

Cedar City

10 North Main Street • Cedar City, UT 84720
435-586-2950 • FAX 435-586-4362
www.cedarcity.org

CITY COUNCIL WORK MEETING
AUGUST 20, 2014
5:30 P.M.

Mayor
Maile L. Wilson

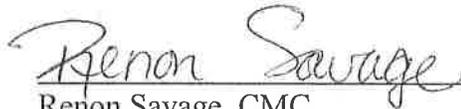
Council Members
Ronald R. Adams
John Black
Paul Cozzens
Don Marchant
Fred C Rowley

City Manager
Rick Holman

The City Council meeting will be held in the Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah. The agenda will consist of the following items:

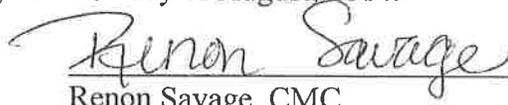
- I. Call to Order
- II. Agenda Order Approval
- III. Administration Agenda
 - Mayor and Council Business
 - Staff Comment
 - Swearing in of Officer Ryan Coleman and Officer Kyle Liddiard
- IV. Public Agenda
 - Public Comments
- V. Business Agenda
 - Public
 1. Presentation from BLM regarding Thunderbird Gardens – Dave Jacobsen/Ben Davidson/Dan Rodgerson
 2. Consider a resolution approving the assignment of an existing cable franchise agreement from Bresnan Communications, LLC to TDS Baja Broadband, LLC
 3. Discuss SWATC traffic issues – Dana Miller
 4. Consider a cooperative agreement for lease extension with YETI – Kerry Fain/Dan Rodgerson
 5. Consider approval of final plat & bond agreement for Talon Point, Phase 1 – Diversified Properties
 - Staff
 6. Consider revised Lease Agreement with DFCM in behalf of DCFS for the use of Festival Hall – Jason Clark
 7. Consider a Five County Regional hazmat interlocal agreement – Mike Phillips
 8. Consider an amendment to the BLM Lease at the Airport – Kelly Dangerfield
 9. Consider annual signing of contract with the State for dispatch services – Chief Allinson
 10. Consider a resolution amending the Personnel Policy
 11. Executive Session – Reasonably Imminent Litigation

Dated this 18th day of August, 2014.


Renon Savage, CMC
City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 18th day of August, 2014.


Renon Savage, CMC
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.

#1



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Cedar City Field Office
176 East DL Sargent Drive
Cedar City, UT 84721
Telephone (435) 865-3000
www.blm.gov

In Reply Refer To:
8300
UTC01000

MEMORANDUM OF UNDERSTANDING

BETWEEN: Cedar City and Bureau of Land Management (BLM), Cedar City Field Office.

AUTHORITY: The basis for this Memorandum of Understanding (MOU) is found in support or stimulation of a public purpose authorized by the following Federal statute(s):

1. Federal Land Policy and Management Act of 1976, 43 USC Section 1737 (b) and (c).
2. Cedar Beaver Garfield Antimony Land Use Plan Signed October 1986.

PURPOSE: The purpose of this MOU is to provide a basic outline for the construction of the Thunderbird Gardens trailhead, Red Hill Trailhead, connector trails to trailheads, facilities, fences, and maintenance of sites, trails and access. It is necessary to construct these trailheads to secure access points for the trails network, and to increase the recreation opportunities on BLM and by extension the people of the United States.

Statement of Work

Cedar City

Cedar City will benefit from this MOU through a possible increase in tourism, additional recreational opportunities for local and non-local residents, and improve the health of the community both physically and mentally. Trail systems are also an attractive selling point for people that are making a choice to relocate individually or as a business.

Cedar City Shall:

1. Meet on an Ad Hoc basis with representatives of the BLM to discuss and agree on guidelines for project development to meet the purposes of this MOU.
2. Identify and comply with all applicable local, state, and federal laws and regulations as they relate to this project.
3. Communicate with the BLM before any modification/work will be done on the trailheads and trails.
4. Assist with monitoring of the sites for vandalism, shooting, dumping, and any other illegal activity.

5. Provide a dump truck to haul material to the trailheads and debris away from the trailheads.
6. Monitor the Thunderbird Gardens area with law enforcement.
7. Install and maintain the trailhead sign on Main Street along with No Shooting and No Dumping signs in the vicinity of Thunderbird Gardens and water control dams above the golf course.

Cedar City would work with the BLM on the construction of the trailhead on 0.7 acres of land in the Thunderbird Gardens area and 0.5 acres near the Red Hill.

BLM CEDAR CITY FIELD OFFICE

The BLM proposes to improve the non-motorized single-track trail opportunity east of Cedar City on the Hurricane Cliffs. These improvements would assist with controlling unauthorized trail building, and offer a trail experience with sustainable non-motorized single-track trails. These trails that are near Cedar City would coincide with the Cedar City master trail plan and link where possible with existing and future Cedar City trailheads. The trails would make a large network that would allow for recreationists to make loops from Fiddlers Canyon over to Shurtz Canyon. The trail network would be diverse with a variety of trail styles to keep the visitors and locals excited about the area, which is expected to slow down users creating unauthorized trails.

The BLM shall:

1. Meet on an Ad Hoc basis with representatives of Cedar City to discuss and agree on guidelines for the project.
2. Communicate with the City before any modification/work will be done on the trailheads and trails.
3. Assist with monitoring of the site for vandalism, shooting, dumping, and any other illegal activity.
4. Acquire permission before constructing trails on City property.
5. Coordinate with IMBA on the development of the trail network with site design and survey.
6. Provide a sign identifying the location of the trailhead that will be installed on Main Street by the City.
7. Install trail entrances (bike cattle guards, walk-overs) to prevent motorized vehicle use on trails designated for non-motorized use.
8. Install trail signage on City property.
9. Provide a grader and operator for installation of trailheads.
10. Maintain the trail network including segments on City property.

11. Construct all trails including sections of trail on City property which provide connectivity to trailheads and the trail network.
12. Remove trash from the trailheads.
13. Install interpretive kiosks.
14. Produce a map of trail network that will be placed on kiosks at trailheads.
15. Install and furnish materials for the post and rail fence/ boulders to delineate trailhead parking.
16. Provide trash cans at the trailheads.
17. Purchase gravel/road-base type material for the trailheads and portions of the access road to Thunderbird Gardens.

It is Mutually Agreed Upon and Understood as Follows:

1. This MOU may be revised, as necessary, by the issuance of a written amendment, consented to, signed, and dated by both parties.
2. Either party may terminate this MOU by providing 30 days written notice.
3. All improvements placed on Cedar City Property at the direction of either party shall thereupon become the property of Cedar City.
4. The BLM reserves the right to conduct all reasonable and necessary inspections of the Trailheads to ensure that the project meets all applicable federal, state and local laws and regulations, and conforms to the above-referenced Statement of Work.
5. Both parties will agree upon a final design of the trailheads before construction.
6. Both Parties will agree upon trail location and use type before installation.

Items to be agreed upon for future plans and development

Installation/ Labor

1. Install drainage features such as culverts and rip rap to help maintain the access road.
2. Installation of shade structure
3. Installation of amenities (fire ring, grill, picnic table, benches, bike rack, etc.)
4. Installation of Restroom

5. Installation of drinking water
6. Grader operator to help maintain the access road into site from the paved road. The road would need to be maintained in a manner that would allow access for low-clearance vehicles.
7. Maintenance of restroom building (toilet paper, cleaning, graffiti removal, etc.)

Materials

1. Restroom vault pumping
2. Shade structure
3. Picnic table/benches, fire ring, grill, etc. at the trailheads.

APPROVALS:

Accepted for Cedar City by:

date

Accepted for the BLM by:

date

Picnic Area

Rifle Range

Archery Range

Stephens Amphitheater

Flood Control Dam

Horse back Riding trail

Hiking Trail

6000

6200

6029

6323

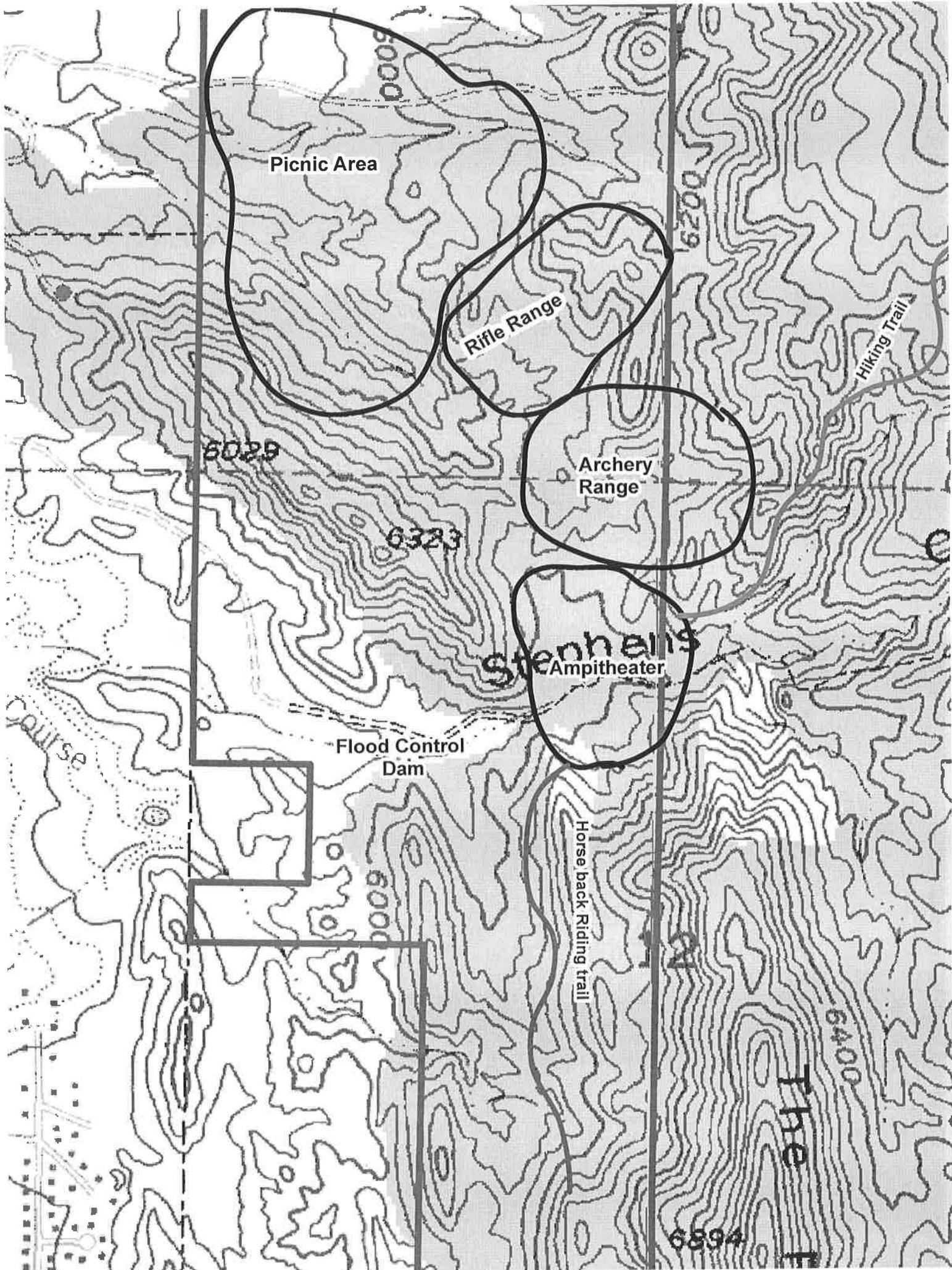
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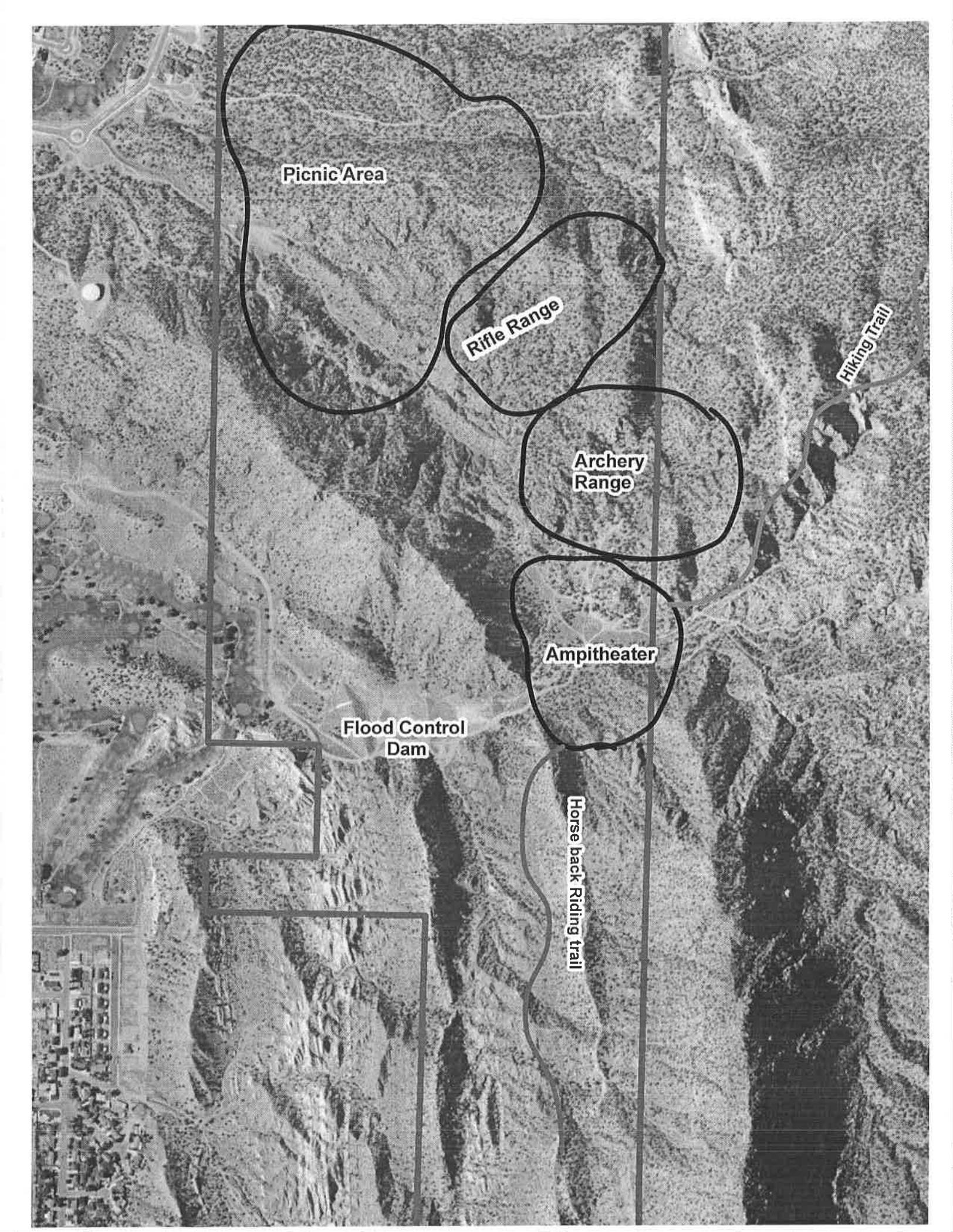
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6594

Course

The P





Picnic Area

Rifle Range

Archery Range

Amphitheater

Flood Control Dam

Hiking Trail

Horse back Riding trail

CEDAR CITY COUNCIL
AGENDA ITEMS V - 2
DECISION PAPER

TO: Mayor and City Council
FROM: Paul Bittmenn
DATE: August 18, 2014
SUBJECT: Cable franchise agreement

DISCUSSION:

Attached is a resolution that assigns the existing cable franchise agreement the City has with Bresnan to TDS Baja Broadband LLC. The existing agreement is set to expire in 2025. Bresnan was bought out by Charter who is the current cable provider. TDS Baja is set to buy the local cable system from Charter.

In addition to the resolution, TDS Baja has provided its FCC documentation including a purchase agreement, some financial information, and a disclosure of the interested persons involved in the transaction. All of this material is available for your review. I did not attach it to this paper because of its overall length. If you would like to review it please let me know and I can send it to you.

Please consider adopting a resolution assigning a cable franchise agreement to TDS Baja.

RESOLUTION NO. _____

**RESOLUTION OF CEDAR CITY, UTAH, APPROVING THE ASSIGNMENT OF THE
CABLE TELEVISION FRANCHISE**

WHEREAS, Bresnan Communications, LLC ("Franchisee") owns, operates, and maintains a cable television system ("System") serving Cedar City, Utah pursuant to a franchise agreement (the "Franchise") issued by Cedar City (the "Franchise Authority"), and Franchisee is the duly authorized holder of the Franchise; and

WHEREAS, TDS Baja Broadband LLC ("Purchaser") has entered into an Asset Purchase Agreement (the "Agreement") with Franchisee in which, among other things, the Franchisee proposes to sell and assign to Purchaser certain of the assets, including the Franchise, used by Franchisee in the operation of the System (the "Transaction"); and

WHEREAS, Franchisee and Purchaser have requested the consent of the Franchise Authority for the assignment of the Franchise in accordance with the requirements of the Franchise and applicable law and have filed with the Franchise Authority a franchise assignment application on FCC Form 394 that includes relevant information concerning the Transaction and the legal, technical and financial qualifications of Purchaser (collectively, the "Application"); and

WHEREAS, the Franchise Authority has reviewed the Application, examined the legal, financial and technical qualifications of Purchaser, followed all required procedures to consider and act upon the Application, and considered the comments of all interested parties; and

WHEREAS, the Franchise Authority believes it is in the interest of the community to approve the Application and the assignment of the Franchise and the System to Purchaser, as described in the Application.

NOW THEREFORE BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:

SECTION 1. The Franchise Authority hereby consents to the Transaction, to the extent required by the terms of the Franchise and applicable law.

SECTION 2. The Franchise Authority confirms that (a) the Franchise was properly granted or assigned to Franchisee and is in full force and effect, (b) the Franchise represents the entire understanding of the parties, the Franchisee has no obligations to the Franchise Authority other than those specifically stated in the Franchise, and the Franchise has not been amended or modified in any respect; (c) the Franchisee has properly invoked its franchise renewal rights under Section 626 of the Cable Communications Policy Act of 1984, as amended; and (d) the Franchisee is in compliance with the provisions of the Franchise and applicable law, and there exists no fact or circumstance known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both, would constitute a default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the rights of Franchisee thereunder.

SECTION 3. The Franchise Authority hereby consents to and approves (a) the pledge or grant of a security interest to any lender(s) in Purchaser's assets, including, but not limited to, the Franchise, or of interests in Purchaser, for purposes of securing any indebtedness; and (b) the assignment or transfer of Purchaser's assets, including the Franchise, provided that such assignment or transfer is to an entity directly or indirectly controlling, controlled by or under common control with Purchaser.

SECTION 4. The Franchise Authority's approval of the Application and its consent to the assignment of the Franchise to Purchaser shall be effective immediately, and Purchaser shall notify the Franchise Authority upon the closing of the Transaction (the "Closing Date").

SECTION 5. The Franchise Authority releases the Franchisee, effective upon the Closing Date, from all obligations and liabilities under the Franchise and applicable law that accrue on and after the Closing Date; provided that Purchaser shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date.

SECTION 6. This Resolution shall have the force of a continuing agreement with Franchisee and Purchaser, and the Franchising Authority shall not revoke, amend or otherwise alter this Resolution without the consent of the Franchisee and Purchaser.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2014.

CEDAR CITY, UTAH

By: _____
Name: _____
Title: _____

ATTEST:

Clerk

#4

LEASE AGREEMENT

This agreement is entered into on the ___ day of _____, ~~2013~~ 2014, between Cedar City Corporation, a Utah municipal corporation and political subdivision, hereinafter referred to as CITY; and Youth & Enthusiasts Together for Ice, Inc., a Utah not for profit corporation, hereinafter referred to as YETI.

WHEREAS, CITY owns and operates the Hills Recreational Complex located in the vicinity of Royal Hunte Drive and 1950 West. This complex is situated on approximately 51.53 acres of land upon which CITY has made a substantial investment constructing ball fields, a dual purpose recreational and water distribution lake, an aquatic center, associated parking facilities, restrooms, and associated infrastructure; and

WHEREAS, on the Northeast corner of CITY's aquatic center there is an area of property that has been designed and planned for future expansion of the Aquatic Center. This area has been designed to accommodate an indoor multiple use facility that would house multiple sport courts, walking paths, exercise facilities, and other such facilities as CITY may choose to program into the space. The future facility is known as the MAC center. The currently vacant parcel of property where the MAC center is scheduled to be built consists of approximately thirty nine thousand seven hundred square feet (39,700 sq. ft.); and

WHEREAS, YETI is a local citizen volunteer group with a stated mission to create a safe and fun environment and facility for families and friends to gather while participating in healthy, invigorating, and family oriented activities revolving around ice sports while including public ice skating, figure skating, and hockey; and

WHEREAS, YETI has leased equipment necessary to construct and maintain an ice rink;
and

WHEREAS, YETI has asked CITY to enter into an agreement whereby YETI may, on a temporary and seasonal basis, locate its ice rink facilities on CITY property; and

WHEREAS, In 2013 CITY has agreed to lease YETI the parcel of property where the MAC center is planned to be located as a temporary and seasonal location for the ice rink.; and

WHEREAS. CITY and YETI experienced a positive experience during the first season.

There were some alterations CITY and YETI want to make to their agreement; and

WHEREAS, it is the express intent of CITY and YETI that this agreement supersede the all prior written or oral agreements related to the lease of CITY property.

NOW THEREFORE, CITY and YETI agree that adequate consideration exists to support the formation of this lease agreement. CITY and YETI enter this agreement with the intent of documenting the lease of CITY property and setting forth each party's responsibilities.

ARTICLE I.

LEASED PROPERTY.

1. The property to be leased to YETI pursuant to the terms and conditions of this lease shall consist of: (A) a temporary ~~and seasonal~~ area where YETI will locate the ice rink, cooling equipment, equipment to maintain the ice, rental equipment, and all other material associated with the ice rink; (B) access to the ice rink for delivery of equipment and materials; (C) customer, volunteer, and employee parking and access to the ice rink; and (D) access to the Aquatic Center facilities.
 - A. On a temporary and seasonal basis CITY leases to YETI the area to the Northeast of

the Aquatic Center that is intended for the future construction of the MAC center. This area consists of +/- thirty nine thousand seven hundred square feet (39,700 sq. ft.) and is depicted in exhibit "A" which is attached hereto and incorporated herein by this reference. This shall be the area within which YETI shall construct the ice rink, store and operate such equipment that is necessary to operate the ice rink, and locate such facilities that will be necessary to facilitate equipment rentals and ticket sales. This agreement contemplates YETI use of CITY property in an as is condition without further cost to CITY. CITY plans on spending a significant amount of money preparing the site for YETI's use. The items CITY will fund are not detailed in this agreement, but will be identified during CITY's RAP tax process.

- B. CITY leases to YETI access to the area where the ice rink will be located. Access for delivery of equipment and supplies necessary to operate the ice rink will be through the existing access road located to the east of the Aquatic Center. This access is not intended to facilitate general parking for customers, volunteers, or employees. This access is not intended for a drop off or pick up access for customers, volunteers, or employees. It is intended to facilitate short term pick up and delivery of equipment and supplies during construction, operation, and removal of the ice rink. This access also facilitates maintenance of the Aquatic Center and delivery of equipment to the Aquatic Center. By entering this lease CITY is not limiting its own use of the access road. YETI's use of the access road is not exclusive and YETI must share use of the road with CITY's operations.

Furthermore, there is a road to the east of the access road that provides vehicular access to the lake at the hills. Use of this road to facilitate YETI's operation is not included in this lease and YETI shall use its best efforts to keep employees, volunteers, and customers from parking along or using this road.

C. Access for customers, spectators, volunteers, and all YETI personnel shall be either through the Aquatic Center or through the walking path to the north of the Aquatic Center. All customers, spectators, volunteers, and YETI personnel shall be required to use the existing parking facilities located to the west of the Aquatic Center.

D. YETI and its volunteers, employees, spectators, and customers shall be allowed access to the Aquatic Center through existing public access points in order to access restroom facilities, CITY operated concession stand, and the lobby area as a warming area. This access will be limited to hours when the Aquatic Center is open for business. YETI will not be provided a key to the Aquatic Center. If access to the Aquatic Center is necessary during non-business hours YETI shall coordinate with the Aquatic Center staff and incur an additional ten dollar (\$10) per hour fee.

E. Limitations on use of leased property shall include the following:

1. Hours of operation for YETI shall be limited to 7 a.m. to 10:30 p.m.

Monday through Saturday. These operational hours shall apply to YETI staff maintenance activities for the rink as well any use of the rink by YETI's customers, volunteers, or any other person allowed to use the rink.

either with or without compensation to YETI. Use or maintenance of the rink is prohibited on Sundays.

2. The outdoor use of sound amplification equipment is only allowed between 10a.m. and 8 p.m.

3. Prior to October 1st YETI shall provide a detailed operational schedule to CITY for its anticipated season. The schedule shall include hours of operation, including Holiday hours, league schedules, and other scheduled uses of the ice rink.

ARTICLE II.

LEASE AMOUNT.

1. CITY shall lease the space for the rink, ~~the delivery access, the necessary parking, the necessary pedestrian access,~~ and access to the Aquatic Center to YETI for three hundred dollars (\$300.00) or 3% of YETI's gross sales. For purposes of this agreement the term "gross sales" shall include, but not be limited to, revenue that may be paid to YETI prior to or after its regular season for all items including, but not limited to pre-sold season tickets, daily admissions, private facility rentals, skate rentals, skate sharpening, clinics, group lessons, private lessons, leagues, classes, revenue generated from sale of advertising space, or any other source of revenue reasonably related to operating the ice rink on City's property. Gross sales shall specifically exclude items such as off season and/or off premise fund raisers. YETI shall have a duty to disclose all sources of income to CITY and itemize sources of income YETI believes are exclude from gross sales. CITY will evaluate the revenue sources related to possible future lease renewals. YETI shall

provide the Leisure Services staff an accounting on a monthly basis which shall include all gross revenue received by YETI from any source whatsoever. ~~The accounting shall include the number of paying customers served by YETI during the month and the gross revenue received.~~ During its operating season, YETI shall pay to CITY the greater of three hundred dollars (\$300.00) or 3% of its gross revenue, whichever is greater, Lease payments shall be paid by the tenth (10th) day of the month after the month in which the revenue is received. The first lease payment during the operating season shall include and account for all revenue generated between the close of the prior season and re-opening for the current season. Any partial months of operation shall be paid to CITY at a pro-rated amount. Any late payments are subject to a 5% late charge per day ~~YETI is late.~~

2. In addition to the base lease amount YETI will be required to pay CITY the cost of electricity and natural gas.
 - A. CITY will disclose to YETI CITY's power and natural gas bills for the three years prior to YETI beginning operations. ~~past three (3) years of bills from its electricity provider.~~ For each month, during any part of which, YETI is operating the ice rink the average of the three years electric and natural gas bills will be calculated. This will provide an average cost per month for electricity and an average cost per month for natural gas. CITY shall provide YETI the Aquatic Center's electricity bills and natural gas bills for the months, or any portion thereof, that YETI is operating the ice rink. YETI shall pay to CITY the difference between the average cost per month for electricity and the amount of CITY's monthly bills for electricity used during the months, or any portion thereof, that

YETI is operating the ice rink. YETI shall pay to CITY the difference between the average cost per month for natural gas and the amount of CITY's monthly bills for natural gas used during the months, or any portion thereof, that YETI is operating the ice rink. YETI shall pay to CITY the cost for electricity and natural gas within ten (10) calendar days of receiving the billing information from CITY. If YETI does not make the payment within the time frames set forth herein CITY may impose a 5% late fee for each day YETI is late.

~~This shall be the method for calculating the electricity costs for the first year of the lease. If the lease is renewed for future years the cost shall be a fixed sum negotiated by the parties.~~

- B. The cost of water, and garbage removal, ~~and the utility cost associated with heating the water is~~ are included in the base rent and YETI will not receive a separate bill for these utilities.

ARTICLE III.

DURATION.

1. This lease agreement shall last for one (1) year from the time it is signed by both parties. The lease may be renewed by both parties on a year by year basis for as long as both parties are willing to extend the lease. During the renewal process the parties reserve the right to re-negotiate the terms contained herein.
2. During the term of the lease YETI shall have use of the property mentioned herein for the purposes of constructing, operating, maintaining, and removing the ice rink from the 1st of October through the 30th of April.

ARTICLE IV.

INDEPENDENT CONTRACTOR.

1. YETI, its employees, officers, agents, volunteers, and assigns shall have control over: how they do their work; who provides the necessary tools and equipment for them to conduct their work; the method and manner of payment for their work; methods and manner of compensation for injuries during their work; and general matters related to their business. They are contractors providing a service. They are strictly independent contractors and in no way are they to be considered agents or servants of CITY and CITY is not liable for their actions.
2. YETI shall be required to purchase and display a sign in a conspicuous location so that customers entering the leased property will have an opportunity to read the sign. This sign may state the rules related to the ice rink, but the sign shall clearly identify that the ice rink is owned and operated by YETI and that YETI is an independent contractor and a separate entity from CITY.

ARTICLE V.

LIABILITY AND INSURANCE REQUIREMENTS.

1. YETI shall maintain its own workers compensation insurance policy in accordance with the laws of the State of Utah. Prior to beginning operation of the ice rink YETI shall provide CITY a copy of an insurance certificate showing YETI has adequate workers compensation insurance to meet Utah's statutory requirements.
2. YETI shall indemnify and hold harmless CITY, its elected and appointed officials, its employees, agents, and assigns from any and all injury to persons or property caused by the

negligence in the operation of the ice rink, the access to the ice rink, or any of YETI's facilities located on the leased property. This is intended to include injury to persons and property of third parties as well as injury or damage to CITY's buildings, infrastructure, and surrounding improvements. Prior to beginning operation YETI shall provide CITY with an insurance certificate naming CITY as an additional insured. The insurance certificate shall be in such an amount that its policy limits for individual, aggregate, and property meet or exceed the liability caps contained in the Utah Governmental Immunity Act and the associated Administrative Rules. The liability caps in the Utah Governmental Immunity Act and associated Administrative Rules are required to be adjusted every two (2) years. If this agreement is extended the insurance amounts will be re-evaluated and YETI will be required to purchase such insurance or umbrella coverage so that the coverage meets or exceeds the liability caps for the year in which they will be in operation.

ARTICLE VI.

USE AND ACCESS TO THE AQUATIC CENTER.

1. This lease shall include limited access to the Aquatic Center during hours when the Aquatic Center is open for business. The access shall be controlled by CITY and subject to CITY opening and closing of the building. YETI will not be provided a separate key to the building. The limited use of the Aquatic Center shall include:
 - (A) Access for YETI customers, volunteers, staff, and spectators from the parking lot to the ice rink;
 - (B) Access to the Aquatic Center restrooms for YETI customers, volunteers, staff, and spectators, and;

(C) Access to the Aquatic Center concession stands and lobby areas.

(D) YETI may request access to the Aquatic Center during off business hours, but YETI will have to pay CITY an additional ten dollars (\$10) per hour for off hour access.

(E) YETI, its staff and all of its volunteers shall follow all duly established Aquatic Center Guidelines related to conduct within the building. In particular this shall include guidelines that children under 8 years of age must be closely supervised by a responsible adult.

2. This lease agreement shall not include the following uses of the Aquatic Center:
 - (A) Use of locker rooms;
 - (B) A key to the building;
 - (C) Use of the pools, and;
 - (D) Without a separate rental agreement, use of the multi-purpose rooms, locker rooms, showers, banquet rooms and storage areas.
3. YETI shall make arrangements to collect all of its entrance fees from its patrons at a location on the leased property. CITY will not collect fees from YETI patrons. City will not schedule ice time. As it relates to the ice rink CITY will not coordinate team activities. YETI shall be solely responsible for collecting its own fees and for scheduling all activities related to the ice rink.
4. Nothing in this lease shall be interpreted to allow CITY or YETI to attach anything to the exterior walls of the Aquatic Center.
5. YETI shall be responsible to provide notice that ice skates are prohibited from being worn

within the Aquatic Center. YETI shall enforce a policy prohibiting ice skates from being worn in the Aquatic Center. YETI shall be strictly liable for any damage done to the interior or exterior surfaces of the Aquatic Center resulting from any YETI customer, volunteer, employee, spectator, or invitee using ice skates. The insurance policy YETI is required to secure pursuant to the conditions of this lease agreement shall cover damage caused to any surface of the Aquatic Center by any YETI customer, volunteer, employee, spectator, or invitee using ice skates.

6. YETI shall be required to erect netting around the south and west sides of the ice rink to protect the Aquatic Center from being damaged by flying objects. This includes but is not limited to hockey pucks. The net must be of such a quality and height that is reasonably agreeable to CITY and YETI so that it is designed to protect the Aquatic Center.

ARTICLE VII.

PERMISSIBLE USE OF LEASED PROPERTY.

1. YETI agrees as a condition to this lease and to the use and occupancy of the leased property that YETI shall at all times use the lease property for the purpose of constructing, maintaining, operating, and disassembling an ice rink. It is the purpose of this lease to foster and abet the public private partnership in favor of providing a temporary and seasonal location for an ice rink. Uses of the leased property that are not normally incidental to the operation of an ice rink are prohibited.
2. YETI shall be responsible for the removal of snow and ice within the leased property. This shall include removal of snow and ice from the ice rink as well as pedestrian ways within the leased property. All snow and ice removed by YETI within the leased property

shall be deposited within the leased property. YETI shall be responsible to manage the snow and ice removal and shall also be responsible to keep people, particularly children, from playing on snow piles. YETI shall be liable for injury resulting from people, particularly children, playing on snow piles and said liability shall be covered by the insurance policies required in this lease agreement.

3. Prior to storing or using any hazardous materials on the leased property that are used to support the operation of the ice rink YETI shall tell the Aquatic Center management the type and quantity of hazardous material as well as information contained in the relevant material safety data sheets. CITY reserves the right to disallow the use or storage of any hazardous materials within the leased property. CITY shall not unreasonably withhold its consent to use such materials that are necessary for the operation of the ice rink.
4. Within the leased property YETI will be allowed to store such equipment and facilities as are necessary for the operation of the ice rink. Storage of other equipment, materials, or storage facilities is prohibited. Construction vehicles and equipment necessary to construct and remove the ice rink shall be allowed on the leased property during construction and removal. Construction vehicles and equipment shall be removed immediately when construction and removal activities are finished. Storage of vehicles on the leased property, other than those necessary for maintenance and operation of the ice rink, is prohibited.
5. YETI shall be responsible to monitor the leased property on at least a daily basis for trash and debris removal. YETI shall have access to CITY's garbage dumpster located on the east side of the Aquatic Center. All trash and debris shall be deposited in the CITY's

dumpster. YETI may use onsite garbage cans during operational hours that it supplies, but said cans shall be emptied daily into CITY's garbage dumpster.

6. YETI shall not permit any part of the leased property to be used for any unlawful purpose or for any purpose or use that may constitute a nuisance or fire hazard. YETI shall not allow the leased property or any part thereof to be used or occupied for any purpose in violation of any law, lawful order, rule or regulation concerning the operation of CITY's public parks and grounds.

ARTICLE VIII.

REMEDIES FOR DEFAULT.

1. Failure to abide by the terms and conditions of this agreement shall constitute an act of default. The non-defaulting party shall be required to provide the party alleged to be in default written notice of the default. The written notice shall state the provision of the agreement that it is alleged the defaulting party has violated and the actions of the defaulting party that are alleged to have caused to the default. This notice shall provide the alleged defaulting party 10 days to cure the default. If the party alleged to be in default requires additional time to cure the default, it may ask but it has to provide a reason why they need more time and a date by which the default will be cured. Providing notice of default and an opportunity to cure as required in this paragraph shall in no way be interpreted to restrict or limit CITY's ability to assess late payment fees as set forth in this agreement.
2. If YETI is in default after being given notice and an opportunity to cure as contained herein CITY, in addition to any other remedy available at law or equity, may restrict any further

customer access to the leased property until the default is cured.

3. YETI shall surrender the leased property to CITY in a condition that is free and clear of all of YETI's seasonal improvements no later than April 30th during each year that this agreement is in effect, or upon failure to cure a default where YETI has been given notice of the default and an opportunity to cure. ~~If YETI has failed to remove its equipment by the April 30th deadline, or by the end of its opportunity to cure a default, CITY may charge YETI a storage fee of twenty five dollars (\$25.00) per day, or CITY may remove YETI's property to a different location and charge YETI the labor and material costs for removing the property as well as a daily storage fee. CITY shall give YETI notice of the location where CITY has moved their property and an opportunity to inspect and remove their property. Prior to April 30th of each year YETI shall discontinue use of the ice rink, and conduct any necessary and appropriate maintenance activities so that the rink and other equipment used during the operation of the ice rink may be stored on the property until the next season. YETI assumes all of the risk that its equipment may be stolen, damaged, or otherwise injured by storing its equipment on CITY's property. No bailment is created and CITY shall have no duty to protect YETI's property. If this agreement is terminated or not renewed YETI shall have twenty (20) days to remove all of its equipment from CITY's property. Any equipment not removed shall be forfeit to CITY.~~
4. Once the notice and opportunity to cure provisions of this agreement have been complied with, this agreement shall not be interpreted to restrict or prohibit CITY or YETI from exercising any legal or equitable remedies they may have.

ARTICLE IX.

MISCELLANEOUS PROVISIONS.

1. YETI's interest in this lease may not be subordinated, mortgaged, hypothecated or otherwise encumbered without the express prior written consent of CITY.
2. No assignment of YETI's leasehold interest in the leased property will be permitted without the express written consent of CITY. All assignments of YETI's leasehold interest herein shall be subject to and regulated by all of the conditions in this lease agreement.
3. This agreement is between YETI and CITY. It is not intended to create any interest on behalf of any third party. No third party or third party group that may wish to use the ice rink shall have any rights or remedies under this agreement.
4. CITY at its sole option may include material produced by YETI in CITY advertising. This may include pamphlet stands, web sites, Facebook, and other such advertising methods that CITY may have that do not cost CITY additional revenue to include YETI material. This shall only include materials that YETI has published, CITY will not write advertisement material for YETI. This does not include advertisement opportunities that CITY has that CITY normally sells to third parties. CITY reserves the right to reject any advertising material submitted by YETI that CITY deems to be offensive or in poor taste.
5. YETI shall provide CITY with a contact list for its employees and volunteers. This contact list shall include working phone numbers, names, and a title showing what capacity each individual has within the YETI organization. The contact list may also include email addresses.
6. YETI shall adopt an emergency plan designed to protect people and property in the case of

an emergency situation arising on the leased property. YETI shall maintain at least one employee or volunteer on the property during all business hours that has a charged and operable cell phone. YETI shall train its employees and volunteers as to what actions they are to take during an emergency.

7. CITY's failure to enforce one or more of the terms herein is not a waiver. No failure by CITY to insist upon the strict performance of any term, condition or covenant of this agreement or to exercise any right or remedy available on a breach of any condition or covenant of this agreement, and no acceptance of full or partial rent or performance hereunder shall constitute a waiver of any such breach or any such term, condition or covenant. No term, condition or covenant of this agreement required to be performed by YETI, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by CITY. No waiver of any breach shall affect or alter any term, condition, or covenant of this agreement, and such term, condition, or covenant shall continue in full force and effect with respect to any other than existing or subsequent default or breach thereof, and any other or subsequent default or breach may be enforced by CITY as provided in this agreement.
8. CITY shall have the right to enter upon the leased property during reasonable hours (except in an emergency) to examine the leased property and take care of any CITY infrastructure thereon. CITY may access the leased property to abate any nuisances or hazardous conditions on the leased property. If CITY has to abate a nuisance or hazardous condition on the leased property CITY shall have the right to bill YETI for such services and YETI shall have the obligation to pay said bill.

9. YETI represents that it has examined the leased property and accepts the leased property in as is condition without any representation or warranty, express or implied in fact or by law, by CITY as to the title, nature, condition or usability of the property for the purpose set forth herein. CITY warrants to YETI that it has title to the property, and the capacity, both legal and actual, to enter into this lease and to grant the leasehold estate, subject to any applicable terms and conditions of any bonds used in the construction of the Aquatic Center that may be outstanding and that may have an impact on the leasehold estate.
10. YETI shall maintain all appropriate licensing as well as collecting and paying all appropriate sales and use taxes. This includes, but is not limited to, obtaining a CITY business license, obtaining a state tax I.D. number, and paying to the State of Utah all applicable sales and use taxes.
11. CITY shall not be responsible for any washouts, subsidance, avulsion, or settling of the premises, nor for any injury caused thereby to YETI's property or any person occupying the property. CITY shall not be obligated to replace, refill, or improve any part of the leased premises during YETI's occupancy, in the event of such washouts, subsidance, avulsion, or settling of the property.
12. No destruction or damage to any structure or improvement on the leased property, or that affects access to or use of the property, by act of God, acts of terror, civil unrest, military action, by fire, rain, snow, ice, windstorm, earthquake, aircraft accident, or any other casualty or action of the elements shall entitle YETI to surrender possession of the leased property, to terminate this lease, to violate any of its provisions, or to cause any rebate or abatement in rent when due or thereafter.

13. Conditioned upon YETI's paying the rent provided herein and performing and fulfilling all covenants, agreements, terms, duties, responsibilities, and conditions contained in this lease agreement, YETI shall have and may enjoy the leased premises.
14. This agreement shall not be modified, altered, or changed in any way whatsoever unless in writing and signed by CITY and YETI.
15. Any notice required to be given by this agreement shall be deemed to have been sent and received if sent via regular first class mail, postage prepaid, or by email to the following:

Cedar City Corporation
c/o Leisure Services Director
10 North Main Street
Cedar City, Utah 84720
rdan@cedarcity.org

YETI
c/o Kerry Fain
2433 West 5900 North
Cedar City, Utah 84721
kerry@yetiskates.org

If CITY or YETI change the above contact information they shall notify the other party within 30 days of said change.

16. All disputes resulting in legal action shall be governed by the laws of the State of Utah. Jurisdiction shall be vested in the District Courts in and for the State of Utah. Venue is vested in the 5th Judicial District Court in and for Iron County, State of Utah or in any other successor district court of competent jurisdiction.
17. In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision contained herein, provided the invalidity of such covenant, condition or provision does not materially prejudice either CITY or YETI in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this agreement.

18. CITY has ~~agreed to allocate up to~~ constructed improvements upon the leased property including, but not limited to providing necessary power, hot water, lighting, and fencing around the leased property costing approximately \$93,000.00 ~~from CITY's fiscal year 2013—2014 recreation, arts, and parks (RAP) tax funds to be used in some manner toward providing necessary earthwork, electricity, fencing, or other miscellaneous improvements that may be deemed necessary to prepare the leased property for the ice rink.~~ The use of CITY revenue from any source ~~the RAP tax funds~~ is at the sole discretion of CITY. Use of future years RAP tax funds City revenue from any source is at the sole discretion of CITY in compliance with CITY ordinance and State Statute. ~~In addition to RAP tax funding nothing~~ Nothing in this agreement shall be interpreted to prohibit or require CITY to expend funds or use equipment to support the ice rink.
19. This is an integrated agreement. No prior or subsequent written or oral representations from CITY or YETI shall be deemed to modify this agreement, modifications shall only be allowed as contained herein. This agreement shall be interpreted on the four corners of the agreement.
20. This agreement has been provided to YETI and CITY and both parties have been provided ample opportunity to review and contribute to the agreement. This is a negotiated agreement and it shall not be interpreted against the author due to the fact that the author wrote the agreement.
21. Each person signing this agreement represents that they have done everything necessary to be able to bind each entity to the provisions contained herein.
22. During the term of this lease, and any extension thereof, CITY agrees not to compete with

YETI by purchasing, constructing, and operating an ice rink. If CITY determines it is in CITY's best interest to enter the ice rink business CITY will consider purchasing YETI's equipment. Any purchase of YETI's equipment is at the sole discretion of CITY.

CITY's SIGNATURE PAGE.

Dated this ___ day of _____, ~~2013~~ 2014.

JOE-BURGESS MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER

STATE OF UTAH)
 :ss.
COUNTY OF IRON)

This is to certify that on the _____ day of _____, ~~2014~~ 2012, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Maile L. Wilson ~~Joe Burgess~~, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that ~~she~~ the said Maile L. Wilson ~~Joe Burgess~~ and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC

YETI's SIGNATURE PAGE.

Dated this _____ day of _____, ~~2014~~ 2013.

KERRY FAIN
PRESIDENT
YETI

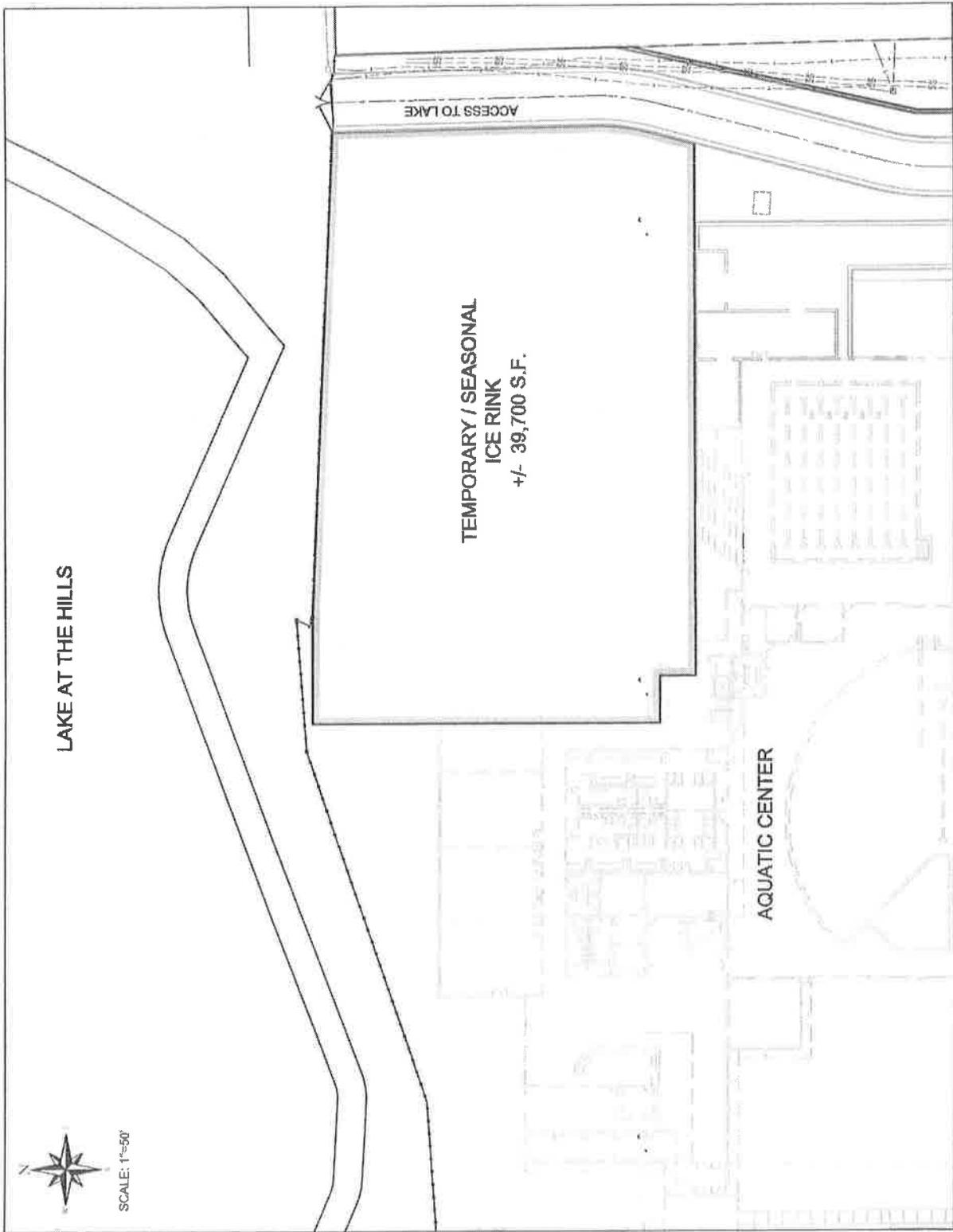
STATE OF UTAH)
 :ss.
COUNTY OF IRON)

On this _____ day of _____, ~~2014~~ 2013, personally appeared before me KERRY FAIN who duly acknowledged to me that she signed the above and foregoing document.

NOTARY PUBLIC

EXHIBIT “A”

Map showing temporary/seasonal ice rink leased property.



CEDAR CITY COUNCIL
AGENDA ITEMS V - 5
DECISION PAPER

TO: Mayor and City Council
FROM: Paul Bittmenn
DATE: August 18, 2014
SUBJECT: Final Plat Approval for Talon Point, Phase 1

DISCUSSION:

Last week the Council approved a zone change for the property where this subdivision is located. This subdivision is the first 16 lots in the area where the zone change was approved. Attached is a map of the proposed subdivision.

This final plat approval is a little different than some you may remember. The developer is scheduled to have a final recommendation from the City's Planning Commission on Tuesday August 19th. The timing to have the matter on the City Council agenda for September would result in not having final plat approval until September 17th as the Council does not have a meeting on the 10th. The developers have asked to have the Council consider the final plat approval during the last 2 meetings in August.

The developer was able to provide a contemporaneous title report showing they own the property, and that all taxes that are due have been paid. They have paid their fees owed to the City. They have also provided a letter of credit sufficient to cover the engineer's estimate for the improvement costs. The bond agreement has been provided to them for their signature. These are the typical items the developer would be required to complete prior to final plat approval. Staff can provide you a draft copy of the planning commission minutes from its meeting on the 19th prior to your action meeting.

Please consider approving the final plat for Talon Point, phase 1 and approving the bond agreement.

**IRREVOCABLE LETTER OF CREDIT;
BOND AGREEMENT FOR IMPROVEMENTS**

THIS AGREEMENT entered into this _____ day of _____, 2014, by and between Cedar City, a municipal corporation of the State of Utah, herein referred to as "CITY", and Diversified Properties, LC., herein referred to as "APPLICANT".

WITNESSETH:

WHEREAS, APPLICANT desires subdivision recordation from CITY for Talon Point at South Mountain, Phase 1; located in the vicinity of 2300 South 1900 West; and

WHEREAS, the terms of said approval require APPLICANT to install the improvements set forth on Exhibit "A" attached hereto and hereby incorporated by reference; and

WHEREAS, CITY will not grant approval until adequate provision has been made to guarantee installation of the improvements, and warranty the improvements from any defects, which improvements and required warranty are estimated to cost \$229,255.00 and which improvement shall be installed under the direction and supervision of and in accordance with the specifications of CITY, and as described and set forth herein; and

WHEREAS, City Ordinances require APPLICANT to pay all applicable fees prior to installation of improvements set forth herein; and

WHEREAS, provision has been made by law whereby APPLICANT may, in lieu of final completion of the improvements prior to development approval file a guarantee acceptable to and in favor of CITY to secure the actual construction of the improvements in a manner satisfactory to the CITY; and

WHEREAS, the parties hereto expressly acknowledge the purpose of this bond

agreement is not only to guarantee the proper installation of the improvements set forth herein, but also to eliminate the harmful effect of premature subdivision and other land developments which may leave property undeveloped and unproductive; and

WHEREAS, the parties expressly acknowledge that the benefits and protections provided by this Agreement shall enure solely to the CITY and not to third parties, including but not limited to lot purchasers, sub-contractors, laborers and suppliers.

NOW THEREFORE, in consideration of the covenants set forth herein, the parties agree as follows:

1. All data which is used by CITY to compute the cost of improvements is hereby made a part of this Irrevocable Letter of Credit for Bond Agreement, attached hereto as Exhibit "A".

2. This Agreement further incorporates by reference the subdivision plat and all provisions required by Chapter 32 of the Cedar City Ordinance governing subdivisions.

3. APPLICANT shall complete the improvements required by this Agreement within one (1) year from the date of approval of the final plat by the City Council.

4. APPLICANT shall pay fees required prior to the issuance of any building permit for the first lot in the subdivision.

5. APPLICANT expressly acknowledges its obligation to complete and warrant the improvements is independent of any obligation of the CITY. APPLICANT agrees that its obligation to complete and warrant the improvements is not conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lot or part of the subdivision or development. APPLICANT further acknowledges that its obligation to complete and warrant the improvements is independent of any other remedy

available to CITY to secure proper completion of the improvements, and therefore acknowledges that APPLICANT may not assert as a defense that CITY has remedies against other entities, or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform, or preclude CITY from requiring APPLICANT'S performance under this Agreement.

6. APPLICANT hereby files as an independent guarantee with CITY for the purpose of insuring construction and installation of the improvements an IRREVOCABLE LETTER OF CREDIT issued by State Bank of Southern Utah, and in the amount of \$ 229,255.00 (herein referred to as the "proceeds"). Said Letter of Credit attached hereto as Exhibit "B", is issued in favor of the CITY to the account of Diversified Properties, LC, APPLICANT herein, and is made part of this Agreement. APPLICANT further agrees not to make demand for the proceeds prior to the time period stated in paragraph 3 above.

7. Final acceptance of the improvements shall be official only upon written notice to the APPLICANT from CITY expressly acknowledging final acceptance and upon delivery of lien waivers to the CITY covering all labor and material incorporated into the improvements.

8. APPLICANT shall be responsible for any substandard or defective improvements for a period of one year following final acceptance.

9. APPLICANT agrees to hold CITY, its officers, agents and employees harmless from any and all liability which may arise as a result of the installation of the improvements.

10. In the event the improvements have been installed to the satisfaction of the CITY pursuant to this Agreement and Cedar City Ordinances within the above-stated time period, CITY agrees to execute a written release of the proceeds of the Letter of Credit.

11. In the event the improvements have not been installed to the satisfaction of the CITY

pursuant to this Agreement and the Cedar City Ordinances within the above-stated time period, the entity issuing the Letter of Credit shall remit to CITY, upon CITY'S written demand, the proceeds of the Letter of Credit. CITY may use and expend all of the proceeds, or such lesser amount as may be estimated by CITY to be necessary to complete the improvements required herein.

12 If, upon written demand of CITY after the expiration of the time period set forth above, the proceeds are not remitted to the CITY within 30 days of the written demand, the CITY'S costs of obtaining the proceeds, including the City Attorney's office cost or outside attorney's fees and court costs shall be added to the amount due CITY from APPLICANT and shall be remitted to CITY by APPLICANT.

13. It is expressly understood and agreed upon that this Agreement shall not relieve APPLICANT from the obligation to install the improvements in full. Should CITY demand payment pursuant to this Agreement, APPLICANT agrees to install any of the improvements and compensate CITY for all costs, including but not limited to construction, engineering and legal costs incurred by CITY to install any of the improvements to the extent that said costs are not adequately covered by the proceeds.

14. In the event of failure to complete improvements as required herein no further permits shall be issued, no business license shall be issued, and/or any existing permits or business license applicable to the location of the improvements shall be suspended until the improvements are completed. Upon City Council approval, a new bond may be executed to insure completion of the remaining improvements.

15. City may use the proceeds to hire a contractor on behalf of APPLICANT to complete

the improvements. APPLICANT expressly grants to CITY and any contractor hired by CITY on behalf of APPLICANT, its successors and/or assigns, the right of access to the project property to complete the improvements.

16. Should any improvements prove to be substandard or defective within the one-year warranty period set forth above, CITY shall notify the APPLICANT in writing of such substandard or defective improvements. APPLICANT shall then have fifteen (15) days from said notice in which to commence repair of the improvements, and a reasonable amount of time as determined by CITY which shall be specified in the notice to complete repair of the improvements.

17. Should CITY exercise its option to install, complete or remedy any defect in the improvements, APPLICANT shall be responsible for the payment of the premium for any insurance policy covering any liability, damage, loss, judgment or personal injury to any person or property, including but not limited to damage to APPLICANT or its property as a result of the work of any contractor hired by CITY on behalf of APPLICANT, its successors and/or assigns. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined by CITY. APPLICANT shall indemnify and hold harmless CITY, its officers, employees and agents for any liability which exceeds the insurance policy limit. APPLICANT further agrees that CITY, at its option, may collect and expend the proceeds to make the premium payment should APPLICANT fail to pay said premium at the time of APPLICANT'S default as determined by CITY. Should APPLICANT fail to pay the same, no permit, approval or business license shall be issued by CITY, and any existing permit, approval or business license shall be suspended until the premium is paid and a bond is in place to pay subsequent payments on any

such improvements or repairs. APPLICANT further agrees to indemnify and hold harmless CITY, its officers, agents and employees, from any damage or loss suffered or any judgment resulting from the work of any contractor hired by CITY on behalf of APPLICANT.

18. Should CITY exercise its option to install, complete, or remedy any defects in the improvements, APPLICANT shall indemnify and hold harmless CITY for any liability which exceeds the bond amount for the payment of any mechanic's or materialman's liens as a result of any work of any contractor (including sub-contractors and materialmen of any contractor) hired by CITY on behalf of APPLICANT, or which may arise due to a defect in the payment bond.

19. In addition to those events previously described herein, the following shall be considered events of default, the occurrence of which shall entitle CITY to invoke any and all remedies outlined in this Agreement (1) APPLICANT'S abandonment of the project which shall include APPLICANT'S failure to perform work for 180 consecutive days; (2) APPLICANT'S insolvency, appointment of a receiver, or filing a voluntary or involuntary petition in bankruptcy; (3) the commencement of a foreclosure proceeding against the project property; or (4) the project property being conveyed in lieu of foreclosure.

20. Time is of the essence. In case either party shall fail to perform the obligations on its part to be performed at the time fixed for the performance, the other party may declare such party in default of its obligations herein and pursue any and all remedies it may have, either in equity or at law.

21. Whenever the term APPLICANT is used herein, it shall also refer to APPLICANT'S successors and/or assigns.

22. This Agreement shall be interpreted pursuant to, and the terms thereof governed by,

CITY:

MAILE L. WILSON, MAYOR

ATTEST:

Renon Savage, CITY RECORDER

STATE OF UTAH)
 :ss.
COUNTY OF IRON)

This is to certify that on the ____ day of _____, 2014, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Maile L. Wilson, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that she the said Maile L. Wilson and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC

**CEDAR CITY COUNCIL
AGENDA ITEM 6**

INFORMATION SHEET

TO: Mayor and City Council

FROM: Rick Holman

DATE: August 18, 2014

SUBJECT: Agreement with State of Utah

DISCUSSION: Last year the State of Utah set up an agreement with the City to use Festival Hall for meeting rooms for the Division of Child and Family Services to use. After a year, they would like to continue the arrangement. With a year's historical usage, the amount the State would be paying is slightly less but a fair arrangement.

A copy of the agreement will be provided to you before the Council meeting.

STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

**CONTRACT NO. 141235
AMENDMENT NO. 1**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between CEDAR CITY CORP, hereinafter referred to as LANDLORD," and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT hereinafter referred to as the "TENANT" for the use of the DEPARTMENT OF HUMAN SERVICES, hereinafter referred to as the "Occupying Agency".

W I T N E S S E T H

THAT WHEREAS, LANDLORD and TENANT have heretofore entered into that certain Lease Agreement (Contract No. 141235) for Conference Rooms in the facility located at Heritage Center/Festival Hall, Cedar City, Utah, which Lease Agreement commenced September 1, 2013, which currently expires August 31, 2014; and

WHEREAS, LANDLORD and TENANT are mutually desirous to renew the subject Lease Agreement for an additional ten (10) month renewal or extended term; and

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. LEASED PREMISES

1.1 LANDLORD does hereby lease unto TENANT approximately 12 meetings per month of conference rooms located in the Heritage Center/Festival Hall, Cedar City, Utah. Rent is based upon four (4) hour "blocks" of time. Forty-five (45%) of the meetings will be in small conference rooms at \$25.00/mtg. x 5.4 meetings = \$135.00/month and Fifty-five (55%) of the meetings will be in larger conference rooms at \$45.00 to \$65.00 per meeting for an average of \$55.00/mtg. x 6.6 meetings = \$363.00 per month. \$135.00 + \$365.00 = \$500.00 per month. The LANDLORD and TENANT agreed to add a ten (10%) contingency usage of the Conference Rooms for and additional \$50.00/month for a base rent of \$550.00/month or \$6,600.00 per year. A review of the Conference Room usage found that 72 meetings were held in the evenings. There is a \$50.00 charge for night meetings because the staff has to work after regular hours. Thus 72 meetings x \$50.00 = \$3,600.00 added to the \$6,600.00 = \$10,200.00/year or **\$850.00 per month** for the new rental rate.

1.2 TENANT agrees to pay as additional rent, special equipment rentals and room(s) set up above the normal conference rooms set ups.

APPROVED:

Utah Division of Finance

#7

INTERLOCAL AGREEMENT FOR COOPERATIVE
EMERGENCY RESPONSE PROTECTION AND SERVICES

This agreement is made and entered into this day by and between the following:

Washington County
Angel Springs Special Service District
Dammeron Valley Special Service District
Dixie Deer Special Service District
Gunlock Special Service District
Leeds Area Special Service District
New Harmony Special Service District
Northwestern Special Service District
Pine Valley Special Service District
Rockville/Springdale Fire Protection Special Service District
Silver Reef Special Service District
Southeastern Special Service District
Southwestern Special Service District
Springdale
Rockdale
Hilldale
Virgin
LaVerkin
Toquerville
Pintura
New Harmony
Leeds
Hurricane
Washington
St. George
Gunlock
Veyo
Central
Enterprise
Santa Clara
Ivins

Iron County
Cedar City
Enoch
Parowan
Brian Head
Iron County
Kanarraville

Beaver County
Beaver County Special Service District #1
Beaver County Special Service District #2

Garfield County
Antimony
Boulder
Cannonville
Escalante
Henrieville
Hatch
Panguitch
Tropic
Cherokee Springs Service District
Mammoth Creek Service District
Panguitch Lake Service District

Kane County
Big Water
Glendale
Orderville
Alton
Kanab
East Zion Special Service District
Churchwells Special Service District
Kane County Hospital
Cedar Mountain Fire Protection Area
Glen Canyon Special Service District
Church Wells

This agreement is made and entered into by the parties based in part upon the following recitals:

A. The parties enter into this agreement pursuant to the provisions of and authority granted to them by the *Utah Interlocal Co-Operation Act*, as set forth in Utah Code Annotated, Section 11-13-101 et seq. (1953, as amended).

B. The parties wish to provide for their mutual assistance to provide for the public safety, public order, and other emergency incidents.

- C. The parties intend by this agreement to share the monies made available to the parties by federal grant(s) and/or provided by the State of Utah, for the purpose of dealing with incidents and emergencies.
- D. The parties also intend by this agreement to commit to support and assist each other with incidents or emergencies, by providing their available resources whenever possible, subject to the sole discretion of each party to determine what personnel, equipment, materials, and other resources it can reasonably provide in the circumstances, to assist the Utah interlocal entity, and further subject to reimbursement by the Utah interlocal entity and/or the parties as set forth in this agreement.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth in this agreement and the attached addenda, the parties hereto do hereby agree as follows:

1. **Definitions** As used in this agreement:

A. **“Agent” or “Agencies”** shall mean the fire, police, or sheriff departments of the counties, municipalities, and special service districts, which are parties to this agreement.

B. **“Corporate limits”** means, as to counties, the unincorporated territory of each of the party counties and, as to the party municipalities, the incorporated territory of each of the party municipalities, and as to special service districts, the area, including the unincorporated and incorporated territory, serviced by the special service district.

C. **“Emergency”** means any incident involving public safety related to hazardous materials protection and suppression as well as a *“disaster”* as defined by Utah Code Annotated, Sections 63-5-2(1), and 63-5a-2(1) (1953 as amended); a *“state of emergency”* as defined by

Utah Code Annotated, Section 63-5a-2(6) (1953 as amended); a "*local emergency*" as defined by Utah Code Annotated, Section 63-5a-2(7) (1953 as amended); or any other incident in which there exists a threat to public health, welfare, safety, or property under emergency conditions related to hazardous waste materials.

D. **"Hazardous Materials"** means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C., Section 6991(2), biological, chemical and radiological wastes as defined in the FEMA Terrorism Planning Course, 2002, and a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, as defined in Utah Code Annotated, Section 19-6-102(9).

D. **"Recipient"** shall mean that party receiving the services performed or materials provided in an emergency.

E. **"Requesting Agency"** shall mean the agent or agency in the county, city, or special service district, which has requested the materials, equipment, personnel or the performance of services under this agreement from the responding agency.

F. **"Resources"** means the personnel, equipment, materials and other resources of each party to this agreement and specifically includes law enforcement and fire departments.

G. “Responding Agency” shall mean the county, city or special service district when either party responds to the request of a receiving agency by providing materials, equipment, or personnel in the performance of services under this agreement.

2. **Mutual Support Assistance**

In the event of a an emergency incident, the parties shall provide mutual support assistance in the manner and subject to the conditions set forth in this agreement.

3. **Nature and Limitation of Agreement**

A. This agreement is an interlocal agreement entered into pursuant to the provisions of and authority granted by the *Utah Interlocal Co-Operation Act*, as set forth in Utah Code Annotated, Section 11-13-202 (1953, as amended), and does not create a separate legal entity.

B. The purpose of the interlocal agreement is to provide for the public safety, public order, during emergency incidents.

C. This agreement shall remain in full force and effect between the parties until such time as it is terminated by a vote of the majority of the parties hereto as set forth in Paragraph 3 F below, or 50 years, whichever occurs first.

D. The parties shall fund the joint and cooperative undertaking of the parties with grant(s) from the federal government or contributions by the State of Utah, which are granted to the parties for the purpose of dealing with incidents or emergencies.

E. The joint and cooperative undertaking of the parties shall be governed by an executive committee (hereinafter referred to as “Executive

Committee”), which shall make all decisions and policies, and shall consist of two members selected by each county party. The Executive Committee shall select a person to chair the Executive Committee by a majority of its members. If the Executive Committee selects, as its chairperson, a member of the Executive Committee, the county party from which the chairperson was selected shall fill the space vacated by the chairperson. The Executive Committee shall be governed by a majority of the votes from its members. The chairperson shall be considered a member of the Executive Committee. The Executive Committee shall make no decisions unless a minimum of seven of its members are present.

- F. This agreement may be partially or completely terminated by a majority of votes of the eleven members of the Executive Committee, which partial or complete termination shall be effective on the date established by the Executive Committee. If the Property which is to be disposed of, by virtue of a partial or complete termination of this agreement, shall be sold or disposed of as determined by a majority of the eleven members of the Executive Committee.

4. **Mutual Aid in a Disaster, State of Emergency or Local Emergency**

In the event of a disaster, state of emergency, or local emergency, as defined above, the parties shall provide mutual aid in the manner and subject to the following conditions:

A. The Recipient has the authority and responsibility under the *Utah Disaster Response and Recovery Act* in a state of emergency, local emergency, or other disaster to respond to an emergency and to obtain such assistance as is reasonably necessary in the circumstances.

B. This agreement anticipates the possibility of a future declaration of a local emergency by a city or a county, or a state of emergency by the Governor of the State of Utah.

C. Utah Code Annotated, Section 63-5a-9(3) (1953 as amended), of the *Utah Disaster Response and Recovery Act* authorizes political subdivisions to enter into mutual aid compacts with other political subdivisions within the State of Utah concerning matters involving cooperative disaster response and recovery assistance support consistent with the performance of services under this agreement.

5. Lawful Responsibility

This agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

6. Provision of Personnel, Equipment, and Materials

A. The Executive Committee shall, in its own discretion, purchase the materials and equipment necessary to deal with incidents or emergencies from the funds made available to it. The State of Utah shall own the equipment and materials purchased by the Executive Committee. All costs and repairs of maintaining the equipment purchased by the Executive Committee shall be approved and administered by the Executive Committee and shall be shared equally by the counties who are parties to this Agreement.

B. The parties shall train and certify and/or coordinate training and certification of the personnel, pursuant to the standards of the Utah Fire Service Certification Council, that will participate in incidents or emergencies, which include five (5) levels of training as follows:

(1) Awareness: Those personnel that will first arrive on the scene or respond to the incident or emergency. Personnel responding to the incident or emergency must have Awareness training and certification to participate.

(2) Operations: Training which will allow personnel to initiate and take defensive measures related to the incident or emergency.

(3) Technician: Training which will allow personnel to take offensive measures to deal with the incident or emergency.

(4) Incident Commander: Training which will allow personnel to take charge at the scene of an incident or emergency and direct and coordinate the agencies, the personnel and materials.

(5) Paramedic: Training in Advanced Life Support, which will allow paramedics to understand and deal with specific medical related injuries.

C. Each county shall have two (2) people trained to qualify as an Incident Commander.

D. The parties shall station or house its offensive resources, purchased as part of this Agreement, which resources shall be allocated between the counties as the Executive Committee deems fit.

E. Each of the county parties shall station or house a defensive cache with defensive resources within each county's corporate limits. The resources to be stored in the defensive caches shall be determined by the Executive Committee.

F. Each party shall supplement the resources, which have been funded by this agreement, with such resources as are available to the parties that are reasonably necessary to provide assistance to the recipient in coping with a state of emergency, local emergency, or disaster, subject to the sole discretion of each party to determine what personnel, equipment, materials, and other resources it can reasonably provide in the circumstances, and further subject to reimbursement by the parties as set forth in this agreement, subject to the compensation provisions set forth in Paragraph 13 below.

G. In the event that responding agency has a need for the return of the personnel, equipment, unexpended materials, or other unexpended resources provided to a receiving agency, the responding agency may, at its sole discretion, immediately recall all or a portion of such personnel, equipment, unexpended materials, or other unexpended resources.

H. Pursuant to Rule 426-14-500 of the Utah Administrative Code, and the Mutual Aid Agreement attached hereto as Exhibit "A", Response Team Paramedics ("Team Paramedics") specifically trained in emergency toxicology, shall be allowed to respond to incidents or emergencies related to hazardous materials within their jurisdiction. The purpose for the team paramedics shall be for team member logistical support, member rehabilitation, and emergency medical care, to include transport if local resources are unavailable. The Team Paramedics may also act as a resource for the receiving agency for patient care as requested. Team paramedic

response is not intended to supplant local EMS resources, but to supplement and provide specialized services not normally available.

7. First Response

Each agency shall first respond to the emergency incident within its jurisdiction utilizing its own resources before requesting resources, which have been funded by this agreement, or other agencies. Each agency shall be responsible to first instruct its dispatchers for their own agencies to make reasonable and diligent effort to send available resources from the requesting agency.

8. Command at Scene

A. The resources used in response to the incident or emergency related to hazardous materials shall be performed and provided in the manner, amount, time, nature, and place as directed by one of the Incident Commanders from the county in which the incident or emergency occurs, and as such, shall be the officer in command of the incident.

B. The Incident Commander may request the dispatcher of the requesting agency to request additional assistance from any other agency in accordance with the protocol described in Paragraph 9 below.

C. The responding personnel or the chief officer from each department of the responding agency shall report to the Incident Commander as soon as reasonably possible upon the arrival of the responding personnel at the scene of the emergency or the location where the assistance is requested. Thereafter, the responding personnel shall comply with the directions of the Incident Commander with respect to the incident or emergency.

9. Incident Command Protocol

It is the intent of the agencies that their respective departments utilize and comply with the uniform incident command and dispatch protocol which has been developed, approved, and implemented by each agency in the event of emergency incidents.

10. Release of Resources

A. The Incident Commander shall, as soon as reasonably possible, release resources from the responding agencies before releasing the resources of the requesting agency.

B. Resources from responding agencies shall be released by the Incident Commander when he determines that the services and other resources of the responding agencies are no longer required or when the chief officer of the participating departments of the responding agency notifies the Incident Commander that the resources of the responding agency are needed within the corporate limits of the responding agency.

11. Discretionary Response

Notwithstanding any other provision of this agreement, no agency shall be required to respond to a request for assistance from another agency when the senior or duty officer of the involved departments of the responding agency determines that the absence of available fire or other resources will jeopardize the ability of the responding agency to provide necessary services within its own corporate limits.

12. No Waiver of Immunity

Nothing herein shall be construed to waive any of the privileges and immunities associated with related services, including medical, ambulance or any other services, of any of the agencies.

13. Compensation

The cost of all resources provided by a party and/or the participating agencies shall be reimbursed and paid for as follows:

A. To the extent possible, the third person, which caused the incident or emergency, and/or the third person's liability insurance carrier. Each responding agency shall submit to the requesting agency a detailed accounting of the expenses it incurred as a result of its response and participation in the incident or emergency, which shall be submitted no later than one hundred and twenty (120) days from the date of the incident or emergency. The Executive Board may, for good cause, extend the period of time in which a responding agency must submit its accounting to the requesting agency. The requesting agency shall submit and process the claim against the third person and/or the third person's liability insurance carrier.

B. All costs not recovered from the third person and/or the third person's liability insurance carrier shall be reimbursed from funds from the State of Utah or federal monies, to the extent that said funding/or monies are available.

C. All costs not recovered as set forth in Paragraph 13 A and B above shall be the responsibility of the party and/or the participating agencies incurring the costs. The parties and/or the participating agencies shall not be reimbursed by any other party hereto, or the requesting and responding agencies, for any costs incurred in the rendition of services pursuant to the terms of this agreement for personnel, materials, or equipment utilized subject to the terms of this agreement unless specifically agreed to otherwise in writing by the parties hereto, or the requesting and responding agencies with respect to any specific incident or emergency incident.

14. **Personnel Status**

A. The personnel assigned or utilized in the performance of the services as required under this agreement shall at all times be deemed and remain as employees of their respective agencies. Employees of responding agencies shall not be considered as employees of the requesting agency.

B. Each agency shall be solely responsible for providing Workers' Compensation, insurance, wages, and benefits for its own personnel who provided services under this agreement.

15. Waiver of Reimbursements

Subject to the terms of this agreement and unless specifically agreed to otherwise in writing by the requesting and responding agencies with respect to any specific incident or emergency incident, the parties waive any claims as responding agencies for reimbursements from the receiving agencies for the costs of materials and equipment, including any claims for damages, maintenance, repair, replenishment, or replacement of equipment and materials, utilized and expended by the responding agency.

16. Indemnification

A. The requesting agency agrees to indemnify and save harmless the responding agency and the employees of the responding 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 a reasonable attorney's fees, and court costs arising or resulting from the performance or provision of services and materials by the responding agency to the requesting agency under this agreement unless such claims are the result of the negligence of the responding agency or the employees of the responding agency.

B. The responding agency shall hold harmless and indemnify the requesting agency and the employees of the requesting agency against any liability for any and all claims arising from any damages or injuries caused by the negligence of the responding agency or the employees of the responding agency except to the extent of the negligence of the requesting agency or the employees of the requesting agency.

17. Injury or Death in the Line of Duty

Any injury to or the death of any personnel incurred in the performance of any services pursuant to this agreement, irrespective of the jurisdiction or territory in which the injury or death occurred, shall be deemed to be an injury or death in the line of duty.

18. Whole Agreement

This agreement constitutes the whole agreement of the parties and replaces all prior agreements and understandings related to services provided in relation to emergency incidents, whether written or oral, between the parties except as to any agreements referred to in this agreement and as to any modifications in writing signed by all parties.

19. 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.

20. Effect on Other Agreements

This agreement shall not supersede or repeal any existing agreements between the parties except as the specific provisions of this agreement are in conflict with such other agreements. In all other respects, the terms and conditions of such other agreements shall remain in full force and effect.

21. No Third Party Beneficiaries

This agreement is not intended to benefit any party or person not named as an agency specifically herein, or which does not later become a signatory hereto as provided herein.

22. Term of Agreement

B. This agreement shall remain in full force and effect between the parties until such time as it is terminated by a vote of the majority of the parties hereto as set forth in Paragraph 3 F below, or 50 years, whichever occurs first.

23. Resolution of Approval

This agreement is conditioned and shall take effect upon the adoption of a resolution of approval by the County Commissioners of the participating counties, and the City Council of the participating cities.

24. Approval by Attorney

This agreement shall be submitted to the authorized attorney of each party for approval as to form and compliance with applicable law.

25. Nature and Limitation of Agreement

A. This agreement is an interlocal agreement and does not create a separate legal entity.

C. All real or personal property acquired by the Executive Committee shall be owned, or possessed jointly by the county parties as the result of this agreement unless specifically agreed to in writing approved and signed by all parties

D. To the extent that any administration of this agreement is reasonably required, the Executive Committee shall constitute an administrative committee for the purposes

of administrative oversight, the interpretation of the provisions of this agreement, and the resolution of any issues or matters arising from the implementation of this agreement.

E. In the event that not all of the named parties approve and sign this agreement, nonetheless, this agreement shall be binding upon those parties that do approve and sign it.

F. This agreement may be executed in counterparts.

26. **Effective Date**

The effective date of this agreement shall be the date that the parties have signed the agreement, adopted a resolution of approval of this agreement, and filed the agreement with the keeper of records.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated next to their signature.

APPROVED AND ADOPTED this ____ day of January, 2003.

WASHINGTON COUNTY

James Eardley, Chairman
Washington County Commission

ATTEST:

Kim Hafen
Washington County Clerk-Auditor

Commissioner Gardner voted ____
Commissioner Eardley ____

**CEDAR CITY COUNCIL
AGENDA ITEM 8**

DECISION PAPER

TO: Mayor and City Council
FROM: Russ Volk
DATE: August 20, 2014
SUBJECT: BLM Lease Amendment
RECOMMENDATION: Amend lease to include one-time asphalt maintenance

DISCUSSION: The BLM is requesting that Cedar City Corp. accomplish asphalt maintenance and repainting at the Air Tanker Center.

Cedar City Corp can utilize the in-place blanket contracts to accomplish this effort. Cedar City Corp will collect revenue by performing the construction management and invoicing process for this effort.

Estimates have been received for both the asphalt and painting portions and the work can be accomplished per guidelines of the lease amendment.

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE
LEASE AMENDMENT

LEASE AMENDMENT NO. 13

TO LEASE NO. L04PL00322

ADDRESS OF PREMISES Cedar City Interagency Fire Center
Airport Rd
Cedar City, Utah 84720

THIS AGREEMENT, made and entered into this date by and between Cedar City Corporation whose address is:
10 N Main St
Cedar City, Utah 84720

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above lease. NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective July 25, 2014 as follows:

Lease Paragraph 31, is hereby incorporated into the lease agreement as follows:

"31. The Lessor hereby agrees to provide, install, and maintain the items described by the below Scope of Work of the Supplemental Lease Agreement number 13. The Government agrees to reimburse the Lessor with a one-time lump sum payment not to exceed \$30,000.00 upon completion, inspection, and acceptance of the project by the Government and upon receipt of an acceptable itemized invoice from the Lessor. Itemized invoice shall be forwarded to the Contracting Officer. The entire \$30,000 represents 100 percent of the submitted tenant improvement cost for the below Scope of Work.

Scope of Work

Work is to include but not limited to:

1. Provide crack sealing on all asphalt surfaces leased by the BLM to include:
 - a. Entry road
 - b. Main vehicular parking area
 - c. Fixed wing aircraft ramp: specifically along curb and gutter and around patched area.
 - d. Helicopter ramp area
 - e. Retardant loading area
2. Provide seal coating to asphalt surfaces leased by the BLM to include:
 - a. Helicopter ramp area
 - b. Retardant loading area
3. Apply pavement markings to asphalt surfaces leased by the BLM to include:
 - a. Helicopter ramp area
 - b. Retardant loading area
4. All work will be in accordance with local building code, Federal Aviation Administration "FAA", and the Code of Federal Regulations.
5. Provide all procurement and construction management activities required for completion of the maintenance activities."

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

FOR THE LESSOR:

Signature: _____
Name: _____
Title: _____
Entity Name: _____
Date: _____

FOR THE GOVERNMENT:

Signature: _____
Name: _____
Title: _____
Entity Name: _____
Date: _____

WITNESSED FOR THE LESSOR BY:

Signature: _____
Name: _____
Title: _____
Date: _____

FOR THE LESSOR:

Initials: _____

FOR THE GOVERNMENT:

Initials: _____

LESSOR

BY _____
(Initial)

UNITED STATES OF AMERICA

BY _____
(Initial)

CEDAR CITY COUNCIL
AGENDA ITEM 9

DECISION SHEET

TO: Mayor and City Council
FROM: Robert D. Allinson
DATE: 12 August 2014

SUBJECT: Cooperative Agreement for Consolidated Dispatch Service

ISSUE: Signing of Contract with State for Dispatch Service

DISCUSSION: The police and fire department contract with the State of Utah for dispatch service. Each year the contract must be re-signed by the Mayor. The fee is based on a formula of calls-for-service and property tax valuations. As our property values continue to grow; and/or our calls-for-service continue to increase; we will pay an increasing share of the dispatch fee.

Last budget year, our portion was \$155,373. This year it is \$156,631. However, this fee is still considerably less than what it would cost to provide our own dispatch service.

A copy of the agreement is attached.

COOPERATIVE AGREEMENT

Providing for Consolidated Dispatch Service in Iron County

THIS AGREEMENT made and entered into this **1st day of July, 2014**, pursuant to the Interlocal Cooperation Act found in Title 11, Chapter 13 of the Utah Code, by and between IRON COUNTY, hereinafter referred to as "County," the cities or towns of CEDAR, PAROWAN, BRIAN HEAD, ENOCH, PARAGONAH, KANARRAVILLE, ENTERPRISE and NEW HARMONY, hereinafter referred to as "Cities," and the STATE OF UTAH, DEPARTMENT OF PUBLIC SAFETY, hereinafter referred to as "State," all being public agencies of the State of Utah as defined by the Interlocal Cooperation Act.

WITNESSETH:

WHEREAS, State, County, and Cities desire to enter into this cooperative contract for the purpose of coordinating dispatch and communications services within the Iron County area, and providing said dispatch and communications services without regard to territorial boundaries, which shall benefit all of the citizens of those agencies participating, and;

WHEREAS, the Commissioner of the Utah Department of Public Safety, Iron County Commissioners, Iron County Sheriff, and Mayors of the Cities have decided that consolidated emergency communications services are needed by State, County and Cities, and that it is mutually advantageous to each party to enter into this agreement, and;

WHEREAS, it is anticipated that the services provided for herein be paid by the parties on a cost basis as hereinafter set forth, and the respective governing bodies of State, County and Cities have determined and agreed that said costs are reasonable, fair, and adequate for such services.

NOW, THEREFORE, in compliance with and pursuant to the terms and provisions of the Interlocal Co-operation Act, State, County and Cities do hereby contract and agree as follows:

1. Emergency communications and dispatch services shall be the responsibility of the emergency communications center, hereinafter referred to as "Cedar Communications Center," located at the Iron County Building at 2130 North Main Street, Cedar City, Utah 84721.

2. The Cedar Communications Center will provide emergency communications and dispatch services for public safety functions (i.e., Sheriff's Office, Police Departments, Utah Highway Patrol, Emergency Medical Services, Fire Departments, and other state and local agencies operating on public safety-licensed frequencies); serve as the public safety answering point (PSAP) for 9-1-1 communications; and provide other such emergency dispatch services as authorized and agreed upon by a consolidated communications services advisory board as established under paragraph three (3) of this agreement.

3. A consolidated communications services advisory board, hereinafter referred to as "Board," is hereby created and shall serve in an advisory capacity to the administrator of the Cedar Communications Center. The Board will be composed of the following:

- a. Sheriff of Iron County, or representative;
- b. Police Chief from each of the Cities, or representative;
- c. Fire Chief from each of the Cities, or representative;
- d. Iron County 9-1-1 Coordinator, or representative;

- e. Iron County EMS Director, or representative;
- f. Section Lieutenant for the Utah Highway Patrol, or representative;
- g. AP&P Regional Administrator, or representative; and
- h. Communications Bureau Director for the Utah Department of Public Safety, or representative.

Each appointment to the Board shall be by the governing body of each entity involved, and shall serve at the pleasure of that governing body, and can only be removed by the governing body they represent.

4. Board members shall select a chairman from their own membership. The Board shall establish policies and procedures regulating its meetings, and shall comply with the requirements of the Open and Public Meetings Act found in Title 52, Chapter 4, of the Utah Code, and other applicable provisions of law. Board members shall serve without compensation. The Board is vested with the responsibility and duty to develop and recommend the following to the administrator of the Cedar Communications Center:

- a. Policies and procedures under which the Cedar Communications Center shall be operated;
- b. Purchase of equipment necessary to properly carry out the functions of the Cedar Communications Center;
- c. A budget for the Cedar Communications Center for the fiscal year beginning July 1, 2014 and ending June 30, 2015.

5. The fiscal year for the Cedar Communications Center will be the 1st of July through the 30th of June of the following calendar year.

6. Proposed capital expenditures in excess of five-thousand dollars (\$5,000) shall be approved by the Board by majority vote prior to being included in the budget.

7. The Cedar Communications Center shall provide continuous dispatch operations and will be available twenty-four (24) hours a day, seven (7) days a week, to answer all requests to/from public safety agencies or the public, and to dispatch the appropriate agency and/or personnel.

8. The Communications Bureau Director for the Utah Department of Public Safety shall act as the Cedar Communications Center administrator, and shall furnish and supply personnel, supervision, equipment, the facility, and supplies necessary to operate the communications center at the level of service recommended by the Board.

9. The County and Cities shall have no liability for the direct payment of salaries, wages, and other compensation to personnel performing services for County and Cities, nor shall County and Cities assume liability whatsoever other than provided for in this agreement.

10. All parties to this agreement are governmental entities as defined in the Utah Governmental Immunity Act found in Title 63G, Chapter 7 of the Utah Code. Nothing in this agreement shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by

the act. Nor shall this agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this agreement is otherwise entitled. Subject to the act, each party will be responsible for its own actions and will defend any lawsuit brought against it and pay any damages awarded against it.

11. The dispatch and supervisory personnel necessary to provide the communications services to be rendered under the terms of this agreement shall be appointed pursuant to rules of selection and hiring in accordance with State of Utah, Department of Human Resource Management Rules.

12. Fees for dispatch service shall be based on the following formula:
 Budget – 911 Funds = 100% Distributed

The County and Cities portion of the budget formula is based on 50% radio log transactions + 50% tax base. Any changes in fees for dispatch service shall be executed only with the approval of the Board and each entity's governing body.

13. The budget for the Cedar Communications Center for FY 2014-2015 shall be as follows:

Expenses

Personnel - Salaries and Benefits (15 FTEs)	\$1,058,740
1 - Manager	
2 - Shift Supervisors	
12 - Dispatchers	
Travel and Training	6,000
Current Expense	44,950
Building Lease	23,050
Data Processing	18,000
Total Annual Expenses:	\$1,150,740

Revenues

State of Utah/Department of Public Safety	\$575,990
AP&P/Utah Department of Corrections	37,000
Southern Utah University	10,000
Iron County 9-1-1 Funds	185,000
Iron County	119,018
Cedar City	156,631
Brian Head	20,151
Enoch City	20,939
Parowan City	17,143
Kanarraville	1,030
Paragonah	1,030
Enterprise City	3,404
New Harmony	3,404
Total Annual Revenues:	\$1,150,740

14. Adequate funding for the Cedar Communications Center in accordance with the approved budget and any authorized increases thereto shall be provided by the parties to this agreement. Fees for dispatch service for the term of this agreement shall become due and payable on July 1, 2014 and will be billed to each entity in one annual invoice during the fiscal year in progress. Payments shall be delivered to the Financial Officer for the Communications Bureau of the State of Utah, Department of Public Safety (2060 South 2760 West, Salt Lake City, Utah 84104).

15. All equipment and supplies directly related to the Cedar Communications Center shall be under the control and inventory of the State.

16. Installation, maintenance, repair and changes of all equipment, radios, facilities, and grounds shall be the responsibility of the State.

17. County shall retain ownership of the E9-1-1 emergency telephone equipment, uninterruptible power supply, and annual maintenance for service, repair or replacement of E 9-1-1 equipment associated with E9-1-1 service for the undersigned public agencies. County will be responsible for managing collection, disbursement, and accountability for funds collected through the 9-1-1 surcharge as described in the Emergency Telephone Service Law, found in Title 69, Chapter 2 of the Utah Code.

18. The term of this agreement shall be for a period of one (1) year, commencing on July 1, 2014 at 12:01 a.m. and continuing through June 30, 2015 at midnight.

19. The State, County or Cities may withdraw from this agreement at the end of the fiscal year then in progress by giving the others written notice, and by paying their pro rata share of any unpaid costs. Said written notice shall be given at least six (6) months prior to the end of the fiscal year, and will be effective for the following fiscal year.

20. That if any additional public agency desires to enter into this agreement, approval shall be made by the Board. The initial fees for dispatch service shall be based on statistics collected from the prior year.

IN WITNESS WHEREOF, the hands of the parties are set below:

APPROVED AS TO FORM

UTAH DEPARTMENT OF PUBLIC SAFETY

BY: _____
Utah Assistant Attorney General

BY: _____
Keith D. Squires, Commissioner

DATE: _____

DATE: _____

BY: _____
Alan Workman, Bureau Director
UHP Communications Bureau

DATE: _____

APPROVED AS TO FORM

BY: _____
Iron County Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Cedar City Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Parowan City Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Brian Head Town Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Enoch City Attorney

DATE: _____

IRON COUNTY COMMISSION

BY: _____
Chairman

DATE: _____

CEDAR CITY

BY: _____
Mayor

DATE: _____

PAROWAN CITY

BY: _____
Mayor

DATE: _____

BRIAN HEAD TOWN

BY: _____
Mayor

DATE: _____

ENOCH CITY

BY: _____
Mayor

DATE: _____

APPROVED AS TO FORM

BY: _____
Kanarraville Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Paragonah Attorney

DATE: _____

APPROVED AS TO FORM

BY: _____
Enterprise City Attorney

TOWN OF KANARRAVILLE

BY: _____
Mayor

DATE: _____

TOWN OF PARAGONAH

BY: _____
Mayor

DATE: _____

ENTERPRISE CITY

BY: _____
Mayor

DATE: _____

TOWN OF NEW HARMONY

BY: _____
District Fire Chief

DATE: _____

SOUTHERN UTAH UNIVERSITY

BY: _____
Director of Purchasing

DATE: _____

10

CEDAR CITY RESOLUTION NO. _____

A RESOLUTION OF THE CEDAR CITY COUNCIL AMENDING VARIOUS PROVISIONS OF THE CITY'S PERSONNEL POLICY RELATED TO: LOCAL RESIDENCY REQUIREMENTS FOR DEPARTMENT HEADS; WORK HOURS AND PROVISION OF BENEFITS; SICK LEAVE DOATIONS; FAMILY MEDICAL LEAVE ACT, AND; PROXIMITY RESTRICTIONS FOR THOSE WITH A TAKE HOME VEHICLE.

WHEREAS, the Cedar City Council is the duly elected governing body of Cedar City and has adopted the City's personnel policy ; and

WHEREAS, from time to time it is necessary and appropriate to consider new alternatives related to personnel management and City wide personnel policy; and

WHEREAS, one of the proposed amendments contained herein creates new policy requiring department hired after the adoption of this resolution to reside within a defined area of Iron County ; and

WHEREAS, one of the proposed amendments contained herein is intended to amend the City's existing policy for permanent part time employees in order to comply with the provisions of the affordable care act; and

WHEREAS, one of the amendments contained herein amends the City's existing policy related to employees ability to donate sick leave to another employee; and

WHEREAS, one of the amendments contained herein amends the City's policy related to when the City will require employees to use time provided for by the Family Medical Leave Act; and

WHEREAS, the final proposed amendment establishes a proximity residency requirement for all employees that have access to a take home vehicle and wish to take the vehicle home; and

WHEREAS, the City Council has considered the proposed amendments to the City wide personnel policy in an open and public meeting and has determined that it is in the best interests of the health, safety, and general welfare of the City to adopt the herein contained amendments to the City's personnel policy.

NOW THEREFORE BE IT RESOLVED, by the City Council of Cedar City, Utah, that the City's personnel policy is hereby amended to remove the language below that has been struck through and include the language below that is underlined:

CHAPTER 6 – EMPLOYEE CONDUCT

6.10 Department Head Residency Requirements.

6.10.1 All department heads must live within Iron County and within a thirty-minute radius of their principle work location within six (6) months of being hired.

6.10.2 For purposes of this policy City department heads shall be those employees hired by Cedar City to manage the City's departments as defined by Cedar City Ordinance.

6.10.3 This policy shall not apply to department heads hired prior to the date this policy was adopted.

Amended by Cedar City Resolution No. _____.

CHAPTER 4 – EMPLOYMENT STATUS

4.4 Regular Part-time Employees.

4.4.1 Regular part-time employees are those employees who are scheduled to work less than forty hours per week for the city and have worked for the City at least six months, having successfully completed their probationary period. Employees will be eligible for sick leave, vacation, holiday and retirement benefits proportionate to hours worked. Only employees working ~~32~~ thirty (30) hours per week or more shall be eligible for insurance benefits, ~~premium to be prorated based upon hours worked.~~

Amended by Cedar City Resolution No. _____.

CHAPTER 8 – BENEFITS

8.12 Sick Leave.

8.12.11 If an employee, due to long-term illness or injury, uses all accrued sick leave, the department head may authorize the employee to request a donation of sick leave from other city employees. The donation amount is eight (8) hours and is not counted as used sick leave for buy-back purposes. If the receiving employee does not use the amount donated after one (1) year the entire remaining donated amount will be calculated and divided by the number of employees making the original donation. Each employee making the original donation shall have an equal amount of sick leave returned to them. If the receiving employee does not use the total amount donated, the remaining amount will be placed in a "donation balance" for future use.

8.18 Family and Medical Leave Act (FMLA).

8.18.1 Regular full-time employees are entitled to 12 unpaid "work-weeks" of leave during any calendar year for one or more of the following conditions:

- A. The birth or adoption of a child;

- B. To care for a spouse, son, daughter, or parent with serious health condition; or
- C. Because a serious health condition makes the employee unable to perform any of the essential functions of his or her job.

8.18.2 Said leave may be taken intermittently. The City may require an employee to use any accrued vacation as part of FMLA leave. If an employee takes leave for a condition covered under this policy for five (5) or more consecutive work days the supervisor with the cooperation of human resources shall require the employee to use FMLA leave. If an employee takes leave for a condition covered under this policy for five (5) or more non-consecutive days the supervisor with the cooperation of human resources may require the employee to use FMLA leave.

8.18.3 Provisions applicable to local governments concerning FMLA as established by The Department of Labor shall be used as guidelines by the City.

Amended by Cedar City Resolution No. _____.

CHAPTER 17 – VEHICLE POLICY.

17.1 Vehicle Policy.

17.1.1 The policy of the City is that city vehicles will be used for city business and that personal use will be limited by City & Department policy.

17.1.2 Generally, city vehicles are kept at the work site. On a limited basis, city vehicles are assigned by dept/Division Manager to be able to respond emergency situations during non-working hours. City vehicles should not remain at an employee's home for more than two consecutive work days. If a City vehicle is taken home, it must be parked off street. A list of positions assigned vehicles will be maintained by the City Manager.

17.1.3 City vehicles may be used for incidental personal business such as lunch near the employee's current work area or stops incidental to the employee's travel. No other off-duty use is permitted. No family members or other non-employee personnel are allowed in City-owned vehicles, except as authorized by Department Head.

17.1.4 Public safety employees to whom vehicles are assigned must live within a 10-mile radius of their principle work location. Public Safety vehicles may be used

for off-duty use in the City limits. Use of vehicles outside the City limits shall be for official business only. Public safety personnel may transport family members when off duty in order to allow them to respond to an emergency situation, or in the case of police, to serve as a crime deterrent. If public safety personnel are to respond to an emergency situation, they must let family members out as soon as practical.

17.1.5 With the exception of public safety employees, every employee who has been assigned a take home vehicle must live within a ten (10) mile radius of the employee's primary work location. If the employee does not live within the ten (10) mile radius, the employee may not take the City owned vehicle home. For purposes of this policy the primary work location shall be defined as the physical location to which the employee reports for work each day. For purposes of this policy the ten (10) mile radius shall be defined as the shortest driving route between the employee's residence and the employee's primary work location.

Amended by Cedar City Resolution No. _____.

BE IT FURTHER RESOLVED by the City Council of Cedar City, State of Utah that staff is authorized to make such non-substantive changes to the format of the City's personnel policy as may be necessary to effectuate the above amendments.

This resolution, Cedar City Resolution No. _____, shall become effective immediately upon passage by the City Council and the signature of the Mayor.

Council Vote:

Ayes: _____ Nays: _____ Abstain: _____

Dated this ____ day of _____, 2013.

MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
CITY RECORDER