

Mayor

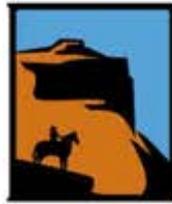
Robert Houston

City Manager

Joseph Decker

Treasurer

RaeLene Johnson



KANAB
— UTAH —

City Council

Brent Chamberlain

Cheryl Brown

Kirt Carpenter

Joe B. Wright

Kent Burggraaf

KANAB CITY COUNCIL

November 11th, 2014

76 NORTH MAIN, KANAB, UTAH

NOTICE is hereby given that the Kanab City Council will hold its regular council meeting on the 11th day of November, 2014, at the Commission Chambers at the Kane County Courthouse at 76 North Main, Kanab, Utah. The Council Meeting will convene at 6:30 p.m., and the agenda will be as follows:

6:30 P.M. Work Meeting

- Discuss Impact Fees

Business Meeting

1. Call to Order and Roll Call
2. Approval of Agenda
3. Approval of minutes of previous meeting
4. Approval of Accounts payable vouchers
5. Public Comment Period – Members of the public are invited to address the Council. Participants are asked keep their comments to 3 minutes and follow rules of civility outlined in Kanab Ordinance 3-60
6. Consider Resolution 11-1-14 R for adoption of a vehicle lease purchase agreement with Zions Bank.
7. Consider Resolution 11-2-14 R -Approval of submission of Utah Enterprise Zone Application
8. Consider Ordinance 11-1-14 O An Ordinance amending Kanab City Land Use Ordinance concerning Sensitive Lands
9. Discuss Engineering contract with Sunrise Engineering for the Tom's Canyon Flood Control project
10. Closed Session:
 - Discuss the character, professional competence, or physical or mental health of an individual.
 - Discuss pending or reasonably imminent litigation.
 - Discuss the purchase, exchange, or lease of real property.

Times listed for each item on the agenda may be accelerated as time permits. If you are planning to attend this public meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting, and we will try to provide whatever assistance may be required. Please contact RaeLene Johnson at the Kanab City offices.

– A Western Classic –

KANAB CITY COUNCIL MEETING

OCTOBER 14, 2014

KANE COUNTY COMMISSION CHAMBERS

PRESENT: Mayor Robert D. Houston, Council Members Kirt Carpenter, Cheryl Brown, Joe B. Wright, Brent Chamberlain, and Kent Burggraaf, Recorder Joe Decker, Attorney Jeff Stott, Attorney Greg Hardman and Treasurer RaeLene Johnson.

WORK MEETING: The Mayor opened the work meeting at 6:30 p.m. Western Legends was discussed. Mayor Houston said that Western Legends is a line item in the budget. Mr. Decker explained the in-kind cost during Western Legends. The police put in 72.5 hours with 39 over time hours and the public works put in 35.5 hours. This was \$6,215.71 in salary and benefits for these employees. Western Legends refunded \$4,000 back to the City. Council Member Chamberlain said this is the first time this has ever been done.

Mayor Houston said the City didn't receive all of the funding they requested, but the City was approved for \$680,000 from the Community Impact Board. Since the first payment to CIB won't be until 2016; and we have another payment with the Beautification project that will drop off at the same time, it is a non-impacting item as far as cash flow. Sunrise Engineering will be the Engineer for the project. The detention pond will go out for bid, but the rest of the project will be done in house.

Mayor Houston said that Council Member Brown has worked on a RFP for the skate park and is getting close to being able to send it out. It needs to be reviewed with legal counsel first.

The Planning and Zoning Commission has asked for goals and objectives from each of the departments to be included in the General Plan. A copy was given to the Council for their review. Each department will have a page with a one, three, five and ten year plan. Council Member Carpenter asked the Council about the Saturday a couple of years ago that was spent on this very plan. He wondered if the information that was received from that meeting has been taken into account.

Mayor Houston said that Attorney Jeff Stott has been working on the business license ordinance and the nuisance ordinance.

The Heritage Museum was discussed. Mr. Kendall Brooksby, Vice Chairman to the Heritage and Preservation Board addressed the Council. He said he has been a volunteer serving on the Heritage Board for nine years. He said the Heritage Council would like to request that the Heritage Museum be allowed to use the downstairs rooms. The Museum is overcrowded and needs additional space. He requested that the Arts Council find another area for their meetings and their displays. Council Member Chamberlain said that the Museum does need more space.

Council Member Brown said that the Arts Council also needs space. Mr. Brooksby said that the Heritage Museum is on the Historical register and that should be taken into consideration.

Mr. Tony Wright addressed the Council. He explained that the main sewer line runs through the corner of his carport. He wanted to build onto his house. He had the footings built when he was red tagged. He said he was willing to pay some of the expense in moving the 50-year old sewer line, but he didn't think it was fair for him to pay for new pipe to replace 50-year old pipe. The Council felt that the City had some responsibility for allowing a building permit now and years ago over a sewer line. Mr. Wright wanted the Council to authorize Keith Robinson, Public Works Director, to remove the red tag knowing that the sewer line is going to be moved.

Mayor Houston called the regularly scheduled meeting to order at 7:15 p.m. and roll call was taken. Prayer was offered by Cheryl Brown and the pledge of alliance led by Mayor Houston.

APPROVAL OF AGENDA: A motion was made by Council Member Wright and 2nd by Council Member Chamberlain to approve the agenda for October 14, 2014. Motion passed unanimously.

APPROVAL OF MINUTES: A motion was made by Council Member Brown and 2nd by Council Member Carpenter to approve the minutes of September 23, 2014 as corrected. Motion passed as follows: Council Members Carpenter, Burggraaf, Brown, Chamberlain voting yea and Council Member Wright abstained since he did not attend that meeting.

APPROVAL OF ACCOUNTS PAYABLE VOUCHERS: A motion was made by Council Member Wright and 2nd by Council Member Chamberlain to approve the October 14, 2014 check register in the amount of \$125,591.61. Motion passed unanimously.

PUBLIC COMMENT PERIOD: No comments were received.

CONSIDERATION FOR AND ADOPTION OF A PARAMETER RESOLUTION AUTHORIZING THE ISSUANCE OF SALES TAX REVENUE BONDS OF KANAB CITY, KANE COUNTY, UTAH, AND THE CALLING OF A PUBLIC HEARING TO RECEIVE INPUT WITH RESPECT TO THE ISSUANCE OF SUCH BONDS AND ANY POTENTIAL IMPACT TO THE PRIVATE SECTOR FROM THE CONSTRUCTION OF THE PROJECT:

Mr. Decker said this is a standard form from the State for any type of bonding done. The approval from CIB was for \$680,000 at a 1 ½% loan for 30 years. In the parameters it says not to exceed \$750,000 at a rate not to exceed 2% interest for not more than 35 years. This is so if any unforeseen expense happens, the City does not have to go back to the CIB Board. It is covered in the Parameters. Mr. Alex Buxton with Zion's Bank Finance addressed the Council. He congratulated the Council on securing this loan with CIB and with such a good interest rate for 30 years. He said it isn't an easy thing to do. Council Member Burggraaf asked about a Special Improvement District instead of having sales tax bonds. Mr. Buxton said the district would have to be created and then issue a special assessment bond with

three public hearings. Mayor Houston said that option should have been discussed at the beginning. Mayor Houston said there will be a public hearing on November 25, 2014. Mr. Buxton said that the Bond is the Loan. The Bonds are to be issued for the purpose of paying all or a part of the cost of construction of flood prevention and storm water improvements, including the construction of a detention basin, the relocation of utilities and improvements to the flood prevention and storm water system. A motion was made by Council Member Burggraaf to table this item until it can be reviewed by legal, and he has more time to review it. Motion died for lack of a second. A motion was made by Council Member Chamberlain to adopt Resolution #10-2-14 R authorizing the issuance of sales tax revenue bonds (The Bonds) of Kanab City, Kane County, Utah (The Issuer); calling a public hearing and establishing a time, place and location for said public hearing; providing for a pledge of excise tax revenues for the payment of the bonds; fixing the maximum principal amount of the bonds; the maximum number of years over which the bonds may mature, the maximum interest rate which the bonds may bear; providing for the running of a contest period; and related matters. Motion passed by roll call vote. Council Member Carpenter, Brown, Chamberlain, Wright voting yea and Council Member Burggraaf voting nay. Council Member Burggraaf felt the City needed to take a more responsible approach and seriously look at a Special Improvement District. Council Member Carpenter felt the City dropped the ball in the beginning in allowing houses in La Estancia to be built before the drainage was finished. He didn't think a few citizens should have to pay for that mistake.

CONSIDER RESOLUTION 10-1-14R AMENDING THE KANAB CITY PERSONNEL

POLICY: A motion was made by Council Member Carpenter and 2nd by Council Member Brown to adopt Resolution #10-1-14 R amending the Kanab City Personnel Policy clarifying compensation time. Motion passed as follows: Council Members Carpenter, Brown, Chamberlain and Wright voting yea and Council Member Burggraaf abstaining.

DISCUSS BATHROOMS AT THE HERITAGE HOUSE: Council Member Chamberlain explained the need for restrooms and a kitchen serving area, so the Heritage House can be used more often. The brick that will be used is similar to the present building. The City is going to do a substantial amount of the labor. The Heritage Board is giving \$2,000, The Daughter of the Utah Pioneers, Margery Stewart Camp, donated \$500, Kane County has authorized \$7,000 and Mr. Chamberlain hopes to get \$20,000 from the Mormon Heritage Trails Grant. He requested that the City give \$5,000 for the project. Mr. Chamberlain said they want to start the project in November. A motion was made by Council Member Chamberlain to authorize allocations up to \$5,000 based on recommendation and approval of legal counsel for use at the Heritage House for bathrooms and a serving area. Motion 2nd by Council Member Carpenter. Motion passed as follows: Council Members Carpenter, Brown, Chamberlain and Wright voting yea, and Council Member Burggraaf abstaining.

BEAUTIFICATION COMMITTEE: A motion was made by Council Member Brown and 2nd by Council Member Chamberlain to appoint Master Gardener, Larry Baer, to serve on the Beautification Committee with a term ending 12/31/2017. Motion passed unanimously.

ARTS COUNCIL: A motion to appoint Michael Schoenfeld to the Arts Council with a term ending 12/31/2018 was made by Council Member Brown and 2nd by Council Member Wright. Motion passed unanimously.

DISCUSS PURCHASING A VACUUM EXCAVATOR FOR PUBLIC WORKS: Mr. Decker said this equipment is vital for the drainage project to help find existing utilities. There are a lot that needs to be moved. This can be paid for out of the bonds for the drainage project. A motion was made to authorize staff to purchase this vacuum excavator not to exceed \$50,000 by Council Member Wright and 2nd by Council Member Chamberlain. Motion passed unanimously.

A motion to go into closed session was made by Council Member Wright and 2nd by Council Member Chamberlain. Motion passed unanimously. Council went back into regular session.

A motion was made by Council Member Wright and 2nd by Council Member Brown to authorize Mr. Hardman to prepare a settlement letter to those in the swimming pool litigation, but send a copy of the letter to Mayor and Council and Mr. Decker before sending to parties. Motion passed unanimously.

A motion to adjourn was made by Council Member Wright and 2nd by Council Member Chamberlain. Motion passed unanimously.

MAYOR ROBERT D. HOUSTON

RECORDER JOE DECKER

Resolution 11-1-14 R

A resolution approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah. Finding that it is in the best interests of the City of Kanab, Utah to enter into said Agreement, and authorizing the execution and delivery thereof.

Whereas, the City Council (the "Governing Body") has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

Whereas, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to the City of Kanab, Utah; and

Whereas, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

Be it resolved by the Governing Body of the City of Kanab, Utah as follows:

Section 1. The terms of said Equipment Lease Agreement are in the best interests of the City of Kanab, Utah for the leasing of the equipment described therein.

Section 2. The Mayor and City Treasurer are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of the City of Kanab, Utah.

Section 3. The officers of the Governing Body and the City of Kanab, Utah are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Adopted and approved this _____ day of _____, 20_____.

By _____
Robert Houston, Mayor

LEASE PURCHASE AGREEMENT

This equipment lease (the "Lease") dated as of November 18, 2014, by and between Zions First National Bank, One South Main Street, Salt Lake City, Utah 84111 ("Lessor"), and the City of Kanab, Utah ("Lessee") a body corporate and politic existing under the laws of the State of Utah. This Lease includes all Exhibits hereto, which are hereby specifically incorporated herein by reference and made a part hereof.

Now therefore, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Lease Of Equipment

Section 1.1 *Agreement to Lease*. Lessor hereby demises, leases, and lets to Lessee and Lessee rents, leases and hires from Lessor, the "Equipment" (as hereinafter defined), to have and to hold for the term of this Lease; provided, however, that the obligation of Lessor to lease any item of the Equipment and to make payment to the Vendor therefor is subject to the condition precedent that Lessee shall provide the following at its cost, in form and substance satisfactory to Lessor:

- (i) Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 10.2 hereof;
- (ii) Invoice of the Vendor of such item of Equipment; and
- (iii) Delivery And Acceptance Certificate in the form attached hereto as Exhibit "E" executed by Lessee acknowledging delivery to and acceptance by Lessee of such item of Equipment.

Section 1.2 *Title*. During the term of this Lease, title to the Equipment will be transferred to, and held in the name of, Lessee, subject to retransfer to Lessor as provided in Section 3.4. Upon termination of this Lease as provided in Sections 3.3 (a) or 3.3 (c), title to the Equipment will transfer automatically to Lessor without the need for any further action on the part of Lessor, Lessee, or any other person, provided that if any action is so required, Lessee by this Lease appoints Lessor its irrevocable attorney in fact to take any action to so transfer title to the Equipment to Lessor. Lessor at all times will have access to the Equipment for the purpose of inspection, alteration, and repair.

Section 1.3 *Security*. To secure the payment of all of Lessee's obligations to Lessor under this Lease, Lessee grants to Lessor a security interest in the Equipment and in all additions, attachments, accessions, and substitutions to or for the Equipment. The security interest granted herein includes proceeds. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices, and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or advisable to establish and maintain its security interest in the

Equipment. Lessor understands and agrees that the security interest granted in this Section shall be subject and subordinate to presently existing security interests and/or purchase money security interests in miscellaneous equipment which may be installed in accordance with the provisions of Section 9.3.

ARTICLE II

Definitions

The terms defined in this Article II shall, for purposes of this Lease, have the meaning herein specified unless the context clearly otherwise requires:

“Business Day” shall mean any day except Saturday, Sunday and legal holidays on which banks in the State of Utah are closed.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commencement Date” shall mean the date when the term of this Lease begins and Lessee’s obligation to pay rent accrues, as set forth in Section 3.1.

“Equipment” shall mean the property which Lessor is leasing to Lessee referred to in Section 1.1 and more fully described in Exhibit “A.”

“Lessee” shall mean the City of Kanab, Utah.

“Lessor” shall mean Zions First National Bank, Salt Lake City, Utah, its successors and assigns.

“Option Purchase Price” shall mean the amount which Lessee must pay Lessor to purchase the Equipment, as determined by Article V.

“Original Term” shall mean the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date, as set forth in Section 3.2.

“Principal Outstanding” means the remaining unpaid principal outstanding under this Lease as specified on Exhibit “C” attached hereto.

“Renewal Terms” shall mean all of the additional periods of one year (coextensive with Lessee’s fiscal year) for which this Lease shall be effective in the absence of a termination of the Lease as provided in Article III.

“Rental Payment Date” means the dates upon which Rental Payments are to be made by the Lessee to the Lessor hereunder as specified on Exhibit “C” attached hereto.

“Rental Payments” means the rental payments payable by Lessee pursuant to the provisions of this Lease during the Term hereof.

“Term” or “Term of this Lease” shall mean the Original Term and all Renewal Terms provided for in this Lease under Section 3.2.

“Vendor” shall mean the manufacturer of the Equipment and the manufacturer’s agent or dealer from whom Lessor purchased or is purchasing the Equipment.

ARTICLE III

Lease Term

Section 3.1 *Commencement*. The Term of this Lease shall commence as of:

_____ the date this Lease is executed.

_____ days after the receipt, installation, and operation of the Equipment, and its acceptance by Lessee, as indicated by an acceptance certificate signed by Lessee.

_____ the date the Vendor receives full payment for the Equipment from Lessor.

 X November 18, 2014.

Such date will be referred to as the Commencement Date.

Section 3.2 *Duration of Lease: Nonappropriation*. This Lease will continue until the end of the fiscal year of Lessee in effect at the Commencement Date (the “Original Term”). Thereafter, this Lease will be automatically extended for four (4) successive additional periods of one year coextensive with Lessee’s fiscal year (each, a “Renewal Term”), unless this Lease is terminated as hereinafter provided.

The parties understand that as long as Lessee has sufficient appropriated funds to make the Rental Payments hereunder, Lessee will keep this Lease in effect through all Renewal Terms and make all payments required herein or Lessee will exercise its option under Article V to purchase the Equipment. Lessee hereby declares that, as of the date of the execution of this Lease, Lessee currently has an essential need for the Leased Equipment which is the subject of this Lease to carry out and give effect to the public purposes of Lessee. Lessee reasonably believes that it will have a need for the Equipment for the duration of the Original Term and all Renewal Terms. If Lessee does not appropriate funds to continue the leasing of the Equipment for any ensuing Renewal Term, this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Lessor of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect; provided, however, that a failure to give such written notice shall not constitute an event of default, result in any liability on the part of the Lessee or otherwise affect the termination of this Lease as set forth hereinabove.

Section 3.3 *Termination*. This Lease will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Lease and the failure of Lessee to appropriate funds to continue the leasing of the Equipment for the ensuing Renewal Term;
- (b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Equipment;
- (c) a default by Lessee and Lessor's election to terminate this Lease under Article VII herein; or
- (d) the expiration of the Term of this Lease.

Section 3.4 *Return of Equipment Upon Termination*. Upon termination of this Lease pursuant to Sections 3.3 (a) or 3.3 (c), Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 9.2 hereof in the following manner as may be specified by Lessor:

- (a) By delivering the Equipment to Lessor at Lessee's principal place of business; or
- (b) By loading the Equipment at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the destination designated by Lessor.

Lessee shall obtain all governmental authorizations to permit return of the Equipment to Lessor and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

ARTICLE IV

Rental Payments

Section 4.1 *Amount*. Lessee will pay Lessor as rent for the use of the Equipment during the Original Term and any Renewal Terms on the dates and in the amounts set forth in Exhibit "C" attached hereto. All Rental Payments shall be paid, exclusively from legally available funds, in lawful money of the United States of America to Lessor at or to such other person or entity or at such other place as Lessor may from time to time designate by written notice to Lessee.

Section 4.2 *Portion of Rental Payments Attributable to Interest*. The portion of each Rental Payment which is paid as and is representative of interest is set forth in Exhibit "C" attached hereto.

Section 4.3 *No Right to Withhold*. Notwithstanding any dispute between Lessee, Lessor, Vendor or any other party, Lessee will make all Rental Payments when due, without withholding any portion of such rent, pending final resolution of such dispute by mutual agreement between the parties thereto or by a court of competent jurisdiction.

Section 4.4 *Rental Payments to Constitute a Current Obligation of the Lessee.* The Lessee and the Lessor acknowledge and agree that the obligation of the Lessee to pay Rental Payments hereunder constitutes a current obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any provision of Sections 10–8–6 or 11–1–1 through 11–1–2, Utah Code Annotated 1953, as amended, or Section 3, 4, or 5 of Article XIV of the Utah Constitution, or any other constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the credit of the Lessee to the payment of the Rental Payments, or the interest thereon, nor shall this Lease obligate the Lessee to apply money of the Lessee to the payment of Rental Payments beyond the then current Original Term or Renewal Term, as the case may be, or any interest thereon.

ARTICLE V

Purchase Of Equipment

Section 5.1 *Option Purchase Price.* On any Business Day on or after November 18, 2014, Lessee may purchase the Equipment from Lessor at a price equal to the principal amount outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such date is a Rental Payment Date, in which case, the principal amount outstanding as of such date), plus accrued interest from such Rental Payment Date to such date of calculation at the rate of interest per annum in effect for the period during which the calculation is made, as set forth in Exhibit “C.”

Section 5.2 *Manner of Exercise of Option.* To exercise the option, Lessee must deliver to Lessor written notice specifying the date on which the Equipment is to be purchased (the “Closing Date”), which notice must be delivered to Lessor at least thirty (30) days prior to the Closing Date specified therein. At the closing, Lessor will deliver to Lessee a bill of sale transferring the Equipment to Lessee free and clear of any lien or encumbrance created by or arising through Lessor, but without warranties, and will deliver all warranties and guarantees of Vendors of the Equipment.

Section 5.3 *Conditions of Exercise of Option.* Lessee may purchase the Equipment pursuant to the option granted by this Lease only if Lessee has made all Rent Payments when due (or has remedied any defaults in the payment of rent, in accordance with the provisions of this Lease) and if all other representations, covenants, warranties, and obligations of Lessee under this Lease have been satisfied (or all breaches of the same have been waived by Lessor in writing).

Section 5.4 *Termination Purchase.* Upon the expiration of the Term of the Lease and provided that the conditions of Section 5.3 have been satisfied, Lessee shall be deemed to have purchased the Equipment (without the payment of additional sums) and shall be vested with all rights and title to the Equipment. Lessor agrees that upon the occurrence of the events as provided in this Section, it shall deliver to Lessee the documents specified in Section 5.2, and shall comply with the provisions of Section 5.2 relating to termination upon exercise of the option to purchase.

ARTICLE VI

Representations, Covenants, And Warranties Of Lessee And Lessor

Section 6.1 *Representations, Covenants and Warranties of Lessee*. Lessee represents, covenants, and warrants as follows:

- (a) Lessee is a body corporate and politic, duly organized and existing under the Constitution and laws of the State of Utah.
- (b) Lessee is authorized by the Constitution and laws of the State of Utah to enter into this Lease and to effect all of Lessee's obligations hereunder. The governing body of Lessee has executed the resolution attached as Exhibit "B" to this Lease which specifically authorizes Lessee to execute and deliver this Lease.
- (c) All procedures and requirements, including any legal bidding requirements, have been met by Lessee prior to the execution of this Lease in order to insure the enforceability of this Lease and all rent and other payment obligations will be paid out of funds legally available for such purpose.
- (d) The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of this Lease was authorized, as evidenced by the certificate of open meeting law attached to the Resolution of Governing Body which is attached hereto as Exhibit "B."
- (e) The letter attached to this Lease as Exhibit "D" is a true opinion of Lessee's counsel.
- (f) Lessee will use and service the Equipment in accordance with Vendor's instructions and in such a manner as to preserve all warranties and guarantees with respect to the Equipment.
- (g) During the term of this Lease, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.
- (h) The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.
- (i) The Equipment shall be used solely by Lessee and shall not be subject to any direct or indirect private business use.
- (j) Lessee covenants and certifies to and for the benefit of Lessor throughout the term of this Lease that:

- (1) No use will be made of the proceeds of this Lease, or any funds or accounts of Lessee which may be deemed to be proceeds of this Lease, which use, if it had been reasonably expected on the date of execution of this Lease, would have caused this Lease to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code;
 - (2) Lessee will at all times comply with the rebate requirements of Section 148(f), to the extent applicable;
 - (3) in order to preserve the status of this Lease as other than a “private activity bond” as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease is outstanding: (I) none of the proceeds of this Lease or the Equipment financed therewith shall be used for any “private business use” as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code; and (II) no part of this Lease shall be secured in whole or in part, directly or indirectly, by any interest in any equipment used in any such “private business use” or by payments in respect of such equipment, and shall not be derived from payments in respect of such equipment;
 - (4) it will not take any action or omit to take any action such that would cause interest on this Lease to become ineligible for the exclusion from gross income of Lessor as provided in Section 103 of the Code.
- (k) The obligations of Lessee under this lease are not federally guaranteed within the meaning of Section 149(b) of the Code.
- (l) This Lease is being executed for the purpose of acquiring the Equipment and is not being issued to refund or refinance any outstanding obligation of Lessee, nor to reimburse Lessee for any expenditures made prior to sixty (60) days before the date the Governing Body (as defined in the Resolution of the Governing Body attached hereto) of the Lessee adopted the Resolution of the Governing Body attached hereto.
- (m) In compliance with Section 149 (e) of the Code relating to information reporting, Lessee has caused or will cause to be filed with the Internal Revenue Service, IRS form 8038–G or 8038–GC, as appropriate.
- (n) Lessee has selected the Equipment and desires to lease the Equipment for use in the performance of its governmental or proprietary functions. Lessor, at Lessee’s request, has ordered or shall order the Equipment and shall lease the same to Lessee as herein provided, Lessor’s only role being the facilitation of the financing of the Equipment for the Lessee. Lessor will not be liable for specific performance or for damages if the supplier or manufacturer of the Equipment for any reason fails to fill, or delays in filling, the order for the Equipment. Lessee acknowledges that Lessor is not a manufacturer of or a dealer in the Equipment (or similar equipment) and does not inspect the Equipment prior to delivery to Lessee. Lessee agrees to accept the Equipment and authorizes Lessor to add the serial number of the Equipment to Exhibit “A.” Lessor shall have no obligation to install, erect, test, inspect, or service the Equipment. *For purpose of this Lease and of any purchase of the Equipment*

effected under this Lease, Lessor expressly disclaims any warranty with respect to the condition, quality, durability, suitability, merchantability or fitness for a particular purpose of the Equipment in any respect, and any other representation, warranty, or covenant, express or implied. Lessor will not be liable to Lessee for any liability, loss, or damage caused or alleged to be caused, directly or indirectly, by any inadequacy, deficiency, or defect in the equipment, or by any use of the equipment, whatsoever. Lessor assigns to Lessee, without recourse, for the Term of this Lease all manufacturer warranties and guarantees, express or implied, pertinent to the Equipment, and Lessor directs Lessee to obtain the customary services furnished in connection with such guarantees and warranties at Lessee's expense, subject to Lessee's obligation to reassign to Lessor all such warranties and guarantees upon Lessor's repossession of the Equipment.

- (o) During the term of this Lease, Lessee covenants and agrees (1) to include in its annual tentative budget prepared by the appropriate officials acting on behalf of Lessee in accordance with applicable law an item for expenditure of an amount necessary to pay the Rental Payments for the Equipment during the next succeeding Renewal Term, and (2) to take such further action (or cause the same to be taken) as may be necessary or desirable to assure that the final budget submitted to the governing body of Lessee for its consideration seeks an appropriation of moneys sufficient to pay such Rental Payments.
- (p) There are no legal or governmental proceedings or litigation pending or, to the best knowledge of Lessee, threatened or contemplated (or any basis therefore) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of this Lease
- (q) Lessee has never non-appropriated or defaulted under any of its payment or performance covenants, either under any municipal lease of the same general nature as this Lease or under any of its bonds, notes or other debt obligations for which its general credit or revenues are pledged.

Section 6.2 *Representations, Covenants and Warranties of Lessor.* Lessor represents, covenants, and warrants as follows:

- (a) During the term of this Lease, Lessor will provide Lessee with quiet use and enjoyment of the Equipment, without suit, trouble, or hindrance from Lessor, except upon default by Lessee as set forth in this Lease.
- (b) Lessor has not caused to be created any lien or encumbrance on the Equipment except the security interest provided in Section 1.3 of this Lease.

ARTICLE VII
Events Of Default And Remedies

Section 7.1 *Events of Default Defined*. The following shall be “events of default” under this Lease and the terms, “event of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 7.1 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 7.1 are subject to (i) the provisions of Section 3.2 hereof with respect to nonappropriation; and (ii) if by reason of *force majeure* Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article IV hereof, Lessee shall not be deemed in default during the continuance of such inability. The term “*force majeure*” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms, droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

Section 7.2 *Remedies on Default*. Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, Lessor shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

- (a) With or without terminating this Lease, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, holding Lessee liable for the difference between (i) the rents and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, as appropriate, and (ii) the purchase price, rent or other amounts paid by a purchaser, lessee or sublessee of the Equipment pursuant to such sale, lease or sublease; and

- (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 7.3 *No Remedy Exclusive*. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article VII it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.4 *Waiver of Certain Damages*. With respect to all of the remedies of Section 7.2 above, Lessee expressly waives any damages occasioned by Lessor's repossession of the Equipment.

ARTICLE VIII

Payment Of Taxes, Fees, Permits, And Utility Services

Section 8.1 *Interpretation*. This Lease for all purposes will be treated as a net lease.

Section 8.2 *Taxes and Fees*. Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, and other taxes and fees, together with any penalties, fines, and interest on such taxes and fees imposed or levied with respect to the Equipment and the ownership, delivery, lease, possession, use, operation, sale, and other disposition of the Equipment, and upon the rental or earnings arising from any such disposition, except any federal or state income taxes payable by Lessor on such rental or earnings. Lessee may in good faith and by appropriate proceedings contest any such taxes and fees so long as such proceedings do not involve any danger of sale, forfeiture, or loss of the Equipment or of any interest in the Equipment.

Section 8.3 *Permits*. Lessee will provide all permits and licenses necessary for the installation, operation, and use of the Equipment. Lessee will comply with all laws, rules, regulations, and ordinances applicable to the installation, use, possession, and operation of the Equipment. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Equipment, such changes or additions will be made by Lessee at its own expense.

Section 8.4 *Utilities*. Lessee will pay all charges for gas, water, steam, electricity, light, heat or power, telephone, or other utilities furnished to or used in connection with the Equipment (including charges for installation of such services) during the term of this Lease. There will be no abatement of rent on account of the interruption of any such services.

ARTICLE IX

Use, Repairs, Alterations, And Liens

Section 9.1 *Use*. Lessee will not install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee agrees that the Equipment is and at all times will remain personal property not withstanding that the Equipment or any part of the Equipment may now or hereafter become affixed in any manner to real property or to any building or permanent structure.

Section 9.2 *Repairs*. Lessee at its own cost will service, repair, and maintain the Equipment so as to keep the Equipment in as good condition, repair, appearance, and working order as when delivered to and accepted by Lessee under this Lease, ordinary wear and tear excepted. At its own cost, Lessee will replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices will be free and clear of all liens, encumbrances, and rights of others, and immediately will become a part of the Equipment and will be covered by this Lease (for all purposes including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.3 *Alterations*. Lessee may install such miscellaneous equipment as may be necessary for use of the Equipment for its intended purposes so long as either (a) the installation of such equipment does not alter the function or manner of operation of the Equipment, or (b) Lessee, upon termination of this Lease (other than termination pursuant to Section 3.3(b) or (d), restores the Equipment to its function and manner of operation prior to the installation of such equipment. Subject to the obligations described above, Lessee may remove such equipment upon termination of this Lease, if the removal of such equipment will not substantially damage the Equipment. Without the prior written consent of Lessor, Lessee will not make any other alterations, changes, modifications, additions, or improvements to the Equipment except those needed to comply with Lessee's obligations to change, add to, or repair the Equipment as set forth in Sections 9.2 and 10.3 herein. Any alterations, changes, modifications, additions, and improvements made to the Equipment, other than miscellaneous equipment installed as set forth above, immediately will become a part of the Equipment and will be covered by this Lease (for all purposes, including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.4 *Liens*. Except with respect to the security interest provided in Section 1.3 hereof, Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment or any interest in the Equipment. Lessee promptly and at its own expense will take such action as may be necessary to duly discharge any mortgage, pledge, lien, charge, encumbrance, or claim, not excepted above, if the same arises at any time.

ARTICLE X

Indemnification, Insurance, And Damage To Or Destruction Of The Equipment

Section 10.1 *Indemnification*. Lessee assumes liability for and agrees to indemnify Lessor from and against any and all liability (including attorney's fees) of any nature imposed upon, incurred by, or asserted against Lessor which in any way relates to or arises out of ownership, delivery, lease, possession, use, operation, condition, sale, or other disposition of the Equipment. Notwithstanding anything contained in this Section to the contrary, Lessor shall not be indemnified for, or relieved of, any liability which may be incurred from Lessor's breach of this Lease.

Section 10.2 *Insurance*. Lessee at Lessor's option will either self insure, or at its cost, will cause casualty insurance, public liability insurance, and property damage insurance to be carried and maintained on the Equipment, with all such coverages to be in such amounts sufficient to cover the value of the Equipment at the commencement of this Lease (as determined by the purchase price paid by Lessor for the Equipment), and to be in such forms, to cover such risks, and with such insurers, as are acceptable to Lessor. A combination of self-insurance and policies of insurance may be utilized. If policies of insurance are obtained, Lessee will cause Lessor to be the named insured on such policies as its interest under this Lease may appear. Insurance proceeds from insurance policies or budgeted amounts from self-insurance as relating to casualty and property damage losses will, to the extent permitted by law, be payable to Lessor to the extent of the sum of the Option Purchase Price of the Equipment at the time of its damage or destruction and all amounts due and owing hereunder. Lessee will deliver to Lessor the policies or evidences of insurance satisfactory to Lessor, if any, together with receipts for the initial premiums before the Equipment is delivered to Lessee. Renewal policies, if any, together with receipts showing payment of the applicable premiums will be delivered to Lessor at least thirty (30) days before termination of the policies being renewed. By endorsement upon the policy or by independent instrument furnished to Lessor, such insurer will agree that it will give Lessor at least thirty (30) days' written notice prior to cancellation or alteration of the policy. Lessee will carry workmen's compensation insurance covering all employees working on, in, or about the Equipment, and will require any other person or entity working on, in, or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverages throughout the Term of this Lease.

Section 10.3 *Damage to or Destruction of the Equipment*. If all or any part of the Equipment is lost, stolen, destroyed, or damaged, Lessee will give Lessor prompt notice of such event and will, to the extent permitted by law, repair or replace the same at Lessee's cost within thirty (30) days after such event, and any replaced Equipment will be substituted in this Lease by appropriate endorsement. All insurance proceeds received by Lessor under the policies required under Section 10.2 with respect to the Equipment lost, stolen, destroyed, or damaged, will be paid to Lessee if the Equipment is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement, such proceeds will be paid to Lessor to the extent of the then remaining portion of the Rental Payments to become due during the Term of this Lease less that portion of such Rental Payments attributable to interest which will not then have accrued. No loss, theft, destruction, or damage to the Equipment will impose any obligation on Lessor under this Lease, and this Lease will continue in full force and effect

regardless of such loss, theft, destruction, or damage. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss, theft, destruction, or damage to the Equipment and for injuries or deaths of persons and damage to property however arising, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such damage to property be to Lessee's property or to the property of others.

ARTICLE XI

Miscellaneous

Section 11.1 *Assignment and Sublease by Lessee*. Lessee may not assign, transfer, pledge, or encumber this Lease or any portion of the Equipment (or any interest in this Lease or the Equipment), or sublet the Equipment, without the prior written consent of Lessor. Consent to any of the foregoing acts shall not constitute a consent to any subsequent like act by Lessee or any other person. Lessee agrees that Lessor may impose on the Equipment such plates or other means of identification as necessary to indicate that the Equipment is subject to this Lease and the restrictions set forth in this Section.

Section 11.2 *Assignment by Lessor*. The parties hereto agree that all rights of Lessor hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part; provided that (1) notice of any such assignment, transfer or other disposition is given to Lessee at least five (5) days prior thereto; (2) prior to any such assignment, transfer or other disposition, the name and address of the assignee or transferee must be registered on registration books maintained by Lessee for this Lease; and (3) prior to any such assignment, transfer or other disposition, this Lease must be surrendered to Lessee and the interest of any such assignee or transferee indicated on the face hereof and after such notation hereon, Lessee will redeliver this Lease to the new owner or owners hereof. Lessee shall maintain registration books for this Lease and shall be obligated to make the payments required hereby, including principal and interest payments, solely to the registered owner or owners hereof.

Section 11.3 *Lessor's Right to Perform for Lessee*. If Lessee fails to make any payment or fails to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, Lessor may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and any expenses incurred by Lessor, as the case may be, together with interest thereon as herein provided, will be deemed to be additional rent payable by Lessee on Lessor's demand.

Section 11.4 *Addresses*. All notices to be given under this Lease will be made in writing and mailed or delivered by registered or certified mail, return receipt requested to the following addresses until either Lessee or Lessor gives written notice to the other specifying a different address:

- (a) if to Lessee, at the City of Kanab, Utah, 76 North Main, Kanab, UT 84741.
Attention: Joe Decker.

(b) if to Lessor, at Zions First National Bank, One South Main Street, 17th Floor, Salt Lake City, Utah, 84133. Attention: Public Financial Services.

Section 11.5 *Manner of Payment*. All payments by Lessee will be made in cash, by certified or cashier's check, or by other manner acceptable to Lessor.

Section 11.6 *Nonwaiver*. No breach by Lessee in the satisfaction of any representation, covenant, warranty, or obligation contained herein or imposed hereby may be waived except by the written consent of Lessor, and any such waiver will not operate as a waiver of any subsequent breach. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or obligation and until complete performance by Lessee of said covenant or obligation Lessor shall be entitled to invoke any remedy available to it under this Lease despite said forbearance or indulgence. No collection of rent shall operate as a waiver of any default.

Section 11.7 *Severance Clause*. Any provision in this Lease which is prohibited by Law will be treated as if it never were a part of this Lease, and the validity of the remaining terms of this Lease will be unaffected.

Section 11.8 *Entire Agreement; Addendum*. This Lease and the attached Exhibits constitute the entire agreement between Lessor and Lessee and supersedes any prior agreement between Lessor and Lessee with respect to the Equipment, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by Lessor and Lessee.

Section 11.9 *Amendments*. This Lease may be amended only by a written document signed by Lessor and Lessee, or their respective successors and assigns.

Section 11.10 *Inurement*. Subject to the restrictions in Section 11.1 above, this Lease is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and assigns.

Section 11.11 *Governing Law*. This Lease is governed by the laws of the State of Utah.

Section 11.12 *Headings*. Headings used in this Lease are for convenience of reference only and the interpretation of this Lease will be governed by the text only.

Section 11.13 *Offset*. Rental Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Rental Payments or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Equipment or any restriction or interference with Lessee's use of the Equipment.

Section 11.14 *Interest*. If Lessee fails to pay any Rental Payment or other amount due hereunder within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the rate of one percent (1%) per month.

Section 11.15 *Nature of this Agreement*. Lessor and Lessee agree that it is their intention that, for federal income tax purposes, the interest of Lessor in the Equipment is as a secured

party and the interest of Lessee is as a debtor with the aggregate principal amount of the Rental Payments constituting the purchase price of the Equipment, and that Lessor neither has nor will have any equity in the Equipment.

Section 11.16 *Set-Up Fee*. As additional consideration for the rights herein granted to Lessee, Lessee agrees to pay Lessor a commencement or set-up fee of two thousand five hundred dollars (\$2,500.00) on the date this Lease is executed.

Section 11.17 *Designation of Issue for Tax Purposes*. In accordance with Section 265 of the Code, Lessee hereby designates this Lease as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. Lessee reasonably anticipates that the total amount of tax-exempt obligations [other than (i) private activity bonds, as defined in Section 141 of the Code (a qualified 501 (c)(3) bond, as defined in Section 145 of the Code, and any bond issued to refund certain obligations issued before August 8, 1986 as described in Section 265 (b)(3)(B)(ii)(II) of the Code not being treated as a private activity bond for this purpose), (ii) any obligation to which Section 141 (a) of the Code does not apply by reason of Sections 1312, 1313, 1316 (g) or 1317 of the Tax Reform Act of 1986 and which is described in Section 265 (b)(3)(C)(ii)(II) of the Code, and (iii) any obligation issued to refund (other than to advance refund within the meaning of Section 149 (d)(5) of the Code) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation] which will be issued by the Lessee and by any aggregated issuer during the current calendar year will not exceed \$10,000,000.

Section 11.18 *Exhibits*. This Lease shall not be effective as against Lessor until such time as all Exhibits attached hereto, consisting of Exhibits "A" through "E," inclusive, are completed to the satisfaction of Lessor and delivered to Lessor.

EXHIBITS

- Exhibit A..... Description Of Equipment
- Exhibit B Resolution Of Governing Body
- Exhibit C Payment Schedule
- Exhibit D..... Opinion Of Lessee’s Counsel
- Exhibit E Delivery and Acceptance Certificate

Executed this ____ day of _____, 20____.

Lessor:

Zions First National Bank

By _____
Alex Buxton, Vice President

Lessee:

City of Kanab, Utah

By _____
Robert Houston, Mayor

EXHIBIT A
Description Of Equipment

Quantity	Description/Serial Numbers
7	(4) 2015, Ram 1500, VIN: 1C6RR7KTXFS500278, 1C6RR7KT8FS500280, 1C6RR7KT6FS500276, 1CR6RR7KT2FS500274 (1) 2015 Ram 2500, VIN: 3C6UR5NL0FG504812 (1) 2013 Chevrolet Camero, VIN: 2G1FK1EJ5D912374 (1) 2012 Chevrolet Camero, VIN: 2G1FK1EJXC9191165

Initials of Lessee Signatory

EXHIBIT B
Resolution Of Governing Body
Extract Of Minutes

November 11, 2014

City of Kanab, Utah

The City Council (the “Governing Body”) of the City of Kanab, Utah met in regular session at its regular meeting place in City of Kanab, Utah on November 11, 2014, with the following members of the Governing Body present:

Robert Houston	Mayor
Joe B. Wright	Council Member
Cheryl Brown.....	Council Member
Brent Chamberlain	Council Member
Kirt Carpenter	Council Member
Kent Burggraaf.....	Council Member

Also present:

RaeLene JohnsonCity Treasurer

Absent:

After the meeting had been duly called to order and the minutes of the preceding meeting read and approved, the following resolution was introduced in written form, read in full, and pursuant to motion duly made by Council Member _____ and seconded by Council Member _____ was adopted by the following vote:

YEA:

NAY:

The resolution was then signed by the _____ in open meeting and recorded by the _____. The resolution is as follows:

A resolution approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah. Finding that it is in the best interests of the City of Kanab, Utah to enter into said Agreement, and authorizing the execution and delivery thereof.

Whereas, the City Council (the “Governing Body”) has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

Whereas, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to the City of Kanab, Utah; and

Whereas, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

Be it resolved by the Governing Body of the City of Kanab, Utah as follows:

Section 1. The terms of said Equipment Lease Agreement are in the best interests of the City of Kanab, Utah for the leasing of the equipment described therein.

Section 2. The Mayor and City Treasurer are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of the City of Kanab, Utah.

Section 3. The officers of the Governing Body and the City of Kanab, Utah are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Adopted and approved this _____ day of _____, 20_____.

By _____
Robert Houston, Mayor

STATE OF UTAH)
 :ss.
COUNTY OF KANE)

I, RaeLene Johnson, the duly qualified City Treasurer of the City of Kanab, Utah do hereby certify:

- (a) that in accordance with the requirements of Section 52-4-202 (2), Utah Code Annotated (1953), as amended, public notice of the 20____ Annual Meeting Schedule of the City Council (the “Governing Body”) of the City of Kanab, Utah was given, specifying the date, time and place of the regular meetings of the Governing Body scheduled to be held during the year, by causing a Notice of Annual Meeting Schedule for the Governing Body to be posted on _____, 20____, at the principal office of the Governing Body at the City of Kanab, Utah; said Notice of Annual Meeting Schedule having continuously remained so posted and available for public inspection during regular office hours of the undersigned until the date hereof; and causing a copy of the Notice of Annual Meeting Schedule to be provided on _____, 20____ to at least one newspaper of general circulation within the geographic jurisdiction of the City of Kanab, Utah, or to a local media correspondent;
- (b) that in accordance with the requirements of Section 52-4-202 (1), Utah Code Annotated (1953), as amended, public notice of the regular meeting of the Governing Body on November 11, 2014, was given by specifying in a Notice of Regular Meeting the agenda, date, time and place of the meeting and by causing the Notice of Regular meeting to be posted at the principal office of the Governing Body on the ____ day of _____, 20____ a date not less than 24 hours prior to the date and time of the Governing Body’s regular meeting, and to be provided on the ____ day of _____, 20____, to at least one newspaper of general circulation within the geographic jurisdiction of the City of Kanab, Utah, or to a local media correspondent.

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Kanab, Utah this ____ day of _____, 20_____.

By _____
RaeLene Johnson, City Treasurer

[SEAL] ↑

EXHIBIT C
Payment Schedule

Lessee: City of Kanab, Utah

Date of Lease: November 18, 2014

Amount Due: \$254,966.00

1. Interest has been computed at the rate of 2.1 % per annum. Interest shall accrue from the Commencement Date.
2. Rental payments shall be due annually commencing November 18, 2014. The payments set forth on the attached debt service schedule shall be due on the 18th day of November up to and including November 18, 2018.
3. The Option Purchase Price, on any given date of calculation, is equal to the Principal Outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such calculation date is a Rental Payment Date, in which case, the Principal Outstanding as of such date) plus accrued interest from such Rental Payment Date at the rate set forth in paragraph number 1 above.

[Please see the attached Debt Service Schedule]

The remainder of this page has been intentionally left blank

Kanab City, Utah

\$254,966 Equipment Lease Purchase

Dated November 18, 2014

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
11/18/2014	43,000.00	-	-	43,000.00
11/18/2015	38,548.71	2.100%	4,451.29	43,000.00
11/18/2016	56,608.66	2.100%	3,641.76	60,250.42
11/18/2017	57,797.44	2.100%	2,452.98	60,250.42
11/18/2018	59,011.19	2.100%	1,239.23	60,250.42
Total	\$254,966.00	-	\$11,785.26	\$266,751.26

Yield Statistics

Bond Year Dollars	\$561.20
Average Life	2.201 Years
Average Coupon	2.0999991%
Net Interest Cost (NIC)	2.0999991%
True Interest Cost (TIC)	-4.8189281%
Bond Yield for Arbitrage Purposes	-4.8189281%
All Inclusive Cost (AIC)	-4.4670908%

IRS Form 8038

Net Interest Cost	2.0999991%
Weighted Average Maturity	2.201 Years

Lease 10/27/14 New | SINGLE PURPOSE | 10/28/2014 | 10:52 AM

Initials of Lessee Signatory

EXHIBIT D
Opinion Of Lessee's Counsel
(Use Attorney's Letterhead)

To: Zions First National Bank
One South Main Street
Salt Lake City, Utah 84111

Gentlemen:

As counsel for the City of Kanab, Utah ("Lessee"), I have examined duly executed originals of Equipment Lease Agreement (the "Lease") dated November 18, 2014, between the Lessee and Zions First National Bank, Salt Lake City, Utah ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Lease. Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of Utah.
2. The Lease has been duly authorized, executed, and delivered by Lessee.
3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of the Lease was authorized.
4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditors' rights generally.
5. The Lease is in accordance with and does not violate the usury statutes of the State of Utah, if any.
6. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.
7. The Equipment (as defined in the Lease) constitutes personal property and when subjected to use by Lessee will not become fixtures under applicable law.

Attorney for Lessee

EXHIBIT E
Delivery And Acceptance Certificate

To: Zions First National Bank

Reference is made to the Equipment Lease Agreement between the undersigned (“Lessee”), and Zions First National Bank (“Lessor”), dated November 18, 2014, (“the Lease”) and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
4. The serial number for each item of Equipment which is set forth on Exhibit “A” to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

City of Kanab, Utah

Witness

By: _____
(Authorized Signature)

(Print name and title)

Date: _____

Resolution No. __11-2-14 R__

APPROVAL OF SUBMISSION OF UTAH ENTERPRISE ZONE APPLICATION.

Whereas Kanab City is interested in supporting local businesses to the greatest possible extent;

Whereas designation of Kanab City as a Utah Enterprise Zone would provide qualifying local businesses access to certain state income tax credits should such a zone were created:

Whereas a joint application involving Kane County, Kanab City, Alton Town, Orderville Town, Glendale Town and Big Water Town encourages coordination between these entities and reduces the administrative burden on the town boards;

Whereas the Kanab City Council has reviewed the application for Utah Enterprise Zone status entitled “Utah Enterprise Zone Application: Kane County, Kanab City, Orderville Town, Glendale Town, Alton Town and Big Water Town: November 1, 2014” (hereinafter referred to as “the Application”);

Whereas the Application was discussed in a duly posted open meeting of Kanab City Council and public input was solicited;

Whereas the Kanab City Council support the submission of the Application to the Governors Office of Economic Development;

NOW LET IT BE RESOLVED BY THE KANAB CITY COUNCIL THAT WE SUPPORT THE CREATION OF AN ENTERPRISE ZONE IN KANE COUNTY AND AUTHORIZES THE SUBMISSION OF “UTAH ENTERPRISE ZONE APPLICATION: KANE COUNTY, ORDERVILLE TOWN, GLENDALE TOWN, ALTON TOWN AND BIG WATER TOWN: November 1, 2014 TO THE GOVERNORS OFFICE OF ECONOMIC DEVELOPMENT.

PASSED, APPROVED AND ADOPTED THIS ___ DAY OF _____, 2014.

Robert D. Houston
Kanab City Mayor

Joseph Decker
City Recorder

ORDINANCE NO. 11-1-14 O

AN ORDINANCE AMENDING KANAB CITY LAND USE ORDINANCE CONCERNING SENSITIVE LANDS

WHEREAS, the Kanab City Planning Commission and staff have evaluated current land use requirements and procedures and has found a need for clarification; and

WHEREAS, The Kanab City Planning Commission conducted the required Public Hearing on December 3rd 2014 and recommended to the City Council that the Land Use Ordinance be amended;

NOW, THEREFORE, BE IT ORDAINED by the Kanab City Council that the Kanab City Land Use Ordinance is hereby amended as reflected in the following 46 pages.

All former codes or parts thereof conflicting or inconsistent with the provisions of this Ordinance or of the Code hereby adopted are hereby repealed.

The provisions of the Code shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance shall be effective upon the required posting.

PASSED AND ORDERED POSTED this 11th day of, November 2014.

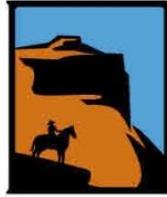
KANAB CITY

MAYOR

ATTEST:

RECORDER

Mayor
Robert Houston
City Manager
Joe Decker
Treasurer
RaeLene Johnson



KANAB
— UTAH —

City Council
Kent Burggraaf
Cheryl Brown
Kirt Carpenter
Brent Chamberlain
Joe B. Wright

KANAB CITY COUNCIL STAFF REPORT- October 21, 2014

I. REQUEST: Land Use Ordinance amendment regarding sensitive lands: Chapter 1, 9, 11

II. BACKGROUND

Chapter 11 of the *Kanab City Land Use Ordinance* currently contains a chapter related to Sensitive Lands, which was adopted January 22, 2008. The Planning Commission and City Staff determined that this ordinance was inadequate and vague in some instances and needed a major revision. Kanab City then contracted with Rosenberg Associates to produce an amended sensitive lands ordinance. Rosenberg Associates produced a completely re-written sensitive lands chapter to replace Chapter 11 of the Land Use Ordinance. In addition, the contract City Engineer produced a sensitive lands map to accompany the chapter. The Planning Commission discussed the proposed changes to the ordinance in the ensuing months, but did not send a recommendation to the City Council to amend the ordinance.

In April 2013, the Planning Commission determined to pursue an amendment to the sensitive lands chapter. In addition to reviewing pieces of the sensitive lands chapter at several Planning Commission meetings, the Planning Commission solicited input from the contract City Engineer and City Planner regarding the proposed ordinance changes, provided by Rosenberg associates. The City Engineer's review included estimated additional costs that sections of the ordinance would cause developments to incur and pieces of the proposed ordinance that are redundant in other City Ordinances, including the *Kanab City General Ordinances* and *The Kanab City Standard Specifications for Design and Construction*. This review provided valuable input to the Planning Commission, when discussing the ordinance and proposing changes to it. The City Planner continually reviewed the ordinance and proposed changes, based upon Planning Commission input, planning best practices and the chapter's relationship to the rest of the Land Use Ordinance and other City Ordinances. The Planning Commission directed Staff to forward proposed changes to the Ordinance to the City Attorney for legal review on February 4, 2014, after completing a thorough review of the Chapter. The City Attorney provided several comments to the proposed ordinance change, regarding the legality of specific language, including:

1. A recommendation to remove language allowing a private right of action for violation of the ordinance.
2. A recommendation to remove provisions related to variances, as this is already defined by State Law and in Chapter 3 of the Kanab City Land Use Ordinance
3. Several suggestions to revise text, while not significantly changing the meaning of the regulation.
4. Several comments related to "vagueness" and "arbitrariness."

— A Western Classic —

Based upon the Legal Opinion provided by the City Attorney, Staff revised the proposed Sensitive Lands Chapter: Chapter 11. Staff also proposes amendments to Chapter 1 to include definitions related to sensitive lands and amendments to Chapter 9, which includes references to regulations in Chapter 11. In addition, Staff proposes that the “Sensitive Lands Overlay Map” be adopted as an appendix to the Land Use Ordinance.

On November 19, 2013, the Planning Commission recommended to the City Council, some minor changes to the Land Use Ordinance related to sensitive lands, including amending the hillside area designation, adopting the Sensitive Lands Overlay Map and amended provisions related to wetland areas. The City Council decided not to act upon this recommendation until the revision of the entire chapter was completed. The recommendations in this report include those that were made in the November 19 Planning Commission meeting.

III. STAFF ANALYSIS

The proposed changes to the Land Use Ordinance, regarding regulations in sensitive lands areas include the following changes:

1. Include a Sensitive Lands Overlay Map to identify sensitive lands areas to accompany this ordinance

The contract City Engineer has provided a sensitive lands overlay map to accompany the regulations in this ordinance. The Map includes information regarding slopes conditions, ridgelines, expansive clay, and floodplain areas. This map will be useful for City Staff, developers, and residents to determine which areas of the City may have physical constraints to develop and in which areas regulations of the sensitive lands ordinance applies. The map will also be useful when planning future land use areas throughout the City.

2. Remove redundant standards and regulations

Geologic/geotechnical report

The current ordinance includes a great level of detail about a required geologic report that is to be performed by a geotechnical engineer to provide information about the geologic conditions and the effect that the proposed development is expected to have upon the environment and surrounding properties. In Section 3-3 of the *Kanab City Standard Specifications for Construction*, a geotechnical report is required for “all commercial and industrial projects, and all residential subdivisions.” The information included in this report provides essentially the same information that the geologic report referenced in the Chapter 11 of the *Kanab City Land Use Ordinance*. The City Engineer identified this duplication in his review of the draft Sensitive Lands Ordinance on August 2, 2013. Staff believes that the required Geotechnical Report provides sufficient guidance to accomplish the goals of this chapter related to assessing geologic conditions for new development and recommends omitting this portion of the chapter reduce redundancy and confusion.

High water table, wetland area, and natural drainage standards

In addition to removing the aforementioned requirement, the proposed ordinance removes regulations related to high water table, wetland area and natural drainage areas. The *Kanab City Standard Specifications for Construction* includes regulations and standards which address natural drainage issues and high water table areas. Wetland areas are subject to requirements of the Army Corps of Engineers. In addition, Utah Code section 10-9a-521 states “a municipality may not designate or treat any land as wetlands

unless the United States Army Corps of Engineers or other agency of the federal government has designated the land as wetlands.” While reviewing the ordinance during a previous meeting, the Planning Commission agreed to remove language related to wetlands and high water table areas.

3. Amend the definition of “hillside area” from slopes “greater than 10%” to “greater than 20%”

The current Land Use Ordinance designates hillside areas to be those of greater than 10%. IN consultation with the City Engineer and the City Planner, the Planning Commission determined during previous meetings that the 10% designation was overly restrictive and that a slope of greater than 20% and may be unnecessarily deterring potential development within the City of Kanab.

4. Require a slope analysis exhibit for areas identified as hillside areas on the Sensitive Lands Overlay Map

The Sensitive Lands Overlay Map includes estimates for slope conditions throughout the City of Kanab. However, a more detailed analysis is needed to determine which areas are suitable for development based upon slope conditions and how proposed development relates to surrounding slope conditions. The exhibit also provides information about the amount of land area within a parcel that is within a hillside area to determine open space requirements. The proposed ordinance requires that all development proposals with parcels that contain slopes greater than 20%, include a slope analysis exhibit.

5. Enhance development standards in hillside and ridgeline areas

The current ordinance includes standards in hillside areas to address drainage issues, minimize visual impacts, and protect life and property. However, the standards are often vague and subjective. Rosenberg Associates provided several development standards in hillside and ridgeline areas that are much more illustrative and comprehensive. These standards were reviewed by the Planning Commission and Staff. The recommended changes include those which were determined to be useful and necessary in previous meetings.

6. Addresses several potential legal issues with the current ordinance

As noted above, the City Attorney reviewed the draft ordinance and included several suggestions, which are incorporated into the proposed Land Use Ordinance amendment. Several of these issues included in the draft ordinance are also included in the current ordinance. Therefore, incorporating changes from the recent legal review addresses several potential legal issues with the current ordinance.

7. Include reference to Kanab Flood Damage Prevention Ordinance

Kanab City has adopted a Flood Damage Prevention Ordinance, which has been reviewed and approved by the Federal Emergency Management Agency (FEMA). The proposed sensitive lands chapter includes a reference to this ordinance, as floodplains are considered sensitive land area, while being addressed by an ordinance of a separate Title. The proposed Sensitive Lands Overlay Map also includes floodplain areas for reference.

8. Amends and provides new definitions related to sensitive lands and migrates all definitions within Chapter 11 to Chapter 1

Rosenberg Associates provided several definitions, which have been reviewed by Staff and the Planning Commission. Several of these definitions are currently included in Chapter 11 of the *Kanab City Land Use*

Ordinance. To reduce confusion while interpreting the ordinance, staff recommends including these definitions in Section 1-6, rather than in Chapter 11.

9. Include references to the sensitive lands areas, where applicable in Chapter 9: Site Plan Review

To ensure that sensitive lands are addressed during the site plan review process, Staff recommends including references in Chapter 9 to the ordinance, as applicable.

While many substantial changes are proposed for Chapter 11: Sensitive Lands, some facets of the ordinance, include only minor changes. For example, the purpose and policies promoted sections remain relatively unchanged, with some restructuring and minor revisions.

III. FINDINGS

1. Regulations related to development within areas of hillsides, riparian areas, and ridgelines are necessary to promote the public health, safety, and general welfare of Kanab City and preserve its unique visual character.
2. Chapter 11: Sensitive Lands of the current Kanab City Land Use Ordinance includes several redundancies and instances of vagueness, which add unnecessary burden and confusion to developers and Kanab City during the development review process. The proposed amendment reduces this redundancy and vagueness.
3. The current hillside area designation is too restrictive and may be unnecessarily deterring potential development.
4. The Sensitive Land Overlay Map, as provided by the Kanab City Engineer would be a useful tool for Staff and applicants to utilize in determining various sensitive land areas, if adopted and included in the Land Use Ordinance.

IV. STAFF RECOMMENDATION:

That the Kanab City Planning Commission recommend to the Kanab City Council an amendment to the *Kanab City Land Use Ordinance*, with the following changes:

- Replacing the Chapter 11 of the Land Use Ordinance, with the attached Chapter 11, which regulates development in sensitive land areas.
- Amending several definitions related to development in sensitive lands areas and migrating definitions to Section 1-6 of the Land Use Ordinance, as described in the attached documents.
- Amending Chapter 9 to include references to sensitive lands, as described in the attached documents
- Adopting the proposed “Sensitive Lands Overlay Map,” provided in the attached documents, as Exhibit N of the Land Use Ordinance.

IV. PLANNING COMMISSION RECOMMENDATION:

That the Kanab City Council amend the *Kanab City Land Use Ordinance*, as outlined by Staff, with the following exceptions:

- Modifying the definitions for “average percent of slope” and “prominent ridge” and changing the heading for section 11-6.4 to include “prominent,” as outlined in the attached documents
- Modifying the hillside area classifications (11-6.2) to allow development in areas with slopes greater than 40%, with an open space requirement of 90%.

The Planning Commission adopts the findings outlined by Staff.

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Adopted January 22, 2008
Revised April 12, 2011

building or structure, but not including signs.

As Graded - The surface configuration upon completion of grading.

Area - The area within a lot which is susceptible of use for construction, accessory or appurtenant use. The area to be considered as qualifying for lot area or minimum area shall not include (a) land which is separate from the area where the proposed building will occur by topographic division or physical boundary, (b) land which is not available for construction, accessory or appurtenant use by reason of slope, regular presence of water, geologic condition, soil conditions, or other such practical inhibitions to use, or (c) land which is not available for construction, accessory or appurtenant use by reason of legal restriction.

Automatic Car Wash - A facility for automatic or self-service washing and cleaning of automobiles and small trucks not exceeding one and one-half (1 1/2) tons capacity.

Automobile Sales Area - An open area used for display, sale, or rental of new or used motor vehicles, mobile homes, recreational coaches, or recreation vehicles in operable condition.

Automobile Service Station - A place where gasoline, or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and services are made directly to motor vehicles, and where services performed may include tube and tire repair, battery charging, storage of merchandise, lubricating of automobiles, replacement of spark plugs, lights, fans, and other small parts, but not including garage-vehicle repair.

Average Percent of Slope - The average rise in slope from the lowest end of the area to the highest end of the area considering only the area plan view square footage (i.e. Cliffs or other vertical surfaces located inside an area would not be factored into the average percent of slope on any given area as there is no actual lot square footage on a vertical cliff face). For example, a rise of 40' on an area over a hundred feet of run, excluding any cliffs or other vertical surfaces on said area, would constitute a 40% slope. An expression of rise or fall in

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ceiling heights is above the average contract level of the adjoining ground. A basement shall be counted as a story for purposes of height measurement, and as a half-story for the purpose of side-yard determination.

Basement House - A residential structure without a full story structure above grade.

Bed and Breakfast Inn - A building of residential design, in which the property owner personally resides on premises, in which no fewer than one (1) but not more than (5) rooms are rented out by the day, for not more than four (4) guests per room, not to exceed fifteen (15) consecutive days per quest, offering overnight lodging and meal services to overnight guests.

Beginning of Construction - The placing of concrete footings for a building or structure.

Bench - Relatively level step excavated into earth materials on which fill is to be placed for intermediate drainage area.

Berm - A low mound of earth graded in a linear or undulating form; often used as a noise or visual barrier.

Block - The land surrounded by streets or other rights-of-way, other than an alley, or land which is designed as a block on any recorded subdivision plat.

Body and Fender Shop - A facility for major automobile, truck, mobile home, recreational coach or recreation vehicle repairs to body, frame, or fenders, and including rebuilding.

~~**Buildable Area** - The portion of a lot remaining after required yard setbacks have been established.~~

Buildable Area - That portion of a lot or parcel which is eligible to place a building or structure and complies with the setbacks and other regulations of the zone where the property is located.

Building - A structure having a roof supported by columns or walls.

Building and Sensitive Lands - Any structure used or intended to be used for the shelter, or enclosure of persons, animals, or property.

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Building, Accessory - A building which is subordinate to, and the use of which is incidental to, that of the main building or use on the same lot.

Building Front - means the primary front entrance of a building as viewed from the public street to which it is orientated. The area of a building front is calculated as the height multiplied by the width of the primary front.

Building, Height of - The height of a building or structure is the vertical dimension measured from highest point on the exterior of the building or structure to the nearest point of finished grade.

Building Inspector - The official designated as the building inspector for the City of Kanab by the Kanab City Council. The Kanab City Building Inspector may also be the Kanab City Zoning Administrator, if so designated.

Campground - A public area designated by a public agency for camping, or a private area licensed by the City of Kanab for camping.

Camping - A temporary establishment of living facilities such as tents or recreational coaches as regulated by this City Ordinances.

Canyon - A deep, narrow valley having high, steep slopes.

Carport - A private garage not completely enclosed by walls or doors. For the purposes of this Ordinance, a carport shall be subject to all the regulations prescribed for a private garage.

Cellar - A room or rooms wholly under the surface of the ground, or having more than fifty (50) percent of its floor to ceiling height under the average level of the adjoining ground.

Child Nursery - An establishment for the care and/or the instruction of six (6) or more children, for compensation, other than for members of the family residing on the premises, but not including a public school.

Church - A building, together with its accessory buildings and uses, maintained and controlled by a duly-recognized religious organization where persons regularly assemble for worship.

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Clinic, Dental or Medical - A building in which a group of dentists, physicians, and allied professional assistants are associated for the conduct of their profession. The clinic may include a dental and/or a medical laboratory and an apothecary, but it shall not include in-patient care or operating rooms for major surgery.

Club, Social - Any organization, group, or association supported by its members where the sole purpose is to render a service to said members and their guests.

Clustering - Land planning technique appropriate for large subdivisions in which some areas are reserved as open space. Clustering allows the permitted units in an area to be grouped more densely in the most developable parts of a site.

Combination of Buildings - Two or more buildings that are on adjoining parcels as measured from the outside exterior walls of two of the buildings.

Common Ownership of Management - Owned, leased, possessed, managed or otherwise controlled, in any manner, directly or indirectly:

- A. by the same individual(s) or entity(ies) including but not limited to corporation(s) partnership(s) limited liability company(ies) or trust(s), or
- B. by different individuals or entities, including but not limited to corporations, partnership(s), limited liability companies or trusts where such individual(s) or entity(ies) have a controlling ownership or contractual right with the other individual(s) or entity(ies) with respect to the Retail Businesses, or where the same individual(s) or entity(ies) act in any manner as an employee, owner, partner, agent stockholder, director, member, officer or trustee of the entity(ies).

Conditional Use - A use of land for which a conditional use permit is required, pursuant to this Ordinance.

Condominium - An ownership structure established in accordance with the Utah Condominium Act.

Contour - A line drawn on a plan which connects all points of equal elevation.

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Contour Grading - A grading concept designed to result in earth forms which resemble natural terrain characteristics. Horizontal and vertical curve variations are often used for slope banks. Contour grading is not necessarily minimal grading.

Convenience Store - Any retail establishment offering for sale a relatively limited selection of prepackaged food products, household items, and other related goods and may include gasoline or fuel sales and is characterized by a rapid turnover of customers and high traffic generation and does not include a store which is solely or primarily a restaurant.

Corral - A space, other than a building, less than one (1) acre in area, or less than one hundred (100) feet in width, used for the confinement of animals or fowl.

Court - An open, unoccupied space, other than a yard, on the same lot with a building or group of buildings, and which is bounded on two (2) or more sides by such building or buildings.

Coverage, Building - The percent of the total site area covered by buildings.

Crosswalk or Walkway - A right-of-way to facilitate pedestrian access through a subdivision block; designed for use by pedestrians and not for use by motor vehicles; may be located within or without a street right-of-way, at grade, or separated from vehicular traffic.

Cut - The mechanical removal of soil, rock or other earth material.

Cut and Fill - The excavating of earth material in one place as cut and depositing of it as fill in an adjacent place.

Development: The carrying out of any building activity or clearing of land as an adjunct of construction. "Major development" shall be considered to be subdivision platting, including various land uses and/or housing types.

Development Parcel: Any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated

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by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

District - A portion of the territory of the City of Kanab, established as a zoning district by this Ordinance, various combinations thereof apply under the provisions of this Ordinance; also includes "overlay" and "zoning" districts.

Driveway - A private roadway, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel on which the driveway is located.

Dwelling - Any building or portion thereof designed or used as the more or less permanent residence or sleeping place of one or more persons or families, but not including a tent, recreational coach, hotel, motel, hospital, or nursing home.

Dwelling, Mobile Home - (See "Mobile Home".)

Dwelling, Single-family - A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

Dwelling, Two-family - A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.

Dwelling, Three-family - A building arranged or designed to be occupied by three (3) families, the structure having only three (3) dwelling units.

Dwelling, Four-family - A building arranged or designed to be occupied by four (4) families, the structure having only four (4) dwelling units.

Dwelling, Multiple-family - A building arranged or designed to be occupied by more than four (4) families, the structure having more than four (4) dwelling units.

Dwelling, Group - A group of two (2) or more detached buildings used as dwellings, located on a lot or parcel of land.

Dwelling, Unit - One or more rooms in a dwelling, designed for or occupied by one (1) family for living or sleeping purposes and having one (1) but not more than one (1) kitchen or set of fixed cooking facilities, other

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than hot plates or other portable cooking units.

Easement - That portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner(s) of said property(ies). The easement may be for use under, on, or above said lot or lots.

Elderly Person - "Elderly person" means a person who is 60 years of age or older, desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

Elevation: Height or distance above sea level.

Erosion - The process by which the soil and rock components of the earth's crust are worn away and moved from one place to another by natural forces such as weathering, solution and transportation.

Escarpment - A long cliff or steep slope separating two (2) comparatively level or more gently sloping surfaces and resulting from erosion or faulting.

Essential Facilities - Utilities or sanitary and public safety facilities provided by a public utility or other governmental agency for overhead or surface or underground services, excluding any building, electrical sub-station or transmission line of fifty (50) KV or greater capacity, except by conditional use permit.

Excavation: Any disturbance to the ground, including, but not limited to, clearing, grubbing, rock removal, cutting, tunneling, drilling or any other activity which alters the natural ground. "Minor" excavation shall mean a vertical cut of three feet (3') or less, or a disturbance of less than one acre of surface area. "Major" excavation shall mean a vertical cut of more than three feet (3'), or disturbance of more than one acre of surface area.

Existing Grade - The grade of land prior to grading.

Export - Excess cut that is removed from a grading project and deposited off site.

Extended Stay Motel-Hotel - a facility specifically constructed, kept, used, maintained, advertised or made available to the public to offer temporary residence for

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up to 240 days.

Family - An individual, or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than four (4) persons (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities.

Fence - A physical barrier to delineate, contain, or designate an area designed for a specific use i.e. an enclosure for a dwelling unit; and area for storage, (etc.).

Fill - A deposit of rock, soil or other earth material placed by artificial means.

Finish Grade - The final elevation of the ground surface after development, which conforms to the approved plan.

Flag Lot - A lot which:

- A. meets the size, set back and other requirements of the zone in which the lot is located,
- B. does not have the frontage required, and
- C. has an extension owned in fee simple from the lot to a dedicated street. The extension shall be referred to as the staff portion of the flag lot.

Flood Hazard - A hazard to land or improvements due to inundation or overflow water having sufficient velocity to transport or deposit debris, scour the surface soil, dislodge or damage buildings, or erode the banks of water courses.

Floodplain - any land area susceptible to being inundated by water from any source.

Floor Area - The lower surface in a story on which one normally walks in a building. The general terms, floor unless otherwise specifically mentioned shall not refer to mezzanine floor or garage area.

Foothill: A hill at the bottom of a higher mountain or mountain range and forming part of the approaches to it.

French Drain: A sump or trench filled with crushed rock or gravel intended to receive storm water discharge.

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Frontage Block - All property fronting on one (1) side of the street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or political subdivision boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

Frontage, Lot - The lineal measurement of the front lot line.

Garage, Private - A detached accessory building, or a portion of a main building, used or intended to be used for the storage of motor vehicles, recreational coaches, boats, or other recreational vehicles, but not including the parking or storage of trucks or vans having a capacity in excess of one and one-half (1 1/2) tons, and not including space for more than a total of four (4) such vehicles for each dwelling unit on the premises.

Garage, Vehicle Repair - A structure or portion thereof, other than a private garage, used for the repair of self-propelled vehicles, trailers, or boats, including general repair, rebuilding or reconditioning of engines, motor vehicles, recreational coaches, and minor collision service, but not including major body, frame or fender repairs or overall automobile or truck painting, except by conditional use permit. A vehicle repair garage may also include incidental storage, care, washing or sale of automobiles.

Geology Report - Report that shall include maps and a report, as required by Section 11-6.

Geological Hazard - A hazard inherent in the crust of the earth, or artificially created, which is dangerous or potentially dangerous to life, property, or improvements, due to the movement, failure, or shifting of the earth.

Geotechnical Engineer - A civil engineer or geologist registered in the State of Utah who, through training and experience, is able to assure that geological factors affecting engineering works are recognized, adequately interpreted and presented for use in engineering practice and for the protection of the public.

Governing Body - The elected legislative body of the City of Kanab.

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Grade, Existing - Shall mean sites which have never been disturbed, existing grade is the same as the natural grade, which is the ground level before any human disturbances. For sites that have existing structures or other disturbances to the land, existing grade would be the ground level established when the structure or disturbance was created. Recent earthwork, particularly if the grading is done without permits, will not necessarily qualify as existing grade and often requires a determination from the Zoning Administrator.

Grade, Finished - Shall mean the highest grade directly adjacent to within five (5) feet of the structure or wall of the building, which has been set through an approved grading and/or drainage plan. The term "finished grade" may also mean natural grade when no terrain alteration is proposed, or where otherwise applicable. Fill which is not necessary to achieve positive drainage or slope stabilization, or which is otherwise proposed clearly to raise the finished floor elevations(s) for any other purpose, shall not be considered finished grade.

Grade Separation - The separation at different levels of two (2) intersecting roads, by bridge, tunnel, or underpass, so as to permit the roads to cross without obstructing free traffic movement on either road.

Grading - To bring an existing surface to a designed form by excavating, filling or smoothing operations.

Grading Plans - A topographic development plan prepared by a registered civil engineer showing contours for before and after grading which do not exceed one-foot intervals.

Grocery store - means a retail business primarily engaged in retailing a general line of groceries in combination with general nonfood merchandise. They have centralized exit checkout stations, and utilize shopping carts for customers. Where the total square footage does not exceed forty-thousand square feet.

Gross Floor Area - The sum of:

- A. the total horizontal area, in square feet, of all floors of a building, as measured at outside the exterior walls and including all interior courtyards, and

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- B. the total horizontal area, in square feet, of all portions of the site outside of the exterior walls of buildings and used for the display, storage, or sale of any goods, wares or merchandise.

Handicapped Person - A person who has a severe, chronic disability attributable to a mental or physical impairment or to a combination of mental and physical impairments, which is likely to continue indefinitely, and which results in a substantial functional limitation in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and who requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that are individually planned and coordinated to allow the person to function in, and contribute to, a residential neighborhood.

Hazardous Conditions - Flood plain area, sensitive land, and land with a high water table which if disturbed is likely to be detrimental to life or property.

Hill - A landform that extends above the surrounding terrain, in a limited area.

Hillside - The slope or side of a hillside area - any lot or parcel with an average slope greater than twenty percent (20%).

Home Occupation - Any use conducted entirely within a dwelling and carried on by solely persons residing in the dwelling unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The home occupation may use any accessory building and shall not use any yard space outside the main dwelling or accessory buildings.

Hospital - Institution for the diagnosis, treatment and care of human illness or infirmity, but not including sanitariums and clinics.

Hotel - any structure consisting of one or more buildings with five (5) or more guest rooms kept, used, maintained or held out to the public to be a place where sleeping accommodations are offered for pay to

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transient guests for a period of thirty (30) days or less in which ingress and egress to and from all rooms is made through an inside lobby or office.

Household Pets - Animals or fowl ordinarily permitted in the house and kept for company or pleasure, such as dogs, cats, and canaries, but not including a sufficient number of dogs as to constitute a kennel as defined in this Ordinance. Household pets shall not include the keeping of dangerous animals.

Import: Fill material obtained off site to balance a grading project.

Improvement - An object, facility or structure generally constructed as a part of development.

Interior Courtyard - A space bounded on three or more sides by walls but not a roof.

Junk - Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris or other waste or salvage materials; dismantled, junked, or wrecked automobiles or parts thereof; and old or scrap ferrous or non-ferrous metal materials.

Junkyard - The use of any lot, portion of a lot, or tract of land for the storage, keeping or abandonment of junk, including scrap metals or other scrap material, or for the dismantling, demolition or abandonment of automobiles, or other vehicles, or machinery or parts thereof; provided that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the district.

Kennel - Any premises where three (3) or more dogs or four (4) or more cats older than four (4) months old are kept.

Kennels, Private - Any kennel where three or more household pets are owned and kept by the owner on his/her private property.

Kennels, Public - Any kennel where household pets are boarded commercially.

Knoll - A small, round hill or mound.

Land - The portion of the earth's surface above the level of the sea or ocean.

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Lot Line, Rear - Ordinarily, that line of a lot which is opposite and most distant from the front line of the lot. In the case of a triangular or gore-shaped lot, a line ten (10) feet in length within the parcel parallel to and at a maximum distance from the front lot line. In cases where these definitions are not applicable, the Kanab City Building Inspector shall designate the rear lot line.

Lot Line, Side - Any lot boundary line not a front or rear lot line. A side lot line separating a lot from another lot or lots in an interior side lot line; a side lot line separating a lot from a street is a street side lot line.

Lot, Right-of-way - A strip of land of not less than sixteen (16) feet in width connecting a lot to a street for use as private access to that lot.

Manufactured Home - A manufactured home shall be a dwelling designed and manufactured by a recognizable fabricator of manufactured homes and be certified under the National Manufactured Housing Construction and Safety Standards Act of 1976, meet the HUD Code and must have been issued an insignia approved by HUD and must not have been altered in violation of such codes. It shall be a single family dwelling unit designed to be transported on its own wheels, on a trailer or on detachable wheels and shall include the plumbing, heating, air conditioning and electrical systems and be ready for occupancy except for connections to utilities, location on a permanent foundation and other minor work.

Mass Grading - The movement of large quantities of earth over large areas. Disruption of the majority of the onsite surface terrain is common and often results in a successive pad/terrace configuration. Modification or elimination of natural landforms may result.

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Mesa - A typically flat topped landform with generally steep sides.

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Minimal Grading - A grading concept designed to minimize excavation and filling. Allows the movement of earth for projects such as individual building foundations, driveways, local roads, and utility excavation. Concept often associated with roads conforming closely to natural contours with the

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structures being built on natural terrain.

Mobile Home - A manufactured dwelling built to be moved on its own wheels built prior to 1976 and not intended to be placed on a permanent foundation.

Mobile Home Park - A space designed and approved by the City of Kanab for occupancy by mobile homes, to be under a single ownership or management, and meeting all requirements of the Kanab City Zoning Ordinance and the Kanab City Mobile Home Park Ordinance for mobile home park.

Mobile Home Space - A space within a mobile home park, designed and to be used for the accommodation of one (1) mobile home.

Mobile Home Subdivision - A subdivision designed and intended for residential use where the lots are to be individually owned or leased, and occupied by mobile homes.

Motel - a building or group of buildings providing five (5) or more guestrooms used for transient guests for a period of thirty days or less in which access to each guest room is provided directly through an exterior door or by an entrance connected to a covered hallway or walkway on the exterior/interior of the building.

Natural Features - Non-manmade land characteristics which include drainage swales, wetlands, rock outcroppings, streams, and concentrated native stands of large shrubs or trees.

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Native Vegetation - The natural vegetation commonly found in an area.

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Natural Areas - Undeveloped sites which have not been graded.

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Natural Open Space - The landform as created by nature or subsequently modified by either agricultural activities or to meet fuel modification fire standards of the plan. Within natural open spaces, vegetation introduced for agricultural purposes may be removed and the area revegetated to a natural condition. Existing trees, riparian vegetation and native plant communities within natural open spaces shall be preserved and protected.

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Manmade water bodies and trails through natural open spaces may be considered as natural open space.

Natural Slope - A slope which is not manmade. A natural slope may retain the natural vegetation during adjacent grading operations, or it may be partially or completely removed and replanted.

Natural State - Portion of any lot or parcel which cannot be subjected to grading, removal of vegetation or building development.

Nonconforming Building or Structure - A building or a structure which does not conform to the regulations for height, coverage, or yards of the district in which it is situated, but which was in conformity with applicable regulations, if any, at the time of its erection.

Nonconforming Use - The use of a building or structure or land which does not conform to use regulations for the district in which it is situated, but which was in conformity with applicable regulations, if any, at the time of its establishment.

Nursing Home - An institution, other than a hospital, for the care of human illness or infirmity in which care, rather than diagnosis or treatment, constitutes the principal function. The term "nursing home" shall also include "rest home" and "convalescent home".

Official Map - A map which has been adopted as the official map of the City of Kanab, showing existing public streets, streets on plats of subdivisions which have been approved by the Kanab City Planning Commission, and/or other street extensions, widening, narrowing, or variations which have been accurately surveyed and definitely located.

Off-street Parking Space - The space required to park one (1) passenger vehicle, which space shall meet the requirements of this Ordinance.

~~Open Space - The area reserved in parks, courts, playgrounds, golf courses, and other similar open areas to meet the density requirements of Planned Developments.~~

Open Space - Primary and secondary conservation areas and other land conserved or set aside from development

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definitely located.

Off-street Parking Space - The space required to park one (1) passenger vehicle, which space shall meet the requirements of this Ordinance.

~~**Open Space** - The area reserved in parks, courts, playgrounds, golf courses, and other similar open areas to meet the density requirements of Planned Developments.~~

Open Space - Primary and secondary conservation areas and other land conserved or set aside from development such as but not limited to public or private parks, trails, landscaped buffers, wetlands, meadows, forested areas, pastures, farm fields and other lands forming part of the ecologically connected matrix of natural areas significant due to wildlife habitat, water quality protection and other reasons.

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Open Space, Usable - The area of a lot which is completely free and unobstructed from any structure constructed on, over or below grade. Walkways, uncovered patio areas, light poles, other ornamental fixtures, trees, shrubs, other vegetation and equipment utilizing renewable energy resources may be allowed in open space areas.

~~**Outcropping** - The part of a rock formation that appears above the surface of the surrounding land.~~

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~~**Pad** - A generally flat or stepped area created by grading to accommodate development.~~

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Parking Lot - An open area, other than a street, used for the parking of more than four (4) automobiles and available for public use, whether free, for compensation, or accommodation for clients or customers.

Planned District - A zoning district, the boundaries of which are to be shown on the Zoning Map, but the regulations for which shall be determined by a general development plan to be adopted by the governing body as part of the Kanab City Zoning Ordinance, after public hearing, as required for other zoning districts.

~~**Plateau** - A flat or predominantly flat area of land which is raised sharply above adjacent land on at least one side.~~

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Plot Plan - A plat of a lot, drawn to scale, showing its actual measurements, the size and location of any existing building or buildings to be erected, the location of the lot in relation to abutting streets, and such other information as may be required by the Kanab City Planning Commission.

Prominent Ridge: A ridge or hilltop identified on the sensitive lands overlay map.

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Recreational Vehicle - A vehicle, such as a travel trailer, tent camper, camp car or other vehicle with or without motor power, designed and/or constructed to travel on the public thoroughfare in accordance with the provisions of the Utah Vehicle Code, and designed for use as human habitation for a temporary and recreational nature.

Recreational Vehicle Park - Any area or tract of land or a separate designated section within a mobile home park where lots are rented or held out for rent to one (1) or more owners or users of recreational vehicles. Such park may also be designated as "Overnight Park".

Recreational Vehicle Space - A plot of ground within a recreational vehicle park designated and intended for the accommodation of one (1) recreational vehicle.

Residential Facility for Handicapped Persons - Means a single-family or multiple-family dwelling unit, consistent with existing zoning of the desired location, that is occupied on a 24-hour per day basis by eight or fewer handicapped persons in a family-type arrangement under the supervision of a house family or manager, and that conforms to all applicable standards and requirements of the Department of Social Services, and is operated by or operated under contract with that department.

Residential Facility for Elderly Persons - Means a single-family or multiple-family dwelling unit that is:

- A. not operated as a business, and that is owned by one of the residents or by an immediate family member of one of the residents, or by an eleemosynary, charitable, or beneficial organization. For purposes of this definition, a facility for which the title has been placed in trust for a resident shall be considered to be owned by that resident.

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Ridge - A long, narrow, or sharply defined conspicuous elevation of land.

Ridgeline - The junction of a rising steep slope on one side and a mildly ascending or a descending slope that may either be gentle or steep on the other side. See sketch below for the intended location of ridgeline as being the same as top of slope.

Right-of-Way (Lot) - A strip of land not less than twenty (20) feet in width connecting a lot to a street for use as private access to that lot.

Scar - A highly visible cut in a hillside or ridge in which all topsoil has been removed and vegetation will be unable to establish itself within a significant period of time (5 years).

Semi Truck - "Semi Truck" is defined as any tractor trailer combination and is of the type commonly used for commercial transport purposes; "trailer", as used herein, refers to a carrier used for cargo or commercial purposes and intended to be used in tandem with a tractor. Semi Tractors have two front wheels, and each of the two rear "drive" axles having a pair of "dual" (double) wheels on each side. Thus, the most common configuration of tractor has ten wheels. The cargo trailer usually has two "tandem" axles at the rear, each of which has dual wheels or eight wheels on the trailer and the overall lengths often range from 50 to 70 feet.

Sensitive Lands - Any land area whose destruction or disturbance could immediately affect the life of the community, and includes:

- A. Hillside Areas, as defined in this Ordinance
- B. Areas of wetlands, as defined by the U.S. Army Corps of Engineers
- C. Floodplain areas, as delineated in the Sensitive Lands Overlay Map.
- D. All areas within one hundred (100) feet of a ridgeline, as identified in the Sensitive Lands Overlay Map.
- E. Expansive clay soils.

Setback - The area between the building line and the property line, or when abutting a street, the ultimate

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right of way line. No structure or building is allowed in this area.

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Sign - A presentation or representation of words, letters, figures, designs, picture or colors, publicly displayed so as to give notice relative to a person, a business, an article of merchandise, a service, an assemblage, a solicitation, or a request for aid; also, the structure or framework or any natural object on which any sign is erected or is intended to be erected or exhibited or which is being used or is intended to be used for sign purposes.

Sign, Animated - A sign which involves motion or rotation of any part, created by artificial means, or which displays flashing, revolving or intermittent lights.

Sign Area - The area in square feet of the smallest rectangle enclosing the total exterior surface of a sign having but one (1) exposed exterior surface. Should the sign have more than one (1) surface, the sign area shall be the aggregate of all surfaces measured as above which can be seen from any one (1) direction at one (1) time.

Sign, Free-standing - A sign which is supported by one (1) or more upright columns, poles, or braces, in or upon the ground.

Sign, Identification and Information - A sign displayed to indicate the name or nature of a building, or of a use.

Sign, Illuminated - A sign in which a source of light is used in order to make the message readable. This definition shall include internally and externally lighted signs.

Sign, Marquee - Any sign attached to or made an integral part of a marquee.

Sign Ordinance - The sign ordinance of the City of Kanab.

Sign, Projecting Wall - A sign which is affixed to an exterior wall or building or structure and which projects more than eighteen (18) inches from the building or structure wall, and which does not extend above the parapet, eaves, or building facade of the building upon which it is placed.

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Single Loaded Street - A street with lots fronting on one side only.

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Site - Any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

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Site Plan - A plan required by providing the information required by, ordinance.

Slope - An inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In this Ordinance, slopes are generally expressed as a percentage; percentage of slope refers to a given rise in elevation over a given run in distance. A fifty (50) percent slope, for example, refers to a 100-foot rise in elevation over a distance of 200 feet. A fifty (50) percent slope is expressed in engineering terms as a 2:1 slope.

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Slope, Manufactured - A manmade slope consisting wholly or partly of either cut or filled material.

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Slope Transition - The area where a slope bank meets the natural terrain or a level graded area either vertically or horizontally.

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Stable, Public - Any stable where horses are boarded and/or kept for hire.

Story, Half - A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls do not extend more than four (4) feet above the floor of such story, and the ceiling area of which does not exceed two-thirds (2/3) of the floor area of the same half story.

Structure - Anything constructed, the use of which requires fixed location on the ground, or attachment to something having a fixed location upon the ground; includes "building".

Street, Dedicated - A street which has been dedicated to public use and accepted by the appropriate authority, according to law.

Street, Private - A thoroughfare within a subdivision which has been reserved by dedication unto the sub divider or lot owners to be used as private access to

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serve the lots platted within the subdivision and complying with the adopted design standards of Kanab City and maintained by the landowners within the subdivision by assessments authorized by recorded covenant.

Street, Publicly Approved - A street in a subdivision where a dedication is technically not complete, but approval by the City has been given to the recording of the subdivision plat. This is the case in a subdivision in which improvements are not completed but in which a developer has posted a bond to ensure the completion of street improvements.

Strip Mall - A shopping complex containing a row of various stores, businesses, and restaurants that are interconnected and usually open onto a common parking lot.

Subsurface Drainage - Any system of pipes, canals, ditches, moats, and the like that intercepts ground water and carries it to Kanab Creek.

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Surface Drainage - Water run-off caused as a result of precipitation or irrigation.

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Toe of Slope - The lowest elevation of a slope which transitions to a flatter area or pad.

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Top of Slope - The highest elevation of a slope which transitions to a flatter area or pad.

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Topography - General term to include characteristics of the ground surface such as plains, hills, mountains, degree of relief, steepness of slope, and other physiographic features.

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Truck Stop - Is defined as a commercial business consisting of one or more of the following: service station, convenience store, garage-vehicle repair, restaurant or motel and has sufficient parking area to accommodate semi-trucks and other restricted vehicles.

Utah Licensed Professional: A Utah registered or licensed civil engineer, land surveyor, architect or landscape architect.

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Vegetation: Growing native or nonnative plants.

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Vicinity Plan - A map or drawing, to scale, showing the physical relationships of the proposed development to existing or proposed streets, buildings, and utilities; other relevant information such as special terrain or surface drainage, and existing zoning classifications of all land within three hundred (300) feet of the property proposed for development.

Viewshed: Areas which can be viewed from arterial roads, major collector roads or public gathering places which visually dominate an individual's cone of vision. (Ord. 2008-14)

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Wetlands: Lands that are generally inundated or saturated by surface or ground water at a frequency or duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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Yard - A required open space on a lot, other than a court, unoccupied and unobstructed from the ground upward, except as permitted elsewhere in this Ordinance.

Yard, Front - A space on the same lot with a building, between the front line of the building and the front lot line, and extending across the full width of the lot. The "depth" of the front yard is the minimum distance between the front lot line and the front line of the building.

Yard, Rear - A space on the same lot with a building, between the rear line of the building and the rear lot line, and extending the full width of the lot. The "depth" of the rear yard is the minimum distance between the rear lot line and the rear line of the building.

Yard, Side - A space on the same lot with a building, between the side line of the building, and the side lot line and extending from the front yard to the rear yard. The "width" of the side yard shall be the minimum distance between the side lot line and the side line of the building.

Zone - (See "District")

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Land Use Ordinance

Chapter 9

SITE PLAN REVIEW

This ordinance promotes the orderly and harmonious appearance of buildings and structures and the development of land

Adopted January 22, 2008
Revised July 28, 2009

Section 9-3 Site Plan Requirements

A site plan, drawn to scale, shall show, as applicable by the Land Use Ordinance:

- A. Scale of plan and direction of north point.
- B. Lot lines, adjacent streets, roads, trails, and rights-of-way.
- C. Location of all existing structures on subject property and adjoining properties, with utility lines, poles, and other equipment, fully dimensioned.
- D. Location of proposed construction and improvements, with location and dimension of all signs.
- E. Any new or re-modeled parking lot to be built.
- F. Proposed motor vehicle access, circulation patterns, with individual parking stalls, trails, and curb, gutter, and sidewalk location.
- F.G. Mapped floodplains and sensitive land areas relative to the project boundary as delineated in Exhibit N: Sensitive Lands Overlay.
- G.H. Explanatory notes as necessary.
- H.I. Name, address, and telephone number of the builder and owner.
- I.J. A landscaping plan, according to the requirements found in this Ordinance.
- J.K. All other information related to the site plan and reasonably required as determined by the Kanab City Planning Commission or the Kanab City Zoning Administrator when authorized.

Section 9-4 Additional Site Plan Requirements by Application

9-4.1. Mobile and Park Model Home Parks

Mobile and Park Model Home Parks shall meet the requirements of Chapter 12 for an overall plan for development, in conjunction with site plan requirements listed in Section 9-3.

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Chapter 9

SITE PLAN REVIEW

This ordinance promotes the orderly and harmonious appearance of buildings and structures and the development of land

Adopted January 22, 2008
Revised July 28, 2009

7. Property owners shall keep landscaped areas free of weeds and trash.

Also see Exhibit J & K

P. Hillside Areas: Development within hillside areas shall meet the landscape design standards of Chapter 11 of this Ordinance.

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Section 9-9 Conditions

The Kanab City Planning Commission, or the Kanab City Zoning Administrator when authorized, shall decide all applications for site plan review. Site plan approval may include such conditions consistent with the consideration of this Chapter as the Kanab City Planning Commission or Kanab City Zoning Administrator deem reasonable and necessary under the circumstances to carry out the intent of this Chapter.

Section 9-10 Findings and Decisions

Upon a finding by the Kanab City Planning Commission, or the Kanab City Zoning Administrator when authorized, that the application meets the requirements of this Chapter, the site plan approval shall be granted, subject to such conditions as are necessary; otherwise, approval shall be denied.

Section 9-11 Notification of Approval or Denial

Upon the granting of site plan approval, the secretary of the Kanab City Planning Commission shall prepare and mail or deliver to the applicant a formal statement thereof, stating the fact of the grant and any conditions attached thereof, or the fact of denial and the reasons therefore.

Section 9-12 Time Limitations on Approval

If construction in harmony with the permit for any development for which site plan approval has been granted has not been commenced within one (1) year from date of notification of approval, the approval shall be deemed automatically revoked. Upon application, an

Chapter 11 – Sensitive Lands

Regulating development in sensitive areas and to preserve Kanab's unique visual character, to promote the public health, safety, and general welfare, and to require environmentally sound design and planning.

Sections

- 11-1 Purpose
- 11-2 Policies Promoted
- 11-3 Applicable Provisions
- 11-4 Development Permit Process
- 11-5 Required Permit Documents
- 11-6 Development Standards
- 11-7 Exempt Actions

Section 11-1 Purpose

11-1.1. This Chapter regulates development in Kanab City's sensitive areas to preserve Kanab City's unique visual character, to promote the public health, safety, and general welfare, and to require environmentally sound design and planning.

11-1.2. The mountains, hillsides, riparian areas, and other natural features around the community create a desirable setting for the entire city. Development of land within these areas involves special considerations and unique situations such as increased hazards to development from rock falls and other geologic hazards, storm water runoff, and high ground water tables. Natural features can often create challenges in providing public services or limit designs for roadways, cuts and fills, and buildings.

Section 11-2 Policies Promoted

11-2.1. This Chapter promotes the following policies:

- 11-2.1.1. Encourage the appropriate location, design, and development of proposed projects while

mitigating any hazardous conditions associated with hillsides, including rock falls, storm water runoff, and mass movements;

11-2.1.2. Preserve the views of Kanab City's hills and mountains.

11-2.1.3. Protect and preserve natural drainage areas, streams, slopes, ridgelines, rock outcroppings, vistas, natural plant formations, trees, and other areas of historical or visual significance;

11-2.1.4. Encourage development that is harmonious with the natural terrain and the character of the area;

11-2.1.5. Minimize the adverse effects of grading and cut-and-fill operations, avoid the highly visible scarring of hillsides, and discourage mass grading and terracing of large pads while allowing flexibility for reasonable development practices;

11-2.1.6. Establish hillside development standards that protect the scenic value of proposed projects;

11-2.1.7. Minimize adverse soil and slope instability, decrease the potential for erosion, and prohibit activities and uses that degrade fragile soils and steep slopes;

11-2.1.8. Stabilize steep hillsides, prevent erosion, and enhance the natural scenic beauty of hillsides;

11-2.1.9. Minimize grading and prevent unreasonable "padding" or "staircase" effects from grading.

11-2.1.10. Encourage road design that follows the natural topography to minimize cutting and grading;

11-2.1.11. Establish land use densities that preserve significant natural features;

11-2.1.12. Require the landowner to hire experts who will assess the conditions of potentially unstable land and impose restrictions on development;

11-2.1.13. Prevent uses that present unreasonable risks to persons or property related to geological and natural hazards or geotechnical limitations; and

11-2.1.14. Prevent fraud in land sales relating to the geologic or other condition of real property.

Section 11-3 Applicable Provisions

11-3.1. **Areas Affected:** This Chapter governs the development of all sensitive land areas as defined in this Chapter, as delineated in Exhibit N.

11-3.2. **Underlying Zoning:** All underlying zoning restrictions of the Kanab City Land Use Ordinance apply. If a section of this Chapter conflicts with another Kanab ordinance, the most restrictive provision applies.

Section 11-4 Development Permit Process

The land use authority must review the criteria of this Chapter as part of the subdivision, site plan, and building permitting process, as applicable to the development.

Section 11-5 Required Documents

11-5.1. In addition to documents required during subdivision, site plan, and building permitting process, the following documents are required for reviewing development containing any sensitive lands, unless excused as under Section 11-5.

11-5.2. **Slope Analysis Exhibit:** If a parcel contains a slope of 20% or greater, as shown in Exhibit N: Sensitive Lands Overlay Map, the applicant must prepare a slope analysis exhibit.

11-5.2.1. The slope analysis must include a base topographical map of the subject site that is prepared and signed by a Utah-licensed civil engineer or land surveyor. This base topographical map must show all of the adjoining properties within 150 feet of the site boundaries.

11-5.2.2. The slope analysis calculations must be prepared by a Utah-licensed professional. This slope analysis must be prepared using CAD-based or GIS-based software specifically designed for slope analysis calculations. Contours on the exhibit must be prepared using no greater than two-foot contour intervals with ten-foot contours clearly labeled and at a scale of at

least one inch equals one hundred feet (1" = 100'). The slope analysis exhibit must delineate slope bands with contrasting colors for the following slope ranges: zero percent (0%) to twenty percent (20%), greater than twenty percent (>20%) to thirty percent (30%), greater than thirty percent (>30%) to forty percent (40%), and greater than forty percent (>40%).

11-5.2.3. The slope analysis exhibit must include a tabulation chart indicating the land area in acres within each slope category as identified in Section 11-5.2.2.

11-5.2.4. The slope analysis exhibit must include a sufficient number of slope cross sections to clearly illustrate the extent of the proposed grading. The slope cross sections must:

11-5.2.4.1. Each be drawn at the same scale and indexed or keyed to the existing topography, grading plan, and project site map. Both vertical and horizontal scales must be indicated and be of the same scale. The slope cross section must extend at least 150 feet outside the project site boundary. The slope calculations must be calculated in intervals of no greater than forty feet along the cross sections.

11-5.2.4.2. At a minimum, slope cross sections must be drawn along those locations of the project site where:

11-5.2.4.2.1. existing topography is altered;

11-5.2.4.2.2. development is proposed;

11-5.2.4.2.3. The site is most visible from surrounding land uses; and

11-5.2.4.2.4. Where grading will impact natural drainage conditions.

11-5.2.4.3. At least two of the slope profiles must be roughly parallel to each other and roughly perpendicular to existing contour lines.

11-5.2.4.4. The slope cross sections must be stamped and signed by a Utah-licensed

professional who is proficient in creating cross sections indicating the datum, source, and scale of topographic data used in the slope profiles. The professional must certify in the exhibit that the slope profiles have been accurately calculated and identified.

11-5.2.4.5. The slope cross sections must show existing and proposed topography, structures, and roadways. Proposed topography and features must be drawn with a solid line. Existing topography and features must be drawn with a dashed line.

11-5.3. Additional Exhibits or Reports: The development committee, city engineer, planning commission, and the city council may request additional exhibits, documents, or reports necessary to adequately understand the unique circumstances and the full impact of any proposed development. These additional exhibits, documents, or reports must be submitted with other application materials. Examples of additional exhibits, documents, or reports that may be requested under this Section 11-5.11 include but are not limited to the following:

11-5.3.1.A more detailed grading exhibit showing mitigation or grading details based on site visits with the developer's representative.

11-5.3.2.A computer-generated, three-dimensional imaging or photo-imbedded visual simulation depicting the impact of the development on the visual character of the site. A visual simulation must depict any topographical areas with steep slopes or unique topographical features planned for disturbance and must be illustrated with a perspective that adequately shows post-development conditions with the proposed mitigation for development. Pre-development digital photographs of the site must be included showing the same views used in the post-development, computer-generated, three-dimensional imaging exhibits for comparison. The number of computer-generated exhibits and their locations and perspective will be based on site visits with the developer's representative.

Section 11-6 Development Standards

11-6.1. These development standards govern all proposed development and improvements within sensitive lands areas, as described in Exhibit N.

11-6.2. **Hillside Area Classifications:** Land in a Hillside Area must be evaluated according to the following slope categories. Each slope category indicates the relative suitability of land for development.

11-6.2.1. Zero percent (0%) to twenty percent (20%); flat to gently rolling land: Development with grading is permitted in this category. Land in this slope category is subject to the requirements of the excavation and grading permit requirements of the applicable building code. Open space requirements coincide with underlying zone.

11-6.2.3. Greater than twenty percent (>20%) to thirty percent (30%); hillside: Hillside Standards described in Section 11-6.3 apply. Required open space includes a minimum of 70% of the total land area.

11-6.2.4. Greater than thirty percent (>30%); steep hillside: This category is a sensitive slope condition, and development is limited. Hillside Standards described in Section 11-6.3 apply. Required open space includes a minimum of 90% of the total land area.

**TABLE 11.1
SLOPE AND REQUIRED OPEN SPACE**

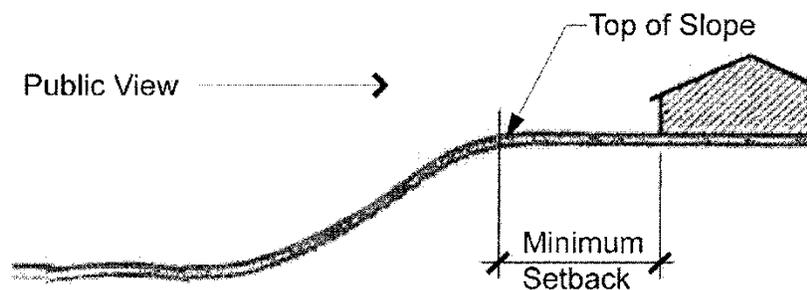
Slope Category Percent Natural Slope	All Zones Required Open Space
0% – 20%	Underlying zoning applies
>20% – 30%	70 percent
>30%	90 percent

11-6.3. **Hillside Area Development Standards:** the following development standards govern development in Hillside Areas, as defined in this Chapter.

11-6.3.1. Architectural Standards:

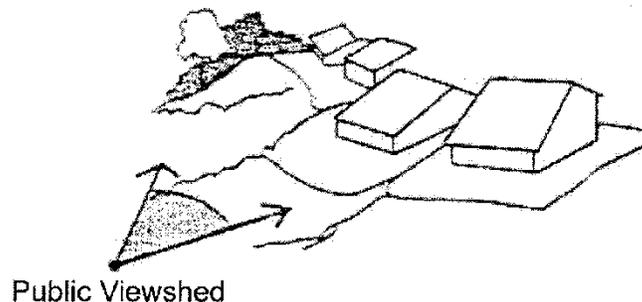
11-6.3.1.1. Building Orientation and Setbacks:

The land use applicant must provide a variety of building and lot orientations. Unless a greater setback is recommended in the geotechnical report or the structure is located on a prominent ridgeline where a greater setback applies as detailed in this Chapter, a minimum building setback of fifteen feet from the top of a slope or an average setback of fifteen feet must be provided from the edge of the pad.



11-6.3.1.2. Viewshed Protection:

11-6.3.1.2.1. A structure must be designed so the slope angle of the roof pitch is generally at or below the angle of the natural hillside or graded slope.



11-6.3.1.2.2. A site plan must be designed to preserve views of prominent visual features such as ridgelines, as viewed from within and outside the hillside development. A building

must be oriented to allow view opportunities and be located on the least sensitive portions of the site so as to preserve landforms, vegetation, and topographical features.

11-6.3.1.2.3. A hillside building must be stepped to follow the contours of the slope. Exterior structural supports and undersides of floors and decks not enclosed by walls are discouraged but may be permitted with fire safety and architectural considerations adequately addressed to the satisfaction of the city.

11-6.3.1.3. Building Style: The architectural style of a building must be compatible with the environment, character, topography, and theme of the community. Hillside adaptive architecture, as described below, must be used within the Hillside Area:

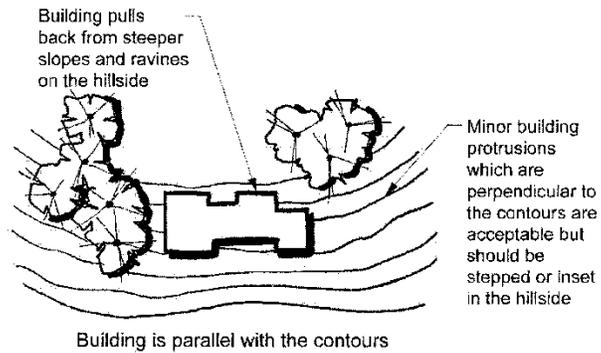
11-6.3.1.3.1. A building must be stepped as necessary to minimize grading.

11-6.3.1.3.2. A building design must include a variety of roof orientations and types that reflect the overall slope of the hillside.

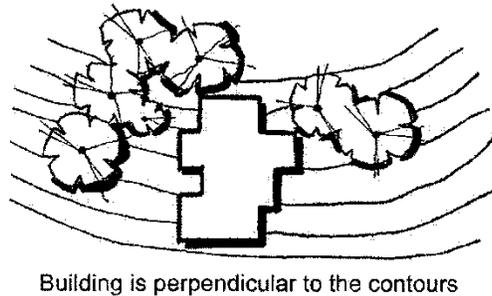
11-6.3.1.3.3. Enhanced architectural elevations are required where any side of a structure is publicly visible.

11-6.3.1.3.4. Building dimensions as measured in the direction of the slope must be minimized to limit the amount of cut and fill and to better incorporate the structure into the natural terrain.

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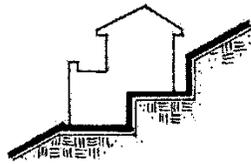
11-6.3.1.3.5. Buildings must be clustered to respect and adapt to the existing topography. The position of a structure and the size of lots must be adjusted as necessary to preserve the character of the hillside setting.

11-6.3.1.4. Architectural Treatments: A publicly visible exterior wall of a building must be designed to avoid monotonous or continuous facades. A single, continuous, vertical, or horizontal plane on the front and rear facade of any building is not permitted. Architectural features and details must be incorporated in all exterior walls of the publicly visible building, including the rear and sides of the building. Buildings may utilize wall articulation (i.e., insets, pop outs, etc.) and roof orientation as a means to break up the massing.

11-6.3.1.4.1. The form, mass, and profile of the individual buildings and architectural features must be designed to blend with the natural terrain and to preserve the character of

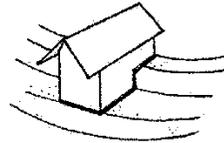
the natural slope. The use of large gable ends on downhill elevations is prohibited. The predominant roof slope must be oriented in the same general direction as the natural slope.

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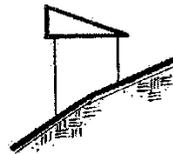


Roof slope approximates that of hillside and follows its direction, building hugs ground form better

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Avoid large gable ends on downhill elevations

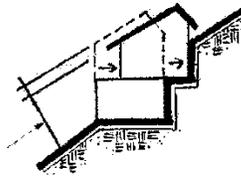


Angular forms which slope in the opposite direction to the slope of the hill destroy the relationship of the hillside and building and increase the effective bulk

11-6.3.1.4.2. Large roof overhangs and cantilevers on downhill elevations are prohibited.

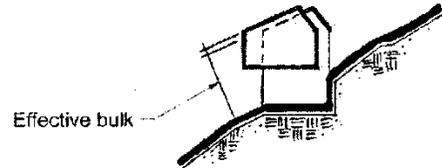
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Terracing reduces bulk



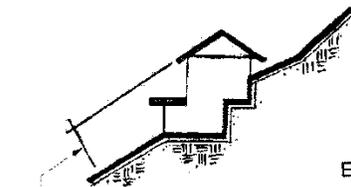
Effective bulk

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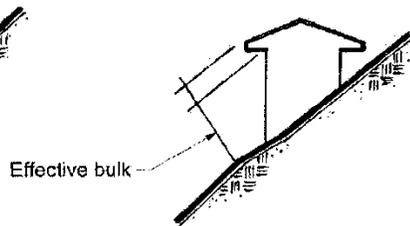
Effective bulk

Cantilever makes building appear taller, more monumental



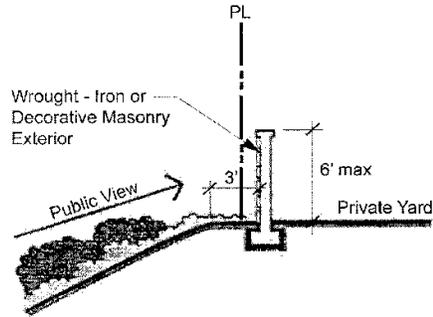
Effective bulk

Smaller overhangs for individual floors or windows help break-up mass and protect against excessive sunlight

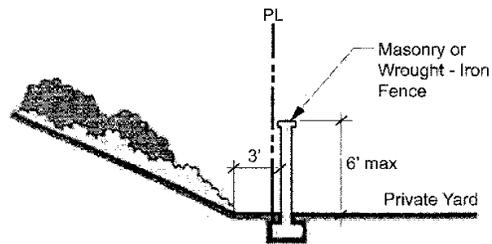


Effective bulk

Excessive roof overhang results in additional visual bulk



Top of Slope Wall



Toe of Slope Wall

11-6.3.2. Hillside Landscape Design Standards:

11-6.3.2.1. Landscaping must be designed to stabilize graded slopes and prevent erosion. The design must be compatible with surrounding natural vegetation.

11-6.3.2.1.1. *Cut or Fill Slopes:* All plant material used on cut or fill slopes must be compatible with plant material found on adjacent undisturbed hillsides. Design for cut or fill slopes must use Xeriscaping landscape methods. No irrigation system is allowed on or adjacent to the slope itself.

11-6.3.2.1.2. *Pad Sites or Flat Areas:* All plant materials on pad sites and areas with slopes of less than ten percent (10%) must be of a desert type requiring little or no irrigation. Hand-watered, fired pots or other similar watertight containers may be used to hold additional landscape materials. Any lawn area must be artificial grass. Any proposed landscaping other

than rocks and colored or natural stones must consist of low-water plantings with minimal irrigation requirements.

11-6.3.2.1.3. *Terraced Areas:* On terraced areas between retaining walls, minimal desert type landscaping may be used as long as it complies with the regulations governing pad sites in Section 11-6.3.2.1.2.

11-6.3.2.1.4. *Slope and Landscape Maintenance:* Homeowners' associations (HOAs) and property owners' associations (POAs) must maintain the slopes and landscaping of common open space in the Hillside Areas. If an affected owners' association disbands or neglects its duties to maintain the slopes and landscaping, the city may contract with a landscape maintenance contractor for ongoing maintenance and place a lien against any and all private or common areas in the project to ensure repayment to the city of any incurred expense.

11-6.3.2.2. Before issuing an occupancy permit may be issued, the city must determine that the proposed site plan and landscaping plans comply with this Chapter and any conditions imposed during the hillside development process.

11-6.3.3. Retaining Walls: These regulations establish minimum development standards for retaining walls. The grading and concept plans must show the location, height, and type of any retaining wall, privacy wall, and fence. A retaining wall, privacy wall, and fence must be located within the disturbance limit for each lot or parcel.

11-6.3.3.1. General Standards:

11-6.3.3.1.1. The maximum length of any continuous retaining wall is 200 feet.

11-6.3.3.1.2. A retaining wall must be used to contain fill material or minimize cut or fill slopes. The retaining wall may extend only six inches above the material it is retaining.

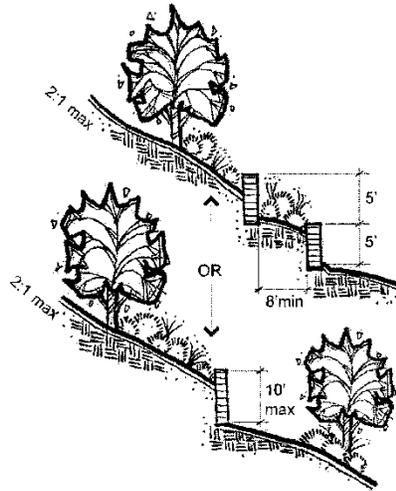
11-6.3.3.1.3. A retaining wall must not block or restrict vehicular access to a dedicated or implied dedicated alley, access way, pedestrian access, trail, sidewalk, easement, or right of way.

11-6.3.3.1.6. Each retaining wall, freestanding wall, and fence must conform to the building codes of the city.

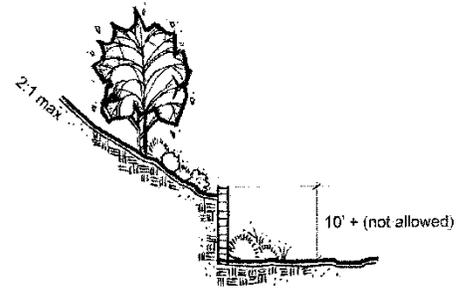
11-6.3.3.2. Height Standards:

11-6.3.3.2.1. No portion of a retaining wall may be more than ten feet tall, as measured from the immediately adjacent lowest natural or finished grade to the top of the wall. Retaining walls must not be stacked or terraced in any manner that increases their combined height beyond ten feet. Two sub-walls may be stacked or terraced to a maximum combined height of ten feet. A minimum separation of six feet is required between sub-walls as measured from the faces of the walls. The separation area between the sets of sub-walls must have low-water-use shrubs, low-maintenance shrubs, or other vegetation as approved in the landscape plan. No tree may be planted in the separation area between sub-walls unless the separation area between sub-walls is at least twenty linear feet.

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11-6.3.3.2.2. For purposes of Section 11-6.3.3, retaining walls are not considered stacked or terraced if there is at least ten feet between the retaining walls. A retaining wall that is at least ten feet from another retaining wall may be constructed to the maximum allowable height as stated in Section 11-6.3.3.2.1. The separation area between the sets of retaining walls must have low-water use shrubs, low-maintenance shrubs, or other vegetation as approved in the landscape plan. No more than three adjacent retaining walls are allowed, and the maximum combined height of the adjacent retaining walls is 27 feet.

11-6.3.3.2.3. Retaining walls may be constructed to varying heights throughout a development.

11-6.3.3.2.3.1. A retaining wall in the side yard area may not be more than four feet tall; provided that such wall does not extend into a required front yard setback adjacent to a street.

11-6.3.3.2.3.2. A retaining wall in the rear yard area of a lot may not be more than eight feet tall.

11-6.3.3.2.3.3. Where a retaining wall contains fill above the natural grade and is located within a required setback yard, the height of the retaining wall is considered as contributing to the permissible height of a fence or wall at that location. A non-view-obscuring fence up to three and one-half feet (3.5') in height may be erected at the top of the retaining wall for safety.

11-6.3.3.2.4. A retaining wall may be used to provide a private outdoor area adjacent to a structure, but this retaining wall must not be more than six feet tall.

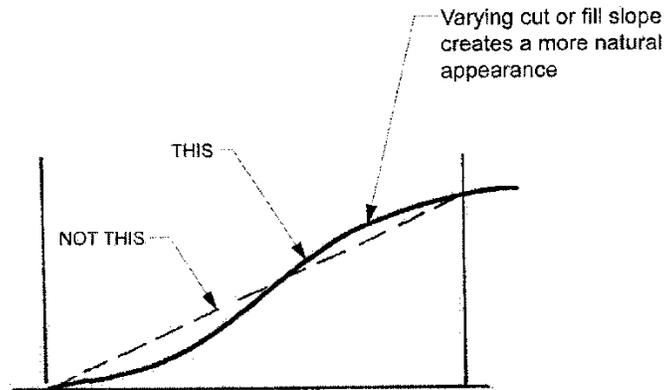
11-6.3.5. Grading Design: Grading for all developments must be designed to blend with the contours of the adjacent natural terrain.

11-6.3.5.1. Limits of Grading: Any grading, cutting, filling, excavating, benching, and terracing must not exceed the disturbance limitation imposed under the authority of this Chapter.

11-6.3.5.2. Cuts and Fills: All cuts and fills must be minimized and must be included within the disturbance limit for each lot or parcel. All cut and fill areas must be re-contoured to the natural, varied contours of the surrounding terrain with a maximum slope transition back to the natural grade no greater than two to one (2:1). Slope ratios greater than two to one (2:1) are prohibited except for approved cuts into solid rock only. For approved cuts into solid rock, the slope may be as steep as one-half to one ($1/2:1$) if recommended by a Utah-licensed professional engineer who is trained and experienced in the practice of geotechnical engineering, and if the visual impact of the cut can be adequately mitigated. Any area of cut and fill must be protected from erosion during construction and must be permanently planted or otherwise protected from erosion within 20 days of the completion of grading and excavation as identified by the approved landscape plan.

Where cut or fill conditions are created, slopes

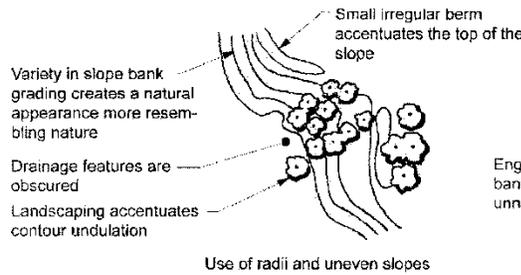
must be varied and rounded where feasible rather than left at a constant angle.



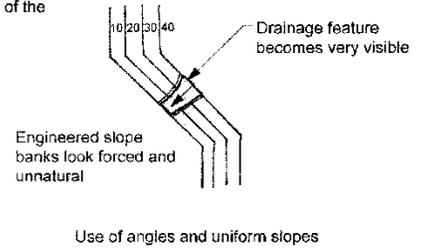
11-6.3.5.3. Cuts and Fills Visual Mitigation: The visual impact of cuts and fills must be mitigated by methods approved by the city council. Mitigation efforts must be predominantly contour grading along with plantings as identified on the approved landscape plan that will stabilize the cut or fill slope and blend with the surrounding vegetation. Other mitigation efforts may include, but are not limited to, positioning buildings to screen the cuts and constructing retaining walls designed to blend with the surrounding terrain. The use of retaining walls is to be as described in Section 11-6.3.3. Contour grading techniques must be used to provide a natural-appearing variety of slope transitions, slope percentage, and slope direction in a three-dimensional, undulating pattern similar to existing terrain.

11-6.3.5.3.1. Cut and fill operations must be given a rounded appearance that closely resembles the natural contours of the land.

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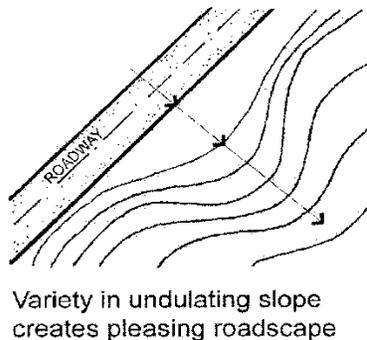


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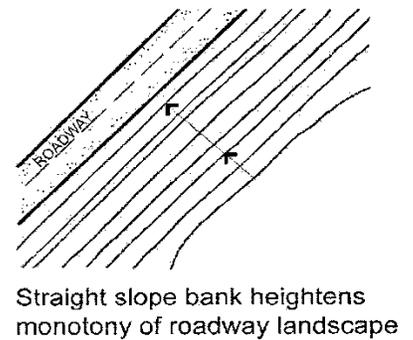


11-6.3.5.3.1. Graded slopes adjacent to roadways must be softened by sufficient berms, contour grading, or landscaping to create natural, varied, and pleasing streetscapes.

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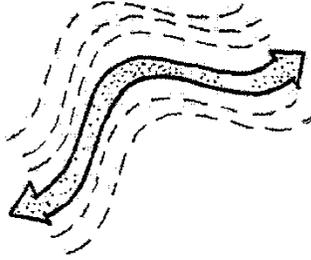


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11-6.3.5.4. Street and Driveway Alignment: A street must run generally parallel to the contours of the natural terrain. Short sections of streets that run perpendicular to natural contours and serve the purpose of connecting main parallel sections of streets are permitted and must follow the natural curves of drainage ways where practicable. Contour grading techniques must be used on all streets and associated cut and fill areas to minimize any adverse impacts. Reduced-width road sections, split-road sections, and split-parking bays are potentially acceptable techniques to use in the layout of hillside streets to reduce grading.

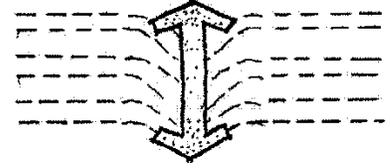
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Reduce grading by aligning roads along natural grades

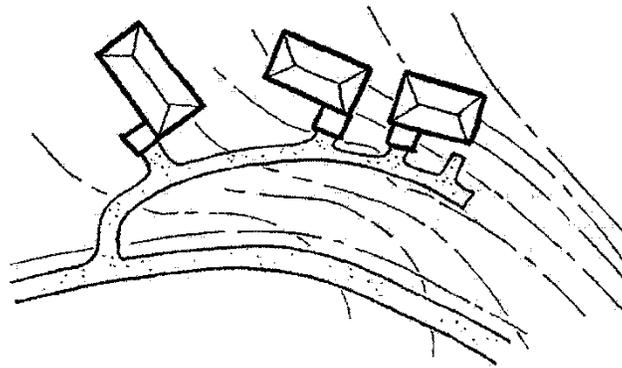
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Roads and hillside grading.



Avoid running counter to steep grades except where necessary for connecting roads parallel to contours

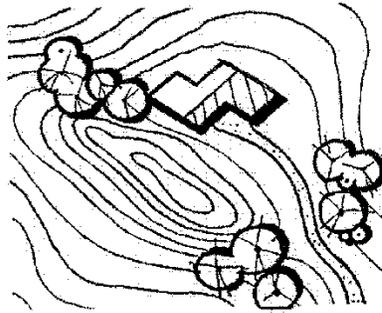
Any portion of a driveway that runs perpendicular to natural contours and serves the purpose of accessing building lots and parcels must be as short as practicable, as determined by the Development Committee. A driveway that serves more than one parcel is permitted as a method of reducing unnecessary grading, paving, and site disturbance. If a driveway is to be shared by lots or parcels, cross-use easements must be recorded with the subdivision.



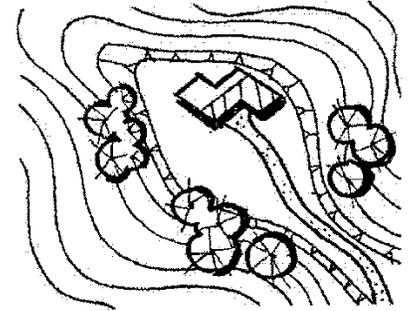
Shared driveways can reduce grading.

11-6.3.5.6. Building Site Grading: A property owner must minimize building site grading to preserve natural features. The building site plan must position each structure so that the necessary grading would not modify the general orientation of the slope.

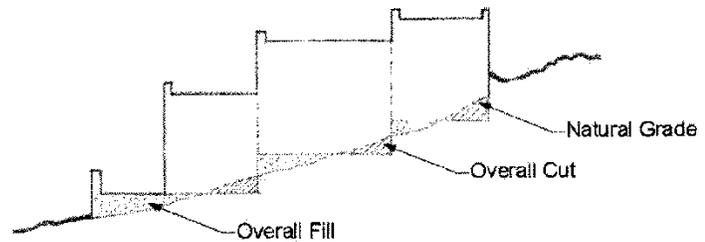
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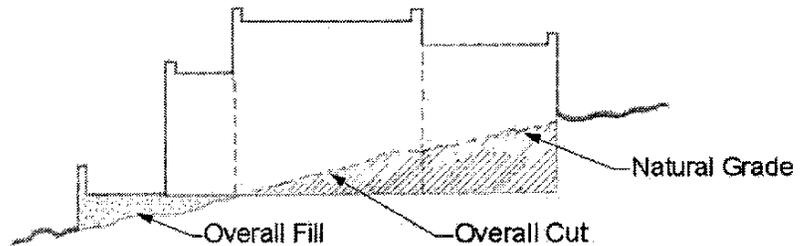
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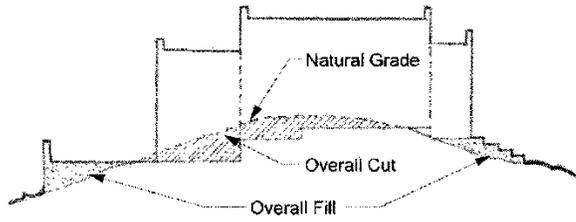
11-6.3.5.7. Cut and Fill Conditions: A site plan must minimize cut and fill conditions consistent with this Chapter. Different terrain conditions call for corresponding different cut and fill solutions so that the structure fits well into the topography as illustrated below. Impact to natural drainage ways must be avoided.



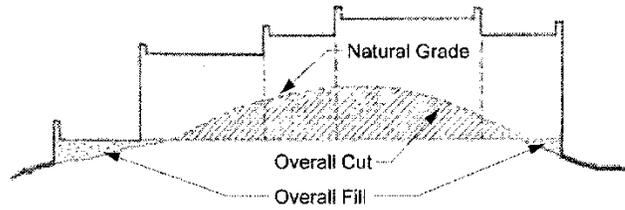
Sloping Site - Conceptual Terraced Floor Levels



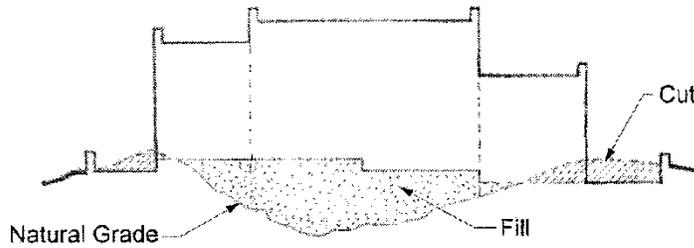
Sloping Site - Conceptual Single Floor Levels



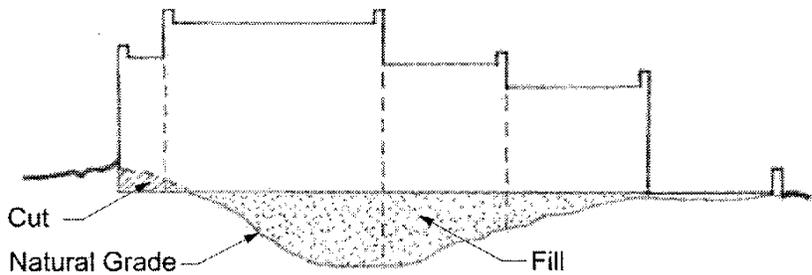
High Center Site - Conceptual Terraced Floor Levels



High Center Site - Conceptual Single Floor Level



Low Center Site - Conceptual Terraced Floor Levels



Low Center Site - Conceptual Single Floor Level

11-6.4. Prominent Ridge and Mesa Edge Visual Preservation: To minimize the adverse visual impacts that new development can have on prominent ridges and their associated viewsheds, the following setbacks apply:

11-6.4.1. The setback from a ridgeline, as described in Exhibit N is 50 feet for one-story structures and sight-obscuring privacy fences and walls. Notwithstanding, if a greater setback is recommended in the geology report submitted under Section 11-5.9, then that setback is mandatory.

11-6.4.2. The setback from a ridgeline is 100 feet for 1¹/₂- and two-story structures. Notwithstanding, if a greater setback is recommended in the geology report submitted under Section 11-5.9, then that setback is mandatory.

11-6.4.3. A greater setback may be recommended in the geology report or by the City Engineer or Development Committee for safety and stability.

11.6.5. Floodplain Areas: Developments proposed to occur in floodplain areas are subject to the Kanab Flood Damage Prevention Ordinance.

11-6.6. Corrective Work: Nothing in this Chapter prohibits the city from authorizing grading that is necessary to correct previously disturbed natural areas or existing hazardous conditions that are on site but not a part of the proposed development area that are brought to the city's attention. In that case, the applicant must investigate alternatives with subsequent review by the Development Committee, City Engineer, Planning Commission, or City Council.

Section 11-7 Exempt Actions

11-7.1. The following actions may be exempt from the application procedure of this Chapter as provided below.

11-7.1.1. Construction or minor excavation that does not require a grading permit or a building permit. To qualify for this exemption, the property owner must submit development plans to the community development department for city review to determine possible mitigation requirements prior to any actions

or activities taking place. Any mitigation requirement established through this review is mandatory.

11-7.1.2. The construction and installation (trenching, utility construction, and backfilling) of underground utility systems.

11-7.1.3. The re-grading of existing lots for landscape installation as long as the re-graded area is within the buildable area of the development.

11-7.1.4. Pool or spa construction that does not involve the construction of any retaining wall over four feet tall, whether or not any retaining wall is part of the pool structure.

11-7.1.5. Addition to an existing structure or construction of an accessory structure within the buildable area of a lot. Notwithstanding, if a grading permit is required for the action referred to in this Section 11-7.1.5, the exemption does not apply, and the applicant must comply with this Chapter.

11-7.1.7. The construction of a public street identified in the Kanab City General Plan or Transportation Master Plan that is not part of any overall development project (e.g., a street proposed primarily for improved circulation within the city and not to provide access to any particular parcel or development).

AGREEMENT

FOR

**ENGINEERING AND
TECHNICAL SERVICES**

KANAB CITY

AND

SUNRISE ENGINEERING, INC.



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**KANAB CITY
AND
SUNRISE ENGINEERING, INC.**

**AGREEMENT
FOR
ENGINEERING AND TECHNICAL SERVICES**

This Agreement for Engineering and Technical Services (this “Agreement”) is entered into by and between KANAB CITY (CLIENT) and SUNRISE ENGINEERING, INC. (ENGINEER) to be effective as of the ____ day of _____, 20____.

CLIENT and ENGINEER agree as follows:

ARTICLE 1. PURPOSE AND EFFECT OF THIS AGREEMENT.

1.1 Work Releases. It is the intention of CLIENT to award to ENGINEER projects for the performance of engineering and/or technical services (a “Relevant Project”) through the execution by CLIENT and ENGINEER of Work Releases substantially in the form attached hereto as Exhibit “A” (a “Work Release”) that reference this Agreement and incorporate into the Work Release for the Relevant Project the terms, conditions, promises and obligations of this Agreement. It is understood and agreed that CLIENT shall have no legal obligation or duty created by the execution of this Agreement to award any Relevant Project to ENGINEER or to execute any Work Release with ENGINEER. Nothing in this Agreement is to be construed as granting to ENGINEER exclusive rights to perform any or all of CLIENT’s requirements for engineering and/or technical services. It is understood and agreed that ENGINEER shall have no legal obligation or duty created by the execution of this Agreement to accept the award of any Relevant Project offered to ENGINEER by CLIENT or to execute any Work Release with CLIENT.

1.2 The Engineering Contract for the Services. If CLIENT and ENGINEER execute a Work Release for a Relevant Project that incorporates by reference this Agreement, this Agreement and the Work Release and any modifications made to this Agreement and/or the Work Release made by CLIENT and ENGINEER in writing (collectively, this Agreement, the Work Release and any written modifications to this Agreement and/or the Work Release with respect to the Relevant Project are collectively referred to as the “Engineering Contract”) shall form the entire and integrated agreement between CLIENT and ENGINEER for ENGINEER’s engineering and/or technical services for the Relevant Project as described in the Engineering Contract (the “Services”).

1.3 Conflicts Between Agreement and Work Release. In the event of any direct conflict between the terms, conditions, promises and/or obligations of this Agreement and the terms, conditions, promises and/or obligations of a Work Release for a Relevant Project that incorporates this Agreement by reference, the terms, conditions, promises and obligations of the Work Release for the Relevant Project shall supersede and replace the directly conflicting terms, conditions, promises and obligations of this Agreement, but only with regard to the Relevant Project.

1.4 Term of Agreement. The term of this Agreement shall be for a period of two years from the effective date of this Agreement. This Agreement shall automatically be extended for additional one-year terms provided that neither party to this Agreement, nor its successors or assigns, terminates this Agreement.

1.5 Services Expansion. CLIENT reserves the right to expand or increase the scope of consulting services including award of additional phases of consulting services to ENGINEER without conducting additional procurement procedures.

1.6 Execution of New Agreement for Engineering and Technical Services. This Agreement shall not be binding on CLIENT or ENGINEER as to any project for which a Work Release has been executed by

CLIENT and ENGINEER which Work Release incorporates by reference another agreement between CLIENT and ENGINEER, even if this Agreement has not been terminated.

1.7 Prior Services. If any of the Services are performed by ENGINEER or ENGINEER's Consultants prior to the effective date of this Agreement and/or the Work Release for the Relevant Project, such Services shall be governed by the terms, conditions, promises and obligations of the Engineering Contract to the same extent as if such Services had been performed after the effective date of this Agreement and the Work Release for the Relevant Project.

ARTICLE 2. ENGINEER'S RESPONSIBILITIES.

2.1 Engineer's Services. ENGINEER shall perform the Services for each Relevant Project as are described in the Work Release for that Relevant Project. This Agreement shall be incorporated by reference into each Work Release for a Relevant Project to be governed by the terms, conditions, promises and obligations of this Agreement.

2.2 Right to Retain Subconsultants. ENGINEER may use the services of subconsultants in the performance of the Services ("ENGINEER's Consultants") when, in the ENGINEER's sole opinion, it is appropriate to do so. Such persons and entities include, but are not limited to, specialized consultants and testing laboratories. ENGINEER's use of subconsultants in the performance of a Change in Services (defined in Section 6.1 of this Agreement) shall not be unreasonably restricted by CLIENT. ENGINEER will engage the services of the subconsultants, if any, required to be engaged by ENGINEER in the Work Release for the Relevant Project to perform the Services. CLIENT shall furnish the services of all other consultants reasonably required for the Relevant Project (but not required to perform ENGINEER's Services), unless CLIENT and ENGINEER mutually agree that ENGINEER shall engage such additional consultants as a Change in Services. Nothing in this Section 2.2 shall be construed to require that ENGINEER agree to engage any additional consultants as a Change in Services.

2.3 Standard of Skill and Care. The Services (whether performed by ENGINEER or ENGINEER's Consultants) shall be performed in accordance with the standard of skill and care ordinarily exercised by licensed professionals of the same discipline in the state in which the Relevant Project is located on projects of similar size and scope and under like circumstances. ENGINEER shall ensure that the Services and Instruments of Service provided under this Agreement and each Engineering Contract will not infringe upon or violate any patent, copyright, trade secret or other proprietary right of any third party. ENGINEER shall be responsible for all services provided under the Engineering Contract, whether such services are provided directly by ENGINEER or by ENGINEER's Consultants. ENGINEER disclaims that any warranties, expressed or implied are made or intended by ENGINEER regarding the ENGINEER'S Services or the Instruments of Services or regarding any other matter.

2.4 Compliance with Laws. ENGINEER and/or ENGINEER's Consultants shall review laws, codes and regulations applicable to the Services and shall exercise the standard of skill and care required by Section 2.3 of this Agreement to comply with the laws, codes and regulations applicable to the Services. ENGINEER specifically disclaims any express warranty or warranty implied by operation of law that the design of the Relevant Project complies with applicable laws, codes and regulations as these laws, codes and regulations are interpreted by governmental authorities with jurisdiction of the Relevant Project or by finders of fact in dispute resolution proceedings. ENGINEER and/or ENGINEER's Consultants shall respond in the design of the Relevant Project to any requirements communicated to ENGINEER by government authorities having jurisdiction over the Relevant Project.

2.5 Reliance on Owner Furnished Information. Unless otherwise notified by CLIENT, ENGINEER and ENGINEER's Consultants shall be entitled to rely upon the accuracy and completeness of services and information furnished by CLIENT and CLIENT's consultants, agents and representatives, and ENGINEER and ENGINEER's Consultants shall have no duty to investigate the accuracy or completeness of such services or information. ENGINEER shall provide notice to CLIENT if ENGINEER or ENGINEER's Consultants become aware of any errors, omissions or inconsistencies in the services or information furnished by CLIENT.

2.6 Non-Negligent Errors. If the Services require the preparation by ENGINEER and/or ENGINEER's Consultants of drawings, specifications or other design documents for construction of improvements to real property, CLIENT acknowledges that there is no perfect set of construction drawings, specifications or other design documents and that inconsistencies, conflicts, errors and omissions in the construction drawings, specifications and other design documents will occur despite the exercise by ENGINEER and ENGINEER's Consultants of the standard of skill and care required by Section 2.3 of this Agreement in the performance of the Services. CLIENT acknowledges and agrees that subject to the limitations and conditions of Article 10 of this Agreement, ENGINEER is liable to CLIENT only for those damages suffered by CLIENT caused by inconsistencies, conflicts, errors or omissions in the construction drawings, specifications and other design documents caused by the negligence or intentionally wrongful conduct of ENGINEER or ENGINEER's Consultants.

2.7 Construction Phase Services. When the Services for a Relevant Project include contract or construction administration services, the terms and conditions of any construction contract (the "Construction Contract") between CLIENT and a contractor ("Contractor") constructing the improvements for the Relevant Project shall be consistent with the Engineering Contract regarding ENGINEER's obligations to perform contract or construction administration services, and shall not purport to require services of ENGINEER different than or in addition to the Services required of ENGINEER by the Engineering Contract. ENGINEER is not a party to the Construction Contract, and the Engineering Contract shall be the sole and exclusive description of ENGINEER's Services and ENGINEER's duties and obligations with respect to ENGINEER's Services.

2.8 Observations of the Work. If ENGINEER is required by the Engineering Contract to make any observations or inspections of the work or services performed by Contractor (the "Work") to construct any of the improvements of the Relevant Project, ENGINEER agrees to perform such observations or inspections using the skill and care required by Section 2.3 of this Agreement solely for the purpose of endeavoring to ascertain if the Work is being constructed in accordance with CLIENT's Construction Contract with Contractor. By performing such observations or inspections, ENGINEER does not warrant or guarantee to CLIENT that the Work conforms to the requirements of the Construction Contract, ENGINEER does not accept or assume any responsibility or liability for any acts or omissions of Contractor or accept or assume any duties or liabilities to Contractor with respect to the Work not performed in accordance with the Construction Contract, and Contractor is not relieved of Contractor's obligations to perform the Work in accordance with the Construction Contract. ENGINEER shall have no duty or responsibility to CLIENT, Contractor or any other person or entity to observe or inspect Contractor's means, methods, techniques or sequences of construction, or Contractor's safety programs or procedures, all of which shall be the exclusive responsibility of Contractor. ENGINEER shall have no responsibility or liability for injuries to persons (including death), damage to property or economic loss caused by Contractor's operations under the Construction Contract. The CLIENT shall indemnify the ENGINEER from and against all injury and damage claims arising out of or based in whole or in part upon the operations of the contractor. ENGINEER shall have no power or authority to stop the Work. The power and authority to stop the Work is possessed exclusively by CLIENT.

2.9 Site Operations. If a Contractor is involved with the Relevant Project, CLIENT agrees that Contractor shall be solely and completely responsible for the conditions at all locations where the Work is performed and at all times that the Work is performed (including Work performed outside of normal business or working hours), including the safety of all persons and property during performance of the Work, and compliance with any applicable health and safety laws or regulations, including the laws and regulations of the United States Occupational Safety and Health Administration ("OSHA") and any similar state or local governmental agencies. It is understood and agreed that ENGINEER shall not be responsible for jobsite safety, and that ENGINEER shall not be responsible for the health or safety of any persons other than ENGINEER's own employees.

2.10 Soils Conditions. Unless the Services specifically require ENGINEER to perform or to engage a subconsultant to perform a soils investigation, to provide or to engage a subconsultant to provide a soils report, or to perform or to engage a subconsultant to perform soils testing, ENGINEER makes no representations concerning soils conditions and ENGINEER shall have no responsibility or liability for the making or failure to make soils investigations or reports, or to the performance or failure to perform any soils testing.

2.11 Interpretations and Decisions. If ENGINEER is required by the Construction Contract between CLIENT and Contractor to evaluate whether Contractor's Work conforms to the requirements of the Construction

Contract or to evaluate claims by Contractor or CLIENT to adjustments of the contract price to be paid to Contractor for the Work (the "Contract Price") or the contract time afforded to Contractor to perform the Contractor's Work (the "Contract Time") or any other claims by Contractor or CLIENT for relief under the Construction Contract, or if ENGINEER is required by CLIENT or Contractor to evaluate any Work or claims, or if ENGINEER agrees to evaluate any Work or claims, then ENGINEER shall evaluate such Work or claims as an unbiased neutral third party and such evaluations and decisions made by ENGINEER shall be rendered in good faith and with impartiality. CLIENT agrees that ENGINEER shall not be liable to CLIENT or Contractor for any evaluations or decisions of such Work or claims made by ENGINEER in good faith. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless ENGINEER and ENGINEER's past and current officers, directors, partners, members, employees and agents, and each of them, from and against any claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any such evaluation or decision made by ENGINEER, provided, however, CLIENT shall not be required to indemnify, defend or hold harmless such indemnified parties from or against any claims or liabilities if ENGINEER is adjudicated to have made the evaluation and/or decision with negligence or in bad faith. CLIENT and ENGINEER agree that the obligations set forth in this Section 2.11 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement and/or a Work Release incorporating by reference this Agreement, and/or final payment for ENGINEER's Services for a Relevant Project.

2.12 Opinions of Probable Construction Costs. If ENGINEER's Services include the evaluation of CLIENT's budgets for construction costs or include providing ENGINEER's opinions of probable construction costs, CLIENT understands that ENGINEER has no control over the costs or the prices of labor, equipment or materials, or over Contractor's methods of pricing, and that the evaluations of CLIENT's budgets and/or the opinions of probable construction costs provided by ENGINEER are ENGINEER's professional judgment as a design professional familiar with the construction industry. ENGINEER makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bids or negotiated prices or actual construction costs, and ENGINEER does not represent or warrant that bids or negotiated prices will not vary from CLIENT's budget for the Relevant Project or from opinions of probable construction costs or from evaluations of CLIENT's budgets prepared or agreed to by ENGINEER.

2.13 Unknown Conditions. Conditions or occurrences may be encountered during the performance of the Services and/or the Work that require changes in the Services or impose risks to ENGINEER and/or ENGINEER's Consultants, or their employees or agents, in the performance of the Services not known to ENGINEER when the Work Release for the Relevant Project was executed ("Unknown Conditions"). If Unknown Conditions are encountered, ENGINEER shall promptly notify CLIENT of the Unknown Conditions and the probable impact of the Unknown Conditions on the Services and the Work, and ENGINEER shall consult with CLIENT regarding possible actions, including: (i) suspend the Services and/or the Work until the Unknown Conditions are further studied by CLIENT, and the additional risks imposed by the Unknown Conditions are eliminated by CLIENT or are reduced by CLIENT to levels acceptable to both ENGINEER and CLIENT; (ii) complete the Services in accordance with the scope of Services described in the Work Release, if to do so is agreed by both ENGINEER and CLIENT to be practical; (iii) agree to a Change in Services (defined in Section 6.1 of this Agreement); or (iv) agree to a termination of the Work Release for CLIENT's convenience.

2.14 Hazardous Materials. Unless otherwise provided in the Engineering Contract, ENGINEER and ENGINEER's Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Relevant Project site, unless the hazardous materials or toxic substances were brought to the Relevant Project site by ENGINEER or ENGINEER's Consultants. ENGINEER shall have the duty and responsibility to report to CLIENT the presence and location of any hazardous materials or toxic substances at the Relevant Project site which ENGINEER or ENGINEER's Consultants discover. In the event ENGINEER or any other party encounters hazardous materials or toxic substances at the Relevant Project site, or should it become known that such materials or substances are present at the Relevant Project site or its adjacent areas that may affect the performance of ENGINEER's Services, ENGINEER may, at its option, and without liability for consequential or other damages, suspend performance of the Services until CLIENT retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials or toxic substances and such consultants represent that such hazardous materials or toxic

substances have been rendered harmless. CLIENT shall indemnify ENGINEER from and against all claims arising out of or based in whole or in part upon any hazardous materials issues existing at the Relevant Project site.

2.15 Certificates. ENGINEER shall not be required in the performance of the Services to execute certificates that would require knowledge, services or responsibilities beyond the scope of the Engineering Contract. Any certificate or certification provided by ENGINEER pursuant to the Engineering Contract is a statement of professional opinion based on ENGINEER's knowledge, information, and belief exercising that degree of skill and care required in accordance with Section 2.3, and is not an affirmation or warranty of any existing fact or condition.

2.16 Confidentiality. Except for disclosures reasonably necessary to perform the Services of a Relevant Project, ENGINEER shall maintain the confidentiality of any information obtained from or through CLIENT and specifically designated as confidential by CLIENT, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent ENGINEER from establishing a claim or defense in an adjudicatory proceeding. ENGINEER shall require of ENGINEER's Consultants similar agreements to maintain the confidentiality of information obtained from or through CLIENT and specifically designated as confidential by CLIENT.

2.17 Conflicts of Interest. Except with CLIENT's knowledge and consent, ENGINEER shall not engage in any activity, or accept any employment, interest or contribution that will compromise ENGINEER's professional judgment with respect to the Relevant Project.

2.18 Promotional Materials. Unless prohibited by the CLIENT, ENGINEER shall have the right to include photographic or artistic representations of the Relevant Project and of the Services among ENGINEER's promotional and professional materials. ENGINEER's photographic or artistic representations shall not include CLIENT's confidential or proprietary information, if CLIENT has previously advised ENGINEER in writing of the specific information considered by CLIENT to be confidential or proprietary. CLIENT shall provide professional credit to ENGINEER on the Relevant Project's construction sign and in CLIENT's other promotional materials for the Relevant Project.

2.19 Independent Contractor. ENGINEER shall perform the Services as an independent contractor, and all persons employed by ENGINEER as ENGINEER's employees shall be employees of ENGINEER, not employees of CLIENT in any respect. ENGINEER may not bind CLIENT except as specifically authorized by CLIENT in the Engineering Contract or in another writing. Nothing in this Agreement is intended to, nor shall it be construed to, create a fiduciary relationship between CLIENT and ENGINEER or to impose any fiduciary duties or obligations on ENGINEER with respect to the performance of the Services.

ARTICLE 3. SCHEDULE FOR SERVICES.

The schedule for the performance by ENGINEER of the Services for a Relevant Project shall be stipulated in the Work Release for the Relevant Project. ENGINEER shall periodically update this schedule as the Relevant Project proceeds. The updated schedule shall reflect adjustments to the Relevant Project milestone dates, including the time for performance of the Services, due to Changes in Services (defined in Section 6.1 of this Agreement) and Relevant Project delays not within the control of ENGINEER. The updated schedule shall be submitted to the CLIENT for approval, which approval shall not be unreasonably withheld. Time limits established by this schedule approved by CLIENT shall not, except for reasonable cause, be exceeded by ENGINEER or CLIENT. ENGINEER shall not be responsible for delays in the schedules caused by CLIENT (including changes in the Relevant Project time parameters, Changes in Services, changes in the Work or changes in the Relevant Project budgets), CLIENT's other consultants, Contractor, governmental authorities with jurisdiction over the Relevant Project, or others not subject to the control of ENGINEER.

ARTICLE 4. CONSIDERATION AND PAYMENT.

4.1 Consideration. For satisfactory performance of the Services of a Relevant Project, CLIENT shall pay ENGINEER consideration in the form of fees and expenses in the amounts and using the methods of calculation described in the Work Release for the Relevant Project. Compensation for the Services of a Relevant Project shall

be made in accordance with one of three methods, as follows: (i) a negotiated lump sum; (ii) on the basis of hourly rates and reimbursable expenses as described in the Work Release for the time and expenses incurred in the performance of the Services; or (iii) some other mutually agreed upon compensation method described in the Work Release. The specific method of compensation shall be agreed in the Work Release for the Relevant Project.

4.2 Invoices. All invoices submitted to CLIENT for Services performed for a Relevant Project shall contain references to the date of this Agreement and the number of the Work Release issued for the Services. Invoices shall be submitted for the Services of a Relevant Project as required by the Work Release for that Relevant Project. If required by the Work Release, invoices shall contain copies of supporting documents and proof of expenditures on behalf of CLIENT. Unless otherwise required by the Work Release for a Relevant Project, payments on account of Services rendered and for reimbursable expenses incurred shall be made monthly within thirty (30) calendar days of the presentation of ENGINEER's invoice for Services. No deduction shall be made from ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which ENGINEER has been adjudged to be liable.

4.3 Over Due Payments. CLIENT agrees to pay to ENGINEER interest at the rate of eighteen percent (18%) per annum on the unpaid balance due for Services from and after the date payment is due pursuant to the terms of the Engineering Contract. Collection fees and/or attorney fees that are required to collect unpaid invoices shall be paid by the CLIENT.

ARTICLE 5. OWNERSHIP AND RIGHTS IN INSTRUMENTS OF SERVICE.

5.1 Instruments of Service. Drawings, specifications and other documents, including those in electronic form, prepared by ENGINEER and ENGINEER's consultants for a Relevant Project are Instruments of Service for use solely by CLIENT with respect to the Relevant Project. ENGINEER and ENGINEER's Consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights. Upon execution of this Agreement, ENGINEER grants to CLIENT a nonexclusive license to reproduce ENGINEER's Instruments of Service for purposes of constructing, using and maintaining the Relevant Project, provided that CLIENT shall comply with all obligations, including prompt payment to ENGINEER of all consideration when due, under the Engineering Contract.

5.2 Authorized Use. CLIENT shall be permitted to authorize Contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by the license granted to CLIENT in Section 5.1 of this Agreement. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Relevant Project is not to be construed as publication in derogation of the reserved rights of ENGINEER and ENGINEER's Consultants.

5.3 Restrictions on Use. CLIENT shall not use the Instruments of Service for future additions or alterations to the Relevant Project or for other projects, unless CLIENT obtains the prior written agreement of ENGINEER and ENGINEER's Consultants. Any unauthorized use or modification of the Instruments of Service shall be at CLIENT's sole risk and without liability to ENGINEER or ENGINEER's Consultants.

5.4 Indemnity for Unauthorized Use. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless ENGINEER and ENGINEER's Consultants and their past and current officers, directors, and partners from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any unauthorized use or modification of the Instruments of Service by CLIENT or any person or entity that obtained the Instruments of Service from or through CLIENT or CLIENT's agents or representatives.

5.5 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 5 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or

a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's Services for a Relevant Project.

ARTICLE 6. CHANGE IN SERVICES.

6.1 Accomplishing Changes in Services. A change in ENGINEER's Services for a Relevant Project (a "Change in Services") may be accomplished after the execution of this Agreement and the Work Release for the Relevant Project without invalidating the Engineering Contract (i) if the Change in Services is mutually agreed in writing by CLIENT and ENGINEER, or (ii) if the Change in Services is caused by one of the circumstances described in Section 6.2 of this Agreement, ENGINEER gives CLIENT written notice of the circumstance and the Change in Services required thereby, and CLIENT does not give timely written notice to ENGINEER that CLIENT has determined that all or a part of the Change in Services is not required. If CLIENT gives ENGINEER timely written notice that a Change in Services is not required due to one or more of the circumstances described in Section 6.2 of this Agreement, ENGINEER shall have no obligation to provide those services. If CLIENT does not give timely written notice to ENGINEER after receiving a written notice from ENGINEER of a circumstance described in Section 6.2 of this Agreement and the Change in Services required thereby, CLIENT shall be deemed to have authorized ENGINEER to perform the Change in Services. Except for a Change in Services due to the fault of ENGINEER, a Change in Services shall entitle ENGINEER to: (a) an equitable adjustment in ENGINEER's compensation described in the Work Release for the Relevant Project (including fees and reimbursable expenses), as modified by the Change in Services; and (b) an equitable adjustment in the schedule described in the Work Release for the Relevant Project, if the Change in Services affects ENGINEER's time for performance of the Services, as modified by the Change in Services.

6.2 Circumstances Justifying a Change in Services. If any of the following circumstances affect ENGINEER's Services for the Relevant Project, ENGINEER shall be entitled to an adjustment in ENGINEER's schedule and compensation as provided in Section 6.1 of this Agreement.

- .1 A change in the instructions or approvals given by CLIENT that necessitate revisions in Instruments of Service;
- .2 Enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 Decisions of CLIENT not rendered in a timely manner;
- .4 Significant change in the Relevant Project including, but not limited to, size, quality, complexity, CLIENT's schedule or budget, or the delivery or procurement method; and
- .5 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding that had not been anticipated and budgeted for by ENGINEER.

6.3 Providing Evidence. If ENGINEER or an employee of ENGINEER is requested by CLIENT or is compelled by subpoena or other legal process by CLIENT or a third party to provide testimony, documents or evidence in relation to the Services and in connection with any public hearing, dispute resolution proceeding or legal proceeding in which ENGINEER is not a party, CLIENT agrees to compensate ENGINEER on the basis of hourly rates and reimbursable expenses according to ENGINEER's Rate Schedule then in effect for the time and expenses reasonably incurred by ENGINEER in providing such evidence, provided that ENGINEER is not compensated in full for such reasonable time and expenses by the party compelling or requesting the evidence. This obligation shall survive the completion of ENGINEER's Services for the relevant Project.

ARTICLE 7. CLIENT'S RESPONSIBILITIES.

7.1 Obligation to Make Payment. CLIENT shall make timely payment of compensation, including fees and reimbursable expenses, to ENGINEER for the Services.

7.2 Obligation to Provide Information. CLIENT shall provide to ENGINEER full information in a timely manner regarding requirements for and limitations on the Relevant Project.

7.3 Obligation to Provide Professional Services. CLIENT shall furnish the Services of the Consultants, if any, reasonably required for the Relevant Project that ENGINEER is not required to engage in the performance of the Services. CLIENT shall also furnish all legal, insurance and accounting services, including auditing services, which may be reasonably necessary at any time for the Relevant Project to meet CLIENT's needs and interests.

7.4 Obligation to Give Notice of Fault or Defect. CLIENT shall provide prompt written notice to ENGINEER if CLIENT becomes aware of any fault or defect in the ENGINEER's Services for the Relevant Project, including any errors, omissions or inconsistencies in ENGINEER's Instruments of Service.

7.5 Obligation to Give Evidence of Financial Arrangements. At the written request of ENGINEER, CLIENT shall promptly furnish to ENGINEER reasonable evidence that financial arrangements have been made by CLIENT to fulfill CLIENT's obligations to ENGINEER under the Engineering Contract.

7.6 Obligation to Provide Access. ENGINEER shall have access to the Relevant Project site and to all areas where the Work is performed or located. CLIENT shall procure all permits, licenses, rights-of-entry and access for ENGINEER to enter upon and to perform Services at any public or private property required for ENGINEER to perform the Services.

7.7 Other Obligations of the Engineering Contract. CLIENT shall perform all other obligations of CLIENT with respect to the Relevant Project described elsewhere in this Agreement or in the Work Release.

ARTICLE 8. INDEMNIFICATION.

8.1 ENGINEER's General Agreement to Indemnify. Subject to the limitations and conditions of Sections 2.8 and 2.11 and Article 10 of this Agreement, to the fullest extent permitted by law ENGINEER agrees to indemnify, defend, and hold harmless CLIENT and CLIENT's consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss adjudicated to have been caused by any negligent act, error or omission or intentionally wrongful conduct of ENGINEER or ENGINEER's Consultants or their employees or agents in the performance of the Services.

8.2 CLIENT's General Agreement to Indemnify. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT agrees to indemnify, defend, and hold harmless ENGINEER and ENGINEER's Consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss adjudicated to have been caused by any negligent act, error or omission or intentionally wrongful conduct of CLIENT or CLIENT's Consultants or their employees or agents.

8.3 ENGINEER's Agreement to Indemnify for Infringement. Subject to the limitations and conditions of Sections 2.8 and 2.11 and Article 10 of this Agreement, to the fullest extent permitted by law ENGINEER agrees to indemnify, defend, and hold harmless CLIENT and CLIENT's consultants, and their present and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by infringement or violation of any patent or copyright originating from ENGINEER's services.

8.4 CLIENT's Agreement to Indemnify for Infringement. CLIENT represents and warrants to ENGINEER and ENGINEER's Consultants that CLIENT has ownership of, or the legal authorization or license to use any drawings, specifications, design details or other documents delivered by CLIENT or CLIENT's agents or representatives to ENGINEER or ENGINEER's Consultants for use in connection with the Relevant Project. If any

suit, claim or proceeding for infringement or violation of a patent or copyright is based in whole or in part upon any documents provided to ENGINEER, subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend, and hold harmless ENGINEER and ENGINEER's Consultants, and their past and current officers, directors, partners, and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by the alleged infringement or violation of the patent or copyright.

8.5 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 8 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's Services for a Relevant Project.

ARTICLE 9. INSURANCE.

9.1 ENGINEER's Insurance Coverage. ENGINEER agrees to procure, prior to commencing the Services of a Relevant Project, insurance policies with insurance coverage and insurance limits as specified below.

.1	Commercial General Liability Insurance	
	Combined Single Limits per occurrence (covering bodily injury liability and property damage liability)	\$1,000,000
	Annual Aggregate	\$2,000,000
.2	Comprehensive Automobile Liability Insurance	
	Combined Single Limits per occurrence (including bodily injury liability and property damage liability)	\$1,000,000
.3	Worker's Compensation Insurance	Statutory Requirement
.4	Employer's Liability Insurance	\$1,000,000
.5	Professional Liability Insurance	\$1,000,000 per claim; \$2,000,000 annual aggregate

9.2 Professional Liability Insurance. ENGINEER's professional liability insurance is procured on a claims-made basis, expense within limits. The policy of insurance is not project specific. ENGINEER agrees to continue its Professional Liability Insurance in place without interruption for a period of not less than two (2) years from the date final payment is due to ENGINEER for the Services of a Relevant Project. The available insurance limits of the Professional Liability Insurance at any given time are dependent on the payment by the insurance carrier of claims and claim expenses during the applicable policy year.

ARTICLE 10. CLAIMS AND LIABILITIES.

10.1 Consequential Damages Waiver. ENGINEER and CLIENT mutually waive as to one another and as to the present and current officers, directors, partners, members, employees, agents and consultants of one another, any and all consequential damages for claims, disputes or other matters in question arising out of relating to the Engineering Contract or the performance or non-performance of the Services. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or suspension of services in accordance with Article 12 of this Agreement.

10.2 Limitation of Liability. ENGINEER shall procure and maintain the insurance coverage required by Article 9 of this Agreement. CLIENT agrees that the maximum limits therein represents the maximum liability in the aggregate of ENGINEER and ENGINEER's consultants to CLIENT and anyone claiming by, through or under CLIENT, or to any third parties (including, without limitation, any contractors, subcontractors, suppliers or consultants providing any work or services to the Relevant Project or their employees or agents). Any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way relating to a Relevant Project, the Work Release for a Relevant Project, or the Services of a Relevant Project, from any cause or causes, including, but not limited to, negligence, professional errors or omissions, strict liability, or breach of contract or warranty (whether express or implied) of ENGINEER or ENGINEER's Consultants (after collectively, "Claims"), shall not exceed the maximum of the unexhausted and available insurance limits of ENGINEER's insurance policies (the "Limitation of Liability"), affording insurance coverage for the Claims at the time the liability for the Claims is fixed by judgment entered by a court of competent jurisdiction or by the execution of an enforceable Settlement Agreement. CLIENT shall hold ENGINEER and ENGINEER's Consultants, harmless from and against any liability arising or resulting from Claims in excess of the Limitation of Liability.

10.3 Certificate of Merit. CLIENT shall make no claim (directly or in the form of a third-party claim) against ENGINEER for an alleged act, error or omission in the performance of the Services for a Relevant Project, unless CLIENT has first provided to ENGINEER a written certificate executed by an independent engineer, or other design professional of the appropriate discipline, licensed in the state in which the Relevant Project is located, specifying the acts, errors or omissions of ENGINEER and/or ENGINEER's Consultants claimed by CLIENT and certifying that the acts, errors, or omissions of ENGINEER and/or ENGINEER's Consultants claimed by CLIENT violate the standard of skill and care required by Section 2.3 of this Agreement applicable on the date of such alleged acts, errors or omissions of ENGINEER and/or ENGINEER's Consultants. Such certificate shall be provided to ENGINEER not less than thirty (30) calendar days prior to the institution of any legal or equitable proceedings against ENGINEER by CLIENT for such alleged acts, errors or omissions.

10.4 Betterment. ENGINEER acknowledges and agrees that he shall be liable to CLIENT for damages suffered by CLIENT caused by failure of ENGINEER or ENGINEER's Consultants to exercise the standard of skill and care required by Section 2.3 of this Agreement in the performance of the Services for a Relevant Project. CLIENT acknowledges and agrees that if CLIENT would have paid costs or expenses including costs and expenses of construction of the improvements of the Relevant Project, if ENGINEER and/or ENGINEER's Consultants had exercised the standard of skill and care required by Section 2.3 of this Agreement in the performance of the Services for the Relevant Project, such greater costs and expenses as would have been incurred by CLIENT in the absence of negligence or intentionally wrongful conduct of ENGINEER and/or ENGINEER's Consultants shall be deducted from CLIENT's claims for damages as "value added" or "betterment".

10.5 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 10 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's services for a Relevant Project.

ARTICLE 11. DISPUTE RESOLUTION.

11.1 Non-Binding Mediation. Any claim, dispute or other matter in question arising out of or relating to this Agreement or the Engineering Contract shall be subject to non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of ENGINEER's Services, ENGINEER may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation, by arbitration or by litigation in courts of proper jurisdiction. CLIENT and ENGINEER shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the applicable Relevant Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event either party to the dispute has need of material information in the possession of the other party in order to

prepare for mediation, CLIENT and ENGINEER shall attempt in good faith to agree on procedures for the expedited exchange of information, with the help of the mediator, if required.

11.2 Binding Dispute Resolution. Unless otherwise provided in the Work Release, all claims, counterclaims, disputes and other matters in question between CLIENT and ENGINEER arising out of or related to this Agreement or the Engineering Contract, or the breach of this Agreement or the Engineering Contract, or the Services performed pursuant thereto, shall be decided in such binding dispute resolution proceedings as CLIENT and ENGINEER shall mutually agree upon in writing after the dispute arises or, in the absence of mutual agreement, in a court of competent jurisdiction within the State in which the applicable Relevant Project is located. Prior to engaging in arbitration (if the parties mutually agree to arbitration after the dispute arises) or litigation, the parties shall endeavor to resolve the dispute by non-binding mediation in accordance with the provisions of Section 11.1 of this Agreement.

11.3 Continued Performance of Services. If ENGINEER elects to continue to perform the Services of the Relevant Project pending the resolution of a dispute, CLIENT shall continue to make payments to ENGINEER of all amounts due ENGINEER under the Engineering Contract that are not in dispute.

ARTICLE 12. SUSPENSION AND TERMINATION.

12.1 ENGINEER's Termination/Suspension of Services for Non-Payment. If CLIENT fails to make payments to ENGINEER for the Services of a Relevant Project in accordance with the Engineering Contract, such failure shall be considered substantial nonperformance and cause for termination of the Work Release for the Relevant Project pursuant to Section 12.4 of this Agreement or, at ENGINEER's option, cause for suspension by ENGINEER of performance of the Services for the Relevant Project. If ENGINEER elects to suspend the Services for the Relevant Project, prior to suspension of the Services, ENGINEER shall give ten (10) calendar days' prior written notice to CLIENT. If the default is not cured by CLIENT in such ten (10) day period after the receipt by CLIENT of such written notice, ENGINEER may suspend the Services for the Relevant Project until the default is cured, or until ENGINEER terminates the applicable Work Release for cause pursuant to Section 12.4 of this Agreement. In the event of a suspension of the Services for a Relevant Project, ENGINEER shall have no liability to CLIENT for delays or damages caused CLIENT because of such suspension of the Services. Before resuming the Services, ENGINEER shall be paid all sums due prior to the suspension of the Services, and any expenses incurred in the interruption and resumption of ENGINEER's Services. ENGINEER's fees and expenses for resuming the Services and the time schedules for the performance of the Services shall be equitably adjusted.

12.2 Suspension of Services for CLIENT's Convenience. CLIENT may, by written notice to ENGINEER, direct ENGINEER to suspend performance of any or all of the Services of a Relevant Project for a period of time specified in the written notice. If such suspension is not occasioned by the fault or negligence of ENGINEER, then ENGINEER shall be compensated for extra fees and costs incurred due to such suspension of ENGINEER's Services of the Relevant Project. Upon receipt of a written notice from CLIENT directing ENGINEER to suspend the performance of the Services of a Relevant Project, ENGINEER shall (i) discontinue the Services in accordance with CLIENT's notice, (ii) unless otherwise provided in CLIENT's notice, enter into no further subcontracts, and (iii) unless otherwise provided in CLIENT's notice, suspend all ENGINEER's existing subcontracts. If CLIENT suspends all or any portion of the Services of a Relevant Project, whether by a single notice for a consecutive period of suspension or by multiple notices for non-consecutive periods of suspension, for a period of time exceeding in the aggregate 120 calendar days, ENGINEER may, at ENGINEER's sole option, terminate the Engineering Contract for the Relevant Project for cause pursuant to Section 12.4 of this Agreement.

12.3 Termination for Convenience. This Agreement and any Work Release may be terminated by CLIENT for CLIENT's convenience and without cause upon delivery to ENGINEER of a written notice of such termination for convenience. This Agreement (but not any Work Release) may be terminated by ENGINEER for ENGINEER's convenience and without cause upon delivery to CLIENT of a written notice of such termination for convenience.

12.4 Termination for Cause. A Work Release for a Relevant Project may be terminated by either party for cause should the other party fail substantially to perform in accordance with the terms of the Engineering

Contract through no fault of the party initiating the termination, if within ten (10) calendar days after the receipt of a written notice of default from the party initiating the termination, the party in default does not cure the defaults.

12.5 Compensation Due Upon Termination. In the event of the termination of this Agreement or a Work Release not the fault of ENGINEER, ENGINEER shall be compensated for the Services performed prior to termination, together with reimbursable expenses then due and all expenses directly attributable to the termination for which ENGINEER is not otherwise compensated. In the event of a termination of this Agreement or a Work Release by CLIENT for CLIENT's convenience, and without cause, ENGINEER waives any claim for anticipated fees or profit on the value of the Services not performed by ENGINEER. In the event of a termination of a Work Release by either party for cause, the terminating party shall be entitled to recover from the defaulting party all damages caused by the defaulting party's breach of this Agreement and/or the Engineering Contract and the termination of the Work Release, including, in the case of a termination by ENGINEER for cause, ENGINEER's anticipated profit on the value of the Services not performed by ENGINEER.

12.6 Effect of Termination of Work Release. The termination of a Work Release as to a Relevant Project shall not terminate this Agreement or the Engineering Contract in respect to any Relevant Project the subject of a Work Release that has not been terminated.

12.7 Effect of Termination of this Agreement. This Agreement and the Engineering Contract shall remain in effect and binding upon CLIENT and ENGINEER after the effective date of the termination of this Agreement as to any Relevant Project for which ENGINEER is performing Services after the effective date of the termination of this Agreement. The Engineering Contract for a Relevant Project shall remain in effect and binding upon CLIENT and ENGINEER after the effective date of the termination of this Agreement and/or the Engineering Contract for a Relevant Project as to any and all terms, conditions, promises or obligations of this Agreement and the Engineering Contract for a Relevant Project that are intended by the parties to survive the completion of the Services with respect to the Relevant Project and/or are intended to survive the termination of the Engineering Contract for a Relevant Project.

ARTICLE 13. MISCELLANEOUS PROVISIONS.

13.1 Notices. All notices given pursuant to this Agreement and the Engineering Contract shall be in writing and shall be given by personal service, or by United States mail. If notice is given by personal service, written notice must be delivered in person to the individual or to a managing agent of the corporate office of a corporation for which notice is intended. If notice is given by United States mail, it must be sent by United States certified mail, return receipt requested, postage prepaid, and it must be addressed to the person or corporate office of a corporation for which notice is intended. All notices pursuant to this Agreement and the Engineering Contract shall be deemed given upon the earlier of the following: (i) the date of personal delivery of the notice to the person or managing agent of the corporate office for which the notice is intended, as evidenced by a sworn statement of the person personally delivering the notice, stating the name of the person to whom the notice was delivered and the date of delivery; or (ii) the date the notice is postmarked, if the notice is sent by United States certified mail. If the last day for giving any notice or taking any action required or permitted under this Agreement or the Engineering Contract falls on a Saturday, Sunday or legal holiday (in the state where the Relevant Project is located), the last day for giving such notice or taking such action shall be the next legal business day. Except as modified by a party by giving the other party written notice of a change, notices shall be given as follows:

.1 Notice to CLIENT shall be delivered or addressed to:

(a) CLIENT's Designated Representative for the Relevant Project identified in the Work Release at the address for such CLIENT's Designated Representative as set forth in the Work Release.

.2 Notice to ENGINEER shall be delivered or addressed to:

(a) ENGINEER's Designated Representative for the Relevant Project identified in the Work Release, at the address for such ENGINEER's Designated Representative as set forth in the Work Release.

13.2 Assignments. Neither CLIENT nor ENGINEER shall assign this Agreement or the Engineering Contract or any right, interest or claim for damages arising under this Agreement or the Engineering Contract without the written consent of the other, except that CLIENT may make a conditional collateral assignment of this Agreement and the Engineering Contract to an institutional lender providing financing for the Relevant Project, conditioned on CLIENT's default in its obligations to such lender regarding the financing for the Relevant Project. In the event the condition of such collateral assignment is satisfied, the lender shall assume CLIENT's rights and obligations under this Agreement and the Engineering Contract. If ENGINEER's Services are affected or delayed by CLIENT's default or the assignment of this Agreement or the Engineering Contract to the lender, ENGINEER's fees for the remaining Services of the Relevant Project and the time schedules for the performance of the remaining Services of the Relevant Project shall be equitably adjusted.

13.3 Persons Bound. CLIENT and ENGINEER, respectively, bind themselves, their partners, members, successors, assigns and legal representatives to the other party to this Agreement with respect to all terms, conditions, promises and obligations of this Agreement and the Engineering Contract.

13.4 Third Party Beneficiaries. Nothing contained in this Agreement or the Engineering Contract shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or ENGINEER. ENGINEER's Services under this Agreement and the Engineering Contract are being performed solely for CLIENT's benefit, and no other person or entity shall have any claim against ENGINEER arising under this Agreement or the Engineering Contract or arising from the performance or non-performance of the Services.

13.5 Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the terms, conditions, promises or obligations of this Agreement or the Engineering Contract or to exercise any rights under this Agreement or the Engineering Contract shall not be construed as a waiver or relinquishment to any extent of that party's right to assert or rely upon such terms, conditions, promises, obligations or rights on any future occasion.

13.6 Severability. Any provisions of this Agreement or the Engineering Contract prohibited, or rendered unenforceable, by any local, state or federal law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and the Engineering Contract.

13.7 Employment Fees. In the event CLIENT hires directly any employee of ENGINEER within one (1) year after final payment is due to ENGINEER for the Services of a Relevant Project, CLIENT agrees to reimburse ENGINEER a monetary amount equal to six (6) months' wages for the employee so hired by CLIENT as an employment fee. The employment fee shall be calculated as six (6) times the gross monthly full-time wages of the employee immediately prior to the hiring.

13.8 Governing Law. This Agreement and the Engineering Contract shall be governed by the laws of the state in which the Relevant Project is located, exclusive of its conflict of laws rules.

13.9 Execution. This Agreement and each Work Release shall be executed by duly authorized representatives of the parties. Those persons executing this Agreement and the Work Releases which incorporate by reference this Agreement represent and warrant to the other party that they are duly authorized to execute this Agreement and the Work Releases and to bind the party for whom they have signed to the terms, conditions, promises and obligations of this Agreement and the Work Releases.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, this Agreement in duplicate on the respective dates indicated below.

KANAB CITY

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST: _____

Name: _____

Title: _____

SUNRISE ENGINEERING, INC.

By: _____

Print Name: Marvin J Wilson, P.E.

Title: Senior Vice President

Date: _____

ATTEST: _____

Name: _____

Title: _____

WORK RELEASE NO. 2014-1 COVER SHEET

TOM'S CANYON FLOOD PREVENTION AND STORM WATER IMPROVEMENTS
FUNDING ACQUISITION, DETAIL DESIGN, AND
CONSTRUCTION ADMINISTRATION

KANAB CITY
76 NORTH MAIN
KANAB, UT 84741

EXECUTION AND EFFECTIVE DATE

This Work Release No.2014-1 has been executed by the duly authorized representatives of the parties and shall be effective as of the date of execution by CLIENT.

ENGINEER

CLIENT

SUNRISE ENGINEERING, INC.:

KANAB CITY:

By: _____

By: _____

Name: Marvin J Wilson, P.E.

Name: _____

Title: Senior Vice President

Title: _____

Date: _____

Date: _____

WORK RELEASE NO. 2014-1

This Work Release is entered into by and between KANAB CITY (CLIENT) and SUNRISE ENGINEERING, INC. (ENGINEER).

RECITAL

Pursuant to Article 1 of the Agreement for Engineering and Technical Services, dated ____ of _____, 2014, hereinafter referred to as the "Agreement", CLIENT and ENGINEER desire to identify certain work and service to be performed by ENGINEER pursuant to the Agreement. CLIENT intends to retain general engineering services hereinafter referred to as "Project" and for which ENGINEER agrees to perform various professional engineering services.

ARTICLES

It is agreed that ENGINEER will perform the following:

ARTICLE 1. PROJECT DESCRIPTION

Flood Prevention and Storm Water Improvements in Tom's Canyon and Related Appurtenances

- In 2010 Kanab City experienced a substantial amount of flood damage from a localized storm event in the Tom's Canyon drainage. This drainage had been altered by a now defunct residential developer. The development plans approved around the 2007 time frame included a retention facility and storm water conveyance to Kanab Creek. The development was only partially completed before the economy caused the project to go under. Part of that work included the removal of two protective dikes located on BLM Land (unrecognized by BLM) on each of the branches of the drainage. The partial completion of the improvements, along with the removal of the dikes, has increased the risk substantially for the City of Kanab.
- The following scope of work for Professional Engineering Services for the design of a 17 ac-ft. flood control dam is based on requirements set forth by the State of Utah, Division of Water Rights, Dam Safety (Dam Safety). Based on the rule, if the volume of the reservoir is less than 20 ac-ft., an application for a dam not requiring submission of formal plans under section 73-5A-502 of the State of Utah would be appropriate. Due to the setting of the structure just upstream of a development, the dam is likely a moderate or high hazard structure. Due to an elevated hazard rating, more in depth analysis is required.
- Sunrise Engineering, Inc. and TC Engineering, PC, have joined forces to offer consulting services for this project. TC Engineering, PC will operate as a sub-consultant to Sunrise as part of this work release.

ARTICLE 2. SCOPE OF WORK

1. FUNDING ACQUISITION AND ADMINISTRATIVE SERVICES

ENGINEER shall perform the following administrative and preliminary design work necessary to fulfill requirements for funding qualifications:

- a) Meet and consult with CLIENT to define and clarify CLIENT's requirements and determine the preferred alternative. This may include but not limited to;
 1. Review of existing subdivision reports and plans,
 2. Review of FEMA, NRCS, BLM or other agency work in the area,
 3. Review of previous work completed by CLIENT or their consultants.
 4. Preparation of conceptual drawings and opinions of probable cost.
- b) Prepare preliminary drawings and provide an itemized list of probable construction costs based upon CLIENT preferences as needed for funding applications.
- c) Assist CLIENT with preparation and submittal of application for funding assistance through the Utah Permanent Community Impact Board (CIB).
- d) Attend conferences or meetings with CLIENT, representatives of the funding agencies, or other interested parties as may be reasonably necessary.
- e) Coordinate project development with funding agencies involved. This includes provision of data and correspondence as required by the agency for concurrence and approval of the project.
- f) Assist CLIENT with addressing the list of requirements as outlined by funding agencies necessary to meet the administrative related requirements for the bond closing.
- g) Assist CLIENT in miscellaneous administrative tasks necessary to further the overall project to the point of authorization to proceed with the Bond Closing.

2. SURVEY PHASE

ENGINEER shall perform the following survey work necessary to fulfill requirements for design:

- a) Design survey to locate utilities and set targets for aerial survey and provide digital surface modeling for use in design.
- b) Aerial survey.

3. HYDROLOGIC STUDY

- a) Perform simplified hydrologic analysis to determine both the 100 year peak flow and probable maximum flood (PMF) for the Tom's Canyon area directly to the northeast of the project site.

- b) Perform dam break analysis of full basin condition and provide downstream inundation map. Provide a recommendation of dam hazard rating to include with the small dam application to Dam Safety.
- c) Prepare hydrologic design report to present the results of the study. The hydrologic analysis will identify the required dam crest elevation (including freeboard) to detain the 100 year peak flow and bypass the PMF at the spillway.

4. GEOTECHNICAL/SEISMIC/STABILITY ANALYSIS AND DESIGN PHASE

- a) Geotechnical Investigation – ENGINEER will coordinate geotechnical borings and sampling as outlined in Article 2.11.a. Seismic Study - A review of the seismic or earthquake history of the region will be performed to establish the relationship of the site to known faults and epicenters. Resulting design earthquakes and associated site ground motion parameters will be selected considering all available evidence including tectonic and seismological history. The ground motion parameters to be selected for the site will consist of those that are needed by the displacements, response spectra, and acceleration time histories. Both the Maximum Credible Earthquake (MCE) and the Operating Basis Earthquake (OBE) will be investigated.
 - 1. To evaluate the MCE, a probabilistic analysis will be performed. The most recent United States Geological Survey (USGS) Interactive Deaggregation tool found on the USGS website, using a 5,000-year return interval, can be used to identify magnitude and peak ground motions. The minimum earthquake magnitude shall be 6.5.
 - 2. The OBE will be determined by probabilistic methods acceptable to the State Engineer and may include the use of the Deaggregation tool on the USGS website with a 200-year return interval.
- b) Stability Analysis - Stability analysis will be performed using the Geo-Slope software. The following conditions will be analyzed.
 - 1. End of Construction Case - Upstream and Downstream Slopes
 - 2. Steady State Seepage – Upstream and Downstream Slopes (Full Pool)
 - 3. Instantaneous Drawdown – Upstream Slope
- c) Prepare Geotechnical/Seismic/Stability Analysis & Design Report to present the results of the study.

5. DESIGN PHASE

- a) Create Design Plans, Specifications, Bidding Documents & Report including the following:
 - 1. Storm Drain Pipe Design including the following
 - (a) Pipe sizing

- (b) Elevations and slope calculations
 - (c) Utility coordination
 - (d) Storm drain facility details
- 2. Hydraulic/Structural Design
 - (a) Emergency Spillway
 - (b) Inlet Structure
 - (c) Low-Level Outlet Work
- 3. Civil Construction Drawings
 - (a) Title Sheet/Location Map
 - (b) Site Topography & Site Plan
 - (c) Plan View of the Dam and Reservoir, including spillway, outlet, and supply source
 - (d) Profile of the Dam along the centerline
 - (e) Dam Cross-section through the outlet
 - (f) Plan and profile drawings for storm drain piping
 - (g) Details of the spillway, outlet, drains, storm drain pipe, manholes, etc.
- 4. Specifications
 - (a) Site Preparation
 - (b) Foundation Preparation
 - (c) Earthwork
 - (d) Emergency Spillway
 - (e) Inlet & Outlet
- 5. Design Review/QAQC
- 6. SOP/EAP PHASE
 - a) Prepare Standard Operating Plan (SOP) to address the safety of the dam and continuous operation of the reservoir.
 - b) Prepare Emergency Action Plan (EAP) to include downstream inundation map and submit to Dam Safety. EAP defines responsibilities and provides procedures designed to identify unusual and unlikely conditions which may endanger the dam in time to take remedial actions and to notify appropriate public officials of possible, impending or actual failure of the dam.
- 7. SMALL DAM APPLICATION
 - a) Prepare and submit an application for a dam not requiring submission of formal plans under section 73-5A-502 of the State of Utah. Although this situation fits the small dam requirements and classification; it is understood that if, for any reason, the state does not approve the small

dam application additional work would be required and would be provided by the hourly rate or could be renegotiated at that time.

8. BIDDING OR NEGOTIATING PHASE

After authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

- a) Assist CLIENT in obtaining bids, prequalification, or negotiating proposals for each separate prime contract for construction or equipment.
- b) Attend one pre-bid or prequalification conference.
- c) Prior to bidding or negotiating, ENGINEER will furnish copies of the final drawings, specifications and contract documents as required by prospective bidders/contractors, material suppliers, and other interested parties, but may charge for the actual cost of such copies.
- d) Issue addenda as appropriate to clarify, correct, or change the bidding documents.
- e) Provide readily available information or assistance needed by CLIENT in the course of any negotiations with prospective contractors.
- f) Attend the bid opening/contractor selection, tabulate the bids, make an analysis of the bids/contractor qualifications, assist CLIENT in evaluating bids or proposals, recommend award of contract, and assemble four sets of contract documents for execution and approval by CLIENT and the successful bidder, hereinafter referred to as "Contractor".
- g) Consult with CLIENT and advise Contractor as to the acceptability of substitute materials and equipment proposed by Contractor when substitution is permitted by the contract documents.
- h) Assist CLIENT in obtaining rebids (including scaling down the project) if no original bids are acceptable.

9. CONSTRUCTION PHASE

ENGINEER shall administer the construction contract in order that the completed work complies with the contract documents. Neither ENGINEER nor CLIENT assumes responsibility for construction means, methods, techniques, sequences or procedures, or for safety procedures, precautions and programs employed by Contractor, subcontractor, their employees, or any material suppliers. ENGINEER's undertaking hereunder shall not relieve Contractor's obligation to perform the work in conformity with the drawings and specifications in a workmanlike manner. ENGINEER does not guarantee Contractor's performance or commitments to CLIENT.

The budget for Engineering Services and related fees outlined during the Construction Phase are based on a construction period of 60 calendar days for the detention basin and 120 days for the storm drain. If the construction period is longer than planned or if there is additional work required, then the budget will be increased to compensate for the additional required engineering services.

ENGINEER's duties, as agent for CLIENT, during construction shall include the following:

- a) CLIENT will provide construction observation for this project and will be doing much of the installation as well. If requested, ENGINEER will designate by letter to CLIENT, the name, address, and telephone number, background and qualifications of person(s) assigned to act as Project Engineer and Resident Observer for the project.
- b) ENGINEER shall at all reasonable times be available personally, or have available, a responsible member of his staff to make such interpretations of the intent of the drawings and specifications as are necessary to facilitate completion of the construction contract. All of CLIENT's instructions to Contractor will be issued through ENGINEER.
- c) ENGINEER shall provide project management services including tracking and reporting Construction Phase budget.
- d) ENGINEER shall assist CLIENT in the selection of an independent testing laboratory.
- e) ENGINEER shall participate in a Pre-Construction Conference prior to commencement of Work at the Site.
- f) ENGINEER shall receive and review the acceptability of any schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- g) ENGINEER shall make sufficient periodic visits to the site to familiarize himself with the progress and quality of the work in an effort to determine if the work is proceeding in accordance with the contract documents. Whereas CLIENT is performing much of the work on the storm drain line, the number of visits required of the ENGINEER will be determined by CLIENT. The base scope for site visits by ENGINEER includes site visits once per week for construction of the detention basin. On the basis of his on-site observations as an Engineer, he shall endeavor to guard CLIENT against defects and deficiencies in the work of the Contractor.
- h) ENGINEER will review Contractor's applications for progress and final payment and, when approved, submit same to CLIENT, Contractor, lenders, and approving agencies as required for approval and payment.
- i) ENGINEER shall attend progress meetings with the Contractor which shall occur on a regular basis during Construction.
- j) ENGINEER shall furnish engineering construction administration for the project. Construction observation shall not relieve Contractor in any way from his obligations and responsibilities under the Contract. If CLIENT requests the ENGINEER to provide a Resident Observer, that individual shall be qualified for the work and his duties shall include but not be limited to:
 1. Monitor Contractor's work for the purpose of making all reasonable efforts to guard CLIENT against defects and deficiencies in the work of the Contractor and to help determine if the provisions of the contract documents are being fulfilled.
 2. Keep detailed daily diaries of activities taking place and work accomplished on the project, which shall be either turned over to CLIENT or saved by ENGINEER for at least three (3) years after final payment is made by CLIENT to Contractor.

3. Issue immediate written memoranda of non-compliance to Contractor, CLIENT and Project Engineer when the Resident Observer determines Contractor's work to be defective or deficient.
 4. Report regularly to the Project Engineer and keep him advised as to the work progress and defects and deficiencies in the work of Contractor.
- k) ENGINEER shall issue necessary clarifications and interpretations of the contract documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the contract documents. Subject to any limitations in the contract documents, ENGINEER may issue field orders authorizing minor variations in the Work from the requirements of the contract documents.
 - l) ENGINEER shall appraise and approve Contractor's certifications of payment and maintain necessary records pertaining thereto for work performed.
 - m) ENGINEER shall monitor compaction and gradation testing results as outlined in the contract documents.
 - n) ENGINEER shall review for conformance with design concept, and approve if acceptable any necessary shop and working drawings furnished by Contractor.
 - o) ENGINEER shall check and make recommendations on all proposals for substitutions.
 - p) ENGINEER shall on a timely basis and as needed prepare and recommend change orders to the construction contract for acceptance by CONTRACTOR, and for written approval of CLIENT, lenders, and approving agencies as applicable, and subsequent issuance of the approved change orders during the course of construction.
 - q) ENGINEER will make a final review prior to the issuance of the statement of substantial completion of construction and submit a written report to CLIENT. Prior to submitting the final pay estimate, ENGINEER shall submit a statement of completion to, and obtain the written acceptance of the facility from CLIENT.
 - r) ENGINEER shall establish the date of Substantial Completion, require and assemble written guarantees and maintenance manuals of the manufacturers and contractors, and issue the Certification of Substantial Completion and Final Certificate of Payment.
 - s) ENGINEER shall prepare 3 sets of "Contract Record Drawings" and specifications for CLIENT, one (1) set for the State Engineer, and maintain one (1) set of reproducible contract record drawings showing details of construction including changes made during the construction process, which ENGINEER considers significant. ENGINEER shall provide other drawings or renditions of the system as requested by CLIENT, to be remunerated by the hourly rate as identified in Attachment No. 1.
 - t) ENGINEER shall assist CLIENT's personnel as required during the preliminary operation to become familiar with operating controls and adjustments.
 - u) ENGINEER will be available to furnish engineering services and consultations as necessary to correct unforeseen project operation difficulties for a period of one year after the date of statement of substantial completion of the facility. This service will include instruction of CLIENT in initial project operation and maintenance, but will not include supervision of normal operation of the system.

Such consultation and advice shall be furnished without additional charge except for travel and subsistence cost. ENGINEER will assist CLIENT in performing a review of the project during the 11th month after the date of the Certificate of Substantial Completion.

10. CONDITIONAL LETTER OF MAP REVISION (CLOMR)

a) Data Collection

1. Obtain available data from CLIENT. Note: ENGINEER has already collected maps, and brief data of previous projects.
2. Purchase published FIS, effective FIRM and available hydrologic (HEC-1) and hydraulic (HEC-RAS or hand calculation) models from FEMA. ENGINEER understands that there was a HEC-1 hydrologic analysis model submitted to FEMA with a submission of a CLOMR for a proposed development in the same area.
3. Retrieve and review FIRMs and all collected data.

b) Hydrology Analysis

1. Duplicate the HEC-1 model obtained from FEMA.
2. Modify the model based on the updated existing and proposed project conditions – the proposed dam-detention will be added to the model and simulated.
3. Determine the 100-year design flood for the CLOMR. ENGINEER understands that the design flood determined in this phase is for the CLOMR Request, not the dam design. A probable maximum precipitation (PMP) shall be developed and a probable maximum flood (PMF) analysis shall be performed for the dam design according to the relative Utah Dam Safety regulations. The PMF analysis will be conducted as part of Article 2.3.

c) Hydraulic Modeling

1. Duplicate the HEC-RAS model or hand calculations purchased from FEMA (effective model) and compare the results with the published FEMA effective floodplain (and floodway, if applicable) levels.
2. Correct errors, if any, in the duplicate effective model and create a corrected effective model that reflects the corrected conditions. Compare corrected effective model results with duplicate effective model flood levels.
3. Modify the effective model or the corrected effective model to include any modifications since the date of the effective FIRM. This model is the existing conditions model. If there are no modifications, the corrected effective model becomes the existing conditions model.
4. Modify the existing conditions model by including the project and new survey data to create a post-project conditions model. The results from the post-project conditions model will establish post-project floodplain (and floodway, if applicable) levels.

d) Preparation of CLOMR Request

1. Generate flood profiles based on model results.

2. Delineate floodplain and floodway boundaries and prepare other information required by FEMA on the work map. The revised floodplain (and floodway, if applicable) shall tie-in to the effective upstream and downstream floodplain (and floodway, if applicable) to meet FEMA requirements.
 3. Create flood elevation and flow velocity comparison tables.
 4. Complete the following FEMA MT-2 Forms and include attachments and exhibits as required by FEMA:
 - MT-2 Form 1 – Overview and Concurrence Form
 - MT-2 Form 2 – Riverine Hydrology & Hydraulics Form
 - MT-2 Form 3 – Riverine Structures Form
 - MT-2 Form 7 – Payment Information Form
 5. Prepare a proposed FIRM revision with all FEMA required annotations.
 6. Prepare a project narrative (summary report).
 7. Submit the CLOMR Request package to CLIENT for review, approval and signatures.
 8. CLIENT will have the CLOMR Request be acknowledged by all impacted communities, if any.
 9. Submit the CLOMR Request package to the FEMA Map Specialist for review. Current FEMA review fee of a CLOMR request based on new hydrology, bridge, culvert, channel, or combination thereof is \$4,400. Current FEMA review fee of a CLOMR request based on levee, berm, or other structural measures is \$6,050.
- e) Finalization of the CLOMR Request
1. Obtain the review comments from the FEMA Map Specialist.
 2. Contact the FEMA Map Specialist to discuss the review comments, if necessary.
 3. Finalize and re-submit the Request.

11. ADDITIONAL ENGINEERING SERVICES

The following engineering services are not included under previous phases, but are included as part of the services rendered under this contract:

- a) Geotechnical Investigation - Five borings will be drilled using an ODEX drill rig. Three borings will be drilled along the centerline of the dam, one at each abutment to 50 feet below grade and one in the middle (flow line of the existing channel) to 100 feet below grade. Two borings, one upstream and one downstream of the middle centerline boring, will be drilled to 50 feet below grade. Undisturbed samples will be collected at 5-foot intervals. In-situ soil classifications will be performed in accordance with the Unified Soil Classification System (USCS). Selected soil samples will be submitted to laboratories for the following analyses:
 1. Moisture-density
 2. Gradation

3. Classification
4. Gradation-hydrometer
5. Atterberg limits
6. Moisture-density relationship-proctor
7. Direct Shear
8. Pinhole dispersion
9. Consolidation-one dimensional
10. Permeability-flexible wall

- b) Compaction and materials testing.
- c) Construction staking for locating the work will be provided on a one-time basis, as outlined in the contract documents. ENGINEER shall not be responsible for stakes, etc. removed through negligence of Contractor, CLIENT, or through vandalism and shall be compensated by the responsible party for re-staking or resurveys.

12. EXCLUSIONS AND ASSUMPTIONS

The following engineering services are not included under previous phases, but may be included as part of the services rendered under this contract. These services may be provided only UPON AUTHORIZATION OF CLIENT and concurrence by ENGINEER:

- a) Laboratory tests, well tests, borings, hydraulic investigations, soils investigations, water quality studies, or other studies recommended by ENGINEER, outside of those described in Article 2.11.a.
- b) Survey for property acquisitions and easements and document preparation for property acquisitions and easements.
- c) Searching out property owners and negotiating for land and easement rights, property surveys, property plats, property descriptions, and abstracting.
- d) Construction staking for locating the work is on a one-time basis, as outlined in the contract documents. ENGINEER shall not be responsible for stakes, etc. removed through negligence of Contractor, CLIENT, or through vandalism and shall be compensated by the responsible party for re-staking or resurveys.
- e) Services in connection with work change directives and change orders to reflect changes requested by CLIENT.
- f) Services in making revisions to drawings and specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- g) Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- h) Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required),

- (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
- i) Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by CLIENT prior to Substantial Completion.
 - j) Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
 - k) Services during the Construction Phase rendered after the duration of construction period referred to in Article 2.9.
 - l) Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
 - m) While at the Site, compliance by Engineer and its staff with those terms of CLIENT's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.
 - n) Necessary data and filing maps for water rights, water adjudication, and litigation.
 - o) Redesigns ordered by CLIENT after final plans have been accepted by CLIENT or after substantial design work has been performed on previously approved design concepts. Redesigns to reduce the project cost to within funds available are not considered additional services but are covered under the Bidding and Negotiating Phase.
 - p) Appearances before courts or boards on matters of litigation related to the project.
 - q) Operation and Maintenance Manual, Plan of Operations, and/or Permits such as Ground Water Discharge or UPDES Permit.
 - r) Storm Water Pollution Prevention Plan.
 - s) Environmental assessment, impact statements, and special environmental studies.
 - t) G.I.S. Mapping of system and conversion of AutoCAD drawings to G.I.S. compatible mapping.
 - u) Survey for the development of hydrologic or hydraulic models is excluded but may be provided upon request.
 - v) Any FEMA review fees associated with a CLOMR request are excluded.
 - w) Any work required beyond the initial preparation and submittal of application for Small Dam exclusions in paragraph 7; including resubmission(s), additional meetings, communications, reports, any other iterative processes, etc.

ARTICLE 3. CLIENT RESPONSIBILITY

1. Access to Property: CLIENT shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required by ENGINEER to perform his services.
2. Notices: CLIENT shall give prompt written notice to ENGINEER, whenever CLIENT becomes aware of developments that affect the scope and timing of Engineering Services, Funding or the Project.

3. Access to Records: CLIENT shall make available to ENGINEER those records designated by ENGINEER as being necessary for the development of the funding application or Project.
4. CLIENT shall promptly examine all studies, reports, sketches, drawings, proposals, and other documents presented by ENGINEER and shall inform ENGINEER of all decisions within a reasonable time so as not to delay ENGINEER.
5. CLIENT shall identify that person within CLIENT's organization who will coordinate Engineers work in order that ENGINEER may coordinate with them through one person.
6. The scope of work assumes that hydrologic and hydraulic modeling prepared for the prior CLOMR request will be made available by FEMA.

ARTICLE 4. COMPENSATION

CLIENT agrees to compensate ENGINEER for services of Work Release No. 2014-1, Tom's Canyon Flood Prevention and Storm Water Improvements, as follows and which payments shall be considered complete compensation for all engineering services outlined in the respective articles of this Agreement. ENGINEER will submit monthly itemized billings for this work, which will not be invoiced until after the funding of the project is approved by CIB after which it will be due and payable within 30 calendar days.

1. **HOURLY ITEMS:**

CLIENT agrees to compensate ENGINEER for actual charges at hourly rates plus direct expenses shown on Exhibit A for all services described under these phases. ENGINEER will submit itemized billings, each month for this work, which will be due and payable within 30 days of receipt thereof by CLIENT.

Compensation under this Article shall be payable monthly. Billing shall begin at the end of the month, after authorization to proceed with the associated phase is given by CLIENT, and will continue each month thereafter.

2. **LUMP SUM ITEMS:**

CLIENT agrees to compensate ENGINEER for all Final Engineering Design work as outlined in referenced articles for the total lump sum prices as shown in the table below.

Compensation under this Article shall be payable monthly as follows:

- a. Billing shall begin at the end of the month, after authorization to proceed with the Phase is given by CLIENT, and will continue each month thereafter.
- b. The amount billed each month shall be a sum; equal to that portion of the total lump sum amount, prorated according to the percent complete of the Phase.

3. COMPENSATION DETAIL:

<u>Article</u>	<u>Task Description</u>	<u>Budget/Cost</u>	<u>Fee Type</u>
2.1	Funding Administration	\$11,500	Lump Sum
2.2a	Survey	\$3,200	Lump Sum
2.2b	Aerial Survey	\$7,700	Lump Sum
2.3	Hydrologic Study	\$10,600	Lump Sum
2.4	Geotechnical /Seismic/Stability Analysis and Design	\$14,100	Lump Sum
2.5	Design Phase	\$91,700	Lump Sum
2.6	SOP/EAP	\$3,400	Lump Sum
2.7	Small Dam Application	\$1,400	Lump Sum
2.8 -2.9	Bidding or Negotiating Phase and Construction Phase. (Budget)	\$72,500	Hourly
2.10	CLOMR	\$16,000	Lump Sum
2.11	Additional Services (Listed)		
	Drilling and Sampling	\$23,000	Lump Sum
	Compaction and Materials Testing	\$37,500	Hourly
	Construction Staking	\$20,000	Hourly

ARTICLE 5. INVOICING

Instructions and invoices submitted pursuant to this Work Release shall be sent to:

KANAB CITY
76 N. MAIN
KANAB, UT 84741

Invoices shall be submitted monthly based on the prior month's effort, and are due and payable within (30) thirty days.

ENGINEERING
FEE SCHEDULE
EXHIBIT A

WORK CODE	WORK CLASSIFICATION	HOURLY RATE	WORK CODE	WORK CLASSIFICATION	HOURLY RATE
101	Engineer Intern (E.I.T.) I	\$89	404	CAD Drafter IV	\$95
102	Engineer Intern (E.I.T.) II	\$99	451	Training Specialist I	\$77
103	Engineer III	\$125	452	Training Specialist II	\$91
104	Engineer IV	\$139	455	Training Specialist III	\$110
105	Engineer V	\$159	456	Training Manager	\$123
110	Principal Engineer	\$179	460	Training Director	\$154
121	Electrical Engineer Intern (E.I.T.) I	\$99	500	Funding Specialist	\$115
122	Electrical Engineer Intern (E.I.T.) II	\$109	510	Plan Reviewer	\$107
123	Electrical Engineer III	\$130	511	Building Inspector I	\$59
124	Electrical Engineer IV	\$150	512	Building Inspector II	\$82
125	Electrical Engineer V	\$165	513	Building Inspector III	\$102
126	Principal Electrical Engineer	\$185	525	Building Official	\$118
301	Engineering Tech I	\$69	604	GIS Tech	\$83
302	Engineering Tech II	\$85	611	GIS Specialist	\$93
303	Engineering Tech III	\$99	51	Administrative I	\$41
304	Engineering Tech IV	\$121	52	Administrative II	\$51
311	Electrical Tech I	\$79	53	Administrative III	\$66
312	Electrical Tech II	\$89	721	Water Rights Specialist I	\$88
313	Electrical Tech III	\$99	722	Water Rights Specialist II	\$99
314	Electrical Tech IV	\$109	723	Water Rights Specialist III	\$113
315	Electrical Tech V	\$125	930	Survey CAD Tech	\$87
351	Construction Observer I	\$59	935	One Man Survey Crew	\$119
352	Construction Observer II	\$79	940	Survey Manager	\$129
353	Construction Observer III	\$89	945	Registered Surveyor	\$142
354	Construction Observer IV	\$99	950	Principal Surveyor	\$160
401	CAD Drafter I	\$61			
402	CAD Drafter II	\$71			
403	CAD Drafter III	\$85			

REIMBURSABLE EXPENSE SCHEDULE

Expense	Rate	Mark-Up
Mileage	\$0.59 per mile	N/A
Field Vehicle (on site)	\$50 per day	N/A
Per Diem Meals	\$35 per day	N/A
Troxler Nuclear Density Gauge	\$40 per day	N/A
High Density Scanner	\$150 per hour	N/A
Material Testing Lab Work	Actual Cost	15%
Outside Consultants, Aerial Photography, etc.	Actual Cost	15%
Lodging	Actual Cost	10%
Other Expenses incurred	Actual Cost	10%

Fee schedule will automatically change once per year in January, and is subject to change on other occasions. Base 01C-2014