreement of the parties, written or oral, relating to the subject matter of this Agreement. This Agreement may be amended in whole or in part at any time by the Participating Agencies by submitting a written amendment to the Alliance. The amendment shall be submitted to the Participating Agencies of the Alliance for a majority vote. The vote by the Participating Agencies will be conducted by mail. Participating Agencies who fail to vote will have their vote counted as an affirmative vote.

ARTICLE XIV. SEVERABILITY

If any provisions of this Agreement are held to be invalid or unenforceable by a court of proper jurisdiction, the remaining provisions shall remain in full force and effect.

ARTICLE XV. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to benefit any party or person not named as a Participating Agency specifically herein.

ARTICLE XVI. EFFECTIVE DATE

This Agreement shall be effective as to a particular Participating Agency executing this Agreement upon the date of execution of this Agreement by that Participating Agency. Completion and maintaining of a resource equipment list (as per Utah Administrative Code R704.2) and a schedule of equipment and manpower rates is required thereafter.

ARTICLE XVII. AUTHORIZATION

The individuals signing this Agreement on behalf of the Participating Agency confirm that they are a duly Authorized Representative of the Participating Agency and are lawfully enabled to sign this Agreement on behalf of the Participating Agency.

ARTICLE XVIII. REVIEW BY AUTHORIZED ATTORNEY

In accordance with the Utah Interlocal Cooperation Act this Agreement shall be submitted to the attorney authorized to represent each Participating Agency for review as to proper form and compliance with applicable law before this Agreement may take effect.

ARTICLE XIX. RESOLUTIONS OF APPROVAL NOT REQUIRED

This Agreement may be approved and executed as an executive function in accordance with the provisions of the Utah Interlocal Cooperation Act and the adoption of a resolution of approval is normally not required.

ARTICLE XX. COUNTERPARTS

This Agreement and any amendments to it may be executed in counterparts, each of which shall be deemed an original.

ARTICLE XXI. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the applicable laws of the United States and the State of Utah.

ARTICLE XXII. FILING OF AGREEMENT

An executed counterpart of this Agreement shall be filed with the keeper of records of each Participating Agency. An executed counterpart of this Agreement shall also be filed with the APWA Utah Chapter, representing the Alliance.

In witness whereof, each Participating Agency hereto has executed this Agreement on the respective signature page of that Participating Agency as of the date specified by its signature block.

ARTICLE XXIII. PERSONNEL NOT AGENTS

The employees of the Participating Agencies providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents, or employees of the Participating Agency that hired them. Each Participating Agency shall assume any and all liability for the payment of salaries, wages, or other compensation due or claimed due, including workers' compensation claims, and each Participating Agency shall hold the other harmless therefrom. The Participating Agencies shall not be liable for compensation or indemnity to any other Participating Agency's employee for any injury or sickness arising out of his or her employment, and the Participating Agencies shall not be liable for compensation or indemnity to any other Participating Agency's employee for injury or sickness arising out of his or her employment, and each party hereby agrees to hold the other party harmless against any such claim.

ARTICLE XXIV. ADDITIONAL AGENCIES

Any subdivision of the State of Utah not specifically named herein ("Prospective Agency") which shall hereafter sign this Agreement or a copy hereof shall become a Participating Agency. Any Agency which becomes a newly accepted Participating Agency is entitled to all the rights and privileges and subject to the obligations of any Participating Agency as set out herein.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the Participating Agency listed here, as a Participating Agency, duly executes this Mutual Aid Interlocal Agreement for Utah Public Works Emergency Management this _____ day of _____ 20__.

Agency _____

By: _____ By: _____

Title _____ Title: _____

Approved as to form and legality

By: Jason S. [Signature]
Agency's Attorney



TO: Spanish Fork City Council
FROM: Dave Anderson, Community and Economic Development Director
DATE: May 20, 2014
RE: Landscaping for Commercial Uses

Background

Accompanying this memorandum is language that describes proposed changes to the City's requirements for landscaping.

The impetus for these changes is a proposed Text Amendment that was made by the Woodbury Corporation. In short, Woodbury proposed to have the requirements changed so commercial developments would no longer be required to plant trees along street frontages at a minimum spacing of thirty feet. Staff understands Woodbury made this request so as to permit greater visibility of signage and buildings on their site.

Since receiving Woodbury's request, the proposal has been reviewed by members of the City's Shade Tree Commission who offered suggestions for changes to the proposed language. The suggestions offered by these members of the Shade Tree Commission were then incorporated into the proposed language.

The updated language was then presented in Shade Tree Commission and Recreation Committee meetings. Both the Shade Tree Commission and Parks and Recreation Committee support the changes as now proposed. Also, the Planning Commission reviewed the proposal on May 14 and recommended that it be approved, subject to staff making one minor change. The language that accompanies this memo includes the change suggested by the Planning Commission.

More specific to the proposed changes, the one significant change pertains to Woodbury's request to not be required to have trees planted along streets with a minimum uniform spacing. The other proposed changes are not intended to modify standards but rather to clarify what the regulations mean.

Proposal



B. Multi-family residential uses:

1. Minimum of thirty-five (35) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include **parking lot trees, as identified on the City's approved list of Parking Lot Trees, non-ornamental trees** with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area. **The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.**
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where any multi-family use abuts a single-family residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. **The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs. All other landscaped areas shall include at least three (3) non-ornamental trees and twenty (20) shrubs for each 1,000 square feet of landscaped area.**
6. **Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.**

C. Professional Office and Non-residential or Non-commercial Uses:

1. Minimum of thirty (30) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include **parking lot trees, as identified on the City's approved list of Parking Lot Trees, non-ornamental trees** with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area. **The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.**
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. **The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs. All other landscaped areas shall include at least three (3) non-ornamental trees and twenty (20) shrubs for each 1,000 square feet of landscaped area.**
6. **Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.**

D. Commercial Uses:

1. Minimum of fifteen (15) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include **parking lot trees, as identified on the City's approved list of Parking Lot Trees, non-ornamental trees** with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include **one street tree for each thirty (30) feet of frontage along all public streets. The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip. trees with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area.**
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative masonry wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. **The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs. All other landscaped areas shall include at least three (3) non-ornamental trees and twenty (20) shrubs for each 1,000 square feet of landscaped area.**
6. **Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.**

E. Industrial Uses:

1. Minimum of ten (10) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include **parking lot trees, as identified on the City's approved list of Parking Lot Trees, non-ornamental trees** with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. **The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.**
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. All other landscaped areas shall include at least one (1) non-ornamental tree and ten (10) shrubs for each 1,000 square feet of landscaped areas. Natural vegetation may be included if materials are appropriate for the setting and location.

The total number of required trees and shrubs for each 1,000 square feet of required landscaping shall equal one (1) non-ornamental tree and ten (10) shrubs. All other

~~landscaped areas shall include at least three (3) non-ornamental trees and twenty (20) shrubs for each 1,000 square feet of landscaped area.~~

6. Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.

Recommendation

Staff recommends that the proposed changes to Title 15 be adopted as presented.

attachments: Tree List for Public Street Frontage
Tree List for Parking Lots

Spanish Fork City Tree List for Public Street Frontage

May 7, 2014

Common Name/Alternate Name		Botanical Name
Beech	European	<i>Fagus sylvatica</i>
Catalpa	Northern	<i>Catalpa speciosa</i>
Elm	Chinese	<i>Ulmus parvifolia</i>
Elm	Frontier	<i>Ulmus 'Frontier'</i>
Ginkgo		<i>Ginkgo biloba</i>
Hackberry	common	<i>Celtis occidentalis</i>
Horsechestnut	common	<i>Aesculus hippocastanum</i>
Linden	American	<i>Tilia americana</i>
Linden	Silver	<i>Tilia tomentosa</i>
Oak	Bur	<i>Quercus macrocarpa</i>
Oak	English columnar	<i>Quercus robur 'Fastigiata'</i>
Oak	Swamp White	<i>Quercus bicolor</i>
Sycamore	London Planetree	<i>Platanus x acerfolia</i>
Zelkova	Japanese	<i>Zelkova serrata 'Green Vase'</i>
Zelkova	Japanese	<i>Zelkova serrata 'Village Green'</i>
Zelkova	Japanese	<i>Zelkova serrata 'Musashino'</i>

Spanish Fork City Tree List for Parking Lots

May 7, 2014

Common Name/Alternate Name		Botanical Name
Beech	European	Fagus sylvatica
Buckeye	Ohio	Aesculeus glabra
Catalpa	Northern	Catalpa speciosa
Catalpa	umbrella	Catalpa bignonioides 'Nana'
Crabapple	Malas	Malus x 'Spring Snow'
Elm	Chinese	Ulmus parvifolia
Elm	Frontier	Ulmus 'Frontier'
Fringetree		Chionanthus virginicus
Ginkgo		Ginkgo biloba
Goldenchain	Waterer Laburnum	Laburnum x watereri
Goldenraintree		Koelreuteria paniculata
Hackberry	common	Celtis occidentalis
Hawthorn	Cockspur	Crataegus crus-galli
Hawthorn	English	Crataegus laevigata
Hawthorn	Lavalle	Crataegus x lavalley
Hawthorn	Washington	Crataegus phaenopyrum
Honeylocust		Gleditsia triacanthos var. inermis 'Shademaster'
Honeylocust		Gleditsia triacanthos var. inermis 'Imperial'
Honeylocust		Gleditsia triacanthos var. inermis 'Skyline'
Coffee Tree	Kentucky Coffee Tree	Gymnocladus dioicus
Linden	Silver	Tilia tomentosa
Oak	Bur	Quercus macrocarpa
Oak	English columnar	Quercus robur 'Fastigiata'
Oak	Swamp White	Quercus bicolor
Pear	Flowering Aristocrat	Pyrus calleryana 'Chanticleer'
Redbud	Eastern	
Serviceberry	Shadblow	Amelanchier canadensis
Smoketree	common	Cotinus coggyria
Sweetgum	American	Liquidambar styraciflua
Sycamore	London Planetree	Platanus x acerfolia
Tuliptree		Liriodendron tulipifera
Yellow Wood		Cladrastis kentukea (lutea)
Zelkova	Japanese	Zelkova serrata 'Green Vase'
Zelkova	Japanese	Zelkova serrata 'Village Green'
Zelkova	Japanese	Zelkova serrata 'Musashino'

ORDINANCE No. 10-14

ROLL CALL

VOTING	YES	NO
STEVE LEIFSON <i>Mayor (votes only in case of tie)</i>		
ROD DART <i>Council member</i>		
RICHARD M. DAVIS <i>Council member</i>		
BRANDON B. GORDON <i>Council member</i>		
MIKE MENDENHALL <i>Council member</i>		
KEIR A. SCUBES <i>Council member</i>		

I MOVE this ordinance be adopted:

I SECOND the foregoing motion

ORDINANCE No. 10-14

AN ORDINANCE MAKING VARIOUS AMENDMENTS TO THE LANDSCAPE REQUIREMENTS OF SPANISH FORK CITY

WHEREAS, Spanish Fork City has enacted a land use ordinance to regulate the development of land within the City, establish zoning to protect property values, and establish administrative rules concerning land use; and

WHEREAS, the land use ordinance contains a section on multi-family, professional office and non-residential, commercial, and industrial landscaping requirements; and

WHEREAS, requests have been made to modify the landscape requirements to allow more visibility for businesses without reducing the number of trees and shrubs; and

WHEREAS, a public hearing was held before the Planning Commission on Wednesday, the 14th day of May, 2014, whereat public comment was received; and

WHEREAS, the Planning Commission has recommended adoption of the modifications, as shown below; and

WHEREAS, a public hearing was held before the Spanish Fork City Council on Tuesday, the 20th day of May, 2014, whereat additional public comment was received;

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

I.

Spanish Fork Municipal Code §15.4.16.130(B), (C), (D), and (E), Landscaping, Buffering, Walls and Fences is hereby amended as follows:

15.1.04.020 Landscaping, Buffering, Walls, and Fences

B. Multi-family residential uses:

1. Minimum of thirty-five (35) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include parking lot trees, as identified on the City's approved list of Parking Lot Trees, with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area. The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where any multi-family use abuts a single-family residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs.
6. Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.

C. Professional Office and Non-residential or Non-commercial Uses:

1. Minimum of thirty (30) percent on-site landscaping as a percentage of total site area.

2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include parking lot trees, as identified on the City's approved list of Parking Lot Trees, with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area. The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
5. The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs.
6. Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.

D. Commercial Uses:

1. Minimum of fifteen (15) percent on-site landscaping as a percentage of total site area.
2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include parking lot trees, as identified on the City's approved list of Parking Lot Trees, with a maximum spacing of thirty (30) feet.
3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include one street tree for each thirty (30) feet of frontage along all public streets. The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.
4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative masonry wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.

- a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
 - 5. The total number of required trees and shrubs for every 1,000 square feet of required landscaping shall equal three (3) trees and twenty (20) shrubs.
 - 6. Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.
- E. Industrial Uses:
- 1. Minimum of ten (10) percent on-site landscaping as a percentage of total site area.
 - 2. Parking lots shall include planter areas within the parking lot, with a minimum of 108 square feet of planter area for every ten (10) parking spaces. Required planter areas shall be individual islands of landscaping and shall be at least six (6) feet wide. Required planter areas shall include parking lot trees, as identified on the City's approved list of Parking Lot Trees, with a maximum spacing of thirty (30) feet. The planter area may be partially or completely within the street right-of-way area.
 - 3. Minimum of fifteen (15) foot wide planter area adjacent to all public streets, which shall include trees with a maximum spacing of thirty (30) feet. The specific trees used shall be selected from the City's approved Street Tree list. On streets included in the Street Tree Master Plan, the trees selected shall include the mix of trees as prescribed by the Plan. Street trees must be planted within thirty (30) feet of the public street curb; wherever possible, fifty (50) percent of the required street trees must be planted in the parkstrip.
 - 4. Minimum of ten (10) foot wide planter area and six (6) foot high decorative block wall, where the site abuts a residential use or district. The planter area shall include trees with a maximum spacing of thirty (30) feet.
 - a. The DRC may waive or modify this requirement, if it is determined that this requirement does not further the intent of this ordinance.
 - 5. All other landscaped areas shall include at least one (1) non-ornamental tree and ten (10) shrubs for each 1,000 square feet of landscaped areas. Natural vegetation may be included if materials are appropriate for the setting and location. The total number of required trees and shrubs for each 1,000 square feet of required landscaping shall equal one (1) non-ornamental tree and ten (10) shrubs.
 - 6. Trees planted in close proximity to electric power lines may be subject to height limitations that will be imposed as part of the development review process.

II.

The following charts are added to Title 15 of the Spanish Fork Municipal Code to implement the tree lists for public street frontage and parking lots:

Spanish Fork City Tree List for Public Street Frontage
May 7, 2014

Common Name/Alternate Name		Botanical Name
Beech	European	Fagus sylvatica
Catalpa	Northern	Catalpa speciosa
Elm	Chinese	Ulmus parvifolia
Elm	Frontier	Ulmus 'Frontier'
Ginko		Ginkgo biloba
Hackberry	common	Celtis occidentalis
Horsechestnut	common	Aescules hippocastanum
Linden	American	Tilia americana
Linden	Silver	Tilia tomentosa
Oak	Bur	Quercus macrocarpa
Oak	English columnar	Quercus robur 'Fastigiata'
Oak	Swamp White	Quercus bicolor
Sycamore	London Planetree	Platanus x acerfolia
Zelkova	Japanese	Zelkova serrata 'Green Vase'
Zelkova	Japanese	Zelkova serrata 'Village Green'
Zelkova	Japanese	Zelkova serrata 'Musashino'

Spanish Fork City Tree List for Parking Lots		
May 7, 2014		
Common Name/Alternate Name		Botanical Name
Beech	European	Fagus sylvatica
Buckeye	Ohio	Aesculeus glabra
Catalpa	Northern	Catalpa speciosa
Catalpa	umbrella	Catalpa bignonioides 'Nana'
Crabapple	Malas	Malus x 'Spring Snow'
Elm	Chinese	Ulmus parvifolia
Elm	Frontier	Ulmus 'Frontier'
Fringetree		Chionanthus virginicus
Ginkgo		Ginkgo biloba
Goldenchain	Waterer Laburnum	Laburnum x watereri
Goldenraintree		Koelreuteria paniculata
Hackberry	common	Celtis occidentalis
Hawthorn	Cockspur	Crataegus crus-galli
Hawthorn	English	Crataegus laevigata
Hawthorn	Lavalle	Crataegus x lavallei
Hawthorn	Washington	Crataegus phaenopyrum
Honeylocust		Gleditsia triacanthos var. inermis 'Shademaster'
Honeylocust		Gleditsia triacanthos var. inermis 'Imperial'
Honeylocust		Gleditsia triacanthos var. inermis 'Skyline'
Coffee Tree	Kentucky Coffee	Gymnocladus dioicus

	Tree	
Linden	Silver	Tilia tomentosa
Oak	Bur	Quercus macrocarpa
Oak	English columnar	Quercus robur 'Fastigiata'
Oak	Swamp White	Quercus bicolor
Pear	Flowering Aristocrat	Pyrus calleryana 'Chanticleer'
Redbud	Eastern	
Serviceberry	Shadblow	Amelanchier canadensis
Smoketree	common	Cotinus coggyria
Sweetgum	American	Liquidambar styraciflua
Sycamore	London Planetree	Platanus x acerfolia
Tuliptree		Liriodendron tulipifera
Yellow Wood		Cladrastis kentukea (lutea)
Zelkova	Japanese	Zelkova serrata 'Green Vase'
Zelkova	Japanese	Zelkova serrata 'Village Green'
Zelkova	Japanese	Zelkova serrata 'Musashino'

III.

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

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this 20th day of May, 2014.

STEVE LEIFSON, Mayor

Attest:

Kent R. Clark, City Recorder

ORDINANCE No. 11-14

ROLL CALL

Vote	YES	NO
STEVE LEIFSON <i>Mayor (votes only in case of tie)</i>		
ROD DART <i>Council member</i>		
RICHARD M. DAVIS <i>Council member</i>		
BRANDON GORDON <i>Council member</i>		
MIKE MENDHALL <i>Council member</i>		
KEIR A. SCUBES <i>Council member</i>		

I MOVE this ordinance be adopted: Council member

I SECOND the foregoing motion: Council member

ORDINANCE No. 11-14

AN ORDINANCE CREATING CHAPTER 68 OF TITLE 2 OF THE SPANISH FORK MUNICIPAL CODE ESTABLISHING A MUNICIPAL ETHICS COMMISSION AND PROVIDING FOR THE MEMBERSHIP THEREOF PURSUANT TO AN INTERLOCAL AGREEMENT

WHEREAS, the Utah State Legislature has enacted a State law establishing a Political Subdivision Ethics Commission to review complaints regarding the activities of certain elected and appointed officials; and

WHEREAS, the State law permits a municipality to establish its own ethics commission to address complaints of violations of the Municipal Officers' and Employees' Ethics Act; and

WHEREAS, in reviewing this option, the City has determined that it is in the best interest of its citizens to have its own commission as established by Interlocal Agreement, being under local control and more convenient, responsive, and accessible to the citizens; and

WHEREAS, pursuant to that determination, the City Council finds that it is in the best interest of the City and its citizens to establish an ethics commission.

NOW, THEREFORE, be it ordained and enacted as follows:

I.

Spanish Fork Municipal Code, Title 2, Chapter 68, entitled Municipal Ethics Commission, is hereby created as follows:

**TITLE 2 – ADMINISTRATION OF GOVERNMENT
Chapter 68 - MUNICIPAL ETHICS COMMISSION**

- 2.68.010 Purpose.
- 2.68.020 Definitions.
- 2.68.030 Municipal Officers' and Employees' Ethics Act.
- 2.68.040 City Attorney Advisory Opinions.
- 2.68.050 Municipal Ethics Commission.
- 2.68.060 Filing of Ethics Complaints with Commission.
- 2.68.070 Privacy.
- 2.68.080 Initial Review.
- 2.68.090 Consideration of Complaint after Acceptance.
- 2.68.100 Contempt Powers.
- 2.68.110 Request by Elected or Appointed Official for Legal Representation.
- 2.68.120 Determination by Commission.
- 2.68.130 Action by City Council.
- 2.68.140 Knowingly Filing of False Complaint.
- 2.68.150 Annual Commission Report.

2.68.010 Purpose.

The purpose of this Chapter is to create an independent means of investigating and making recommendations concerning alleged violations of the Municipal Officers' and Employees' Ethics Act. It also seeks to increase public confidence by assuring that governmental actions are taken ethically.

2.68.020 Definitions.

As used in this Chapter, the following terms shall have these meanings:

- 1) "Commission" means the Municipal Ethics Commission formed pursuant to Section 2.68.050.
- 2) "Elected officials" includes only the Mayor and members of the City Council.
- 3) "Appointed official" means the City Manager.

2.68.030 Municipal Officers' and Employees' Ethics Act

Elected and appointed officials of the City are required to comply with the Municipal Officers' and Employees' Ethics Act (Utah Code §10-3-1301 *et seq.* as amended), which is incorporated herein by reference.

2.68.040 City Attorney Advisory Opinions.

1. Elected and appointed officials of the City may request of the City Attorney an advisory opinion concerning the application of the Municipal Officers' and Employees' Ethics Act. The City Attorney shall accept and process these advisory opinion requests. The City Attorney shall render a written opinion to the Mayor, City Council, and to the City Manager within 45 days of receiving such a request. All advisory opinions shall be available for public review, but may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
2. An advisory opinion rendered by the City Attorney, until amended or revoked by the City Attorney, shall be a defense in any action brought by a complainant against the elected or appointed official and shall be binding on the City in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith upon it, unless material facts were omitted or misstated by the person requesting the opinion.

2.68.050 Municipal Ethics Commission.

1. The City, along with other Utah County cities, establishes a Municipal Ethics Commission pursuant to Utah Code §10-3-1311 and Utah Code §11-13-101 *et seq.* The Commission shall be a three (3) person commission as provided for in an Interlocal Agreement between the participating municipalities. Upon receiving a complaint the membership of the Commission shall be determined by random selection from the pool of eligible participating municipalities.
2. The City Attorney's Office shall provide the Commission such administrative or other support as requested by the Commission.

2.68.060 Filing of Ethics Complaints with Commission.

1. A complaint may only be filed with the Commission under the following conditions:
 - a. The complaint must be against an elected or appointed official of the City who is currently serving in their elected or appointed position. The complaint must allege a violation of the Municipal Officers' and Employees' Ethics Act;
 - b. The complaint must be filed with the City Recorder;
 - c. The complaint must be made by either:
 - i. two or more registered voters who reside within the boundaries of the City; or
 - ii. two or more registered voters who pay a fee or tax to the City; or
 - iii. one or more registered voters who reside within the boundaries of the City plus one or more registered voters who pay a fee or tax to the City;
 - d. The complaint must be based upon direct evidence or sworn statements by one or more people with actual knowledge of the facts and circumstances supporting the alleged ethics violation;
 - e. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal primary election, if the accused elected or appointed official is a candidate in the primary election;

- f. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal general election in which the accused elected or appointed official is a candidate, unless the accused elected or appointed official is unopposed in the election;
- g. The complaint must be in writing and contain:
 - i. the name and position of the elected or appointed official alleged to be in violation;
 - ii. the name, address, and telephone number of each individual who is filing the complaint;
 - iii. a description of each alleged violation of the Municipal Officers' and Employees' Ethics Act, including a reference to the section of the Act alleged to have been violated;
 - iv. with reasonable specificity, evidence supporting each allegation, which shall be provided by copies of official records, documentary evidence, or affidavits that include the required information;
 - v. a list of witnesses that a complainant wishes to have called or interviewed, including for each witness: the name, address, and, if available, one or more telephone numbers of the witness; a brief summary of the testimony to be provided by the witness; a specific description of any documents or evidence a complainant desires the witness to produce;
 - vi. a statement that each complainant:
 - 1. has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
 - 2. believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected or appointed official, causing unwarranted harm to the accused elected or appointed official's reputation, or causing unnecessary expenditure of public funds; and
 - 3. believes the allegations contained in the complaint to be true and accurate.
 - vii. a statement with the signature of each complainant.

- 2. Upon receipt of any ethics complaint, the City Recorder shall select the commission using the procedures set forth in the Interlocal Agreement, inform the city attorneys from the selected cities of their selection, then immediately refer the complaint to the commission. The City Recorder shall not notify or inform any other person of the filing of the complaint.
- 3. A person filing a complaint under this Chapter is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings.
- 4. An administrative fee of \$50 must be filed with the complaint. The \$50 filing fee must be paid to the city where the complaint is filed. After the selected commission elects a chairperson, the \$50 administrative fee will be paid to the chairperson's city to defray the costs of administering the complaint.

2.68.070 Privacy.

- 1. Once an ethics complaint has been filed with the City Recorder, neither the City Recorder, the Commission, nor any City employee may disclose the existence of the complaint, any response to the complaint, or any information concerning the alleged ethics violation that is the subject of the complaint, unless otherwise provided in this Chapter.
- 2. Nothing in the restrictions above may be construed to hinder or prevent a person or the City Attorney from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.

3. Nothing in this Section may be construed to hinder or prevent the named elected or appointed official from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.
4. Nothing in this Section may be construed to hinder or prevent any person from disclosing public records.
5. If any employee or official of the City publicly discloses any private information, appropriate disciplinary action may be taken against such individual.
6. If a complainant publicly discloses any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice.
7. All records, that are not public records, received by or generated by or for the Commission are private and not subject to disclosure or release, except for the Commission's summary findings and recommendation to the City Council or any document that is classified as public in accordance with Utah Code §63G-2-301.

2.68.080 Initial Review.

1. Within twenty (20) business days after receipt of an ethics complaint, the Commission shall examine the complaint to determine if it is in compliance with the filing requirements of this Chapter.
2. If the Commission determines that the complaint does not comply with the filing requirements of this Chapter, the Commission shall return the complaint to the first complainant named on the complaint with a statement detailing the reason(s) for non-compliance. At the same time, the Commission shall notify the City Manager, Mayor, City Council, and the City Attorney that a complaint filed against an unidentified elected or appointed official has been returned for non-compliance with this Chapter and the fact that a complaint was filed and returned shall be kept confidential as to any others. If a complaint is returned by the Commission, the complainants may file another complaint if the new complaint independently meets the filing requirements of this Chapter.
3. If the Commission determines that the complaint complies with the filing requirements of this Chapter, the Commission shall:
 - a. Accept the complaint;
 - b. Promptly forward the complaint to the elected or appointed official who is named in the complaint, together with directions for providing a response to the Commission;
 - c. If appropriate, request assistance from the Office of the City Attorney; and
 - d. Notify the complainants, the named elected or appointed official, the City Recorder, and the employees in the Office of the City Attorney of the privacy requirements of this Article.
4. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.
5. If the Commission learns that the subject of the complaint is under criminal investigation, the Commission may suspend its review of the complaint pending the resolution of the criminal investigation.
6. The named elected or appointed official shall have the right to present an answer to the complaint. The answer may contain statements, arguments, and evidence. The answer must be filed within ten (10) business days from the date the complaint was forwarded to the elected or appointed official.
7. The Commission shall dismiss an ethics complaint if:
 - a. The named elected or appointed official resigns or is removed from office;
 - b. The named elected or appointed official is charged with a criminal violation of the Municipal Officers' and Employees' Ethics Act where the facts and allegations presented

- in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
- c. The allegations in the complaint, if assumed to be true, do not state a violation of the Municipal Officer's and Employees' Ethics Act.

2.68.090 Consideration of Complaint after Acceptance.

1. After acceptance of a complaint, the Commission has the discretion to:
 - a. Conduct a confidential, independent administrative investigation of the complaint;
 - b. Refer the matter to an independent non-criminal investigator for fact finding and investigation and consider the confidential report of the investigator;
 - c. Conduct a hearing in accordance with Subsection (2) of this Section; or
 - d. Any combination of the above.
2. If the Commission uses a hearing to review the complaint, the Commission shall:
 - a. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments;
 - b. Close the hearing to the public;
 - c. Allow the complainants and the named elected or appointed official to retain legal representation, at their discretion; and
 - d. Provide administrative subpoenas pursuant to its subpoena powers.
3. For any hearing the Commission must provide a notice to the first named complainant and the named elected or appointed official at least five (5) business days prior to the hearing.
4. The Commission shall determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a City Attorney ethics advisory opinion. The Commission shall take into consideration efforts by the named elected or appointed official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected or appointed official in response to legal advice received.
5. The Commission shall ensure that a record of any Commission meeting or hearing is made, which shall include:
 - a. Official summaries or minutes taken during the meeting or hearing;
 - b. Copies of all documents or other items admitted into evidence or considered by the Commission;
 - c. Copies of a document or written order or ruling issued by the Commission;
 - d. Any other information the Commission deems relevant to the findings and recommendation; and
 - e. The Commission has the discretion to make an Audio recording. If an audio recording is made, it shall also be kept as part of the record.
 - f. The record shall be kept for the length of time required by the retention schedule prepared by the State Archivist.

2.68.100 Contempt powers.

1. The Commission may hold a person in contempt if the person:
 - a. Refuses to answer a question, without legal justification, after being directed by the Commission to answer; or
 - b. Fails to comply with a subpoena issued by the Commission.
2. Upon finding a person in contempt, the Commission shall report the person to the Fourth District Court and request a warrant of attachment or order to show cause, as provided in Utah Code §78B-6-313.

2.68.110 Request by Elected or Appointed Official for Legal Representation.

1. The named elected or appointed official may request that the City provide legal counsel to defend the official if the complaint arises from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority.
2. The City is obligated to provide legal counsel, upon request, if the Council finds that the allegations in the complaint arise from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority. If no request for legal counsel is made prior to the filing of an answer to the complaint, the City has no obligation to provide legal counsel, but has the discretion to provide part or all of the cost of legal counsel despite the late request.

2.68.120 Determination by Commission.

1. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Municipal Officers' and Employees' Act by the named elected or appointed official. If there are multiple alleged violations, the Commission shall separately determine whether clear and convincing evidence supports each alleged violation. The determination shall be by majority vote of the Commission.
2. If the Commission determines that no allegations in the complaint were proved, the Commission shall:
 - a. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven;
 - b. Provide notice of the determination of no violation by an unidentified elected or appointed official at a regular public meeting of the City Council; and
 - c. Provide written notice of the determination to the named elected or appointed official and the first named complainant on the complaint.
3. If the Commission determines that one or more of the allegations in the complaint were proved, the Commission shall:
 - a. Prepare written summary findings:
 - i. Listing the name of each complainant and the name of the elected or appointed official;
 - ii. For each allegation that was proven:
 1. Provide the reference to the Municipal Officers' and Employees' Act;
 2. Summarize the evidence supporting a violation by clear and convincing evidence;
 3. Make factual findings; and
 - iii. Recommend appropriate action to the City Council.
 - b. Notify the named elected or appointed official and the first complainant on the complaint of the written summary findings and recommendation for the City Council; and
 - c. Report the summary findings and recommendation to the City Council in a regular meeting of the City Council.
4. If the Commission finds a violation of the Municipal Officers' and Employees' Ethics Act, the Commission may recommend to the City Council any appropriate action or remedy, including but not limited to censure, reprimand, additional ethics training, or removal from office. The Commission's recommendation may depend on the severity of the violation, the elected or appointed official's intent, any history or pattern of abuse by the named elected or appointed official, and any economic or other benefit received by the named elected or appointed official.

2.68.130 Action by City Council.

1. Upon receipt of any finding of violation of the Municipal Officers' and Employees' Ethics Act and recommendation by the Commission, the City Council shall review the recommendation and take action at its discretion.
2. The elected or appointed official referred for a violation may not participate in the City Council's deliberation or cast a vote as the City Council decides whether to take action and what action to take.

2.68.140 Knowingly Filing of False Complaint.

Any person who files a complaint against an elected or appointed official pursuant to this Chapter, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor.

2.68.150 Annual Commission report.

1. If there has been any activity by the Commission during the previous year involving an elected or appointed official of the City, the Commission shall prepare a summary report that contains:
 - a. A general description of the activities of the Commission during the past year;
 - b. The number of ethics complaints filed with the Commission;
 - c. The number of ethics complaints dismissed; and
 - d. An executive summary of each complaint where the Commission found a violation of the Municipal Officers' and Employees' Ethics Act or other applicable local ordinance.
2. The annual report of the Commission shall be filed with the Recorder and shall be a public record.

II.

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

DATED this 6th day of May, 2014.

STEVE LEIFSON, Mayor

Attest:

KENT R. CLARK, City Recorder