



Cedar City

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

Mayor
Maile L. Wilson

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

City Manager
Rick Holman

CITY COUNCIL WORK MEETING

MAY 6, 2015

5:30 P.M.

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

- I. Call to Order
- II. Agenda Order Approval
- III. Administration Agenda
 - Mayor and Council Business
 - Staff Comment
- IV. Public Agenda
 - Public Comments
- V. Business Agenda
 - Public
 1. Consider a single event permit for the Elks Horse Shoe Tournament on May 30th – Cedar City Elks
 - Staff
 2. Consider a cost reimbursement agreement between Cedar City and First Wind LLC – Danny Stewart
 3. Consider a cost reimbursement agreement between Cedar City and Gilbert Development – Danny Stewart
 4. Consider an ordinance amending the RAP Tax and Transient Room Tax ordinances – Paul Bittmenn
 5. Consider the 2015-2016 FY Tentative Budget – Jason Norris

Dated this 4th day of May, 2015.

Renon Savage, MMC
City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 4th day of May, 2015.

A handwritten signature in cursive script that reads "Renon Savage". The signature is written in dark ink and is positioned above a horizontal line.

Renon Savage, MMC
City Recorder

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

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

1

CEDAR CITY CORPORATION

SINGLE EVENT PERMIT APPLICATION

APPLICANT: Please spell out the information requested below. A \$50.00 fee is due and payable at the time of submitting the application. (Said fee is refundable if a permit is not granted.)

SECTION I

NAME: Candace Howes

ADDRESS: 111 E 200 N

PHONE NUMBER: (435) 586-8332 NAME OF ENTITY: Elks Lodge

PURPOSE OF ENTITY: _____

TYPE OF EVENT: Horse Shoe Tournament

CASH OR SURETY BOND FOR \$1,000 _____

TIME AND DATE OF EVENT: May 30th @ 1:00 - 7:00

NATURE AND PURPOSE OF EVENT: Charity fundraiser

SECTION II

DESCRIBE THE FLOOR PLAN DESIGNATING:

(A) THE AREA IN WHICH THE APPLICANT PROPOSES THAT BEER BE STORED:

North East parking lot

(B) THE SITE FROM WHICH THE APPLICANT PROPOSES THAT BEER BE SOLD

OR SERVED: North East parking lot (car port)

(C) THE AREA IN WHICH THE APPLICANT PROPOSES THAT THE BEER BE

ALLOWED TO BE CONSUMED: around horseshoe pits

SECTION III

WE HEREBY CONSENT TO CITY OFFICIALS HAVING THE UNRESTRICTED RIGHT TO ENTER THE PREMISES TO ENTER THE EVENT FOR PURPOSES OF ENFORCEMENT.

DATE: May 1, 2015

SIGNATURE:

Candace Howes
APPLICANT

I HEREBY VERIFY THAT I AM AUTHORIZED TO ACT ON BEHALF OF SAID ASSOCIATION OR ORGANIZATION.

DATED this _____ day of _____, 19____.

APPLICANT:

Its: _____

THIS SECTION IS TO BE FILLED OUT BY CITY

APPLICATION HAS BEEN REVIEWED BY THE CEDAR CITY POLICE DEPARTMENT, AND ITS RECOMMENDATION IS AS FOLLOWS: _____

DATE: _____

SIGNATURE:

COUNCIL APPROVAL _____

COST REIMBURSEMENT AGREEMENT

THIS COST REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made effective as of the ____ day of _____, 2015 (the “**Effective Date**”) by and between Cedar City Corporation, a Utah municipal corporation (the “**City**”); and First Wind, LLC, a Delaware limited liability company], (the “**Developer**”), with respect to the following:

RECITALS:

A. Developer, through wholly-owned subsidiaries, has leased certain real properties located in Iron County, Utah for the purpose of constructing and operating five commercial solar energy generation facilities (the “**Solar Energy Facilities**”). These facilities include Fremont Solar, Rush Lake Solar, Granite Mountain West, Granite Mountain East, and Iron Springs Solar.

B. The Iron County Community Development and Renewal Agency (the “**Agency**”) requested that the City prepare a draft Community Development Project Area Plan for each of the Solar Energy Facilities in conformance with the requirements of Utah Code Annotated 17C-4-101 et seq. (the “**Act**”).

C. The draft Community Development Project Area Plans (the “**Project Area Plans**”) will be for five Solar Energy Facilities located within unincorporated Iron County.

D. The Agency has determined that the proposed project areas meet the criteria for creation of Community Development Areas (the “**CDAs**”) pursuant to the Act. The areas offer the opportunity to encourage renewable energy development in Iron County that will attract private capital investment, contribute to the tax base and otherwise contribute to the economic vitality and prosperity of the community.

E. Creation of the CDAs will allow Developer to construct and operate its Solar Energy Facilities.

F. Creation of the CDAs will require legal services not available from current City staffing and Developer has agreed to reimburse necessary and reasonable costs and legal expenses associated with creation of the CDAs.

G. The purpose of this Agreement is to provide for the reimbursement for legal service costs and expenses incurred by the City in association with the creation of the CDAs.

AGREEMENT:

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Reimbursable Costs and Expenses.** Reimbursable costs (“**Costs**”) are those charges or fees for necessary and reasonable legal services that are solely related to the creation of the CDA incurred by the City as further described on Exhibit A attached hereto and made a part hereof. The City will coordinate with Developer in advance to avoid unnecessary

duplication of Costs. These costs include the hourly rates billed by third-party legal service providers hired by the City, as further addressed below, to assist in creating the CDAs. The City estimates the total amount of Costs to be reimbursed by Developer will not exceed \$43,500.00, and in no event will Developer be liable for more than [\$43,500.00] (the “**Authorized Costs**”) under this Agreement absent a written amendment in a form mutually acceptable to the City and Developer. In the event that the total amount of Costs to be reimbursed by Developer approaches \$43,500.00, the City will notify Developer and the parties will endeavor to negotiate an amendment to this Agreement before the City incurs any further Costs which exceed \$43,500.00. Additionally, City and Developer entered an agreement for a similar purpose on or about July 1, 2014. During administration of the July 1, 2014 agreement, City incurred expenses in excess of Developer's deposit in the amount of \$416.64. Developer agrees these expenses were incurred within the scope of the agreement and agrees to pay said expensed. Developer agrees that City may use necessary funds from the deposit in this agreement to satisfy the expenses incurred during the administration of the July 1, 2014, agreement. As part of the Authorized Costs, the City may incur out-of-pocket expenses related to the CDAs (“**Expenses**”) such as copying, postage, travel expenses, public notices and similar out-of-pocket expenses for which Developer is responsible.

2. **Initial Deposit.** Developer agrees to make an initial, advance deposit payment of \$43,500.00 (the “**Deposit**”) to the City, to be placed in a dedicated account established and maintained by the City for payment of the reimbursable Costs and Expenses. Any balance remaining in said account at the termination of this Agreement, after all Costs and Expenses have been satisfied, shall be refunded to Developer. Developer may direct the City to draw down the Deposit in payment of the final invoice(s) for work under this Agreement. The City agrees to provide Developer with copies of all bank statements.

3. **Payment of Invoices; Dispute.** The City will provide Developer with detailed invoices for all reimbursable Costs and Expenses. The City may draw from the Deposit to reimburse itself for Costs if payment is not received within thirty (30) days of billing. If Developer objects to an invoice on the basis that the work performed was not within the scope of work or costs established in accordance with this Agreement or was incorrectly calculated, Developer agrees to promptly provide the City with a statement of the basis of its objection, including the amount in dispute. The parties shall cooperate in good faith to resolve the dispute.

4. **Termination.** Developer’s obligation to reimburse the City shall terminate upon the earlier of (a) Developer’s request, in writing, that the City cease further work under this Agreement; or (b) the Agency approving the CDAs (the “**Completion Date**”); provided, however, that Developer shall remain obligated to reimburse the City for reimbursable Costs and Expenses incurred up to the Completion Date.

5. **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in force and effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

6. **Construction.** This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. The parties agree that venue for any action regarding the Agreement shall be in the 5th Judicial District Court in and for Iron County.

8. **Assignment.** This Agreement shall bind all successors and assigns to Developer. Developer may assign its rights under this Agreement in whole or in part, provided that it provides written notice of such assignment to the City.

9. **Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each party shall act reasonably in implementing this Agreement. The City and Developer agrees that each of them shall at all times act in good faith so as not to frustrate the purpose and intent of this Agreement.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement (cost reimbursement). This Agreement is specifically intended by the parties to supersede all prior agreements, whether written or oral, related to the subject matter of this Agreement which may exist between the City and Developer.

11. **Notices.** All notices under this Agreement shall be, unless otherwise authorized herein, in writing and given personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, a communication shall be deemed to have been given and received on actual receipt by the addressee. If personally delivered, it shall be deemed to have been given when delivered to the party to whom it is addressed. A courtesy copy may be sent by facsimile transmission. Any party may designate any other address in substitution of the address contained herein by like written notice. Communications shall be given to the parties at their addresses set forth below:

If to City: Cedar City Corporation
10 North Main
Cedar City, Utah 84720
Attn: Daniel B. Stewart

If to Developer: Sun Edison, LLC
44 Montgomery Street, Suite 2200
San Francisco, CA 94104
Attn: Jason Hannigan

12. **No Partnership.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(Signatures follow on the next page)

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the dates below written to be effective as of the Effective Date.

CITY:

Cedar City Corporation, a Utah municipal corporation

Date: _____, 2015

MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

Date: _____, 2015

RENON SAVAGE
RECORDER

DEVELOPER:

First Wind, LLC

Date: _____, 2015

By: _____
Print Name: _____
Title: _____

**EXHIBIT A TO
REIMBURSEMENT AGREEMENT**

(Scope of Work)



J. CRAIG SMITH
jcsmith@smithlawonline.com

ADAM S. LONG
along@smithlawonline.com

February 25, 2015

Mr. Danny Stewart
Cedar City/Iron County Economic Development
10 North Main St.
Cedar City, UT 84720

Via Email at dans@cedarcity.org
and U.S. Mail

Re: Revised Estimate of Legal Fees for Potential CDA Projects in Iron County

Dear Danny:

This letter is our response to a request from the Iron County Community Development and Renewal Agency ("Agency") for an estimate of legal fees in regards to creating five new Community Development Project Areas in two separate groups on separate timelines.

Our firm will prepare timelines, notices, resolutions, ordinances, and the first drafts of the Participation Agreements and Interlocal Agreements for the proposed project areas. We will mail and post the necessary public notices. We will review the Plans and Budgets prepared by the Agency and attend and participate in up to four Agency Board Meetings. The do-not-exceed cost for these legal services without the written authorization of the Agency is \$8,000 per project area for a total of \$40,000 for all five project areas done in one group, plus out-of-pocket costs, such as mileage at the IRS rate, filing fees, publication expenses, etc. Additional services provided, such as negotiation of Participation or Interlocal Agreements or attendance at additional meetings, will incur additional expense.

We hope this Proposal meets the approval of the Agency. We are hopeful of being able to work with you and the Agency on this exciting project. Please do not hesitate to call me or Adam if you have any questions.

Sincerely,

SMITH HARTVIGSEN, PLLC

J. Craig Smith
Adam S. Long

175 SOUTH MAIN STREET SUITE 300 SALT LAKE CITY, UTAH 84111
TELEPHONE 801-413-1600 TOLL FREE 877-829-2064 FACSIMILE 801-413-1620
WWW.SMITHHARTVIGSEN.COM

L A N D W A T E R L I F E

COST REIMBURSEMENT AGREEMENT

THIS COST REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made effective as of the ____ day of _____, 2015 (the “**Effective Date**”) by and between Cedar City Corporation, a Utah municipal corporation (the “**City**”); and Gilbert Development, (the “**Developer**”), with respect to the following:

RECITALS:

A. Developer owns certain real property (the “**Property**”) located in Iron County, Utah that has previously been used for the purpose of mining, processing and shipping iron ore (a “**Purpose**”) and the City and Developer believe that the Property can be again put to use for the Purpose with additional capital investment and with assistance from the Agency.

B. The Iron County Community Development and Renewal Agency (the “**Agency**”) desires to prepare a draft Community Development Project Area Plan for mining operations at Iron Mountain in conformance with the requirements of Utah Code Annotated 17C-4-101 et seq. (the “**Act**”) in order to create a Community Development Project Area (“**CDA**”) pursuant to the Act so that the Agency may offer incentives to Developer to encourage utilization of the Property so as to benefit Iron County and its residents.

C. The draft Community Development Project Area Plan (a “**Project Area Plan**”) will contemplate the establishment of active mining operations located within unincorporated Iron County.

D. The Agency has determined that the proposed project area meets the criteria for creation of a CDA pursuant to the Act. The area offers the opportunity to encourage development in Iron County that will attract private capital investment, create high paying new jobs, contribute to the tax base and otherwise contribute to the economic vitality and prosperity of the community.

E. Creation of the CDA will allow Developer to construct and operate its mining, processing and shipping project.

F. Creation of the CDA will require legal services not available from current Agency staffing and Developer has agreed to reimburse necessary and reasonable costs and legal expenses associated with creation of the CDA.

G. Agency is unable to front the cost and corresponding administrative expense for the necessary legal expenses associated with the creation of the CDA. City has agreed to participate in the process by fronting the cost and associated administrative expenses associated with the creation of the CDA contingent upon reimbursement. City is willing to use its resources to this end because Developers project may have a positive financial impact on City.

H. The purpose of this Agreement is to provide for the reimbursement for legal service costs and expenses incurred by the City in association with the creation of the CDA.

AGREEMENT:

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Creation of CDA.** The Agency and Developer agree to cooperate and work together in good faith to create the CDA and accomplish the purposes of this Agreement. However, the Agency and Developer agree and acknowledge that the interests of the City Agency and Developer may be adverse and that both the Agency and Developer may take positions adverse to the interests of the other without violating this Agreement so long as such positions are taken in good faith. City's involvement in creation of the CDA is strictly limited to paying for the associated legal work, incurring administrative costs associated with said payments, and receiving reimbursement for said payments from Developer.

2. **Reimbursable Costs and Expenses.** Reimbursable costs (“Costs”) are those charges or fees for legal services that are solely related to the creation of the CDA, including preparation of interlocal and participation agreements, incurred by the City as further described on Exhibit A attached hereto and made a part hereof. The City will coordinate with Developer in advance to avoid unnecessary duplication of Costs. These costs include the hourly rates billed by third-party legal service providers hired by the Agency, as further addressed below, to assist in creating the CDA. The City estimates the total amount of Costs to be reimbursed by Developer will not exceed \$15,000.00. In the event that the total amount of Costs to be reimbursed by Developer approaches \$12,500.00, the City will notify Developer and the parties will endeavor to negotiate an amended agreement before the City incurs any further Costs which exceed \$12,500.00. The City may incur out-of-pocket expenses (“Expenses”) such as copying, postage, travel expenses, public notices and similar out-of-pocket expenses for which Developer is responsible.

3. **Initial Deposit.** Developer agrees to make an initial, advance deposit payment of \$12,500.00 (the “Deposit”) to the City, to be placed in a dedicated account established and maintained by the City for payment of the reimbursable Costs and Expenses. Any balance remaining in said account at the termination of this Agreement, after all Costs and Expenses have been satisfied, shall be refunded to Developer. Developer may direct the City to draw down the Deposit in payment of the final invoice(s) for work under this Agreement. The City agrees to provide Developer with copies of a detailed general ledger showing all deposits and payments associated with the account.

4. **Payment of Invoices; Dispute.** The City will provide Developer with detailed invoices for all reimbursable Costs and Expenses. The City may draw from the Deposit to reimburse itself for Costs if payment is not received within thirty (30) days of billing. If Developer objects to an invoice on the basis that the work performed was not within the scope of work or costs established in accordance with this Agreement or was incorrectly calculated, Developer agrees to promptly provide the City with a statement of the basis of its objection, including the amount in dispute. The parties shall cooperate in good faith to resolve the dispute.

5. **Legal Counsel.** Developer and City acknowledge and agree that the Agency will require the assistance of outside legal counsel in order to create the CDA (“**Agency Counsel**”). The City and Developer agree that although fees for services of Agency Counsel may be part of the Reimbursable Costs under this Agreement, Agency Counsel shall be counsel for the Agency alone and Agency Counsel shall not owe a duty to the City or to Developer. Developer and the City acknowledge that Agency Counsel, in the course of its representation of the Agency, may take or advocate for positions adverse to the interests of the City and Developer. Agency Counsel shall have obligations only to the Agency and not to the City or Developer. The engagement of Agency Counsel by the Agency shall not create an attorney-client relationship between Agency Counsel and either the City or Developer.

6. **Other Entities.** The City and Developer acknowledge and agree that the creation of the CDA as contemplated requires the agreement and action of the Agency board and the Iron County Commission and that the Agency board and the Iron County Commission may or may not approve the creation of the CDA. Further, the City and Developer agree and acknowledge that the Agency requires agreement from the taxing entities levying taxes on the Property (the “**Taxing Entities**”) in order for the Agency to receive tax increment funds that may be used as an incentive to Developer to develop the Property. The City and Developer acknowledge and agree that the Agency board must approve any payment of incentives to be paid from the Agency to Developer. The City and Developer agree and acknowledge that the Agency board, the Iron County Commission, and the Taxing Entities are under no obligation to the City or Developer to take any action or to decline to take any action, and that any action or inaction by the Agency board, the Iron County Commission, or any Taxing Entity shall cause the City to be liable to Developer. Developer agrees that even if the Agency, Iron County Commission and/or the Taxing Entities refuse to approve the CDA Developer shall reimburse City for the legal costs incurred pursuant to this agreement.

7. **Termination.** Developer’s obligation to reimburse the City shall terminate upon the earlier of (a) Developer’s request, in writing, that the City cease further work under this Agreement; or (b) the Agency approving the CDA, including negotiation and execution of interlocal and participation agreements, as necessary (the “**Completion Date**”); provided, however, that Developer shall remain obligated to reimburse the City for reimbursable Costs and Expenses incurred up to the Completion Date. If the agreement is terminated pursuant to the provisions of 7(a) Developer shall remain obligated to reimburse the City for reimbursable Costs and Expenses incurred up to the date City received Developer's notice to cease further work.

8. **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in force and effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9. **Construction.** This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. The parties agree that venue for any action regarding the Agreement shall be in the 5th Judicial District Court in and for Iron County.

11. **Assignment.** This Agreement shall bind all successors and assigns to Developer and City.

12. **Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each party shall act reasonably in implementing this Agreement. The City and Developer agrees that each of them shall at all times act in good faith so as not to frustrate the purpose and intent of this Agreement.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement (cost reimbursement). This Agreement is specifically intended by the parties to supersede all prior agreements, whether written or oral, related to the subject matter of this Agreement which may exist between the City and Developer.

14. **Notices.** All notices under this Agreement shall be, unless otherwise authorized herein, in writing and given personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, a communication shall be deemed to have been given and received on actual receipt by the addressee. Notices may also be sent by electronic mail provided such notice is also sent by U.S. Mail, postage prepaid. If personally delivered, it shall be deemed to have been given when delivered to the party to whom it is addressed. Any party may designate any other address in substitution of the address contained herein by like written notice. Communications shall be given to the parties at their addresses set forth below:

If to City: Cedar City Corporation
10 North Main
Cedar City, Utah 84720
Attn: Daniel B. Stewart
Email: dans@cedarcity.org

If to Developer: Gilbert Development
c/o Keith Gilbert
6249 West Gilbert Industrial Court
Hurricane, UT 84737
Attn: Keith Gilbert
Email: keith@gilbertdevelopment.com

15. **No Partnership.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(Signatures follow on the next page)

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the dates below written to be effective as of the Effective Date.

CITY:

Cedar City Corporation, a Utah municipal corporation

Date: _____, 2015

Maile L. Wilson
MAYOR

[SEAL]
ATTEST:

Date: _____, 2015

RENON SAVAGE
RECORDER

DEVELOPER:

Gilbert Development

Date: _____, 2015

By: _____
Print Name: _____
Title: _____

**EXHIBIT A TO
REIMBURSEMENT AGREEMENT**

(Scope of Work)



J. CRAIG SMITH
jesmith@smithlawonline.com

ADAM S. LONG
along@smithlawonline.com

April 22, 2015

Mr. Danny Stewart
Cedar City/Iron County Economic Development
10 North Main St.
Cedar City, UT 84720

**Via Email at dans@cedarcity.org
and U.S. Mail**

Re: Estimate of Legal Fees for Potential Iron Mine CDA Project

Dear Danny:

This letter is our response to a request from the Iron County Community Development and Renewal Agency ("Agency") for an estimate of legal fees in regards to creating a new Community Development Project Area encompassing a currently-idle iron mine owned by Gilbert Development.

Our firm will prepare timelines, notices, resolutions, ordinances, and the first drafts of the Participation Agreement and Interlocal Agreements for the proposed project area. We will mail and post the necessary public notices. We will review the Plan and Budget prepared by the Agency and attend and participate in up to two Agency Board Meetings. We estimate that those legal services will cost approximately \$12,500, with a do-not-exceed limit of \$15,000, plus out-of-pocket costs, such as mileage at the IRS rate, filing fees, publication expenses, etc. Additional services provided, such as negotiation of Participation or Interlocal Agreements or attendance at additional meetings, will incur additional expense.

We hope this proposal meets the approval of the Agency. We are hopeful of being able to work with you and the Agency on this exciting project. Please do not hesitate to call me or Adam if you have any questions.

Sincerely,

SMITH HARTVIGSEN, PLLC

J. Craig Smith
Adam S. Long

175 SOUTH MAIN STREET SUITE 300 SALT LAKE CITY, UTAH 84111
TELEPHONE 801-413-1600 TOLL FREE 877-825-2061 FACSIMILE 801-413-1620
WWW.SMITHHARTVIGSEN.COM

LAND WATER LIFE

CEDAR CITY COUNCIL
AGENDA ITEMS - 4
DECISION PAPER

TO: Mayor and City Council
FROM: City Attorney
DATE: May 4, 2015
SUBJECT:
DISCUSSION: Consider amendments to: (1) Cedar City's RAP tax ordinance, and; (2) Cedar City's TRT ordinance.

Amendments to the RAP tax ordinance.

There are various amendments to the City's RAP tax ordinance being proposed. To keep the amendments organized below they will be discussed in the same order as the sections of the ordinance appear.

Section 1 (Purpose Statement). No changes are proposed to this section.

Section 2 (Statutory Authority). No changes are proposed to this section.

Section 3 (Definitions). There are several changes proposed in this section.

1. The first proposed change is to the definition of "Cultural organization". The proposed change will update the definition to include additional language that is currently included in the State Statutes.
2. The proposed change to the definition of "Institution" changes Dixie State College to Dixie State University and eliminates College of Eastern Utah, these changes make the City's definition consistent with State Statute.
3. There is a proposed definition for "preservation and replacement fund". This is the fund where 10% of the RAP tax will go. The key elements of the definition are (1) the fund can accumulate over time (2) the money shall be spent on preservation and replacement of City owned recreational facilities and cultural facilities, and; (3) the City owned facilities have to be facilities that would otherwise qualify for expenditure of RAP tax funding. Lastly, the expenditure of the funds would require recommendation from the advisory board and approval of the Council

4. There is a change in the definition of "qualifying expense". This definition includes preservation and replacement funds and also does away with the distinction the City had related to only spending RAP money in parks and recreation to construct facilities. The latter change updates the ordinance so it is in line with current state law.

5. The definition of "rural radio station" is proposed to be deleted. It is a definition that has gone unused and staff is not sure there is a need for this definition where it is limited to non-profit radio stations in the local market.

Section 4 (Advisory Boards). No changes are proposed to this section.

Section 5 (Use of Funds). The first proposed addition to this section related to the use of funds for preservation and replacement. The second proposed change is to eliminate rural radio station.

Section 6 (Allocation). This is the section of the ordinance that controls the basic allocation of RAP tax funds. There are changes to this section. First there is a provision taking 10% of the total RAP tax and setting it aside for preservation and replacement. The remaining funds are divided as the City has done in the past 1/3 each to recreation, arts, and parks.

The next proposed addition to this section is that the 10% preservation and replacement fund is to be divided 1/3 each to recreation, arts, and parks. Expenditure of money from the preservation and replacement funds shall go through the same application, committee, and Council process as the rest of the RAP tax funds.

Section 7 (Application). There is a minor change to add categories for; arts preservation and replacement, and parks and recreation preservation and replacement.

Section 8 (Agreements and Disbursement of RAP Tax Funds). No changes are proposed to this section.

Amendments to Transient Room Tax Ordinance.

There is one proposed amendment to this ordinance. Please see section 40-3, use of revenue and budgeting. The proposed change is to eliminate the last sentence in paragraph "A" which has restricted use of the TRT funds from being budgeted or used to pay city staff salaries or benefits.

That is a summary of the proposed changes. Below is a copy of the proposed ordinance. If you have questions or need additional information please ask.

CEDAR CITY ORDINANCE NO. _____
**AN ORDINANCE AMENDING PROVISIONS OF CHAPTER 39, CEDAR CITY
FUNDING REQUEST ORDINANCE, AND CHAPTER 40, CEDAR CITY TRANSIENT
ROOM TAX ORDINANCE.**

WHEREAS, Cedar City has enacted a recreation, arts, and parks (RAP) tax pursuant to the authority granted by Title 59, Chapter 12, Sections 1401 through 1404, Utah Code Annotated, 1953 as amended; and

WHEREAS, Chapter 39 of the ordinance of Cedar City, Utah, among other things, regulates how Cedar City spends RAP tax revenue; and

WHEREAS, Cedar City has enacted a transient room tax pursuant to the authority granted by Title 59, Chapter 12, Part 3a, Utah Code Annotated, 1953 as amended; and

WHEREAS, Chapter 40 of the ordinance of Cedar City, Utah, regulates how Cedar City spends transient room tax revenue; and

WHEREAS, State law provides the local government unit imposing a RAP tax a wide range of discretion in how RAP tax revenue is spent and in a similar manner a local government imposing a transient room tax is also provided a wide range of discretion in how transient room tax revenue is spent; and

WHEREAS, State law requires Cedar City pass a yearly budget and pursuant to this yearly budgeting process Cedar City is able to identify emerging financial trends; and

WHEREAS, as part of a proactive strategy to meet emerging financial trends Cedar City finds that it is in the best interests of the City to amend the City's internal regulations on the expenditure of RAP tax revenue and transient room tax revenue; and

WHEREAS, Cedar City further finds that all amendments to its internal regulations on spending RAP tax revenue and transient room tax revenue shall be within the boundaries of state law.

NOW THEREFORE BE IT ORDAINED by the City Council of Cedar City, State of Utah, that Chapter 39 of the ordinance of Cedar City, Utah, is hereby amended to include the underlined text and exclude the struck through text as depicted in exhibit #1, which is attached hereto and incorporated herein by this reference.

NOW THEREFORE BE IT FURTHER ORDAINED by the City Council of Cedar City, State of Utah, that Chapter 40 of the ordinance of Cedar City, Utah, is hereby amended to include the underlined text and exclude the struck through text as depicted in exhibit #2, which is attached hereto and incorporated herein by this reference.

NOW THEREFORE BE IT FURTHER ORDAINED by the City Council of Cedar City, State of Utah, that City staff is authorized to make such minor formatting changes to both

Chapter 39 and Chapter 40 as may be required to facilitate the amendments contained herein.

This ordinance, Cedar City Ordinance No. _____, shall become effective immediately upon publication as required by State Law.

Dated this _____ day of _____, 2015.

MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER

Exhibit #1

Cedar City Ordinance No. _____

**CHAPTER 39
CEDAR CITY FUNDING REQUEST ORDINANCE
ARTICLE I
RECREATION, ARTS, AND PARKS
LOCAL OPTION SALES TAX**

SECTION 39-I-1	Purpose
SECTION 39-I-2	Statutory Authority
SECTION 39-I-3	Definitions
SECTION 39-I-4	Advisory Boards
SECTION 39-I-5	Use of Funds, and Certain Application Restrictions
SECTION 39-I-6	Allocation
SECTION 39-I-7	Application Information and Format
SECTION 39-I-8	Agreements and disbursement of RAP tax funds

**ARTICLE II
COMMUNITY EVENT PROMOTIONS AND NONMONITARY ASSISTANCE**

SECTION 39-II-1	Purpose and Statutory Authority
SECTION 39-II-2	Definitions
SECTION 39-II-3	Nonmonetary Assistance
SECTION 39-II-4	Community Events Promotions

**CHAPTER 39
CEDAR CITY FUNDING REQUEST ORDINANCE
ARTICLE I
RECREATION, ARTS, AND PARKS
LOCAL OPTION SALES TAX**

Sections:

- 39-I-1 Purpose
- 39-I-2 Statutory Authority
- 39-I-3 Definitions
- 39-I-4 Advisory Board
- 39-I-5 Use of Funds, and Certain Application Restrictions
- 39-I-6 Allocations
- 39-I-7 Application Information and Format

SECTION 39-I-1 Purpose

Cedar City is host to numerous recreation and artistic events sponsored by public and private entities. Cedar City has a thriving park system that is in need of expansion to provide service to a growing community. In order to pay for some of the costs associated with recreation, arts, and parks, a majority of the voters in the 2005 municipal election approved the imposition of a one tenth of one percent (0.1%) sales tax (the RAP tax). Said tax was enacted by a vote of the Cedar City Council. The purpose of this article is to provide a structure for the

distribution of the recreation, arts, and parks sales tax revenue, and to avoid conflicts between the Community Events Promotions funding requests.

SECTION 39-I-2 Statutory Authority

Cedar City has enacted the local option sales tax to fund recreation, arts, and parks and shall administer the disbursement of any funds generated by the same pursuant to the provisions of Title 59, Chapter 12, Sections 1401 through 1404, Utah Code Annotated, 1953 as amended. Cedar City will continue to abide by the foregoing provisions of State law in their current form, or as amended by the legislature.

SECTION 39-I-3 Definitions

As used in this article the following terms shall have the following definitions:

- (1) "Administrative unit" means a division of a private or nonprofit organization or institution that:
 - (A) would, if it were a separate entity, be a botanical organization or cultural organization; and
 - (B) consistently maintains books and records separate from those of its parent organization.
- (2) "Application form" means the official document, with noted attachments and supporting documentation to request funds collected pursuant to the RAP tax.
- (3) "Arts" means botanical organizations, cultural facilities, cultural organizations, and zoological organizations.
- (4) "Botanical organization" means:
 - (A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of plant science through horticultural display, botanical research, and community education; or
 - (B) an administrative unit.
- (5) "Cultural facility" means any publicly owned or operated museum, theater, art center, music hall, or other cultural or arts facility.
- (6) "Cultural organization" means:
 - (A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of:
 - (I) natural history;
 - (II) art;
 - (III) music;
 - (IV) theater; ~~or~~
 - (V) dance; ~~and or~~
 - (VI) cultural arts, including literature, a motion picture, or storytelling; and
 - (B) an administrative unit.
- (7) "Cultural organization" does not include:
 - (I) any agency of the state;
 - (II) any political subdivision of the State of Utah; or
 - (III) any educational institution whose annual revenues are directly derived more than 50% from state funds.

(8) "Institution" means any of the following:

- (A) the University of Utah;
- (B) Utah State University;
- (C) Weber State University;
- (D) Southern Utah University;
- (E) Snow College;
- (F) Dixie State ~~College~~ University;
- ~~(G) the College of Eastern Utah;~~
- ~~(H)~~ (G) Utah Valley University;
- ~~(I)~~ (H) Salt Lake Community College;
- ~~(J)~~ (I) the Utah College of Applied Technology; and
- ~~(K)~~ (J) other public post-high school educational institutions as the Legislature may designate.

(9) "Non-profit" means an organization or corporation that is not organized, created, operated or maintained to generate a profit or distribute income to its members, directors, or officers, or corporation. An organization automatically qualifies as a non-profit organization if it is operating under section 501 (C)(3) of the internal revenue service code.

(10) "Organization" means an association, corporation, government, governmental subdivision, agency, or partnership formally established to coordinate and carry out unified activities and goals.

(11) "Preservation and replacement fund" shall mean a fund established with RAP tax revenue that may be allowed to accumulate over time and shall only be spent on the preservation or replacement of Cedar City owned cultural facilities or Cedar City owned recreational facilities that would otherwise qualify for the use of RAP tax funding. All expenditures from the preservation and replacement fund shall be made only after recommendation by the appropriate RAP tax board and approval of the Cedar City Council.

~~(11)~~ (12) "Primary purpose" means the main goal, the fundamental intent, or the mission of an organization.

~~(12)~~ (13) "Qualifying expenses" means: (A) yearly operating expenses of a qualifying botanical organization or cultural organization; (B) yearly operating expenses or cost to construct facilities for a qualifying recreational facility, zoological facility, or cultural facility, or (C) expenditures meeting the definition of the preservation and replacement fund.

~~(A)~~ means the following:

~~(I) in the case of botanical, cultural, and zoological organizations within the city or as part of an interlocal agreement to operate such a facility, includes their yearly operating expenses;~~

~~(II) in the case of recreational and zoological facilities within the city or as part of an interlocal agreement to operate such a facility, includes costs to construct facilities; —~~

~~(13)~~ (14) "Quorum" means a simple majority of the voting members.

(14 15) "Recipient organization" or "recipient" means an otherwise qualified organization or individual that has been approved by the City Council to receive a specific amount of RAP tax money for qualifying expenses.

(15 16) "Recreational facility" means any publicly owned or operated park, campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system, cultural facility, or other facility used for recreational purposes.

~~(16) "Rural radio station" means a nonprofit radio station based in a county of the third, fourth, fifth, or sixth class.~~

(17 17) "zoological organization" means a public, public-private partnership, or private nonprofit organization having as its primary purpose the advancement and preservation of zoology.

SECTION 39-I-4 ADVISORY BOARDS

1. The Cedar City Council hereby creates two (2) advisory boards to be known as the arts advisory board and the parks and recreation advisory board. The purpose of the arts advisory board is to receive applications from arts groups that would qualify to receive RAP tax funds; review the applications; and recommend allocation of the arts portion of the RAP tax revenue to the Cedar City Council. The purpose of the parks and recreation advisory board is to receive applications from parks and recreation groups that would qualify to receive RAP tax funds; review the applications; and recommend allocation of the parks and recreation portions of the RAP tax revenue to the Cedar City Council.
2. Each advisory board shall be comprised of seven (7) people appointed by the Mayor with the approval of the City Council. Each member of the advisory board shall serve a term of four (4) years, unless they are reappointed by the Mayor and approved by the City Council. The advisory board shall nominate and elect one of its members to serve as the chairperson of the board. The chairperson shall conduct all meetings of the board, but shall not vote unless there is a tie. In order to conduct business, there must be a quorum present. If a member of either board should resign, the Mayor shall appoint a replacement to serve out the remainder of the resigning person's term.
 - A. The terms of the initial appointees shall be staggered. The Mayor shall designate three (3) members of each board to serve four (4) year terms, two (2) members to serve three (3) year terms, and two (2) members to serve two (2) year terms. All appointments after the initial formation of the board shall serve a complete four (4) year term.
3. Each board shall meet once per year to consider applications, and make recommendations to the City Council, this shall be the annual board meeting. The yearly meeting of each board shall be as soon as reasonably possible after the Cedar City Council approves its next fiscal year's budget. Depending on the amount of revenue collected, the Mayor may suspend the board meetings in 2006. The board may conduct additional meetings as necessary with the consent of the majority of the board members.
4. All meetings of each board shall be open to the public and in compliance with the

Utah Open and Public Meetings Act, UCA §52-4-1 through 52-4-10.

5. In addition to the notice requirements of the Utah Open and Public Meetings Act, City staff shall cause notice of the annual board meeting to be sent to applicable organizations that qualify for RAP tax money and have registered with City staff. This notice shall be sent at least thirty (30) days prior to the meeting and shall contain an application for RAP tax funding, and a deadline for submission of the completed application not less than fourteen (14) days prior to the scheduled meeting. Staff shall only be responsible to send the above notice to the organization's representative at the address given to City Staff by the organization. The individual organizations shall be responsible to keep their contact information updated. Each board shall cause to be published a notice in the local paper no less than thirty (30) days in advance of the meeting stating that applications for RAP tax funds are being accepted; that interested persons or groups should contact City Staff for information and applications; and setting a deadline for the receipt of applications.

SECTION 39-I-5 Use of Funds, and Certain Application Restrictions

1. The funds generated by the RAP tax shall be used for qualifying expenses as defined in this chapter, and defined by Utah Code Annotated Title 59, Chapter 12, Sections 1401 through 1404. It shall be the duty of the advisory boards and City staff to evaluate each application to ensure that the proposed use of the funds complies with the qualifying expenses as defined in this chapter.
2. In addition to the requirements of State Law adopted above, the following standards shall apply to the use of and application for RAP tax funding:
 - A. In order to assure the fair distribution of the limited pool of RAP tax available and to discourage double dipping no organization, cultural facility, cultural organization, botanical organization, institution, recreational facility, ~~rural radio station~~, zoological organization, or administrative unit thereof shall be allowed to receive funding for more than one application per year. Applications may contain requests for multiple purposes, but only one application will be allowed. Also, no organization, cultural facility, cultural organization, botanical organization, institution, recreational facility, ~~rural radio station~~, zoological organization, or administrative unit thereof shall be allowed to receive funding from RAP tax money as well as funding from the Community Promotions fund as set forth in article II of this chapter.
 - B. During the application process the applicant shall designate, consistent with the organization's primary purpose, whether they are requesting funding from the RAP tax arts fund, ~~or the RAP tax parks and recreation fund~~, the RAP tax arts preservation and replacement fund, or the RAP tax parks and recreation preservation and replacement fund. The applicant may request and receive assistance from staff when making this determination. Once the designation is made by the

applicant it shall be reviewed by City staff to determine if the applicant qualifies for RAP tax funding from the selected fund. If it is determined that the applicant has requested RAP tax funding from a fund for which the applicant does not qualify, the applicant may choose to apply for RAP tax funding from the fund for which the applicant does qualify.

- C. The deadline for returning the applications shall be specified in both the newspaper advertisement and the application form. Applications received after the application deadline shall be rejected by staff and may not be considered by either the advisory board or City Council. It is the responsibility of the individual organizations to make sure their applications are turned in prior to the deadline.

SECTION 39-I-6 Allocation

~~The City Council has determined that the entire amount of funds generated by the RAP tax shall be divided and 1/3 shall be spent on each recreation, arts, and parks. All recommendations made by the advisory boards shall comply with this basic allocation of funds.~~

The entire amount of RAP tax collected shall be budgeted every year. Of the entire amount of RAP tax collected 10% shall be budgeted in a preservation and replacement fund. After the allocation of the initial 10% the remaining funds shall be allocated 1/3 to recreation, 1/3 to arts, and 1/3 to parks. All recommendations made by the advisory boards and expenditures made by the City Council shall comply with this basic allocation of funds.

The entire preservation and replacement fund shall be allocated 1/3 to recreation, 1/3 to arts, and 1/3 to parks. All allocations made by the advisory boards and expenditures of the preservation and replacement fund made by the City Council shall comply with this basic allocation.

SECTION 39-I-7 Application Information and Format

All applications for RAP tax funds shall contain the following information:

1. Applicant's name;
2. Applicant's mailing address;
3. Applicant's physical address;
4. Applicant's phone number;
5. Applicant's email address;
6. Applicant's fax number;
7. Proof of applicant's non-profit status;
8. An attachment showing the applicant's detailed financial statement for the last year, including:
 - A. Sources of income;
 - B. Amounts of income;
 - C. Types of expenses; and
 - D. Amounts of expenses;
9. Proposed qualifying expenses to be paid with the RAP tax money;

10. The amount of RAP tax revenue the applicant is requesting;
11. A detailed statement describing what the RAP tax money will be used to pay for, including, if applicable, bids for proposed improvements;
12. If the applicant has received RAP tax money within the past three (3) years, an accounting showing how the prior RAP tax appropriations have been spent; and
13. Any other information that is reasonably related to determining where the RAP tax money should be spent and is requested by the board.

The following is a sample of the application to be used for funding requests. It is illustrative only and may from time to time be altered by the Mayor, City Council, or City Staff as long as it requires the information stated above:



RECREATION • ARTS • PARKS
RAP TAX FUNDING APPLICATION
NOTICE TO APPLICANT:

The information provided on this application constitutes a request to receive funding from the RAP tax revenues. Please complete the application in its entirety. If more space is necessary, please attach additional information to the form and reference the attachment in the appropriate section. Applications received after the due date shall be rejected.

All information on this application must be, to the best of your knowledge, true and accurate. Making a false statement on this form is a criminal act in violation of Title 76, Chapter 8, Section 504, Utah Code Annotated, 1953 as amended. In addition to criminal punishment, any application containing false or misleading information will be rejected.

Choose which RAP tax fund the applicant is applying for:

Arts; ~~or~~

Arts Preservation and Replacement

Parks and Recreation

Parks and Recreation Preservation and Replacement

1. Applicant's name:

2. Applicant's mailing address:

3. Applicant's physical address:

4. _____
Applicant's phone number:
5. _____
Applicant's fax number:
6. _____
Applicant's email address:
7. _____
Proof of applicant's non-profit status:
8. _____
Attach a detailed financial statement showing the following information for the applicant's prior fiscal year:
 - A. Sources of income;
 - B. Amounts of income;
 - C. Types of expenses; and
 - D. Amounts of expenses;
9. Proposed qualifying expenses to be paid with RAP tax money:

10. Amount of RAP tax money the applicant is requesting _____
11. Detailed statement describing what the RAP tax money will be used for, including, if applicable, bids for proposed improvements:

12. If the applicant has received RAP tax money within the past three (3) years, provide an accounting showing how the prior RAP tax appropriations have been spent:

13. Any other information the applicant would like to provide:

A notice stating the application due date.

SECTION 39-I-8 AGREEMENTS AND DISBURSEMENT OF RAP TAX FUNDS

1. RAP tax funding agreements. Organizations receiving RAP tax allocations shall enter into an agreement with Cedar City prior to receiving any RAP tax funds. At a minimum the agreement between the City and the organization receiving RAP tax funding shall include the following items:
 - A. A statement that to the greatest extent possible funds shall be expended within Cedar City. Also, that the funds shall be spent for the qualified expenditures approved by the City Council.
 - B. A statement that the organization receiving the RAP tax funding will agree to submit a detailed income/expenditure report showing how the

- RAP taxes were spent.
- C. The following statement related to the nature of the RAP tax funds being public funding:
For purposes of this section “public funds” means monies, funds, accounts, regardless of the source from which they are derived and includes funds allocated through the Cedar City RAP tax program. Public funds also includes accounts or funds that have been transferred through the Cedar City RAP tax program to private or public entities that have contracted with Cedar City for the expenditure of said funds. Recipient organization’s responsibility for public funds. The recipient organization expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these public funds as authorized by law and this agreement. The recipient organization understands that it, its officers, and employees may be criminally liable under Utah Code Annotated §76-8-402, for misuse of public funds. The recipient organization understands that the City may monitor recipient organization’s expenditure of the public funds.
- D. Cedar City reserves the right to audit the use of the RAP tax funds and the accounting of the use of the RAP tax funds received by the recipient organization under this agreement. If an audit is requested by the City the recipient organization shall cooperate fully with Cedar City and/or its auditors in the performance of said audit.
- E. The Recipient organization expressly understands that Cedar City may withhold RAP tax funds or require repayment of funds from the recipient organization for noncompliance with the terms and conditions of this agreement; failure to comply with directives regarding the use of public funds contained in this agreement; and/or the misuse of public funds. The recipient organization expressly understands and agrees that the City’s ability to require repayment of funds extends not only to the public funds that are allocated pursuant to this agreement, but to all funding the recipient organization has received through RAP tax funding.
- F. A statement limiting the agreement to a period of one (1) year after the agreement is signed by both parties and requiring that any funds not spent within the one (1) year period be returned to the City to be reallocated as RAP tax funds. Also, this statement shall include a provision that if the agreement is not signed and returned to City staff within thirty (30) days that the City may void the agreement and re allocate the money as RAP tax funds.
2. City as recipient organization. From time to time Cedar City is the recipient of RAP tax money to fund various qualifying projects. When the City is the recipient organization it is not required to enter an agreement. The City is required to abide by all provisions of the minimum contract provisions as stated above and the City is required to abide by all of the requirements for

- disbursement of RAP tax funding as stated below.
3. General procedure for the disbursement of RAP tax funds. After the recipient organization has entered an agreement with Cedar City, RAP tax funds shall be disbursed using the following procedures:
 - A. Unless otherwise provided for herein, one half of the RAP tax funding shall be disbursed to the recipient organization once the organization signs the agreement with the City. If the recipient organization is awarded an amount equal to or less than \$5,000.00 it shall receive 80% of the award when it signs the agreement with the City.
 - B. Prior to receiving the second half, or the remaining 20% in the case of an award equal to or less than \$5,000.00, of the funding the recipient organization shall provide to the City a detailed income and expenditure report showing the amount of RAP tax that was received with the first half of the disbursement and how it was spent. Also on the same report the recipient organization shall show the amount of RAP tax that is to be received with the second disbursement and the manner in which it is projected to be spent. It is not intended that the report detail all funding and expenditures by the recipient organization, the report is only concerned with RAP tax income and expenditures. Below is a fictitious example of the required report:

*Cedar City RAP tax income and expenditure report
 Miscellaneous City cultural organization
 (name of organization receiving RAP tax funds)
 Reporting period Cedar City Fiscal year 2012-2013
 (Time period covered by report)*

<i>Income:</i>	
<i>RAP tax funds received</i>	<i>\$5,000.00</i>
<i>Expenditures:</i>	
<i>Office supplies</i>	<i>\$500.00</i>
<i>Costumes</i>	<i>\$2,000.00</i>
<i>Employee wages</i>	<i>\$1,000.00</i>
<i>Music</i>	<i>\$500.00</i>
<i>Fuel</i>	<i>\$1,000.00</i>
<i>Remaining Allocation:</i>	<i>\$5,000.00</i>
<i>Anticipated Expenditures:</i>	
<i>Scenery for production of South Pacific</i>	<i>\$5,000.00</i>
<i>Actual Expenditures for remaining allocation:</i>	

- C. In addition to the above report the recipient organization shall be required to submit a final report once the second half of the RAP tax funding has been received and spent. The final report shall be submitted prior to the recipient organization being eligible for any future RAP tax funding.
4. Procedure for a lump sum RAP tax disbursement. From time to time RAP tax

funds are appropriated for purposes that require a one-time disbursement of funds. Examples of this type of funding include, but are not limited to, a single purchase of equipment or a single purchase of multiple pieces of equipment. This procedure may be used as an exception to the above general and preferred disbursement method.

- A. The recipient organization will be required to show that it has received three written price quotes for the proposed item(s) to be purchased. As an alternative to the three price quotes the recipient organization may follow the City's adopted purchasing policy.
- B. Once the recipient organization has provided the information required above, the RAP tax funds will be disbursed to the recipient organization pursuant to the City's accounts payable process. If mutually agreed, the City may issue payment directly to the vendor designated by the recipient organization.
- C. Prior to receiving any future RAP tax funding the recipient organization shall submit the same written report as required in section 2 above.

6 5. Failure to supply income and expenditure report. If a recipient organization fails to provide the required income and expenditure report, the recipient organization will be in breach of its agreement with City. Failure to supply a required income and expenditure report may lead to an audit into how the recipient organization has spent public funds. In addition to the remedies available for the breach of the agreement, a possible audit, and the criminal penalties provided for misuse of public funds, the recipient organization shall not receive further RAP tax allocations and/or disbursements until the required income and expenditure reports are provided.

Adopted 7/06.

Amended by Cedar City Ordinance No. 0513-09.

Amended by Cedar City Ordinance No. 1209-09-1.

Amended by Cedar City Ordinance No. 0425-12

Amended by Cedar City Ordinance No. _____.

**CHAPTER 39
CEDAR CITY FUNDING REQUEST ORDINANCE
ARTICLE II**

COMMUNITY EVENT PROMOTIONS AND NONMONITARY ASSISTANCE

SECTION 39-II-1	Purpose
SECTION 39-II-2	Definitions
SECTION 39-II-3	Nonmonetary Assistance
SECTION 39-II-4	Community Events Promotions

SECTION 39-II-1 Purpose

Title 10, Chapter 8, Section 2, Utah Code Annotated, 1953 as amended authorizes Cities in the State of Utah to appropriate money for corporate purposes. This same statute includes as a corporate purpose the appropriation of money when in the municipal legislative body's

judgement the purpose will provide for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the City's inhabitants. The State Legislature has also given the City a limited ability to waive fees or provide non-monetary assistance to non-profit organizations. Additionally, the City has established a RAP tax for the collection and distribution of money for Arts, Parks, and Recreation. The purpose of this article is to set forth regulations in compliance with Utah State Law for the community events promotions requests and other nonmonetary assistance. Furthermore, it is the purpose of this article to distinguish eligibility between the RAP tax, community events promotions and nonmonetary assistance.

SECTION 39-II-2 Definitions

As used in this Chapter the following terms shall have the following definitions:

- (1) "Community events promotions" shall mean a line item established by the City Council through the yearly budget process, and administered in accordance with this chapter.
- (2) "Intangible benefit" means a benefit to the City that is not capable of being quantified in terms of money, real property, personal property, or demonstrable economic benefit but in the opinion of the City Council the benefit does provide for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of Cedar City.
- (3) "Nonmonetary assistance" shall mean a benefit to a non-profit entity in terms of labor, fee waivers, or other services provided by the City. Nonmonetary assistance does not include waiver or adjustment of impact fees as such waivers or adjustments are provided for under the City's impact fee ordinance.
- (4) "Non-profit" shall mean an organization or corporation that is not organized, created, operated or maintained to generate a profit or distribute income to its members, directors, or officers, or corporation. An organization automatically qualifies as a non-profit organization if it is operating under section 501 (C)(3) of the internal revenue service code.
- (5) "Public hearing notice" shall mean a notice published in a newspaper of general circulation and/or on the State of Utah's public notice website, as state law may require. Said public notice shall be published no less than fourteen (14) days prior to the public hearing. Said notice shall contain information so that a reasonable person would be able to understand the following information about the public hearing: general topic, location, date, and time.
- (6) "Tangible benefit" means a benefit to the City that can be measured in terms of money, real property, personal property, or demonstrable economic benefit pursuant to the standards set forth in this chapter.

SECTION 39-II-3 Nonmonetary Assistance

- (1) The City Council may authorize nonmonetary assistance when in the judgement of the City Council said nonmonetary assistance provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of Cedar City. In making this determination the City Council may consider both tangible and intangible benefits to the City.
- (2) Nonmonetary assistance may only be provided to non-profit organizations, and the total amount of nonmonetary assistance approved by the City Council in any

given fiscal year shall not exceed 1% of the City's budget for that fiscal year. City staff shall provide to the Council an estimate of the dollar value of the nonmonetary assistance requested.

- (3) Prior to considering approval of nonmonetary assistance, the City shall receive an application from a non-profit organization, and allow staff reasonable time to provide an estimate of the dollar amount of assistance requested. No nonmonetary assistance shall be approved without first publishing a public hearing notice and holding a public hearing before the Cedar City Council.

SECTION 39-II-4 COMMUNITY EVENTS PROMOTIONS.

- (1) If through its yearly budget process, the City Council funds the community events promotions budget this chapter shall govern the expenditure of those funds.
- (2) Other than RAP tax funding, persons or organizations requesting funds from the City must complete a Fund Request application and provide the relevant supplemental information stated in the application. The application and supplemental, information will be submitted to a designated City Staff member for review and economic evaluation based upon intangible benefits and the following formula:

Economic Evaluation

Estimated expenses subject to sales tax incurred by event sponsor	
Estimated expenses subject to sales tax incurred by event participants	
Estimated expenses subject to sales tax incurred by event spectators	
Total estimated expenses subject to sales tax	
Economic multiplier	1.3
Total estimated expenses after multiplier	
Cedar City tax rate on sales	X .009
Estimated sales tax revenue for Cedar City as a result of the event	

Other methods/justification:

- (3) The Council must hold a public hearing in order to consider the requests. Public hearing notice shall be published by staff. The public hearings to consider funding requests shall be held once a year in conjunction with the City's annual budget process. With the consent of the Mayor and any two (2) members of the City Council, a public hearing may be advertised and held during the year at a time other than in conjunction with the budget.
- (4) The City Council shall not consider any request for funding from community events promotions when the applicant is eligible to apply for funding from the RAP tax. Also, the City Council shall not consider any request for funding where the applicant has not submitted an application or when the application is received after the yearly established deadline.

ADOPTED BY CEDAR CITY ORDINANCE NO. 1209-09-1

Exhibit #2

Cedar City Ordinance No. _____.

**CHAPTER 40
TRANSIENT ROOM TAX**

SECTION 40-1	ENACTMENT
SECTION 40-2	DEFINITIONS
SECTION 40-3	USE OF REVENUE AND BUDGETING
A.	General use and limitations.
B.	Reserve Fund.
C.	Budget Process.
SECTION 40-4	ACCOUNTING

SECTION 40-1 ENACTMENT

Pursuant to the authority given to municipalities under the current Title 59, Chapter 12, Part 3a, Utah Code Annotated, 1953 as amended, the City Council of Cedar City hereby enacts a 1% transient room tax. Said tax shall be collected by the State Tax Commission in accordance with the provisions of UCA § 59-12-354, and the State Tax Commission shall be permitted to keep an administrative fee as therein defined. The State Tax Commission shall begin collecting the transient room tax as soon as allowed under UCA § 59-12-355.

SECTION 40-2 DEFINITIONS

This section incorporates all definitions currently, or as may be hereinafter amended, applicable to the provisions of Title 59, Chapter 12, Part 3a of the Utah Code. In addition to the definitions under current state law for purposes of this ordinance the following terms shall have the following definitions:

- (A) "Community improvements" shall mean additional equipment and/or infrastructure needed to accommodate sporting events, festivals, entertainment, business conferences, conventions, and spectator events resulting in whole or in part from the City's recruiting efforts.
- (B) "Event support" shall mean efforts including monetary support for an event, festival, activity or organization which enhances tourism in Cedar City. It could also include use of City facilities and City staff in a capacity that is beyond their regular work duties. Event support shall have a primary focus on large festivals, activities, or organizations that may have a positive impact on travel and tourism in Cedar City.
- (C) "Marketing" shall mean to communicate with current and potential associates on the benefits of holding festivals, sporting, entertainment, business and spectator events in Cedar City. Marketing efforts should be primarily directed toward attracting events to Cedar City during off seasons when tourism and event traffic is low. Marketing efforts may also include contributing to Cedar City's branding efforts in marketing and promoting the image of Cedar City.
- (D) "Recruitment" shall mean proactive efforts by City staff to reach out to individuals and/or organizations which may result in bringing sporting events, entertainment, business conferences, conventions, and spectator events, and festivals to Cedar City. As with marketing, recruitment should be primarily directed toward attracting events to Cedar City during off seasons when tourism and events traffic is low.

SECTION 40-3 USE OF REVENUE AND BUDGETING

A. General use and limitations.

Pursuant to UCA §59-12-352(4) the revenue generated by the transient room tax may be used for general fund purposes. The City shall budget a maximum of 50% of the anticipated Transient Room Tax revenue for event support; 40% of the anticipated Transient Room Tax revenue for marketing and recruitment; and 10% of the anticipated revenue shall be maintained in a reserve fund. ~~Under no circumstances shall funds generated by the Transient Room Tax be budgeted or used to pay City staff salaries or benefits.~~

B. Reserve fund.

The reserve fund shall not accumulate or maintain a balance in excess of two hundred and fifty thousand dollars (\$250,000.00). The reserve fund may, with the recommendation of the Mayor and approval of the City Council on a project by project basis, be budgeted and spent for community improvements, event support, marketing, and/or recruitment related to securing major events. If the cap on the reserve fund is reached additional revenue may be budgeted for marketing and recruitment.

C. Budget process.

Each year during Cedar City's budget process the Mayor will solicit from the members of the City Council suggested uses for the transient room tax. The Mayor may also request input from staff, community organizations and citizens as to possible uses for the revenue generated by the transient room tax. As part of the Mayor's proposed budget, recommendations as to the expenditure of transient room tax revenue shall be presented for the City Council's approval.

In addition to the provisions contained herein the budgeting, expenditure and use of transient room tax revenue shall be in accordance with the laws of the State of Utah and all applicable ordinances and policies of Cedar City.

SECTION 40-4 ACCOUNTING

The City's Finance department will separately account for transient room tax revenue in a special revenue fund that shall be known as the transient room tax special revenue fund. For accounting purposes, the transient room tax special revenue fund shall be separate and distinct from the City's General Fund and all other revenue funds. For any transient room tax revenue that is not spent during the fiscal year in which they are budgeted the finance department shall account for these funds in the transient room tax special revenue fund. The transient room tax special revenue fund account balance will be reported by the Mayor to the Council as part of the City's budget process and in conjunction with the City's yearly audit.

ENACTED BY CEDAR CITY ORDINANCE NO. 0424-13.

AMENDED BY CEDAR CITY ORDINANCE NO. _____.

