

REGULAR MEETING

HEBER CITY CORPORATION
75 North Main Street
Heber, Utah, 84032
City Council Regular Meeting
September 18, 2014

7:00 p.m. Regular Meeting

**TIME AND ORDER OF ITEMS ARE APPROXIMATE AND MAY BE
CHANGED AS TIME PERMITS**

- I. Call to Order
- II. Pledge of Allegiance: Council Member Heidi Franco
- III. Prayer/Thought: By Invitation (Default Council Member Robert Patterson)
- IV. Minutes for Approval: September 4, 2014 Work and Regular Meetings
- V. Open Period for Public Comments
 1. Approve Don Pedros Mexican Restaurant, Request for Local Consent to Sell Alcohol, Located at 1050 South Main Street
 2. Approve UDOT Aeronautics Grant Agreement for Airport Runway and Apron Rehabilitation
 3. Approve Contract for Services with ISI Water Company
 4. Approve Ordinance 2014-17, an Ordinance Abandoning the Open Space Parcel on the West Side of Valley Hills Boulevard within The Cove at Valley Hills Subdivision
 5. Coyote Development, Approve The Cove at Valley Hills Phase 1C, Located between 1772 North Valley Hills Boulevard and Callaway Drive, and the Associated Development Agreement

In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact

Michelle Kellogg at the Heber City Offices (435) 654-0757 at least eight hours prior to the meeting.

Posted on September 15, 2014, in the Heber City Municipal Building located at 75 North Main, Wasatch County Building, Wasatch County Community Development Building, Wasatch County Library, on the Heber City Website at www.ci.heber.ut.us, and on the Utah Public Notice Website at <http://pmn.utah.gov>. Notice provided to the Wasatch Wave on September 15, 2014.

Memo

To: Mayor and City Council
From: Mark K. Anderson
Date: 09/15/2014
Re: City Council Agenda Items

REGULAR MEETING

CONSENT AGENDA

Item 1- Approve Don Pedros Mexican Restaurant, Request for Local Consent to Sell Alcohol, Located at 1050 South Main Street: Due to a change in ownership, Don Pedros' Restaurant is seeking local consent to sell alcohol at their restaurant located at 1050 South Main. Clean background checks have been provided to the City and the request is consistent with existing zoning regulations. See enclosed staff report. Staff would recommend approval.

ACTION ITEMS

Item 2 – Approve UDOT Aeronautics Grant Agreement for Airport Runway and Apron Rehabilitation: UDOT Aeronautics has sent a grant agreement for City approval regarding their match to FAA Grant AIP-26. The enclosed agreement commits \$181,605 of State matching funds for the runway/apron rehabilitation project that will begin in April/May of 2015. This equates to 4.685% of the estimated \$3,876,312 project. Staff would recommend approval.

Item 3 – Approve Contract for Services with ISI Water Company: In August, Ron Phillips, agent for Water Company of America, aka ISI Water Company, came before the Council to discuss an audit of Heber City utility billing. The Council seemed comfortable with the concept and asked that a formal contract be presented for approval. See the attached contract. Staff would recommend approval.

Item 4 – Approve Ordinance 2014-17, an Ordinance Abandoning the Open Space Parcel on the West Side of Valley Hills Boulevard within The Cove at Valley Hills Subdivision: Prior to the approval of the Valley Hills Phase 1C Subdivision Plat, the County Recorder is requesting that the open space parcel in the Cove at Valley Hills Subdivision be abandoned. Once abandoned, the parcel can then be subdivided as proposed in the next agenda item. (See enclosed Ordinance and plat map)

Before the Council grants this abandonment, staff would recommend the following: In light of comments made by adjacent property owners that it was represented to them that the property would remain as perpetual open space, previous verbal representations by the developer during the development process and the property being untaxed by Wasatch County for the past 13 years, staff would recommend that the Council require the developer to obtain an opinion from the Utah State Property Rights Ombudsman as to whether the property meets the requirement for perpetual open space and/or whether the City can reject approval of the proposed subdivision because the open space is required to be preserved.

Item 5 – Coyote Development, Approve The Cove at Valley Hills Phase 1C, Located between 1772 North Valley Hills Boulevard and Callaway Drive, and the Associated Development Agreement:

In August, the City Council had this issue before them and several adjacent property owners expressed concern with the abandonment of the open space and approval of this subdivision. The Council asked that staff look at the history of this project and any commitments that have not been kept by the developer. Since this meeting, the City has received the deed to the Valley Hills water tank property. The only ongoing issue is the maintenance of the debris that accumulates on Valley Hills Boulevard sidewalk.

Coyote Development/Mel McQuarrie is seeking approval for a two lot subdivision known as The Cove at Valley Hills Phase 1C. This converts property that was held by the developer as privately owned open space into two lots on the west side of Valley Hills Boulevard. (See enclosed staff report, subdivision agreement and plat map)

The Planning Commission has reviewed the proposed development and is recommending approval subject to the conditions in the subdivision agreement. As noted in the previous agenda item, staff would not recommend approval of this subdivision until an opinion can be obtained from the Utah State Property Rights Ombudsman as to whether the property is required to remain as open space. If the Council is inclined to approve the subdivision, the City will need to approve the abandonment of the open space first.

MINUTES

1
2 Heber City Corporation
3 City Council Meeting
4 September 4, 2014
5 6:00 p.m.
6

7 WORK MEETING

8
9 The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on September 4,
10 2014, in the City Council Chambers in Heber City, Utah
11

12 I. Call to Order
13

Present: Mayor Alan McDonald
Council Member Robert Patterson
Council Member Jeffery Bradshaw
Council Member Erik Rowland
Council Member Heidi Franco
Council Member Kelleen Potter

Also Present: City Manager Mark Anderson
City Recorder Michelle Kellogg
City Engineer Bart Mumford
City Planner Anthony Kohler
Police Chief Dave Booth

15 Others in Attendance: Jan Olpin
16

17 City Manager memo
18

19 A. Discuss Business License Study
20 Business License Study
21 Business Categories
22

23 Anderson noted the changes in the fees based on Council Member Rowland's request that all
24 businesses be charged 70% of the cost of the business to the City. He passed around a paper with
25 similar business categories each having a corresponding color. He stated the Council would need
26 to decide what to focus on, whether it would be police services, sales tax brought to the City, or
27 another economic benefit. When asked what fees were currently being generated, he estimated
28 \$88,000 in business license fees were received this year.
29

30 Council Member Franco suggested looking at sales tax revenue for each business compared to its
31 number of calls for police service for the year so as to determine if there was a gap between the
32 sales tax generated and police services provided. Council Member Rowland remembered from
33 the study the advice that sales tax should not be a metric in charging license fees. Council

1 Member Bradshaw agreed and stated he thought the business should be judged on following
2 regulations, etc. he didn't think it was legitimate to charge a license fee based on a business'
3 revenue. Council Member Potter suggested starting off on a level playing field and then adding
4 and subtracting part of the fee based on certain factors. Anderson stated the vast majority of
5 businesses fell under home occupation and general services, which had low police service needs.
6

7 Council Member Franco felt if the fee was based on police calls, the City would have to track
8 those police calls and restudy the fees each year. Anderson hoped that for the majority of
9 businesses, the City would only charge a fee sufficient to cover the administrative costs of
10 issuing the license. He noted that if that base fee was reduced, the businesses that paid a
11 disproportionate fee would have to pay even more to cover that deficit.
12

13 Mayor McDonald felt some categories were paying up to 98% of the cost in fees while others
14 paid a lower percentage. Anderson stated the City could justify that fee percentage difference by
15 saying that while certain businesses used more police services, they also generated substantial
16 revenue for the City that had offset that cost. Council Member Rowland suggested starting with
17 the 70% of cost figures and then the City could make adjustments or create programs where the
18 successful completion of those programs would result in lower fees. Council Member Potter
19 remembered that Hansen remarked that she would often have businesses comment on how low
20 the fees were.
21

22 Mayor McDonald asked if some businesses used the police significantly more than others.
23 Council Member Rowland noted that in doing ride-alongs with the police, the calls would be for
24 Walmart. He felt if the City explained the reason for the fee increase, businesses would accept it
25 better. Mayor McDonald agreed with charging the flat rate and offering alternatives in order to
26 achieve a lower rate. Anderson stated 60% of cost would generate approximately the same
27 revenue as the fees brought in last year, and 65% of cost would generate approximately \$95,000
28 in revenue. Anderson asked what factors would lower the percentage. Council Member Franco
29 asked that sexually oriented businesses be categorized and given a fee for if/when one came to
30 the City.
31

32 Mayor McDonald suggested raising and lowering the license fee based on how regulated the
33 industry was. Council Member Franco suggested that events should be adjusted so as not to
34 discourage them from coming to the valley. Council Member Rowland suggested a fee for an
35 event with no police services, and if police services were required, then an additional fee would
36 be charged. Chief Booth commented that currently the police were charging \$75 per hour to be at
37 events and some events the police mandated a presence. Council Member Potter asked what
38 other cities charged for events. She felt that if events were used to paying a certain fee, then they
39 wouldn't be upset with Heber City's fee.
40

41 Mayor McDonald suggested the Council email Anderson with any more suggestions. Anderson
42 indicated he would bring new numbers to the Council. He noted that some businesses
43 contributed a lot to the community through donations and other positive things. Council Member
44 Franco stated community service could be a good reason for reductions in license fees. It was
45 decided that this item would be discussed further at the next work meeting.
46

1 B. Chief Booth, Discuss Realignment of Police Officer Advancements
2 Police Job Descriptions

3
4 Chief Booth explained the career ladder for moving up from a Police Officer I to a Police Officer
5 III. Currently, it took three years for a Police Officer I to advance to a Police Officer II and two
6 more years to advance from a Police Officer II to a Police Officer III. He hoped to condense this
7 process so an officer could advance after two years from a Police Officer I to a Police Officer II.
8 Chief Booth indicated his main reason for condensing the career ladder was to be able to raise
9 the officer's pay to a level that could make it affordable to live here. He noted he had four
10 officers that would be eligible this year for advancement if the new career ladder was approved.
11 The Council approved Chief Booth's recommendation and changes to the Police job descriptions.

12
13 Anderson noted that he struggled with creating equity within the organization. He wondered how
14 the City could create levels of advancement in other areas besides the Public Works and the
15 Police departments. He thought of creating levels of clerks and secretaries. He also looked at
16 compensation systems and was in favor of getting employees to a salary midpoint within the first
17 five years of employment, and then slowing down the raises after that. He felt employees should
18 be very effective by the five-year mark and should be compensated accordingly. Council
19 Member Bradshaw asked if Public Works and Parks/Cemetery workers advanced through their
20 career ladders in four years instead of five as well. Mayor McDonald asked if this could be
21 reviewed by the Personnel Policy Committee. Anderson stated he would not be opposed to it, but
22 he would first start working with Bingham to estimate the financial costs to the City. The
23 Council agreed to have Anderson proceed with creating job descriptions and pay increases for
24 other positions within the city.

25
26 C. Discuss Valley Hills Tank Connection-Boring Change Order
27 Valley Hills Tank Staff Report

28
29 Council Member Franco noted a conflict of interest since the property in question was her home,
30 and stated she was willing to leave the room so the Council could discuss the issue. She
31 remained when the Council did not express concern with her presence.

32
33 Mumford explained the process of digging up the easement and showed the easement in relation
34 to Council Member Franco's home. He stated boring would be safer in not damaging the home,
35 but the cost would be higher. The City had planned on replacing the landscaping until Mumford
36 found out that the City owned the easement. He acknowledged that the City would be
37 responsible for some landscaping so it wouldn't create a nuisance, but would not necessarily be
38 responsible for restoring the property to the original state. He asked the contractor if the cost of
39 boring could be reduced and was waiting to hear back on a final amount. He recommended the
40 boring, but noted it would be a higher cost. The Council agreed to bore for the waterline. Council
41 Member Franco noted she was willing to pay the \$260 difference in cost. It was noted the cost
42 difference between boring and trenching was \$3,760.

43
44 With no further business, the meeting was adjourned.
45
46

Michelle Kellogg, City Recorder

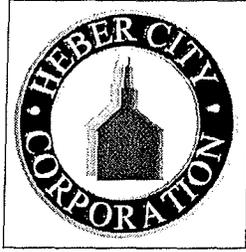
TAB 1

Heber City Council
Meeting date: September 18, 2014
Report by: Anthony L. Kohler

Re: Local Consent for Ownership Change for Don Pedro's Restaurant

The petitioner is requesting Local Consent for a Full Service Restaurant Alcohol License to serve wine and beer. The request is for ownership change of the restaurant. There are no nearby public or private schools, churches, public libraries, public playgrounds, or parks that would require a variance to the code for an alcohol license at this location. The petitioner has submitted a clean background check.

The request for Local Consent for a full service restaurant meets the requirements of the City Code, Chapter 5.08.



HEBER CITY CORPORATION
 BUSINESS LICENSE DIVISION
 75 North Main, Heber City, Utah 84032
 (435) 654-4830

APPLICATION for LOCAL CONSENT:
 BEER, WINE AND ALCOHOL ESTABLISHMENTS

To appear before the City Council, please file this application with the City Recorder's Office.

A. Business Name Don Pedro's Mexican restaurant

Proposed local business address: _____

B. Ownership Type: Corporation Partnership Proprietorship LLC

If Corporation list Corp. name _____

(Attach a copy of Certificate of Incorporation)

C. Information on: President General Partner Sole Proprietor

Name Diana Esquivel Home Phone (619) 4142246

Home Address 335 S 820 E

Mailing Address Heber City UT 84032
(Street Number) (City) (State) (Zip)

D. Information on: Local Manager Partner Representative Responsible for Business

Name Ricardo Mena Home Phone (701) 651-7288

Home Address 417 W 400 N

Mailing Address Same as above Heber Utah 84032
(Street Number) (City) (State) (Zip)

Date of Birth 5/18/77 Place of Birth Mexico

A Bureau of Identification criminal background check may be required for each local manager as part of the application approval process

E. Give a brief description of the proposed establishment and alcohol license requested, and check the appropriate box or boxes. _____

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Restaurant License | <input type="checkbox"/> Limited Restaurant License | <input type="checkbox"/> Off-premise Beer Retailer's License |
| <input type="checkbox"/> Tavern License | <input type="checkbox"/> Private Club License | <input type="checkbox"/> State Store |
| <input type="checkbox"/> Package Agency | <input type="checkbox"/> On-premise Banquet License | <input type="checkbox"/> Special Use Permit |
| <input type="checkbox"/> Single Event Permit | <input type="checkbox"/> Manufacturers and Wholesale Facilities | <input type="checkbox"/> Liquor Warehousing License |
| <input type="checkbox"/> Temporary Special Event Beer Permit | | <input type="checkbox"/> On-premise Beer Retailer License |

F. Attach a copy of a plat map from the County Recorder's office showing the proposed facility, as well as all other properties within 500 feet of the proposed facility.

G. Attach a certified Bureau of Criminal Identification background check of the applicant current within 30 days.

H. Verification of Accuracy - Acknowledgment of Responsibility

I hereby consent to grant an irrevocable license to the City permitting any authorized representative of the City or any law enforcement officer unrestricted right to enter and inspect the premises. I verify by oath that I am the executive officer or the person specifically authorized by the corporation, business or association to sign this application, and have attached written evidence of said authority.

[Signature]
 Authorized Business Owner

9-10-14
 Date

TAB 2

UTAH DEPARTMENT OF TRANSPORTATION

AERONAUTICAL OPERATIONS DIVISION

**PROJECT APPLICATION AND GRANT AGREEMENT
FOR STATE AID FOR DEVELOPMENT OF PUBLIC AIRPORTS**

Part 1 - Project Information

Heber City (hereinafter called the “Sponsor”) hereby makes application to the Utah Department of Transportation (hereinafter called the “State”) for a grant of state funds pursuant to Title 72, Chapter 10, Aeronautics Act, for the purpose of aiding in financing an improvement project (hereinafter called the “project”) for the development of the **Heber Valley/Russ McDonald Field**, (hereinafter called the “Airport”) located in **Heber City, Wasatch County**.

It is proposed that the Project consists of the following described airport improvements or development:

Rehabilitate Runway 4/22

as shown on the attached map accompanied by a detailed engineering cost estimate showing each item in the Project by description, quantity, unit cost, total cost, engineering and contingencies. [The map will show (1) the boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed non-aviation areas and of all existing and proposed improvements thereon including the access road; and (4) airport vicinity zoning.] It is understood that the State will approve in writing the project plans and specifications before start of construction.

The estimated total project is \$ 3,876,312. The requested State share of the project is \$ 181,605 which is 4.685%.

Other governmental agencies granting money to the project are
_____ FAA _____

The Project engineer is intended to be _____.
The FAA Project No. is **3-49-0011-026-2014** (if applicable)

Part II - Representations

The Sponsor hereby represents and certifies as follows:

1. Legal Authority - The Sponsor has the legal power and authority to :
 - (1) do all things necessary in order to undertake and carry out the Project in conformity with applicable statutes;
 - (2) accept, receive, and disburse grants of funds from the State in aid of the Project;
 - (3) carry out all of the provisions of Parts III and IV of this document.

2. Funds - The Sponsor now has \$ 181,605 available for use in defraying its share of the Project.

Part III – Sponsor’s Assurances

In consideration for grant monies made available to the airport, the Sponsor hereby covenants and agrees with the State, as follows:

1. The Sponsor will operate the Airport as such for the use and benefit of the public throughout the useful life of the facilities developed under this Project, but in any event for at least ten (10) years from the date hereof. In furtherance of this covenant, (but without limiting its general applicability and effect) the Sponsor specifically agrees that it will keep the airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds, and classes; provided, that the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport; and provided further, that the Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary - (a) For safe and efficient use of the Airport; (b) To keep operation activities within acceptable noise levels; (c) To serve the civil aviation needs of the public.

2. The Sponsor covenants and agrees that, unless authorized by the State, it will not either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the Airport or at any other Airport now or hereafter owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity.

3. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the airport, neither it nor any person or organization occupying space of facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to render to the public any service (including the furnishing or sale of any aeronautical parts, materials, or supplies) essential to the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) To furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or

service; Provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection b, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection b.

4. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of non-aviation products and supplies or any service of a non-aeronautical nature or to obligate the Sponsor to furnish any particular non-aeronautical service at the Airport.

5. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, or the State, and will not permit any activity or uses thereon which would interfere with its use for airport purposes; Provided that nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; and provided further, that nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

6. Insofar as it is within its power and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Regulations. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land. In addition the Sponsor will clear said area or areas of any existing structure or any natural growth that constitutes an obstruction to airspace within the standards established by said Part 77 unless exceptions to or deviations from the aforementioned obligations have been granted to it in writing by the State.

7. The Sponsor will furnish the State with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the State, or may be submitted in such manner as the Sponsor elects as long as the essential data is furnished. The Airport and all Airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments will be made available for inspection and audit by the State, or his duly authorized representative upon reasonable request. The sponsor will furnish to the State a true copy of any such documents.

8. The Sponsor will furnish Utah's Division of Aeronautics on a semi-annual basis a list of all aircraft which have been based at the airport for more than 6 months, out of the last 12 months. The list shall include the aircraft tail numbers with the owner's current name and address.

9. The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the State to be eligible to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with these covenants.

10. The Sponsor will keep up to date, by amendment, the attached map of the Airport showing:

- (1) The boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto;
- (2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
- (3) Airport vicinity zoning.

11. The location of all existing and proposed non-aviation areas and of all existing improvements thereon, including the access road, said attached map, and each amendment, revision, or modification thereof, shall be subject to the approval of the State which approval shall be evidenced by the signature of a duly authorized representative of the State on the face thereof. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities that might adversely affect the safety, utility, or efficiency of the Airport.

12. Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes

compatible with normal airport operations including landing and takeoff of aircraft.

13. The Sponsor will not dispose of, or abandon in any manner, any portion of the Airport shown on the approved map without the written consent of the State.

14. It is understood and agreed that as to the land acquired or to be acquired for future development of the airport, the Sponsor will construct and complete thereon a useful and usable facility consistent with the State Airport System Plan not later than the time of forecasted need; and if the land so acquired or any part thereof, is not used within the forecast period for the purpose for which it was acquired, the Sponsor will refund the State share of acquisition cost or fair market value of the land, whichever is greater, plus the State share of net revenue, at the time of sale or expiration of the period stated in this agreement. It is further understood and agreed that the Sponsor will deposit all net revenues derived from the interim use of the land into a special fund to be used exclusively for approved items of airport development, but in no case may the State share of such funds be used to match State aid funds in future grants. It is still further understood and agreed that the Sponsor will not dispose of the land by sale, lease, or otherwise without the prior consent and approval of the State.

15. The Sponsor will maintain, at its own expense, the following aeronautical use items and activities:

- (1) A standard, mounted windsock for observation of wind direction and velocity from the ground and while airborne together with a standard segmented circle, both in good repair.
- (2) Enforcement of zoning in the vicinity of airports to minimize environmental problems associated with aeronautical uses.
- (3) A current license issued by the State designating the Airport for public use.
- (4) Runway or boundary lights in good repair and on from dusk to dawn of each calendar day.
- (5) The runway, taxiways, and apron in a state of good repair which would include annual crack filling and mowing of vegetation at least 15 feet outside of hard surfaced areas as necessary to maintain a weed height of not more than 12 inches.
- (6) The boundary fence, when in place, in a state of good repair.
- (7) The main runway, associated taxiway and apron to be cleared of snow as soon as practical after a snowstorm and the airport to remain open for use during these months.

16. It is understood that the State will participate in the amount of grant monies herein mentioned in the engineering estimate or in the herein mentioned per cent share of the actual project cost, whichever is least.

17. In the event the State does not grant monies under this application, the covenants herein mentioned shall not become effective.

18. Sponsor shall have no authorization to bind the State of Utah or the Utah Department of Transportation, or its Aeronautical Operations Division to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah, except as herein expressly set forth.

19. Sponsor hereby agrees to indemnify and save harmless the State of Utah, Utah Department of Transportation, and Aeronautical Operations Division, and their officers, agents, and employees from and against any and all loss, damages, injury, and liability, and any claims therefore, including claims for personal injury or death, damages to personal property and liens of workmen and material, howsoever caused, resulting directly or indirectly from the performance of this agreement or from the use or operation of the airport improvements and facilities being purchased, constructed or otherwise developed under this agreement.

Part IV - Project Agreement and Acceptance

If the Project or any portion thereof is approved by the State, and State aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the plans and specifications for such development, as approved by the State, and the herein assurances with respect to the Project and the Airport.

IN WITNESS WHEREOF, The parties hereto do hereby ratify and adopt all statements, representatives, warranties, covenants, and agreements contained or referenced herein and do hereby cause this document to be executed in accordance with the terms and conditions here of.

Executed for the Sponsor this _____ day of _____, 20_____.

(SEAL)

(Name of Sponsor)

By _____

Title _____

Attest _____
Recorder

Executed for the Co-Sponsor this _____ day of _____, 20_____.

(SEAL)

(Name of Sponsor)

By _____

Title _____

Attest _____
Recorder

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for _____
(herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing document and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Utah, and further that, in my opinion, said Agreement constitutes a legal and bind obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, 20 ____.

Title _____

AERONAUTICAL OPERATIONS DIVISION

Director

APPROVED:

UDOT Legal Counsel

Finance

COOPERATIVE AGENCY AGREEMENT

THIS AGREEMENT by and between the Aeronautical Operations Division of the State of Utah, Utah Department of Transportation, hereinafter called the "Division", and **Heber City Corporation**, hereinafter called the "Sponsor",

WITNESSETH:

WHEREAS, the Sponsor, with the approval of the Division, intends to apply for Federal Funds in aid of an airport project under the "FAA Modernization and Reform Act of 2012"; and

WHEREAS, under the provisions of Title 72, Chapter 10, Part 3, Federal Airport Funds Act, as amended, the Sponsor appoints the Division its agent for the purpose therein stated,

NOW, THEREFORE, it is agreed by the respective parties: The Sponsor appoints the Division as agent for the Sponsor and the Division agrees to act as agent of the Sponsor for the purpose of accepting, receiving, and receipting for, and disbursing Federal monies and other public monies other than those of the Sponsor made available to finance in whole or in part the planning, construction, and improvement of the **Heber City Municipal–Russ McDonald Field** in connection with airport project No. **3-49-0011-26**.

Federal regulations require the Utah Department of Transportation to insure audit coverage of all federal funds passing through the Department to other agencies, the Sponsor agrees to provide the Department with an audit report in conformance with the United States General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions; Guidelines for Financial and Compliance Audits for Federally Assisted Programs; Office of Management and Budget Circular A-133, and compliance supplements approved by the Office of Management and Budget. Audit reports in compliance with the above regulations are required for any fiscal year during which costs covered by this agreement are incurred. The audit reports are to be submitted to

the Utah Department of Transportation, Office of Internal Audit, 4501 South 2700 West, Salt Lake City, Utah 84119-5998, within 180 days (6 months) of the close of the fiscal year.

The Division does hereby acknowledge its approval of the Federal Aid for the improvement of the airport. Upon receipt of federal funds under this agreement, the Division shall deposit said funds with the State Treasurer from which a state warrant will be issued to the sponsor.

The sponsor shall process and submit to the Division for its approval and/or execution all proper documents, including the project application, plan set, specifications, applications for payment and project completion documentation.

This Agreement shall remain in full force and effect until the present project for the airport development under Vision 100—Century of Aviation Reauthorization Act herein before referred to shall have been either substantially accomplished or abandoned by the Sponsor. It shall not apply to any subsequent or additional projects, nor to any program for development in which the United States does not participate financially.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures and official seals.

City

Mayor

(Date)

State of Utah
Department of Transportation
Aeronautical Operations Division

Director

(Date)

Attest:

Attest:

Recorder

(Seal)

Division of Aeronautics

TAB 3

CONTRACT

**FOR
SERVICES**

THE STATE OF: UTAH

COUNTY OF: WASATCH

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT FOR SERVICES ("Contract") is made on the date of countersignature, hereinafter specified, by and between the Heber City Corporation / ("City"), and ISI Water Company, a Texas corporation, with its principal office in Houston, Harris County, Texas (referred to herein as Water Company of America "WCA"). The initial addresses of the parties are as follows:

WCA
ISI Water Company
5215 Fidelity St
Houston, Texas 77029

City
Heber City Corporation
75 N. Main Street
Heber City, Utah 84032

WITNESSETH:

WHEREAS, the City desires to secure the performance of services of the highest quality by trained, skilled personnel; and

WHEREAS, WCA desires to provide such services in exchange for the fees hereinafter specified; and

WHEREAS, WCA has submitted various materials describing the proposed service;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms shall have meanings as set out below:

"Account" is defined as a particular Water, Wastewater, Stormwater and/or Solid Waste Service of the City. This definition includes all unauthorized taps discovered by WCA that previously had not been given an Account number by the City.

"Base Revenue" Is defined as the average of the monthly Account billings during the period of time when the Account experienced the problem and which immediately precedes the completion of the Work, for up to a twelve month period. By way of example, and not limitation, if WCA discovers a meter which has been broken for a six-month period, resulting in consumption of zero usage during such six-month period, the Base Revenue is zero, and shall not include in the Base Revenue average the preceding six-month period during which time the meter operated properly.

"WCA Share" is defined as the fee to be paid by the City to WCA for performance of duties under this Contract, computed in accordance with Section 5.02 hereof.

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"WCA" is defined in the preamble of this Contract and includes its successors and assigns.

"Customer Information System" (or "CIS") is defined as the system used by the City to bill and to account for customer activities.

"Contract Administrator" is defined as that person designated by the Director by notice to WCA, to administer this Contract on behalf of the City. This individual shall have a working knowledge of City protocol and operating procedures of the City, and shall have the authority and responsibility of administering all day-to-day aspects of this contract on behalf of the City.

"Director" is defined as the City's designated Utility manager who has ultimate authority and responsibility over this Contract.

"Documenting the Find" is defined as the notation by WCA on the Research report to the City or the approval of a submitted Formal Work Order.

"Find" is defined as the discovery by WCA of an Account condition, as the result of the Work, which causes a specific Water, Wastewater, Stormwater or Solid Waste Service to be improperly or inaccurately billed.

"Force Majeure" as used herein, shall include but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests, and restraints of government and people, explosions, breakage or damage to machinery or equipment and any

other abilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability.

"Increased Revenue" is defined as the amount of monthly income received by the City on an Account, over and above the Base Revenue, including any rate increases, subsequent to corrective action being taken on that Account, including both income derived from ongoing usage, as well as retroactive billing.

"Notice to Proceed" is defined as the written notification by the City to WCA to initiate Work. This notification shall be issued upon the successful conversion of Account data from the CIS by WCA. The date of the Notice to Proceed shall mark the initiation of the Contract Term.

"Research Report" is defined as the reports delivered to the City by WCA pursuant to Section 2.01 (C) (1) hereof.

"Water, Wastewater, Stormwater and/or Solid Waste Service" is defined as the physical location of a City consumer, both known and unknown to the City, which utilizes services provided by the City.

"Work" is defined as all of WCA's efforts towards determining needed changes and recommending the corrective actions necessary in order for the specific Water, Wastewater, Stormwater or Solid Waste Service to be properly and accurately billed.

"Work Order" shall be defined to mean that certain standard document that defines relevant information about a City Account that WCA has evaluated and determined to be defective.

ARTICLE II

Scope of Service

2.01 - Basic Service

WCA shall provide the investigation, Work Orders, and field services necessary to maximize the billable revenue for the City's utility Service.

- A) Investigation and Field Work
- B) Upon receiving the Account information described in Section 3.01 (A) hereof WCA shall:
 - 1) Investigate each Account and determine if there is a loss of revenue to the City associated with that Account.
 - 2) Submit Work Orders with recommendation for changes in billing procedures and/or changes in physical service. This information will be provided for each Account.
- C) Reports
 - 1) WCA shall provide to the City on a periodic basis a complete list of all Accounts researched on which WCA has identified potential increased revenues to the City. This Research Report shall be submitted for the purpose of "Documenting the Find" and WCA shall be entitled to its portion of the Increased Revenues on said Accounts (the WCA Share), if the Work Order(s) included therein are subsequently approved by the Contract Administrator.
 - 2) On each Account for which WCA has Documented the Find and the City has collected Increased Revenue, WCA shall provide a detailed report that quantifies Increased

Revenue prepared from the information received from the City in the monthly account data download. This report typically contains at least the following information:

- a) Work Order number
 - b) Account Number
 - c) Cycle counter (indicates progression through the revenue sharing period)
 - d) Amount of customer billing (from the download)
 - e) Base Revenue
 - f) Calculation of Increased Revenue
 - g) Calculation of WCA Share
- 3) WCA may provide the Contract Administrator a status report on a frequency agreed to by the parties. This report is to be inclusive of all Accounts that are deemed by WCA to justify action and on which a Work Order has been generated in the prior month.
- D) WCA warrants that all work shall be performed in a good and workmanlike manner meeting the standards of quality prevailing in the City ordinances for services of like kind. WCA further warrants that trained and skilled persons who have been previously approved by the City shall perform all Work.

2.02 - Services in General

WCA shall coordinate all of its activities herein described with the City, the Director, WCA Administrator, or their designated representative(s).

2.03 – Finds Exempted

In certain rare cases, WCA may discover a Find on an account of which the City has prior knowledge and is attempting to remedy. Such a Find being remedied by the City is exempted from WCA Work. These cases fall into two categories and require that WCA shall: 1) for a period of 60 calendar days from the date of the inception of a new Account problem that originates during the term of this agreement, refrain from submitting a Work Order related to that Find, and 2) for a period of 60 calendar days beginning at the Notice to Proceed date, refrain from submitting a Work Order for any specific account problem known to the City and made known to WCA, that the City is in the process of remedying.

It is agreed by the parties hereto that the purpose of this Section 2.03 is to define and agree to the period of time for the City to remedy new problems that it discovers, and/or to remedy known situations. This will minimize duplication of effort, thus keeping project resources focused on providing maximum benefit to the City.

ARTICLE III

City Duties, Data Records, Work Products, Etc.

3.01 - Certain Duties of the City:

- A) In addition to its other duties under this Contract, the City shall, to the extent permitted by law for each Account, promptly provide access to all the data and records in the possession of the City and provide copies of any documents in the possession or control of the City or available to the City which are requested by WCA and are reasonably necessary for WCA to perform its duties under this Contract. CSIS data shall be in two forms. First, a monthly download (transmitted via FTP or written to CD) of select fields of Account data generated by an automatic script or macro. Second, a VPN link to the

CSIS for the viewing and extracting of "real time" information. At no time will WCA be able to input a change or modification to an Account by way of this link.

- B) Upon execution of this Contract by all parties, the City will coordinate a post-award meeting with WCA and all designated management personnel representing the City under this Contract in order to fully explain all the aspects of this Contract.
- C) The City shall review all Work Orders submitted by WCA under Section 2.01 (B) hereof and within ten (10) working days of the date of submittal, the City shall advise WCA of the disposition of the Work Order request (approved or denied).
- D) The City shall timely implement the recommended corrective action identified in the Work Order once approved and notify WCA of this action once complete and the date of completion. Changes to account data such as billing code changes shall be accomplished within thirty calendar days. Should this not occur within the time frame specified, the City shall issue to WCA written notification of a fifteen day extension. Work Orders that involve changes to physical service shall be expedited with all reasonable haste. Both parties recognize and agree that the purpose and intent of the project cannot be realized until approved changes have been implemented and accounts are fairly and accurately billed. If account changes are not completed by the City within the time frames described, the City shall approve and pay an estimate of the WCA Share (ref 5.02 C).
- E) The Contract Administrator shall assist WCA in its dealings with any City department.
- F) The City shall acknowledge that WCA has Documented the Find pursuant to Section 2.01 (C) (1), by promptly entering the appropriate information related to the Account within the "CIS" System, or by whatever other method the City chooses. Once documented, the City shall not deny approval of a Work Order due to any action taken by the City during the approval process.
- G) Matters not specifically covered by this Contract will have procedures established by mutual agreement of WCA and the Contract Administrator.
- H) At all times, the spirit of this Contract will be upheld by both the City and WCA. WCA is performing a service to the City by increasing revenue to the City. The City has given WCA authorization to perform the defined duties of this Contract and will not hinder, restrict, delay or compete with WCA's performance of these duties.

ARTICLE IV

Indemnification and Insurance

4.01 - Indemnification

WCA hereby agrees at all times to defend, indemnify and hold the City harmless from and against any and all liability, losses or costs arising from claims for damages, or suits for loss or damage, including without limitation out-of-pocket costs and reasonable attorneys fees, which arise as a result of WCAs negligence or failure to properly perform this Contract, whether such claims are asserted before or after the termination of this Contract.

4.02 - Insurance

Throughout the term of this Contract, WCA shall carry and maintain the following insurance coverage with a company or companies reasonably satisfactory to the Director, and policies of insurance that meet the requirements of the State. The City shall be named as an additional insured on all such policies for this Contract, and the policy shall provide that the Director will be given at least ten (10) days notice in case of cancellation. Such insurance coverage shall have the minimum limits of liability in not less than the following amounts:

- A) Comprehensive General Liability Insurance including Contractual Liability:
Bodily Injury & Property Damage
 \$ 1,000,000 per occurrence
 \$ 2,000,000 aggregate
- B) Worker's Compensation with Employees Liability including Broad Form All States
Endorsement: \$ 1,000,000

ARTICLE V

Payment

5.01 - Limitation of Funds

Any and all fees due to WCA under this Contract shall be payable solely from the funds collected pursuant to this Agreement. WCA acknowledges and agrees that the City's liability for any and all payments hereunder shall be limited by this provision. No other funds are available nor will they be appropriated for the purpose of this Contract.

5.02 - Payment for Services

- A) If any Work performed by WCA to an Account results in Increased Revenues to the City, WCA shall be entitled to a WCA Share for such Work equal to 60% of all Increased Revenues (as defined in Article I of this Contract) for a term of 36 months thereafter, referred to in 6.01 TERM as Phase Two. The 36 month term may be suspended in the event that the account problem persists which eliminates Increased Revenue and restarted following remedy.
- B) Documentation substantiating and calculating Increased Revenue shall be reviewed and approved by the City within thirty calendar days of submission and thereafter processed for payment within the time frame stipulated by Statute. Interest on all amounts remaining unapproved and/or unpaid beyond the time frame stipulated by Statute shall accrue at a rate of 10% per annum until paid.
- C) If all of the data necessary to compute the WCA Share is not available in time to make such payment when due, or if the condition described in 3.01 D) occurs, the City shall approve a good faith estimate of such Increased Revenue and compute the WCA Share accordingly. Adjustments to such WCA Share shall be made on succeeding monthly payments after actual Increased Revenues are determined.

5.03 - Arbitration

The City and WCA shall promptly notify each other of any controversy which shall arise with respect to the computation of any payments or fees due to WCA hereunder. Each party shall act in good faith and shall make its best reasonable effort to resolve the dispute within thirty (30) days after receipt of any invoice disputing such payments or fees. In the event the parties are not able to resolve the dispute within such thirty (30) day period, the controversy shall be considered and resolved by majority vote of an arbitration panel ("Panel") consisting of three (3) persons selected and designated as follows:

1. The City shall within ten (10) days thereafter designate an independent certified public accountant which may be the independent auditors regularly retained by the City;
2. WCA shall within ten (10) days thereafter designate an independent certified public accountant which may be a certified public accountant regularly retained by WCA; and

3. The two (2) certified public accountants and/or independent auditors thus designated shall agree upon and promptly designate a third certified public accountant and/or independent auditor which shall not have then or previously had any significant relationship with the City or WCA.

The parties agree that the arbitration procedure provided above shall be the sole remedy for dispute of the payments or fees due WCA hereunder and shall be binding on the parties thereto; provided, however, in the event the City's certified public accountant and WCA's certified public accountant cannot agree upon a third accountant, or the Panel does not resolve the controversy within a reasonable period, not to exceed one hundred twenty (120) days from the date the independent certified public accountants are retained by the parties, either party may pursue any other remedy provided by law. Each party shall bear the expenses of its designated accountant, and the expense of the third accountant shall be borne equally by the parties.

ARTICLE VI

Term and Termination

6.01 - Term

The Contract term is initiated by the City upon the issuance of the Notice to Proceed. The term of the Contract is divided in two phases. Phase one is the operations period when WCA is performing the Work and shall continue for a primary term equal to thirty six (36) months. At the end of the primary term of phase one, the phase one term may be renewed for successive periods of twelve (12) months, upon written agreement of both parties. Phase two is the period of time, on a Work Order by Work Order basis, during which the WCA Share is determined (reference 5.02 A). Therefore the Contract Term is the total time from the date of the Notice to Proceed, through phase one, including any renewal periods, and including phase two which is the 36 month revenue sharing period for each Find approved by the City.

6.02 - Termination

Either party may terminate phase one (the operations period) of this Contract by giving a thirty day written notice to the other party of the intent to terminate. The City agrees that for three (3) years after termination of this Agreement, however brought about, the City shall, during normal business hours, provide WCA with access to and the determination of fees and payments owed to WCA hereunder.

6.03 - Earned Fees

The duties and obligations of the City to pay WCA under the terms of Article V shall continue in full force and effect as outlined therein and shall survive the completion of phase one (the operations period) of this Contract.

ARTICLE VII

Miscellaneous Provisions

7.01 - Independent Contractor

The relationship between WCA and the City shall be that of an independent contractor.

7.02 - Business Structure and Assignments

Other than by operation of law, WCA shall not delegate or assign any portion of this Contract without the written consent of the Director, which shall not be unreasonably withheld. WCA however may assign any portion of its WCA Share under this Contract. Before an assignment of this sort can become effective, WCA shall furnish reasonable proof of the assignment by providing a notice to the Director containing the following information: a) the name, address and telephone number of WCA with clear reference to this Contract; b) the name, address and telephone number of assignee; and c) the identity of the fees to be assigned. If reasonable proof as described above is not provided to the Director, the City may continue to pay the assignor.

7.03 - Subcontractors

WCA may subcontract any part of its performance under this Contract with the approval of the Director or Contract Administrator. Any subcontractor shall be treated under the Contract as if they were employees of WCA, except in regard to fees.

7.04 - Parties in Interest

This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and WCA only.

7.05 - Non-waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on or to enforce by any appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.06 - Applicable Laws

This Contract is subject to all laws of the State of domicile of the City, the City Charter and Ordinances of the City, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body having jurisdiction.

7.07 - Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Services post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have therefore prescribed by notice to the sending party.

7.08 - Equal Employment Opportunity

WCA will comply with all laws, ordinances and policies set by the City in reference to Equal Employment Opportunities.

7.09 - Force Majeure

In the event either party is rendered unable, wholly or in part, by Force Majeure to perform under this Contract, it is agreed that, upon such party's giving notice specifying such Force Majeure in writing or by telefax to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to cure the Force Majeure and resume performance at the earliest practicable time, shall be suspended during the continuance

of the Force Majeure, but for no longer extended by the period of time during which either party was unable to perform its obligations hereunder as a result of the occurrence of a Force Majeure.

7.10 - Approvals; Authority

An approval by the Director, or by any other instrumentality of the City, of any part of WCA's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. No party is authorized to vary the terms of this Contract.

7.11 - Remedies Cumulative

The rights and remedies contained in this Contract shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided however, that none of the parties shall terminate this Contract except in accordance with the provision hereof.

7.12 - Representations

- A) WCA represents that it and its employees, agents and subcontractors are fully competent and qualified to perform all the service required to be performed under this Contract. WCA represents that it has experience in performing all of the services to be performed hereunder and these services shall be of the highest professional quality.
- B) The City represents that it is a duly authorized and empowered to enter into this Agreement and to carry out its obligations hereunder. By proper action of its members, the City has duly authorized the execution, delivery and performance by this Agreement.

7.13 - Captions

The captions at the beginning of the Articles of this Contract are guides and labels to assist in location and reading such Articles and, thereto, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

7.14 - Personnel of WCA

WCA shall replace any personnel assigned to provide services under this Contract which are deemed unsuitable by the Director or Contract Administrator.

7.15 - Entire Agreement

This Contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

7.16 - Amendment

This Contract may be modified or amended by written agreement signed by all parties hereto.

7.17 - Exclusive Contract

WCA shall have the sole and exclusive franchise, license and privilege to provide the services described in this Contract within the bounds of the Contract service area.

Witnesseth:

WCA

ISI WATER COMPANY

By: _____

Title: _____

Date: _____

CITY

HEBER CITY CORPORATION

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

TAB 4

HEBER CITY COUNCIL

Meeting date: September 18, 2014

Report by: Anthony L. Kohler

Re: Cove at Valley Hills Open Space Abandonment Ordinance

As part of the approval of the Cove at Valley Hills Phase 1-C, the open space is considered a lot in the existing subdivision, and must be abandoned if Phase 1-C is platted in its stead. The County Recorder requires this ordinance as per Section 10-9a-608 of the Utah Code.

Heber City does not have an ordinance requiring open space within the R-1 Residential Zone. Black's Law Dictionary, Eighth Edition, defines "Open Space" as "undeveloped (or mostly undeveloped) urban or suburban land that is set aside and permanently restricted to agricultural, recreational, or conservational uses. The land may be publicly or privately owned. Access may be restricted or unrestricted. Open spaces are not necessarily in a natural state: the term includes land used for public parks, gardens, farms, and pastures. But it does not include structures such as parking lots, swimming pools, or tennis courts."

The Wasatch County Assessor recently verified that for the past 13 years since the plat was recorded, the "Open Space" on the plat has been classified as Exempt, and therefore no property taxes have been levied or paid. The Assessor indicates that if the property is now deemed developable, the property will be taxed, with the potential requirement of back taxes being owed for the past 5 years.

Also, adjacent property owners have stated to the Council that they relied on representations (before they purchased property) that the property would remain as perpetual open space.

RECOMMENDATION

Because of the definition of Open Space being "Permanent" in Black's Law Dictionary, the County Assessor has not levied taxes on the property for its status as Open Space, adjacent property owners that indicated that it was represented that the property would remain as perpetual open space, the City Council may consider continuing the item, and requesting the petitioner obtain an opinion from the Property Rights Ombudsman as to whether the property meets the requirement for perpetual open space and/or whether the City can reject approval of the proposed subdivision because the open space is required to be preserved.

ORDINANCE NO. 2014-17

AN ORDINANCE ABANDONING A PORTION OF THE OPEN SPACE PARCEL WITHIN THE COVE AT VALLEY HILLS.

BE IT ORDAINED by the City Council of Heber City, Utah, that pursuant to Utah State Code, Section 10-9a-609 (3), the 2.03 acre Open Space Parcel within the Cove at Valley Hills Subdivision is hereby abandoned.

All subdivision requirements, development agreements, and obligations applicable to the development of the Open Space Parcel of the Cove at Valley Hills Subdivision shall remain in full force and effect.

Legal Descriptions: Open Space Parcel

Tax ID Numbers: 0CV-00PN-0-029-035

This Ordinance shall take effect and be in force from and after its adoption.

ADOPTED and PASSED by the City Council of Heber City, Utah this _____ day of _____, 2014, by the following vote:

	AYE	NAY
Council Member Robert L. Patterson	_____	_____
Council Member Jeffery Bradshaw	_____	_____
Council Member Erik Rowland	_____	_____
Council Member Heidi Franco	_____	_____
Council Member Kelleen L. Potter	_____	_____

APPROVED:

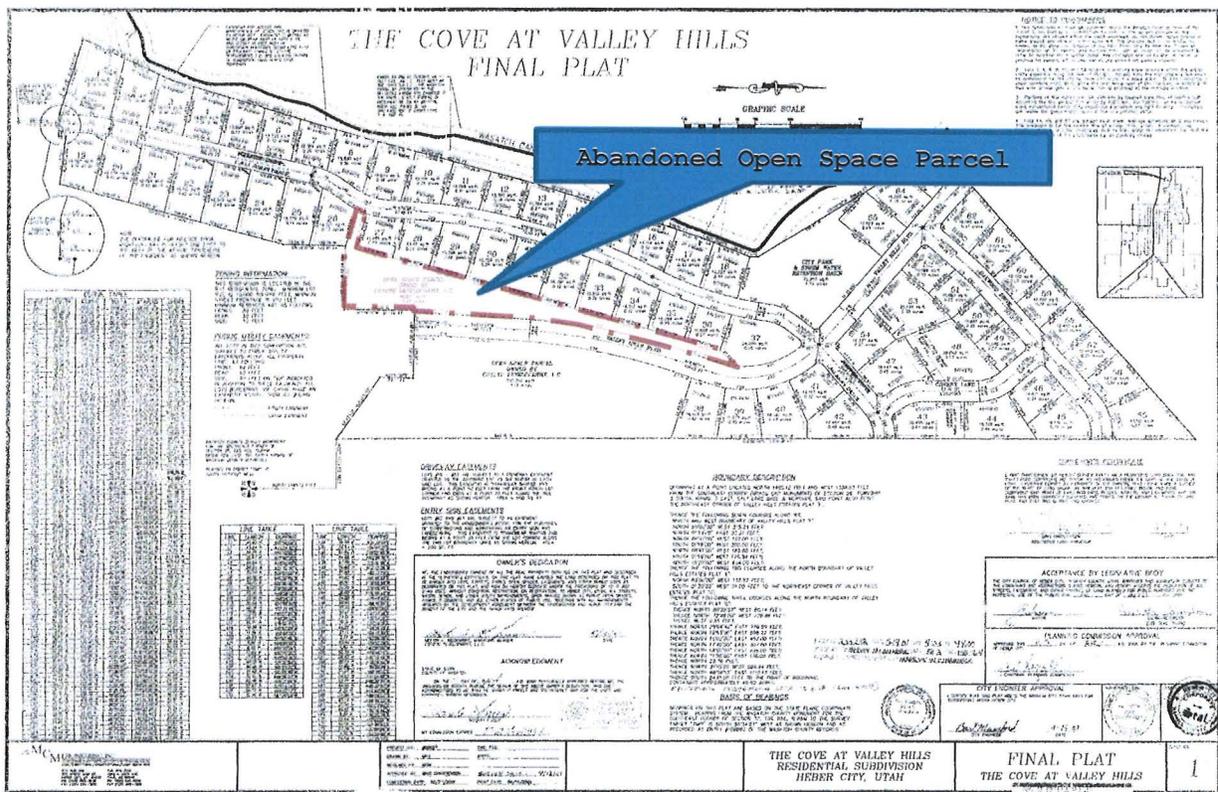
Mayor Alan W. McDonald

ATTEST:

Date: _____

RECORDER

DATE OF FIRST PUBLISHING: _____



TAB 5

HEBER CITY COUNCIL
Meeting date: July 17, 2014
Report by: Anthony L. Kohler

Re: The Cove at Valley Hills Phase 1-C

Coyote Development LC has applied for subdivision of the remaining property within the Cove at Valley Hills Subdivision to the west of Valley Hills Boulevard. The proposal creates two (2) new building lots. The subdivision is located within the R-1 Residential Zone, requiring 100 feet of frontage and 10,000 square feet.

Section 10-9a-606 of the Utah State Code indicates that common area is owned in common by the subdivision unless specified differently on the plat. The existing plat identifies the property as "Open Space Parcel Owned by Coyote Development, L.C.", meaning the property is owned by a private party. The city does not, and did not have at the time of development, an ordinance that requires open space dedication. The city did not at that time and does not have a requirement that lots have slopes less than 30 percent. While the property has slopes of 30 percent, there are locations that are less than 30 percent slope and a geotechnical report was conducted on the property in 1994 by AGEC that indicates the property is located upon stable soils. The report provides recommendations for foundations, drainage, and grading for the lots, particularly to avoid problems with ground water.

RECOMMENDATION

On June 26, 2014, 3 Planning Commissioners voted for the subdivision and 2 voted against the subdivision. The Planning Commission struggled with their vote for much of the same reasons expressed in past meetings (see attached minutes). Residents of the surrounding lots expressed concern that the proposed two western lots would be hazardous, block views, and was not ethical because the original plat showed that area as "open space". However, the Planning Commission could not find that the proposed subdivision violates any provision of Heber City Code and therefore recommended approval of the proposed subdivision as consistent with the Municipal Code, conditional upon the following:

- 1) Developer install fire hydrants along Valley Hills Blvd. so that each lot is within 250 feet of a fire hydrant;
- 2) Developer install necessary utilities and laterals to each lot;
- 3) The water tank and accompanying easements be dedicated to Heber City prior to the plat recording; and
- 4) Developer address what becomes of the remainder of property to the rear (east) of the Cove at Valley Hills Lots 32-36.

10-9a-606. Common or community area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.

(1) (a) A parcel designated as a common or community area on a plat recorded in compliance with this part may not be separately owned or conveyed independent of the other lots, units, or parcels created by the plat unless:

(i) the parcel is being acquired by a municipality for a governmental purpose; and

(ii) the conveyance is approved by the owners of at least 75% of the lots, units, or parcels on the plat, after the municipality gives its approval.

(b) A notice of the owner approval described in Subsection (1)(a)(ii) shall be:

(i) attached as an exhibit to the document of conveyance; or

(ii) recorded concurrently with the conveyance as a separate document.

(2) The ownership interest in a parcel described in Subsection (1) shall:

(a) for purposes of assessment, be divided equally among all parcels created by the plat, unless a different division of interest for assessment purposes is indicated on the plat or an accompanying recorded document; and

(b) be considered to be included in the description of each instrument describing a parcel on the plat by its identifying plat number, even if the common or community area interest is not explicitly stated in the instrument.

December 11, 2008 Planning Commission Minutes

Item 1 Public Hearing to consider an Amendment to The Cove at Valley Hills-Phase I Subdivision Plat located along Valley Hills Boulevard and Calloway Drive:

Chairman Rawlings asked Allen Fawcett to discuss the background of the plat. A plat map was shown on the overhead and the four proposed lots were shown. Originally, the area was designated as open space that was to be maintained by the homeowners association. Now, in the open space was a water tank, and a dialog had begun with the developer and Heber City so the City could acquire that water tank parcel.

Stacie Ferguson, MCM Engineering, was asked to briefly describe the proposal. She explained some lot owners owned part of the open space and the County Recorder had asked for an amended plat to recognize the changes. The water tank also required that an easement be given to the City. There was more discussion of different aspects of the plat map. Mumford stated that he discovered a couple years ago the City had built the water tank and never got the land deeded to them.

Michelle Kellogg, Deputy City Recorder, read the public hearing notice. Chairman Rawlings then opened the public hearing to public comment.

Tara and Dave Lundberg: Mrs. Lundberg said they own Lot 29 in this subdivision. She read a letter from her neighbor, Robert Mills, of which the Commission had received a copy. Lundberg stated she bought her property three years ago and would not have chosen that lot if she had known another house would be built right on top of hers. She talked to an attorney and he said if there was no language pertaining to the future use of the open space on the plat map, it should not change. She had discussed her concern with another partner of Coyote Development who said he did not think that was a buildable area. Lundberg also commented that safety was another issue for this steep of a hillside. She pointed out that it didn't make sense to offer new lots when the current lots still haven't sold. She discussed other reasons why she didn't want this plat amended.

Steve and Suzanne Norman, 1530 North Calloway Drive: Mr. Norman stated his concern over the danger and the lack of privacy if the amended plat was approved. He also said he would not have bought his property if he had known the open space would disappear. He felt the developer was greedy and he was prepared to hire an attorney if need be.

Mia Kent: She stated that she and her husband owned Lot 30 and she read a letter from her neighbor, Valerie Kamdar. Kent had talked with many of her neighbors and they all felt that they had been deceived. She asked why this area was now considered buildable when seven years ago it was not. She asked if there was a requirement for a certain amount of open space per development. It was determined that for this subdivision there was no minimum open space requirement. She also inquired why certain lots were given the option of acquiring the open space behind them, yet others were not.

With no further comments from the audience, Chairman Rawlings closed the public hearing portion of the meeting and the Planning Commission began its discussion. Chairman Rawlings asked Ferguson about the corridor between Lots 26 and 27. Ferguson said that area was for future water, sewer and power lines as the developer had always planned to develop the open space at a later point. Chairman Rawlings asked if it was legal to amend a final plat. Fawcett said plats have been amended but it was very rare to amend and develop open space. Ferguson clarified that the driveways to the proposed lots would come off Calloway Drive.

Commissioner Webb commented that as a homeowner, he would not be happy with designated open space being turned into homes. It was very deceptive to market land as open space and then come back to try to develop it. It was also not intelligent to have the developer owning the water tank. Many things went wrong with this subdivision that needed to be corrected.

In discussing the proposed Lot 67, Fawcett said a well was required because the house would sit too close to the water tank. Mumford said the City could not currently service any of the proposed lots with water because of the lack of water pressure. If the lots were approved, the City would require that no homes be built until the City could adjust the water pressure, which could take a couple of years.

Commissioner Hansen said he was concerned with the geotechnical report, which left a lot of questions. Jason Boal showed a slide of the steepness of the slope of the proposed lots. Ferguson stated that although the hill was steep, the subdivision above it had the same steepness and homes were on those lots. Chairman Rawlings asked if the proposed amended plat was not approved, would the owners have the option of purchasing the open space behind their homes. Ferguson said she was sure the developer would like to talk with those owners. It was clarified that there was no Homeowners Association (HOA) but the open space was maintained by Coyote Development. There was discussion on the HOA in the CCR's. The HOAs only function was to review building plans. There was more discussion concerning the proposed lots.

Commissioner Thurber read the Planning Commission minutes of June 22, 2000 which stated the recommendation for open space. "Paul Royall commented that the City does not want a dedication of open space; the open space must be run by a homeowners association or something. Mr. Johnston suggested that the City specify what is defined as open space and what the City wants as open space. Mr. Johnston stated that the developer would prefer to extend the lots and eliminate the open space; the only reason open space is shown on the plan is to meet the hillside ordinance."

Commissioner Zane motioned to recommend approval of the amendment to the plat with the exception of lots 66, 67, 68, and 69 (leave the open space). The other adjustments would remain. The motion died for lack of a second. Councilmember Patterson asked about the hill eroding down on all the sidewalks in the area. It was stated that the owner said he would put retaining walls with the amendment. The water tank was also discussed. Mumford said the water tank needed to be deeded and an access easement put in place, which the owner told him would be done with the plat amendment.

Commissioner Thurber also read the City Council minutes taken February 1, 2007 which stated, "Councilmember Lange asked if mesh nailed into the hillside, like on University Boulevard in Provo, would be sufficient to help the problem. McQuarrie said the mesh was for vegetation and did not think it would help in this instance. He said he would get with Mumford and get this issue resolved to make the slope less steep and peel some of that off so it wouldn't slough off so much." It was discussed that this never happened.

Fawcett referred to Ferguson for options. She said if the upper two lots were approved, a retaining wall would be put in that would keep the hill from sloughing.

Commissioner Webb said something needed to happen to get the problems resolved. He felt this issue should be tabled. Coyote Development needed to get with the City and determine how to resolve the access issue of the water tank. Mumford clarified that the amended plat would give the City the deed and the access easement to get to the tank.

Commissioner Webb motioned to recommend approval of the amended plat with exception to Lots 68 and 69, which would be left as open space, with a requirement for a retaining wall in front of Lots 66 and 67 and detailed notes placed on the plat regarding Lot 67, which needed its own well. Approval would also be contingent upon staff and engineering requirements. Lots 32 through 36 needed to be aware of this amended plat to verify that they wanted those parcels behind their property. The developer would also be required to give an access easement to the water tank and a deed for the land under the water tank. Approval would also be contingent upon resolving the open space area which included proposed Lots 68 and 69 so as to no longer be owned by Coyote Development. Commissioner Zane seconded the motion.

The definition of common area was discussed. Kohler said open space should be commonly owned by all the owners of the plat. Commissioner Nelsen asked if a property owner, in this case Mr. McQuarrie, needed to take care of his property. Boal said it was hard to enforce undeveloped property. The City could enforce garbage on property, slough on sidewalk, etc.

Voting Aye: Chairman Rawlings and Commissioners Zane, Hansen, Webb, and Thurber. Voting Nay: Councilmember Patterson and Commissioner Nelsen. The motion passed.

February 19, 2009 City Council Minutes

Stacey Ferguson/Mel McQuarrie – Requesting Approval of Amended Plat – The Cove at Valley Hills – Phase 1 Subdivision located along Valley Hills Boulevard and Calloway Drive (Tab 2): Mel McQuarrie indicated he did not attend the Planning Commission meeting when this was presented. He said some of the issues and history were not presented to them and he wanted to bring those things to the attention of the legislative body. He said he would like the Council to approve the plan as originally presented. He indicated he had left open space on the original plat purposely in case that could be developed at some time. He talked about how water could be brought to that area. Discussion about different plats and plans that had been brought before the Council at different time. He talked about the Planning Commission recommendations over the years. He said he had been working with staff for some time on how to clean slivers of land up and how to make everyone happy. However, he said he wanted to protect his own property rights as well. He said he had agreed to give the City the property rights to the tank and he also agreed to give another access. He continued that what he was willing to do additionally, along the back area of the property owner's lots, (he pointed out on the overhead the area he was referring to) was to engineer fill those areas with a 3" minus gravel, build retaining walls and bring those up to grade so that when the lots sold, the chances of that area being disturbed would be minimal. He said some property owners wanted the additional land and he had no problems with that. However, if they didn't, he would extend the one large lot to

include that long sliver of land. If the Council did not want to proceed this way, he would want to go back to Planning Commission.

Mayor Pro Tempore Bradshaw asked Kohler to give a summary of how he viewed the situation and what should be done. Kohler said this was a fairly old development. (Recorded in 2001) He said he had looked through the minutes to see why there was open space. The minutes reflected that Paul Royall and the Planning Commission felt strongly at that time that open space should be privately held instead of held by the City. Consequently, Coyote Development had held on to that and, even though it was open space on the recorded plat, the open space was held by the developer and not the property owners. He said that even though the plat outlines open space, that does not mean it will stay that way for ever.

Kohler said McQuarrie had approached the City last year about what to do with this land. He said there were a lot of issues with this. He talked about ownership of the land the water tank was on and access to that water tank. Another issue was a steep embankment which kept sluffing off onto the sidewalk and a retaining wall needed to be built to secure that. He said the west side slopes were steep and the neighbors had concerns that rocks would fall onto their homes.

Kohler said the Planning Commission recommended the two lots to the west be removed and kept in open space but McQuarrie wanted four lots. If four lots were built, fire hydrants were needed, steep slopes had to be dealt with, and water tank issues needed to be solved. It was pointed out the lot closest to the tank could not be served by the tank and would have to be served by a well. He suggested the Council had two options; agree with the Planning Commission recommendation or go back to Planning Commission and work out issues with neighbors. Councilmember Hokanson suggested that seemed to be the best option--that is what the Planning Commission was for. Mayor Pro Tempore Bradshaw said if there were issues that were not brought up and still needed to be resolved, this issue should go back to the Planning Commission.

Councilmember Patterson said the Planning Commission went over and over this. He did not agree with McQuarrie when he said the Planning Commission was influenced by neighbor clamor. Kohler said McQuarrie felt the more fair way was to go back to the Planning Commission. Councilmember Straddeck asked if McQuarrie wanted to be able to mitigate the issues, why even come to the Council. Kohler said the Planning Commission had given a recommendation to the City Council and this was the next step. He said the Council could send it back to the Planning Commission or act on the recommendation of the Planning Commission. McQuarrie said what he wanted was due process and wanted the neighbors to have the same. He said he asked what the process was and he was told this was the correct process. He wanted everyone to win on this, himself, neighbors and the City.

Tara Lundburg - owner of home on lot 29. Lundburg said her first concern was open space. She said they bought the land based on the final plat and that plat showed open space--there was nothing on there that said open space for future development. She said they would not have bought that lot if they thought there was a chance there would be homes built on that open space. She pointed out the land had not changed and she did not think McQuarrie had a right to say it was safe now when it was not before. Her second concern was safety. She wanted anyone voting on this to come and look at it to see how steep it was and the big boulders that were there. She said she was afraid for her children if there was development in the area because of the possibility of those boulders getting loose and falling. She said, too, that it did not make sense to approve an amendment to this area when there were so many lots left in The Cove. She talked again about sluffing off of land, boulders, and privacy issues. Lundburg said this had been discussed for two hours with the Planning Commission and their recommendation was before front of them now. She quoted Planning Commissioner Zane as saying the Planning Commission needed to do what was right. She said Planning Commissioner Webb made the recommendation and felt the developer was holding the water tank as hostage over the City. Lundburg had minutes from 2007 where she felt promises were made and never kept by McQuarrie and she hoped the Planning Commission recommendation would be upheld. She questioned how many times a developer could go back to the Planning Commission until they finally got what they wanted. She said they were asking, as members of the community, to

do what was right. She pointed out that Mayor Phillips was always saying the Council represented the community. So, “put yourself in our shoes and do what is ethical and fair.”

Councilmember Straddeck asked Mrs. Lundburg to rank her concerns from highest concern to lowest concern. She said her biggest concern was safety.

Rob Mills - Lot 28 - the home right next to the Lundberg home. He said the real issue for him was open space. He said he loved the subdivision but he thought he was buying with open space around him and said open space was space not to be developed. His understanding when he bought the lot was that the open space would not be developed. The biggest reason he chose that lot was the open space, the privacy it afforded, the deer that walked there--if the proposed lots were approved, that would go away. He said, too, there were some safety issues. His house had been struck by a tire off of Valley Hills Boulevard that illustrated there was quite a slope there. As he worked in construction, he knew the excavator would be careful, but how do you keep the big boulders from rolling down and hitting their homes. His biggest concern was he thought he was getting something that it now turns out he may not have. He thought he knew what open space was.

Steve Norman - 1540 Calloway Drive Lot #27 – purchased the lot three years ago. The primary reason for buying that lot was they thought they had open space around them and had that not been there, they would not have purchased that lot. They looked at a final plat map--not almost final or tentative, but final. Nothing said the developer could come back and develop what was deemed open space. He said that when this went before the Planning Commission they asked Ferguson why the four lots were not covered in the final plat. She said the lots were not capable of being developed. He asked if they felt that way four years ago, then what had changed because the land had not changed.

Mia Kent - Lot 30. Felt the same as last two gentlemen. They bought the house rather than built. They came to the City and asked if they were sure this would be open space. She discussed the minutes from meetings that were attended by developers and there was discussion about whether the City could maintain the open space, other minutes talked about the water tank, but never in any of those meeting minutes, did they talk about development of the open space. No one had indicated what had changed on those lots that would make them developable now. They all feel deceived. None would have bought those lots if they had known the open space would be developed. She did not think this issue should go back to the Planning Commission and she was hoping the Council would agree with the Planning Commission and keep two lots out of there.

Dave Lundberg – The developer had a lot of time to plan for this meeting and the land owners had a very short time to prepare. He believed everything had been presented already and he encouraged the Council to accept the recommendation of the Planning Commission and move forward.

Councilmember Horner said it appeared that one of the questions was what had changed from 2001 to today as far as the lots being buildable now. He asked Kohler to address that. Kohler said from his recollection there was nothing in the minutes that indicated those lots could not be built on. He also reviewed the Code and said, as far as he knew, there had been no changes to the R-1 or Sensitive Overlay Zone. He suspected in the original subdivision either the Planning Commission or developer felt the land was undevelopable because of steepness. However, that was not in the minutes and was only his opinion. In his mind nothing had changed. Kohler said this was not a unique situation. It happened in Timberlakes, here and other places. The legislature made an amendment to the law in about 2003/04 and it addressed ownership of open space. The law says open space, as shown on a plat, was designated to land owners unless designated differently. On this particular plat, the open space was designated to Coyote Development. He said he looked in the Code and could not find anything that dictated this open space stay open forever. However, the Planning Commission did ask for a Home Owners Association to be developed so it appeared they wanted it to stay open; but, it was clear they did not want the City to own the open space. Whether the City owned it, or an HOA owned it, or lot owners themselves owned it, or Coyote LLC owned it, didn't matter but there needed to be conservation among everyone and the land needed to

be deed restricted--otherwise it was not permanent open space. He agreed the plat indicated open space and that was deceiving, but if it was privately owned, it does not mean it will stay open space forever.

Mayor Pro Tempore Bradshaw asked Mumford about the buildability of the lots. Mumford said the lots could be served by sewer and water except the one lot would have to be served by a well. Conceptually whatever was decided, the engineering for the utilities could be done. He indicated that was why this could not be approved tonight because he did not have drawings to review. Councilmember Hokanson asked about the slopes. Mumford said the Planning Department had indicated they could be built on. Kohler said they looked at the Code and there was a requirement for a geotechnical study. A geotechnical study in 1997 indicated the area was stable. It was pointed out that one problem with the area was that there may have to be some blasting and there was difficulty with using a back hoe. Mumford said regardless what got approved, there were some conditions outlined in the Planning Commission recommendation. One was that improvements go in on some other parts of the City so there would be adequate water pressure in Valley Hills and without those improvements, a building permit could not happen.

McQuarrie reviewed that in 2001 the discussion was to give the open space to the City. But the final decision was to not have the open space dedicated to the City. He said he had engineered the lots so that it was reasonable to build on them. What had changed was at that time they were still developing lots in other phases and as the property owner, he had the right to develop the land. He said another thing that changed was the State had changed the law on slopes.

McQuarrie said he wanted to address the concerns of the neighbors and he thought the proper way to do that was to go back to the Planning Commission. He indicated he had done everything he had been asked to do.

Councilmember Straddeck talked about voting on the final plat with the idea of open space. To him that was the intention and regardless if it was City property or not, it was approved thinking that area was open space. What was fair and equitable was to allow both parties to address each other. If the developer had been presented issues that he had not been able to address, he should be able to address them. He addressed the current home owners who had concerns and wanted to put this to bed. Councilmember Straddeck said the reason he was actually on the City Council was because of a back yard issue that affected him which was a bypass road 20 feet from his house. He said the process went back and forth for two or three months. That was part of the due process so he hoped they would continue to be involved. He said his personal opinion was that the Planning Commission needed to hear the mitigating factor affecting safety that the developer had to present. If safety factors could not mitigate those issues, he felt the issue was mute. However, if they could be mitigated, it should come back to City Council and the City Council could move forward and face the open space issues.

Mayor Pro Tempore Bradshaw said the Council had the following options:

1. Approve the recommendation of Planning Commission
2. Go against Planning Commission recommendation and approve all four lots
3. Send the issue back to Planning Commission
4. Continue it and get better acquainted with the issue
5. Throw the whole thing out
6. Combination of some of the above

Councilmember Hokanson moved to approve the recommendation of the Planning Commission. Mayor Pro Tempore reiterated the recommendation of the Planning Commission was to approve lots 66 and 67.

Councilmember Patterson made the second. Anderson asked if there was a final plat that incorporated the recommendations of the Planning Commission that was approvable. Mumford said no. Councilmember Horner said that what the Planning Commission recommended was a two-lot approval and because the City did not have a final plat to approve, he did not think this could be approved. Discussion about the motion and how to move forward. Mumford said Coyote had to do the remaining work. Councilmember Hokanson amended her motion to continue the approval process of the Planning Commission's recommendation. Councilmember Patterson made

the second on the amended motion. Councilmember Horner wondered what would happen to the other two lots-- what could the home owners do to protect the lots from not being developed. Mayor Pro Tempore Bradshaw said he understood that if those two lots were still in the name of McQuarrie or his company, nothing would prevent him from coming back to develop those two lots; however, he thought that was a separate issue. Councilmember Hokanson informed the property owners that this issue might come up again. She personally felt the only reason this issue was before the Council was because of the decision on open space made at the time the subdivision was approved. She said she probably would have been on board with the decision at the time which was that Heber City not take over the management of the open space. But now the Council was in a situation where the HOA was not formed and established and that left the open space in question and the developer had the opportunity to come back and develop those lots. Councilmember Hokanson felt it was intended this area be open space and that the only reason the City did not want the open space was maintenance responsibilities.

Mike Thurber pointed out that in the motion made at the Planning Commission level, there were several things that needed to be done—Mumford get the revised plans, only two lots be built on, the other two lots were not to be built on and remain open space and listed as such on the plat, and water tank right-of-way issues resolved were just a few.

Councilmember Horner said he felt for all parties as all had property rights. He thought there could be a chance for the developer and property owners to come to terms. Regardless of the intent, the property belonged to Coyote Development. He suggested that maybe Heber City should own the open space. He suggested that if the concerned property owners were not willing to buy the development rights or if Heber City was not willing to buy development rights, then McQuarrie was not made whole. Councilmember Horner felt this issue should be sent back to the Planning Commission.

Anderson asked if the motion included resolving that property as open space as recommended by the Planning Commission. Councilmember Patterson indicated, yes. Anderson asked if that meant the City would negotiate and try and purchase the property. Councilmember Hokanson said not necessarily but to work towards a resolution. Councilmember Horner suggested either the City had to own it or the property owners had to own it. Councilmember Hokanson suggested resurrecting the idea of an HOA. Anderson said if the City, McQuarrie and property owners could come up with a solution that would be great but absent that, if McQuarrie could show he met the ordinance, the City could not withhold approval of those lots being developed unless there was some countervailing public interest that was not being served. (not mitigating safety issues or other legitimate concerns)

Mayor Pro Tempore Bradshaw called for a vote on the amended motion to continue the approval process of the Planning Commission's recommendation.

Voting AYE: Councilmembers Bradshaw, Hokanson and Patterson. Voting NAY: Councilmembers Straddeck and Horner.

September 10, 2009 Planning Commission Minutes

Item 1 Coyote Development requests a Lot Split / Small Lot Subdivision of the Cove at Valley Hills Phase 1-C, Lots 68 and 69, east of Lots 27 through 31

Allen Fawcett presented information on the request and related information from December 2008 when a public hearing had been held by the Planning Commission on Coyote Development's request to amend the Cove at Valley Hills – Phase 1 Subdivision Plat. One requested amendment to this plat was to Lots 68 and 69, which had been designated on the original final recorded plat as open space. Amendment of these lots had not been approved in December 2008 at Planning Commission or in February 2009 when

the proposal went to the City Council. A photograph was shown on the overhead of the lots and homes along Callaway Drive and Valley Hills Boulevard. The proposal on tonight's agenda was to bring driveways to Lots 68 and 69 from Valley Hills Boulevard above. The photograph showed the slope. There were questions and answers on the slope gradient. It was determined that contiguous to Valley Hills Boulevard where fill had been brought in to construct the road the grade was higher, possibly up to a 70% slope. Anthony Kohler noted that Stacie Ferguson had submitted a slope map generated by MCM Engineers in December 2008 and the area of the slope located below fill areas was around a 25% - 35 % grade. Commissioner Webb arrived to the meeting at 7:38 p.m. Allen Fawcett conveyed that some of the homeowners living on Callaway Drive below Lots 68 and 69 were concerned with the safety issues involved with the slope and the vulnerability of their lots below from rocks either during building of the driveways or any time after that; he believed that the last time this was discussed there had been some discussion about a retaining wall and some questions as to whether this would be adequate. He felt those issues were appropriate to bring up tonight.

Options for placement of homes and driveways on Lots 68 and 69 were discussed. Fill could be used to bring the front of the house to street level, the driveway would be level and the homes would appear to be a rambler from the street, the downhill side of the homes would be two to three stories deep. The other option would be to leave the slopes as they are, the driveways would be steep and the most visible portion of the homes from the street would be the rooflines.

Mel McQuarrie expressed that he thought the main concern voiced at the City Council Meeting February 19, 2009 was the safety issue of slope and rocks. He stated that his recommendation at the time had been for engineered fill to bring to street grade and that this was his intent. He explained how they would control the fill with an engineered fill, typically a three-inch rock, so if the lot is sold to somebody or if they choose to develop it, it is compacted and it is ready to go to help alleviate some of the concerns of the neighbors behind. He indicated they had come up with an engineering plan for the City Engineer. His intent was for the homes to be on street grade. Mr. McQuarrie showed a photograph of an existing home built in this manner on the overhead. Mr. McQuarrie discussed the engineering of the building pads indicating they felt a retaining wall, or smaller, stepped retaining walls with landscaping would produce a much bigger building pad, which was what he wanted to do. He stated, "Originally in the design when we did this subdivision this, the whole intent of leaving this right here this easement was to bring the sewer down through here (he indicated where) to develop this part. We've actually--originally (we) were going to slice it up into more lots with these kind of -- we think it's better served to have some bigger lots and you can make some better lots and hopefully better homes when it's done it's something you can work with."

Commissioner Hansen felt if there were stepped, landscaped walls it would not look quite as objectionable to the neighbors below. Mel McQuarrie agreed but indicated that he also did not want children jumping off of it and hurting themselves either. They both agreed that a six foot wall would be acceptable. McQuarrie concluded that he felt they meet the code and would like to submit engineering plans to confirm what he had just spoken about and he is seeking the Planning Commission's approval.

Bart Mumford reiterated information from the engineering staff report. He indicated that they had been discussing conceptually, relating to utilities the sewer would be served through the "fingers" access on Callaway Drive and one would be served from above. Before going to the City Council for approval the Petitioner would need to proceed and get an engineered drawing to show these utilities. He pointed out there is no sidewalk on the west side of Valley Hills Boulevard because of the steep slopes there and

unless there is a recommendation requiring sidewalk there they would not anticipate placing sidewalk there due to the steep slopes. There was discussion on the sidewalk on the east side of Valley Hills Boulevard. The Commission had questions as to whether debris was still coming down the hill slope on the east side onto the sidewalk. Bart Mumford replied that this was still an issue. Commissioner Hansen communicated that his understanding was that this would be taken care of when the other lots (the upper lots requested for approval in December) were approved and Councilmember Patterson agreed that this was his understanding as well.

Mel McQuarrie disclosed that the Planning Commission had recommended denial of the entire subdivision that was before them and it had been approved with modifications (by the City Council). He indicated with the approved plat it is specified to put that wall in and the sidewalk is wider on that side and was designed that way because they did not plan to put sidewalk in on the other side of the street and that when the wall goes in it would be less maintenance. Commissioner Hansen asked when the wall would go in. McQuarrie answered, "We would like to get approval of this and we would like to get a building (permit) and we would like to construct it all as one. So when we construct it that's, well, we'll get it in there." Chairman Rawlings asked Councilmember Patterson if he recalled if the approval of the two (upper) lots was contingent upon the retaining wall being put in at that time. Councilmember Patterson answered that he thought it was. Commissioner Hansen indicated that was what he thought. Chairman Rawlings asked for clarification as to whether the approval was granted contingent upon the retaining wall being put in or was the approval granted contingent upon development. Mr. McQuarrie explained, "Well, the improvement was granted as a subdivision, it is part of the engineered improvement plans that have to be installed for the subdivision. So technically before you can build on the lot, yes that has to be put in. You don't have to put it in before it's approved, no." Anthony Kohler asked about the retaining wall on Lots 68 and 69, whether this would be part of the building permit or part of the subdivision as well. Mel McQuarrie answered, "I suggest if it will give some comfort to everybody, let's put it in the engineering plan that is approved through the final approval of this. Though not required, I'll agree to do it, so that we can put at rest some minds in the neighborhood. But there is a number of others, you can put-you can hold-so there is plenty of room on those slopes to put a - it's holding in the slopes for the road. I mean you could slope it down like that but I don't think-that's going to leave you a hillside that you can't maintain, you can't-I would like to put something in whether it is rock or concrete or block or something that you can step it off for six foot max and then lift back and something you can landscape when you are done. And I'm willing to do that and I'm willing to do an engineered fill and bring that up to something where you can build a two to three story house on any and pull straight in off the road with having a pretty mild grade on your site on your driveway."

Chairman Rawlings asked Bart Mumford, "Based on what Mr. McQuarrie was just saying, do you feel comfortable with that? Can the engineering be done to satisfy-to make you feel comfortable at least for those two lots (Lot 68 and 69)?"

Bart Mumford answered, "Well I'm wondering where the liability lies. If we put it in as part of our plans then are we taking on the liability with those walls on the lot? Normally that would be something I would think goes with the building permit, somebody building on the lot and they have their engineer take and do that." Commissioner Hansen asked, "Well if those things failed they'd drop right in the yard below them, right? Or into the house, is that right?" Mumford answered, "Well they would, but if it's part of an improvement that the City required-normally we just stay within the right-of-way and it's our, we just worry about our improvements not what goes on in the lot. It is just between the lot owner and their neighbors. If-I would probably want to visit and see with legal counsel and see what's the best way

to do that. In the end it has to be constructed properly but I don't want to go beyond and take on more as a City than we should." Commissioner Webb asked, "Have it fail and then come back on the City?" Mumford answered, "Yeah, I mean, they could come back against us either way, it seems to me like everybody does, but let me check on that to see if it would be better to have that as part of the improvement drawings. It sounds like you (McQuarrie) are comfortable either way." Mel McQuarrie replied, "I'm comfortable either way. I think you have the mechanism now to come up with it, that's when you issue a zone permit it says that it requires it." Mumford expressed "But I could visit with legal counsel and we could make sure it's done, I mean, either way it needs to be done properly, but I don't know if that should be on the City's improvement plans versus just part of a lot owner when they buy its plans."

There was discussion of the plat. Bart Mumford asked for clarification because he was not clear on this subject. His recollection on the original subdivision plat which had been approved by the City Council after denial at the Planning Commission was a two lot subdivision with the same name. He believed the plat was Plat 1C or C. Brief discussion on what had been proposed on the plat at Planning Commission in December 2008, these same two lots being discussed tonight and two lots across the street. Bart Mumford indicated that proposal had the same name as this. Mel McQuarrie answered that this had been an amended plat to the original plat; he said they needed to check the name. Mumford said that the amended plat was approved and it included this as open space, now they were taking this open space and requesting a subdivision of it and calling it 1C. Anthony Kohler disagreed. He expressed that at that time there had been four lots proposed, the two lots being discussed this evening, Lots 68 and 69 and then two lots above. Chairman Rawlings concurred. The issue was that it was a plat amendment on the two lots above regarding the water tank because that was part of the plat and on Lots 68 and 69 what they had found out from the County Recorder was a metes and bounds unsubdivided property; last year they were all part of the same proposed plat. He expressed that the City Council said half of it was approved; the other half they denied which was this half. Bart Mumford asked if this was just a plat amendment for the upper two lots and Anthony Kohler answered, that he thought so, yes. Commissioner Webb asked what happened with the water tower property. The concensus was that this had passed. Bart Mumford said now they were coming back with this lower piece and they could call it 1C but he thought the other plat had been called 1C also. Anthony Kohler advised that they double check the records. Bart Mumford established that if they have to correct the plat to distinguish between the two they will if that was alright with the Planning Commission. As a conclusion, Bart Mumford asked the Commission to keep in mind that this would not happen for sometime anyway because it is contingent upon the City making some water system improvements in the development here-he pointed to where-and before they can actually develop on the lot. Even if this is approved there is still this condition that somebody can not pull a building permit and build until water pressure is boosted in this area. There was more discussion on what had occurred with the plat when it first went to the City Council in February 2009.

Allen Fawcett pointed out that what they had submitted now was a lot split; what they were looking at now was a lot split of that open space area into the area that now encompasses Lots 68 and 69. Chairman Rawlings asked Allen Fawcett if there were any of the city ordinances he could see that would make these lots nonconforming. Allen Fawcett answered, "No not really, as long as they meet the standards and specifications of one-the problem with what you are dealing with here is a piece of property with steep slope and materials and that on it. I can't predict that a good engineering firm couldn't come in and propose a solution to all of the environmental issues...if the concern is whether or not this former open space area is suitable for development from a planning point of view, yes it can

meet the area requirements, it can meet the, assuming you can get a driveway in there that can serve it, it can provide the important elements of a driveway. Sidewalk issue, that is a little vague right now...we have done that.” Chairman Rawlings asked if the city ordinances have anything in them about slope, whether it is natural or manmade. Fawcett answered that the slope ordinance was a little vague. He noted that the steepest part of the slope was the result of building the road.

Commissioner Webb commented the way he looks at it you can build on anything, it just costs lots of money. His opinion was if Mr. McQuarrie feels he can get an engineering firm to accomplish this and it is within all the guidelines and all the codes, let him do it.

Some members of the public in attendance asked to be allowed to speak. Chairman Rawlings allowed their comment even though the meeting was not a public hearing.

Rob Mills, homeowner of Lot 28, expressed that the safety and steepness of the property is a concern; he has small children and his home has already been hit from something from Valley Hills Boulevard above. He stated his main issue was they were sold lots that were designated as being backed by open space. He said he had heard it said twice in this meeting this was former open space and asked if he had missed something and this was no longer open space. Chairman Rawlings asked if he had this in writing when he bought the lot that this was open space behind him. Mills indicated it was on the final approved plat as open space. Mel McQuarrie asked who it was owned by on the plat. Mills answered that it was owned by Coyote Development and then asked to read the ordinance on Open Space from the Heber City Municipal Code Section 18.22.030 Definitions A, Open Space shall mean “a parcel or area of land or water within a development essentially unimproved or set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.” Mills continued discussing other elements of the code, regarding yard, he said: “the definition of the term yard wherein the described areas specifically than buildings and other minor structures. In short that the code refers and defines that open space is called as unimproved land in one case and is landscaped in another. But in all cases open spaces are completely defined as being building free. There is no other clarification or amendments to this definition of open space within the code. The code does not address particular ownership as affecting the status of being essentially unimproved or set aside. The owner could therefore be a municipality, a homeowners association while it was rendering this space to developer.” Mr. Mills felt it was the same request that was denied six months ago. He stated emphatically that they were not trying to be difficult, unreasonable people but they had an understanding that their property was backed by open space. He related how he had moved his family to Idaho and put his house on the market and subsequently lost the sale of his home because he disclosed Mr. McQuarrie’s effort to develop this property. He stated, “This is a real issue. If you look at the definition of open space anywhere you find it, it is land that is not going to be developed. And that is the heart of the issue here...If the intention was to develop those lots I would like to know why they were called open space.” Mills indicated he had done research which indicated that Mr. McQuarrie had enjoyed a tax exempt status on the open space for 8 or 9 years. McQuarrie voiced that he paid taxes on it every year; there were three or four parcels that he pays taxes on. Mills admitted that it was possible he had made a mistake and McQuarrie conceded that sometimes during research you find something you wouldn’t. Rob Mills concluded his comments by stating, “Why would you call it open space if you fully intended to develop it? That is my question. Why was it called open space? All of us in here bought these particular lots. There were better lots available, there were less steep lots. We bought these lots because of the open space behind them and the privacy and the enjoyment that that affords, it is completely private back there and that is why we bought these lots. We

would simply ask you to defend the definition of open space in your own code and vote the same way you did six months ago.”

Chairman Rawlings asked Mr. Mills if he understood that a property owner can come and ask that his property be changed at any time whether it be designated open space one minute and ask to be changed into a developable parcel. He said, “You do understand that that can and does happen, right?” Mr. Mills replied “That may be the case.” Commissioner Zane questioned whether a precedent had been set with the property which had been designated as open space property across the street from the property being discussed this evening that had been subdivided. Members of the Planning Commission commented that the Commission had recommended denial of this and the City Council had elected to approve the two upper two lots in February. There was more discussion and the Commission voiced a number of opinions. Mr. Mills and the other homeowners were asked if they had a statement in writing when they purchased their lots that the property behind them would always remain open space and who they had bought the lots from. Mills answered that he thought it might have been the development. Mr. McQuarrie specified that the lots had been split to different “partners” and he did not know who. Mr. Mills indicated that when he had made phone calls and enquired and asked questions about the lots; it was not Mr. McQuarrie who had fielded those questions. Commissioner Webb pointed out that they had two different classes of open space before them. One was on the plat map which could be owned by anyone and there is also open space which is designated back to the City to remain open space. He asked if the City could come back at some point and say that they wanted to develop the open space.

Other homeowners spoke on the issue; Tara Lundberg of Lot 29, Steve Norman of Lot 27, 1540 Calloway Drive, John Kent of Lot 30, and Dave Lundberg of Lot 29. All of them reiterated Mr. Mills’ statement that many other lots and/or homes had been available when they made a purchase decision on their lot and that the open space behind them had been the key factor in making their decision; they would not have purchased these lots had they known it would not be open space. They also pointed out that the subdivision plat says it is the final subdivision plat. Tara Lundberg felt that he was basically still trying to amend the plat; the last request had been a plat amendment. She quoted State Code, Municipal Land Use Development and Management Code, “Each petition to vacate, alter or amend an entire plat or portion of a plat shall include the name and address of each owner of record of the land contained in the entire plat and a signature of each of those owners who consents to the petition.” She stated that this was never done and that he was now coming at it from a different angle by calling it a two-lot subdivision. Mrs. Lundberg felt what had transpired at the City Council meeting for the plat amendment was unclear and she was concerned with Mr. McQuarrie keeping the promises he was making as far as safety concerns such as building a retaining wall. Her concluding statement was, “We’ve already denied it and him coming here with a little different spin on it trying to avoid the open space issue and just have it be a two lot subdivision, it’s still the same thing and I think we’re kind of wasting all of our time trying to approve something that is wrong and unfair which we came up with last time.” Steve Norman also noted he was concerned with landscaping issues on the steep slope and of the potential for gully washes.

Mel McQuarrie addressed the Commission. He expressed that they have a right to develop the property, it is private property, they meet the code, and they were trying to make it better. He explained the plat amendment process informing them that it does not require everybody’s signature, it requires a public hearing so they can come back to City Council and they can sign it; this was done so that everybody has a say. His opinion was that open space was a nuisance if you don’t maintain it and stated, “Put in a ditch, develop it, assign it to somebody so they can take ownership in it and they can maintain it.”

Commission comment: Commissioner Hansen wondered if this could be tabled until they got a legal opinion on what the status of an open space plat really is. He stated, "It just seems to me from trying to put myself in a homeowner's or a buyer's place, if you've taken the trouble to go to the City and say 'ok, what's going on here? What is the development plan around it? What does that say? And you in good faith, you've done your homework and if legally it is not binding then it is not binding, but I'd like to hear that from an attorney, the City Attorney." One the homeowners indicated they wanted to look at their legal recourse as well as there had been many homes on the market at the time they had purchased. Mel McQuarrie expressed they went through this in November and the question was brought to the City Attorney, Anthony Kohler had done the research on this and had asked the question and he was pretty confident but wanted the Planning Commission to be comfortable. The Commission wanted to ask Anthony Kohler about this but Mr. Kohler was not in the Council Chambers at the time this part of the discussion took place. Commissioner Hansen asked Allen Fawcett if they already had a legal opinion on this. Mr. Fawcett replied that he did not have any record of a written legal opinion. He believed they had discussed the issue with Mr. Smedley but did not have anything written from him; he felt this was a reasonable request. Commissioner Schindler pointed out that the Commission had recommended denial last time. There was discussion at this time on the Planning Commission's recommendation last December and the City Council's deliberation and decision in February. Allen Fawcett pointed out there had been multiple issues. Mel McQuarrie spoke, "Your recommendation was to deny, there was a lot of public input... City Council was stumbling over it because the very legality you're asking was, they knew that it was right. And Mark Anderson if you want to pull the minutes and let's take a look and go look at the minutes and let's do the research if you're not sure. Because that was the discussion and he said at that meeting, he said, 'Mel can come back in here tomorrow and he can petition for those two lots to be developed with a small subdivision', and that was said in the meeting." Commissioner Hansen asked if this was said by Mark Anderson or by the attorney. Mr. McQuarrie answered, "It was by Mark Anderson but Mark Anderson consulted with the attorney." Mr. McQuarrie emphasized that he was not in such a hurry that this could not be looked at, he wanted everybody comfortable but he was adamant that he had rights just like everybody else and he needed to protect them.

Dave Lundberg of Lot 29 asked to comment. He stated, "The only comment I want to make is that Mel continues to step up and make statements that are his opinion. My recollection of the meeting that many of you are a part of both here and at the Council Meeting is that the big reason, the big logical argument that many people sided with was not can the driveway go down here, but what is fair to the residents and that is what we are asking you guys to do is what we believe is fair to the residents. Mel can step up and give his opinion all day long and that is all I'm doing. I suggest as this Mr. Dennis suggests, you've denied it before, maintain consistency. It's fair for us, it's fair to allow the Council to consider the option that is before them."

Chairman Rawlings asked the Commission how they would like to proceed.

Commissioner Hansen motioned to table this request for a small lot subdivision at Cove at Valley Hills Phase 1C until we have a written legal opinion from the City Attorney that tells us that the plat that was designated open space and sold that way to the lot owners below is a legally valid issue or not, and if it is not then we have to do what is legal, but I would like to know that before we proceed further. Commissioner Zane seconded the motion. Commissioner Webb asked that they also look not only into the property owners' rights but the developer's rights as well to make sure he is able to do this; to make sure he is in his legal bounds to do so. Discussion on whether Commissioner Hansen was talking about

the surrounding property owner's rights or the developer's rights. Commissioner Hansen indicated that both were part of this and that he wanted this to be legally clear before the Commission makes a recommendation. Commissioner Thurber asked that the City Attorney be consulted regarding the City requiring the retaining walls at this time or at the time the building permit is applied for and what the liability would be for the City to require this. He asked for Commissioner Hansen's motion to be amended to include this. Commissioner Hansen agreed to amend his motion.

Commissioner Hansen motioned to table this request for a small lot subdivision at the Cove at Valley Hills Phase 1C until we have a written legal opinion from the City Attorney that tells us that the plat that was designated open space and sold that way to the lot owners below is a legally valid issue or not, and if it is not then we have to do what is legal, but I would like to know that before we proceed further. And also that the City Attorney be consulted regarding the City requiring the retaining walls at this time or at the time a building permit is applied for and what the liability would be for the City to require this. Commissioner Zane's second still stood.

Voting Aye: Commissioner Zane
Commissioner Nelsen
Commissioner Hansen
Commissioner Thurber

Voting Nay: Chairman Rawlings
Commissioner Schindler
Councilmember Patterson

DEVELOPMENT AGREEMENT
AND
COVENANT RUNNING WITH THE LAND
The Cove at Valley Hills Phase 1-C

THIS AGREEMENT entered into this _____ day of _____, 2014, by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, developer has proposed a 2 lot subdivision in the R-1 Residential Zone, The Cove at Valley Hills Phase 1-C;

NOW, THEREFORE, the parties hereby agree as follows.

1. With respect to Exhibit A (the approved final subdivision plat), the developer shall, prior to recording of that subdivision plat, transfer to the City all required water rights necessary for development, which shall include but not be limited to _____ Acre-Feet of diversion water rights;
2. During home construction, each lot shall erect a construction debris fence along the western property lines to minimize the potential for debris falling onto adjoining properties to the west;
3. Prior to the plat recording, developer shall provide an updated geotechnical evaluation of the fill slopes on Valley Hills Boulevard addressing the stability of the road as driveway cuts and fills are placed within the street right of way;
4. The remainder of property owned by Coyote Development shall either be attached as part of Lot 68 or attached to adjoining Lots 32 through 37;
5. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement;

6. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties;
7. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement; and
8. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this _____ day of _____, 2014.

HEBER CITY:

By: _____
Alan McDonald, Mayor

Attest: _____
Michelle Kellogg, Recorder

OWNER, _____

By: _____
Coyote Development, LLC.

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

On this _____ day of _____, 2014, personally
appeared before me the above named Owner, who duly acknowledged
to me that he is the owner in fee and executed the same as such.

NOTARY PUBLIC

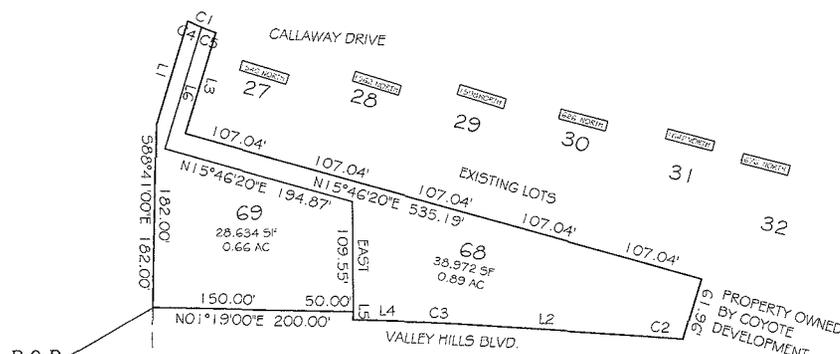
BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED NORTH 1506.34 FEET AND WEST 1715.25 FEET FROM
THE SOUTHEAST CORNER (BRASS CAP MONUMENT) OF SECTION 29, TOWNSHIP 3 SOUTH,
RANGE 5 EAST, SALT LAKE BASE & MERIDIAN, SAID POINT BEING ON THE NORTH BOUNDARY
LINE OF VALLEY HILLS ESTATES PLAT 'F';
THENCE N88°41'00"W 182.00 FEET;
THENCE N72°41'19"W 107.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE
LEFT HAVING A RADIUS OF 224.00 FEET;
THENCE NORTHEASTERLY 30.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
07°42'32" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N22°20'24"E 30.12
FEET)
THENCE S72°41'19"E 104.73 FEET;
THENCE N15°46'20"E 535.19 FEET;
THENCE S72°41'19"E 61.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE
LEFT HAVING A RADIUS OF 1809.00 FEET;
THENCE SOUTHWESTERLY 46.20 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
01°27'48" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S04°25'48"W 46.20
FEET)
THENCE S03°41'54"W 181.73 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT
HAVING A RADIUS OF 1033.00 FEET;
THENCE SOUTHWESTERLY 33.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
01°52'54" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S02°45'27"W 33.92
FEET)
THENCE S01°49'00"W 68.37 FEET;
THENCE N88°41'00"W 8.00 FEET;
THENCE S01°19'00"W 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.55 ACRES

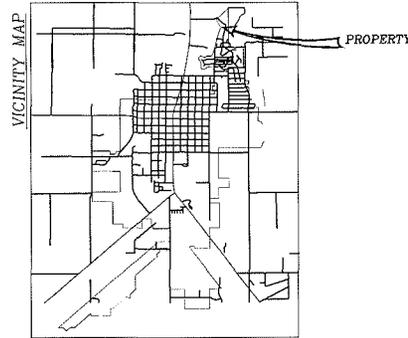
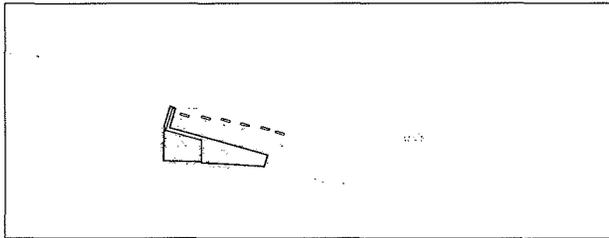
THE COVE AT VALLEY HILLS PHASE I-C

HEBER CITY, UTAH S29,T35, R5E, 5LB#M



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD DIK	CHORD L
C1	30.14	224.00	74.232	N22°20'24" E	30.12
C2	46.20	1,803.00	1°27'48"	S04°12'34" W	46.20
C3	33.92	1,033.00	1°52'54"	S02°45'27" W	33.92
C4	15.07	224.00	3°51'16"	N07°41'53" E	15.07
C5	12.07	224.00	3°51'16"	N07°24'46" E	12.07

LINE TABLE		
LINE	LENGTH	BEARING
L1	107.23	N72°41'18" W
L2	181.73	S03°41'54" W
L3	104.73	S22°41'18" W
L4	65.37	S01°48'00" W
L5	8.00	N86°41'00" W
L6	125.95	N72°42'46" W



PUBLIC UTILITY EASEMENTS:
ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO PUBLIC UTILITY EASEMENTS ALONG ALL PROPERTY LINES AS FOLLOWS:
FRONT: 10 FEET
REAR: 10 FEET
SIDE: 10 FEET ON SIDE INDICATED



ZONING INFORMATION:
THIS SUBDIVISION IS LOCATED IN THE R-1 RESIDENTIAL ZONE.

MINIMUM LOT SIZE IS 10,000 SQUARE FEET
MINIMUM STREET FRONTAGE IS 100 FEET
MINIMUM SETBACKS ARE AS FOLLOWS:
FRONT: 30 FEET
REAR: 30 FEET
SIDE: 10 FEET

LOT SUMMARY:
TOTAL ACRE: 0.66
TOTAL LOT ACREAGE: 0.66
AVG. LOT ACREAGE: 0.33
DEVELOPER: COYOTE DEVELOPMENT, L.L.C.
375 N. MAIN
HEBER, UTAH 84032

- Notes to Purchaser:**
- Portions of this subdivision are underlain by bedrock (containing no oil or gas). According to the geological data by AEGC Inc., the bedrock can be encountered using conventional geophysical detection equipment, and left blank. Purchasers can review this geophysical report in the city planning office.
 - Lot 68 & 69 will not be allowed to receive a building permit until Heber City has completed the new water pressure zone. The plan is in place. The City is waiting for the installation of infrastructure through the new water line and the Stone Creek Pipe.
 - Lot 68 & 69 must provide proper retaining on the lot so as not to impinge upon or damage of any lots to the lower lots. Lot # 27-31.
 - Driveways on lot 68 & 69 shall be developed before receiving a building permit. Slope of driveway shall not exceed 10%.

ACCEPTANCE BY LEGISLATIVE BODY
THE CITY COUNCIL OF HEBER CITY APPROVES THIS SUBDIVISION SUBJECT OF THE CONDITIONS AND RESTRICTIONS STATED HEREON AND HEREBY ACCEPTS THE DEDICATION OF ALL STREETS, EASEMENTS, AND OTHER PARCELS OF LAND INTENDED FOR PUBLIC PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC THIS DAY OF _____ A.D. 2014.

APPROVED BY MAYOR _____ ATTEST BY CLERK/RECORDER (SEE SEAL BELOW)

CITY ENGINEER APPROVAL
APPROVED THIS _____ DAY OF _____ A.D. 2014, BY HEBER CITY'S ENGINEER _____

PLANNING COMMISSION APPROVAL
APPROVED THIS _____ DAY OF _____ A.D. 2014, BY THE PLANNING COMMISSION OF HEBER CITY.
DIRECTOR/SECRETARY _____
CHAIRMAN, PLANNING COMMISSION _____

ACKNOWLEDGMENT
STATE OF UTAH
COUNTY OF WASATCH

ON THE _____ DAY OF _____ A.D. 2014, PERSONALLY APPEARED BEFORE ME THE PERSON(S) SIGNING THE FOREGOING OWNERS DEDICATION KNOWN TO ME TO BE AUTHORIZED TO EXECUTE THE FOREGOING OWNERS DEDICATION FOR AND ON BEHALF OF THE OWNERS WHO DO NOT ACKNOWLEDGE TO ME THAT THE OWNERS DEDICATION WAS EXECUTED BY THEM OR BEHALF OF THE OWNERS.

NOTARY PUBLIC (SEE SEAL BELOW)

SURVEYOR'S CERTIFICATE

I, MELVIN C. MCQUARRIE, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 17665-I AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY BY AUTHORITY OF THE OWNERS, THAT I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, BLOCKS, STREETS, AND EASEMENTS, AND THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT, AND THAT THIS IS TRUE AND CORRECT.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED NORTH 1506.34 FEET AND WEST 1715.25 FEET FROM THE SOUTHEAST CORNER BESSIE CAP MONUMENT OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 5 EAST, 541' LAKE BASIN MERIDIAN, SAID POINT BEING ON THE NORTH BOUNDARY LINE OF VALLEY HILLS ESTATES PLAT "F".
THENCE N86°41'00"W 182.00 FEET,
THENCE N72°41'18"W 107.23 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 224.00 FEET,
THENCE N07°41'53"E 15.07 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°44'23" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N22°20'24" S 30.12 FEET),
THENCE S72°41'18"E 104.73 FEET,
THENCE N5°45'20"E 53.18 FEET,
THENCE S72°41'18"E 61.36 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1803.00 FEET,
THENCE S04°12'34"W 46.20 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°27'48" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S04°12'34"W 46.20 FEET),
THENCE S03°41'54"W 181.73 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1033.00 FEET,
THENCE S01°48'00"W 65.37 FEET,
THENCE N86°41'00"W 8.00 FEET,
THENCE S01°19'00"W 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 155 ACRES

BASIS OF BEARING

BEARINGS ON THIS PLAT ARE BASED ON THE STATE PLANE COORDINATE SYSTEM BEARING FROM THE WASHINGTON COUNTY MONUMENT FOR THE SOUTHEAST CORNER OF SECTION 32, T35, R5E, SLEEM TO THE SURVEY TARGET TBM#15 SOUTH 52°34'07" WEST AS SHOWN HEREON AND AS RECORDED AS ENTRY #106682 OF THE WASHINGTON COUNTY RECORDS.

MELVIN C. MCQUARRIE
REGISTERED LAND SURVEYOR

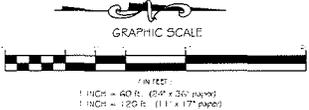
OWNER'S DEDICATION

WE, THE UNDERSIGNED OWNERS OF ALL THE REAL PROPERTY DEPICTED ON THIS PLAT AND DESCRIBED IN THE SURVEYOR'S CERTIFICATE ON THIS PLAT, HAVE CAUSED THE LAND DESCRIBED ON THIS PLAT TO BE DIVIDED INTO LOTS, EASEMENTS, AND OTHER PUBLIC USES AS DESIGNATED ON THIS PLAT, AND NOW DO HEREBY DEDICATE UNDER THE PROVISIONS OF UTAH CODE, WITHOUT CONDITION, RESTRICTION, OR RESERVATION, TO HEBER CITY, UTAH, ALL WATER, SEWER, AND OTHER UTILITY IMPROVEMENTS, OPEN SPACES SHOWN AS PUBLIC OPEN SPACES, EASEMENTS, AND ALL OTHER PLACES OF PUBLIC USE, TOGETHER WITH ALL IMPROVEMENTS REQUIRED BY THE DEVELOPMENT AGREEMENT BETWEEN THE UNDERSIGNED AND HEBER CITY FOR THE BENEFIT OF THE CITY AND THE INHABITANTS THEREOF.

MANAGING MEMBER OF MCM COVE, L.L.C. _____ DATE _____

SHAWNSON'S SEAL _____ NOTARY PUBLIC SEAL _____ ENGINEER'S SEAL _____ CLERK/RECORDER'S SEAL _____

ENGINEER/SURVEYOR
MCM ENGINEERING, INC.
MEL MCQUARRIE
575 N. MAIN
HEBER CITY, UTAH 84032
435-654-0939



MCM ENGINEERING, INC.
CIVIL / STRUCTURAL / LAND SURVEYING

PROJECT: THE COVE AT VALLEY HILLS PHASE I-C
HEBER, UT S29, T35, R5E

SHEET TITLE: PRELIMINARY PLAT MAP

SHEET NO: 1