ORDINANCE NO. XX-XX

AN ORDINANCE ADOPTING A SANITARY SEWER IMPACT FEE FACILITIES PLAN AND A SANITARY SEWER IMPACT FEE ANALYSIS; ESTABLISHING A SERVICE AREA FOR PURPOSES OF THE SANITARY SEWER IMPACT FEES AND IMPOSING A SANITARY SEWER IMPACT FEE ON ALL DEVELOPMENT ACTIVITY IN THE SOUTHWEST SERVICE AREA.

WHEREAS, the City of Orem (the *"City"*) is a political subdivision of the State of Utah, authorized and organized under applicable provisions of Utah law; and

WHEREAS, the City has legal authority, pursuant to Title 11, Chapter 36a of the Utah Code Annotated, as amended (*"Impact Fees Act"* or *"Act"*), to impose development impact fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to new development activity; and

WHEREAS, the City desires to establish fees to be referred to hereafter as "Sanitary Sewer Impact Fees" in accordance with applicable provisions of the Impact Fees Act in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner as more particularly provided herein; and

WHEREAS, the City properly noticed its intent to prepare the Sanitary Sewer Impact Fee Facilites Plan and the Sanitary Sewer Impact Fee Analysis as required by law and the City has, through its consultants, completed the Sanitary Sewer Impact Fee Facilities Plan and Impact Fee Analysis in accordance with applicable provisions of the Impact Fees Act, which Sanitary Sewer Impact Fee Facilities Plan and Impact Fee Analysis are more particularly described and adopted herein; and

WHEREAS, the City has provided the required notice and held a public hearing before the City Council regarding the proposed Sanitary Sewer Impact Fees, Sanitary Sewer Impact Fee Facilities Plan and Sanitary Sewer Impact Fee Analysis in accordance with applicable provisions of the Impact Fees Act; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OREM, STATE OF UTAH, AS FOLLOWS:

SECTION I
PURPOSE

This Sanitary Sewer Impact Fees Ordinance establishes the City's Sanitary Sewer Impact Fees policies and procedures and is promulgated pursuant to Title 11, Chapter 36a, Part 4, Enactment of Impact Fees, and other requirements of the Impact Fees Act. This Ordinance amends and adopts Sanitary Sewer Impact Fees for sanitary sewer facilities within the Southwest

Service Area as defined herein, provides a schedule of Sanitary Sewer Impact Fees for development activity, and sets forth direction for challenging, modifying and appealing Sanitary Sewer Impact Fees.

SECTION II
DEFINITIONS

Words and phrases that are defined in the Impact Fees Act shall have the same definition in this Sanitary Sewer Impact Fees Ordinance. The following words and phrases are defined as follows:

1. *"City"* means the City of Orem, Utah, a political subdivision of the State of Utah.

2. *"Development Activity"* means, except as otherwise provided in the Impact Fees Act, any construction or expansion of a building, structure or use, any change in use of a building or structure, or any changes in the use of land within the Service Area that creates additional demand and need for public facilities related to sanitary sewer management.

3. *"Development Approval"* means any written authorization from the City that authorizes the commencement of development activity.

4. *"Impact Fee"* means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. "Impact fee" does not include a tax, special assessment, building permit fee, hookup fee, fee for project improvements, or other reasonable permit or application fee.

5. *"Impact Fee Analysis"* means the written analysis of each impact fee required by Section 11-36a-303 of the Impact Fees Act.

6. *"Impact Fee Facilities Plan"* means the plan required by Section 11-36a-301 of the Impact Fees Act.

7. *"Project Improvements"* means site improvements and facilities that are: planned and designed to provide service for development resulting from a Development Activity; necessary for the use and convenience of the occupants or users of development resulting from a Development Activity; and not identified or reimbursed as a system improvement. "Project Improvements" does not mean system improvements as more particularly defined herein.

8. *"Proportionate Share"* means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

9. *"Public Facilities"* means impact fee facilities as defined in the Impact Fees Act that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity. For purposes of this Ordinance, and as defined in the

Impact Fees Act, impact fee facilities include "sanitary sewer collection, storage, and distribution facilities" of the City for the Southwest Service Area.

10. *"Southwest Service Area"* means a geographic area designated by the City on the basis of sound planning or engineering principles in which a public facility, or a defined set of public facilities, provides service within the area. The Southwest Service Area for purposes of this Ordinance is more particularly described in Section IV.

11. *"System Improvements"* means existing public facilities that are: identified in the impact fee analysis under Section 11-36a-304 of the Impact Fees Act; and designed to provide services to service areas within the community at large and future public facilities identified in the impact fee analysis under Section 11-36a-304 that are intended to provide service to service areas within the community at large. "System improvements" do not include project improvements as defined herein.

SECTION III
STATUTORY AUTHORITY AND RESTRICTIONS

1. *Impact Fees Act Authority.* The City is authorized to impose impact fees subject to and in accordance with applicable provisions of the Impact Fees Act. An impact fee is defined as a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. Impact fees may only be established for public facilities as defined in Section 11-36a-102 that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision. Public facilities for which impact fees may be imposed include public facilities for sanitary sewer collection, storage, and distribution facilities.

2. *Impact Fees Act Restrictions.* Pursuant to Section 11-36a-202 of the Impact Fees Act, the City may not impose an impact fee to: (1) cure deficiencies in public facilities serving existing development; (2) raise the established level of service of a public facility serving existing development; (3) recoup more than the local political subdivision's costs actually incurred for excess capacity in an existing system improvement; or (4) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement.

SECTION IV
SERVICE AREA

The Impact Fees Act requires the City to establish one or more service areas within which the City will calcluate and impose a particular impact fee. The service area within which the proposed Sanitary Sewer Impact Fees will be imposed includes all of the area within the corporate limits and jurisdictional boundaries of the City. The Southwest Service Area is more particularly described and set forth in **Exhibit A,** attached hereto and incorporated herein by this reference.

SECTION V
IMPACT FEE FACILITIES PLAN

1. *Impact Fee Facilities Plan Required.* Pursuant to Section 11-36a-301 of the Impact Fees Act, before imposing or amending an impact fee, the City is required to prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new development activity. The impact fee facilities plan shall identify the demands placed upon existing public facilities by new development activity and the proposed means by which the City will meet those demands.

2. *Sanitary Sewer Impact Fee Facilities Plan.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-302 of the Impact Fees Act and has caused to be prepared a Sanitary Sewer Impact Fee Facilities Plan ("IFFP"), as more particularly set forth in **Exhibit B,** attached hereto and incorporated herein by this reference. The Sanitary Sewer IFFP has been prepared based on reasonable growth assumptions for the City and general demand characteristics of current and future users of sanitary sewer facilities. The Sanitary Sewer IFFP identifies the impact on system improvements created by development activity and estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity. As shown in the Sanitary Sewer IFFP, the City has considered all revenue sources to finance the impacts on system improvements, including grants, bonds, interfund loans, impact fees, and anticipated or accepted dedications of system improvements. The Sanitary Sewer IFFP establishes that impact fees are necessary to maintain a proposed level of service that complies with applicable provisions of Section 11-36a-302 of the Impact Fees Act.

3. *Plan Certificiation.* The Sanitary Sewer IFFP includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the plan certifying that the Sanitary Sewer IFFP complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with the summary, and this Ordinance, in the Orem Public Library and the City Recorder's Office at Orem City Hall at least ten (10) days before the public hearing.

5. *Adoption of Sanitary Sewer Impact Fee Facilities Plan.* The Sanitary Sewer IFFP as set forth in **Exhibit B,** is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

SECTION VI
IMPACT FEE ANALYSIS

1. *Impact Fee Analysis Required.* Pursuant to Section 11-36a-303 of the Impact Fees Act, each local political subdivision intending to impose an impact fee shall prepare a written analysis of each impact fee to be imposed and a summary of the impact fee analysis designed to be understood by a lay person. The impact fee analysis shall identify the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated development activity; identify the anticipated impact on system improvements required by the anticipated development activity to maintain the established level of service for each public facility; demonstrate how the anticipated impacts are reasonably related to the anticipated development activity; estimate the proportionate share of the costs for existing capacity that will be recouped and the costs of impacts on system improvements that are reasonably related to the new development activity; and identify how the impact fee is calculated.

2. *Sanitary Sewer Impact Fee Analysis.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-304 of the Impact Fees Act, including the proportionate share analysis required therein, and has caused to be prepared a Sanitary Sewer Impact Fee Analysis ("IFA"), as more particularly set forth in **Exhibit B,** attached hereto and incorporated herein by this reference. The Sanitary Sewer IFA identifies the impacts upon public facilities required by the development activity and demonstrates how those impacts on system improvements are reasonably related to the development activity, estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to the development activity, and identifies how the Sanitary Sewer Impact Fees are calculated.

3. *Analysis Certificiation.* The Sanitary Sewer IFA includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the analysis certifying that the Sanitary Sewer IFA complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with the summary, and this Ordinance, in Orem Public Library and the City Recorder's Office at Orem City Hall at least ten (10) days before the public hearing.

5. *Adoption of Sanitary Sewer Impact Fee Analysis.* The Sanitary Sewer IFA as set forth in **Exhibit B,** is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

SECTION VII
CALCULATION OF IMPACT FEES

1. *Impact Fee Calculations.* Pursuant to Section 11-36a-305, in calculating an impact fee, the City may include: the construction contract price; the cost of aquiring land, improvements, materials, and fixtures; the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and debt service charges if the City might use impact fees as a revenue stream to pay principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements. In calculating the proposed Sanitary Sewer Impact Fees, the City has based such amounts calculated on realistic estimates and the assumptions underlying such estimates are more particularly disclosed in the Sanitary Sewer IFA set forth in **Exhibit B.**

2. *Previously Incurred Costs.* To the extent that new growth and development will be served by previously constructed improvements, the City's Sanitary Sewer Impact Fees may include public facility costs and outstanding bond costs related to the sanitary sewer improvements previously incurred by the City. However, as provided in the Sanitary Sewer IFA, a buy-in component is not contemplated in the analysis and therefore the interest costs associated with any outstanding water bond obligations have not been included in the calculation of the Sanitary Sewer Impact Fee.

SECTION VIII
IMPACT FEE ENACTMENT, SCHEDULE AND FORMULA

1. *Impact Fee Schedule or Formula Required.* Pursuant to Section 11-36a-402 of the Impact Fees Act, the City is required to provide a schedule of impact fees for each type of development activity that specifies the amount of the impact fee to be imposed for each type of system improvement or the formula that the City will use to calculate each impact fee.

2. *Maximum Sanitary Sewer Impact Fee Schedule.* Based on the Sanitary Sewer IFA, the maximum Sanitary Sewer Impact Fees which the City may impose on development activity within the defined Service Area for sanitary sewer facilities is set forth in the following schedule:

Sanitary Sewer Impact Fee Schedule

TABLE 1.2: IMPACT FEE CHANGE

IMPACT FEE SUMMARY	IMPACT FEE	EXISTING	CHANGE
Residential Equivalent Unit (ERU)	$3,643	$0.00	100%

3. *Impact Fee Enanctment.* The City Council, by this Ordinance, hereby enacts and imposes a Sanitary Sewer Impact Fee on all Development Activity in the Soutwest Service Area in the amount of Three Thousand Six Hundred Forty-Three Dollars ($3,643.00) per Equivalent Residential Unit (ERU) as shown in the Sanitary Sewer Impact Fee Schedule above.

SECTION IX
ADJUSTMENTS AND CREDITS

1. *Adjustments.* In accordance with Section 11-36a-402 of the Impact Fees Act, the City may adjust the Sanitary Sewer Impact Fees at the time the fee is charged to respond to unusual circumstances in specific cases, to address development activity by the State or school district, or to ensure that impact fees are imposed fairly. The Sanitary Sewer Impact Fees may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The Sanitary Sewer Impact Fees assessed to a particular development may also be adjusted should the developer supply sufficient written information, studies and/or data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.

2. *Developer Credits.* In accordance with Section 11-36a-402 of the Impact Fees Act, a developer may be allowed a credit against Sanitary Sewer Impact Fees or proportionate reimbursement of Sanitary Sewer Impact Fees if the developer dedicates land for a system improvement, builds and dedicates some or all of a system improvement; or dedicates a public facility that the City and the developer agree will reduce the need for a system improvement; *provided* that the system improvement is: (i) identified in the City's Sanitary Sewer IFFP; and (ii) is required by the City as a condition of approving the development activity. To the extent required in Section 11-36a-402, the City shall provide a credit against Sanitary Sewer Impact Fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities are system improvements, as defined herein and included in the Sanitary Sewer IFFP; or are dedicated to the public and offset the need for an identified system improvement.

3. *Waiver for "Public Purpose".* The City may, on a project by project basis, authorize exceptions or adjustments to the Sanitary Sewer Impact Fees for those projects the City determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include affordable housing and other development activities with broad public purposes. The City may elect to waive or adjust Sanitary Sewer Impact Fees for such projects.

SECTION X
NOTICE AND HEARING

1. *Notice.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the Sanitary Sewer IFFP and Sanitary Sewer IFA, together with the summary, and this Ordinance, in Orem Public Library and the City

Recorder's Office at Orem City Hall at least ten (10) days before the public hearing. Notice has also been provided in accordance with applicable provisions of *Utah Code Ann.* § 10-9a-205.

2. *Hearing.* The City Council held a public hearing regarding the Sanitary Sewer IFFP, the Sanitary Sewer IFA, and this Sanitary Sewer Impact Fee Ordinance, on August 25, 2015, and a copy of the Ordinance was available in substantially its final form at the Orem Public Library and the City Recorder's Office in the Orem City Hall at least ten (10) days before the date of the hearing, all in conformity with the requirements of *Utah Code Ann.* § 10-9a-205 and applicable noticing provisions of the Impact Fees Act.

SECTION XI
IMPACT FEE ACCOUNTING AND EXPENDITURES

1. *Impact Fees Accounting.* Pursuant to Section 11-36a-601 of the Impact Fees Act, the City will establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected, deposit a receipt for an impact fee in the appropriate ledger account established herein, and retain the interest earned on each fund or ledger account in the fund or ledger account.

2. *Reporting.* At the end of each fiscal year, the City shall prepare a report on each fund or ledger account showing the source and expenditures as required by law. Annually, the City shall produce and transmit to the State Auditor a certified report in accordance with Section 11-36a-601 in a format developed by the State Auditor.

3. *Impact Fee Expenditures.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may expend Sanitary Sewer Impact Fees only for a system improvement: (i) identified in the Sanitary Sewer IFFP; and (ii) for the specific public facility type for which the fee was collected. Impact fees will be expended on a First-In First-Out basis.

4. *Time of Expenditure.* Except as otherwise provided by law, the City shall expend or encumber Sanitary Sewer Impact Fees for a permissible use within six (6) years of their receipt. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

5. *Extension of Time.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may hold the impact fees for longer than six (6) years if it identifies in writing: (i) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and (ii) an absolute date by which the fees will be expended.

6. *Refunds.* Pursuant to Section 11-36a-603 of the Impact Fees Act, the City shall refund any Sanitary Sewer Impact Fees paid by a developer, plus interest earned, when: (i) the developer does not proceed with the development activity and files a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted. An impact that would preclude a developer from a refund from the City may include any impact reasonably identified by the City, including, but not limited to, the City having sized facilities and/or paid

for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

7. *Other Impact Fees.* To the extent allowed by law, the City Council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, at the discretion of the City Council, include but not be limited to reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the City's system.

8. *Additional Fees and Costs.* The Sanitary Sewer Impact Fees authorized herein are separate from and in addition to user fees and other charges lawfully imposed by the City and other fees and costs that may not be included as itemized component parts of the Sanitary Sewer Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.

9. *Fees Effective at Time of Payment.* Unless otherwise provided in the City's Consolidated Fee Schedule, the City will collect the Sanitary Sewer Impact Fees prior to final plat recording or prior to building permit issuance, as applicable. The fees will be calculated by the City.

10. *Imposition of Additional Fee or Refund after Development.* Should any developer undertake development activities such that the ultimate acreage or other impact of the development activity is not revealed to the City, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the Sanitary Sewer Impact Fee is not initially charged against all acreage within the development, the City shall be entitled to charge an additional Sanitary Sewer Impact Fee to the developer or other appropriate person covering the acreage for which an impact fee was not previously paid.

SECTION XII
CHALLENGES TO IMPACT FEES

1. *Request for Information.* Pursuant to Section 11-36a-701, a person or entity required to pay a Sanitary Sewer Impact Fee who believes the the impact fee does not meet the requirements of law may file a written request for information with the City Manager. As required by law, the City Manager shall, within two (2) weeks after the receipt of the request for information provide the person or entity with the Sanitary Sewer IFFP, the Sanitary Sewer IFA, and any other relevant information relating to the Sanitary Sewer Impact Fee.

2. *Advisory Opinion.* A potentially aggrieved person may request an advisory opinion from a neutral third party regarding compliance of the Sanitary Sewer Impact Fees with the Impact Fees Act by filing such request with the Office of the Property Rights Ombudsman in accordance with the procedures and provisions of Title 13, Chapter 43, known as the Property Rights Ombudsman Act. The aggrieved party requesting an advisory opinion is not required to

exhaust the admininstrative appeals procedures set forth in Subsection 4 before requesting an advisory opinion.

3. *Appeal.* A person or entity that has paid Sanitary Sewer Impact Fees under the provisions of this Ordinance may challenge such impact fees pursuant to the provisions set forth in Title 11, Chapter 36a, Part 7 of the Impact Fees Act regarding Challenges.

a. *Grounds for Challenge.* Pursuant to Section 11-36a-701, a person or entity that has paid Sanitary Sewer Impact Fees under the provisions of this Ordinance may challenge: (1) the impact fees; (2) whether the City complied with the notice requirements of the Impact Fees Act with respect to the imposition of the impact fees; and/or (3) whether the City complied with other procedural requirements of the Impact Fees Act for imposing the impact fee.

b. *Sole Remedy.* The sole remedy for challenging the notice requirements is the equitable remedy of requiring the City to correct the defective notice and repeat the process. The sole remedy for challenging the impact fee is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated. Reasonable attorneys fees may be awarted to the substantially prevailing party to the extent provided in the Impact Fees Act.

c. *Initiation.* A challenge to an impact fee is initiated by filing:

i. An appeal to the City Council pursuant to the admininstrative a appeal procedures set forth herein;

ii. A request for arbitration as provided in Section 11-36a-705 of the Impact Fees Act; or

iii. An action in district court.

d. *Time Restrictions.* The time for filing a challenge to the impact fees shall be filed in accordance with the time limitations set forth in Section 11-36a-702, depending upon the type of challenge. The deadline to file an action in district court is tolled from the date that a challenge is filed using the admininstrative procedures set forth in Subsection 4 until thirty (30) days after the day on which a final decision is rendered in the administrative appeals procedure.

4. *Administrative Appeal Procedure.* The City hereby adopts an administrative appeal procedure to consider and decide challenges to the Sanitary Sewer Impact Fees. Any person or entity that has paid a Sanitary Sewer Impact Fee pursuant to this Ordinance may challenge or appeal the impact fee by filing written notice of administrative appeal with the City Manager within thirty (30) days after the day on which the person or entity paid the impact fee. The notice of appeal shall set forth the grounds for the appeal and shall include any applicable filing fees as set forth in the City's Consolidated Fee Schedule. Upon receiving the written notice of appeal, the City Council shall set a hearing date to consider the merits of the challenge or appeal. The

person or entity challenging or appealing the fee may appear at the hearing and present any written or oral evidence deemed relevant to the challenge or appeal. Representatives of the City may also appear and present evidence to support the imposition of the fee. The City Council shall hold a hearing and make a decision within thirty (30) days after the date the challenge or appeal is filed.

5. *Mediation.* In addition to the methods of challenging an impact fee as provided herein, a specified public agency may require the City to participate in mediation of any applicable impact fee in accordance with the provisions of Section 11-36a-704 of the Impact Fees Act. A written request for mediation must be filed in accodance with Section 11-36a-704 no later than thirty (30) days after the day on which the impact fee is paid.

6. *Declaratory Judgment Action.* Pursuant to Section 11-36a-701, a person or entity residing in or owning property within the Service Area, or an organization, association, or a corporation representing the interests of persons or entities owning property within the Service Area, are deemed to have standing to file a declaratory judgment action challenging the validity of an impact fee.

SECTION XIII
MISCELLANEOUS

1. *Severability.* If any section, subsection, paragraph, clause or phrase of this Sanitary Sewer Impact Fee Ordinance shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose, the provisions of this Sanitary Sewer Impact Fee Ordinance are declared to be severable.

2. *Interpretation.* This Sanitary Sewer Impact Fee Ordinance has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Ordinance shall not be affected by such division or by any heading contained herein.

3. *Other Impact Fees Not Repealed.* Except as otherwise specifically provided herein, this Sanitary Sewer Impact Fee Ordinance shall not repeal, modify or affect any impact fee of the City in existence as of the effective date of this Ordinance.

SECTION XIV
EFFECTIVE DATE

In accordance with the provisions of *Utah Code Ann.* § 11-36a-401, this ordinance and the impact fees adopted herein or pursuant hereto shall not take effect until ninety (90) days after the day on which the ordinance is approved.

[Signature Page to Follow]

PASSED AND APPROVED this _____ day of August, 2015.

OREM CITY COUNCIL

By: _____
Mayor Richard Brunst, Jr.

[SEAL]

VOTING:

Council Member Andersen Yea ___ Nay ___
Council Member Black Yea ___ Nay ___
Council Member Brunst Yea ___ Nay ___
Council Member MacDonald Yea ___ Nay ___
Council Member Seastrand Yea ___ Nay ___
Council Member Spencer Yea ___ Nay ___
Council Member Sumner Yea ___ Nay ___

ATTEST:

By_____
Donna Weaver, City Recorder

DEPOSITED in the office of the City Recorder this _____ day of _____, 2015.

RECORDED this _____ day of _____, 2015.

EXHIBIT A

SOUTHWEST SERVICE AREA

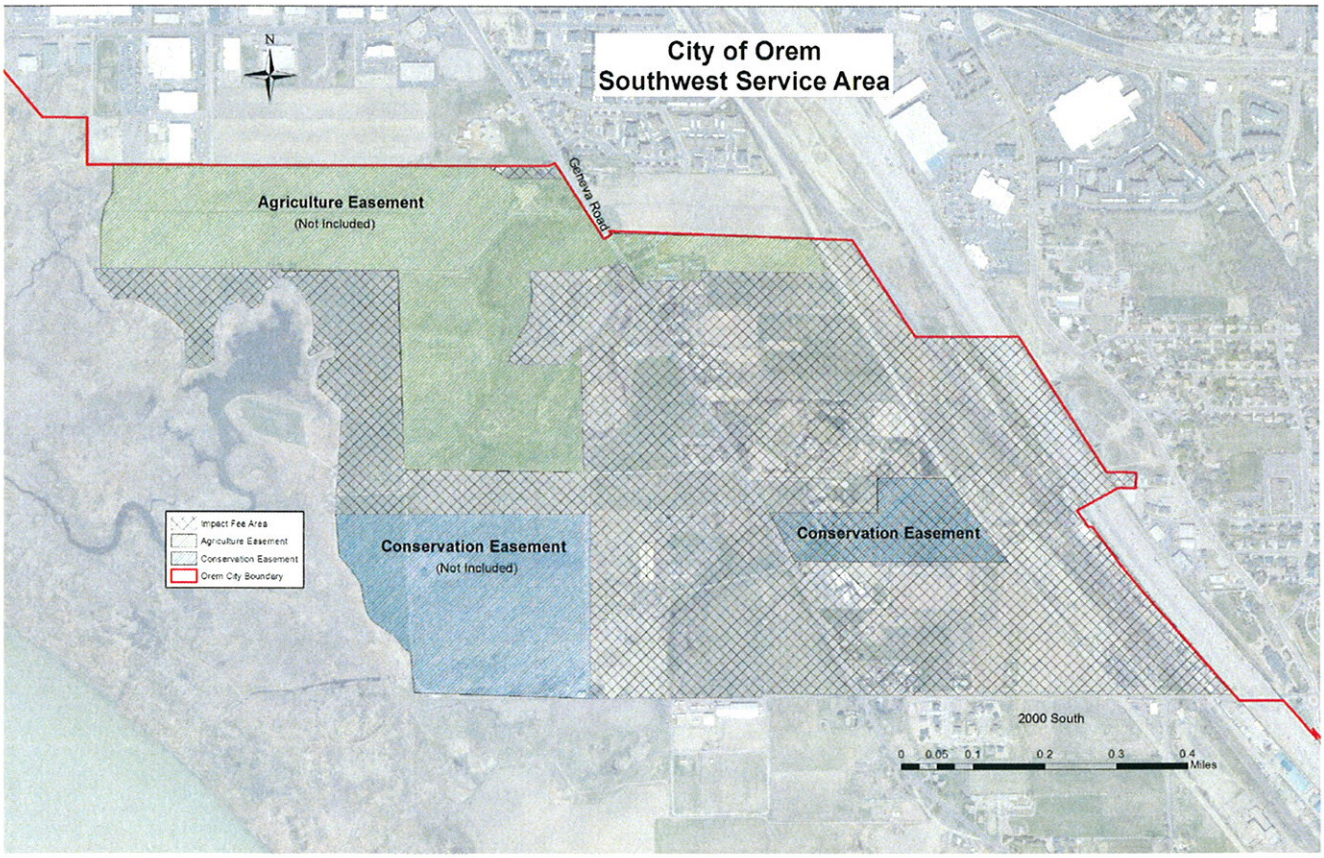


EXHIBIT B

SANITARY SEWER IMPACT FEE FACILITIES PLAN (IFFP) AND IMPACT FEE ANALYSIS (IFA)

OREM CITY ANNEXATION AREA
OREM CITY, UTAH

AUGUST 2015

LEWIS YOUNG
ROBERTSON & BURNINGHAM, INC.
GATEWAY PLAZA BUILDING - 41 N. RIO GRANDE, STE 101 - SALT LAKE CITY, UT 84101
(P) 801-596-0700 - (TF) 800-581-1100 - (F) 801-596-2800 - WWW.LEWISYOUNG.COM

Impact Fee Analysis Certification

IFFP Certification

LYRB certifies that the attached impact fee facilities plans prepared for sanitary sewer facilities:

1. includes only the costs of public facilities that are:
    a. allowed under the Impact Fees Act; and
    b. actually incurred; or
    c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
    a. costs of operation and maintenance of public facilities;
    b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
    c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and,
3. complies in each and every relevant respect with the Impact Fees Act.

Impact Fee Analysis (IFA) Certification

LYRB certifies that the attached impact fee analysis:

1. includes only the costs of public facilities that are:
    a. allowed under the Impact Fees Act; and
    b. actually incurred; or
    c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
    a. costs of operation and maintenance of public facilities;
    b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
    c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;
3. offsets costs with grants or other alternate sources of payment; and,
4. complies in each and every relevant respect with the Impact Fees Act.

LYRB makes this certification with the following caveats:

1. All of the recommendations for implementations of the IFFP made in the IFFP documents or in the Impact Fee Analysis documents are followed by City Staff and elected officials.
2. If all or a portion of the IFFP or Impact Fee Analysis are modified or amended, this certification is no longer valid.
3. All information provided to LYRB is assumed to be correct, complete, and accurate. This includes information provided by the City as well as outside sources.

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.

Table of Contents

Impact Fee Analysis Certification 2
Table of Contents 3
Section 1: Executive Summary 4
Section 2: General Impact Fee Methodology 6
Section 3: Overview of Service Area And Demand Analysis 8
Section 4: Existing Facilities Inventory 10
Section 5: Capital Facility Analysis 11
Section 6: Sewer Impact Fee Calculation 13

Section 1: Executive Summary

The purpose of the Sanitary Sewer Impact Fee Analysis ("IFA") is to fulfill the requirements established in Utah Code Title 11 Chapter 36a, the "Impact Fees Act" and to assist Orem City (the "City") assess the impacts and obligations future growth will have in relation to its sanitary sewer system. This document will address the appropriate impact fees the City may charge to new growth to maintain the existing level of service ("LOS"). The costs of equipment, other vehicles, personal equipment, and any other capital items not related to maintaining the LOS may not be included in the calculation of impact fees.[1]

The following paragraphs briefly summarize: (1) the impact fee service area, (2) the demand analysis, (3) level of service, (4) excess capacity, (5) capital facilities analysis, and (6) funding of future facilities.

- **Impact Fee Service Area:** The service area for sanitary sewer impact fees includes all areas within the southwest annexation area.
- **Demand Analysis:** The demand units utilized in this analysis are based on undeveloped residential and commercial land and the equivalent residential units (ERUs) generated from these land-use types. As residential and commercial growth occurs within the annexation area, additional ERUs will be generated.
- **Level of Service:** The collection component's LOS is based on 0.0004 cfs/ERU based on peak daily demand. Treatment is provided by a regional treatment facility and uses a LOS of 80 gallons per capita per day.
- **Excess Capacity:** The treatment facility was recently expanded and has excess capacity to serve the annexation area. The existing collection system does not have a buy-in component because there was no cost to Orem City for the original infrastructure.
- **Capital Facilities Analysis:** The City will need to expand the collection system to meet demand of new growth.
- **Funding of Future Facilities:** This analysis assumes the City will not borrow funds for projects. If the City does choose to borrow funds or bond finance the future facilities needed in the annexation area, borrowed funds may be paid back with interest using impact fees.

Proposed Sewer Impact Fee

The sanitary sewer impact fees proposed in this analysis will be assessed within all the southwest annexation area of Orem City. The tables below illustrate the appropriate fee per ERU by dividing the cost-to-growth component by the number of ERUs served through build-out. The impact fee calculations are based on the original project costs at the time of construction. The proportionate share analysis determines the proportionate cost assignable to new development based on the future growth's portion of system's total capacity at build-out.

[1] Other revenues such as property taxes, sales tax revenues, grants, or loans can be used to fund these types of expenditures.

Table 1.1: Sanitary Sewer Impact fee per ERU

	Cost to Growth	ERUs Served	Fee Per ERU
Future Collection	$3,364,926	1,248	$2,696
Buy-in to Existing Treatment	$1,172,974	1,248	$940
Impact Fee Balance*	-	779	-
Professional Expense	$5,334	779	$7
Total	$4,543,234		$3,634

*No impact fee has been imposed by Orem City for this area in the past, so there is no accumulated fund balance.

Non-Standard Sewer Impact Fees

Under the Impact Fees Act the fee may be adjusted to more closely match the true impact that the land use will have upon public facilities.[2] This adjustment could result in a lower impact fee if the City determines that a particular user may create a different impact than what is standard for its land use.

Table 1.2: Impact Fee per Meter Size

Meter Size (In.)	ERU Multiplier	Impact Fee per Meter Size
3/4	1.00	$3,643
1"	1.67	$6,084
1-1/2"	3.33	$12,131
2"	5.33	$19,417
3"	11.67	$42,514
4"	20.00	$72,860
6"	41.67	$151,803

[2] 11-36a-402(1)(c)

Section 2: General Impact Fee Methodology

The purpose of this study is to fulfill the requirements of the Impact Fees Act regarding conducting an impact fee analysis (IFA) and establishing an impact fee. The IFA is designed to proportionately allocate the cost of existing facilities (with excess capacity) and any future facilities to new development, while ensuring that all methods of financing are considered. Each component must consider the historic level of service provided to existing development and ensure that impact fees are not used to raise that level of service. The following elements are important considerations when completing an IFA.

Figure 2.1: Impact Fee Methodology

DEMAND ANALYSIS

Demand Analysis

This element focuses on a specific demand unit related to each public service – the existing demand on public facilities and the future demand as a result of new development that will impact public facilities.

LOS ANALYSIS

Level of Service Analysis

The demand placed upon existing public facilities by existing development is known as the existing "Level of Service" ("LOS"). Through the inventory of existing facilities, combined with the growth assumptions, this analysis identifies the level of service which is provided to a community's existing residents and ensures that future facilities maintain these standards. Any excess capacity identified within existing facilities can be apportioned to new development. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.

EXISTING FACILITIES ANALYSIS

Existing Facility Inventory

In order to quantify the demands placed upon existing public facilities by new development activity, the Capital Facilities Plan (the "CFP") provides an inventory of the City's existing **system** facilities. To the extent possible, the inventory valuation should consist of the following information:

FUTURE FACILITIES ANALYSIS

- Original construction cost of each facility;
- Estimated date of completion of each future facility;
- Estimated useful life of each facility; and,
- Remaining useful life of each existing facility.

FINANCING STRATEGY

The inventory of existing facilities is important to properly determine the excess capacity of existing facilities and the utilization of excess capacity by new development.

PROPORTIONATE SHARE ANALYSIS

Future Capital Facilities Analysis

The demand analysis, existing facility inventory and LOS analysis allow for the development of a list of capital projects necessary to serve new growth and to maintain the existing system. This list includes any excess capacity of existing facilities as well as future **system improvements** necessary to maintain the level of service. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.

Financing Strategy – Consideration of All Revenue Sources

This analysis must also include a consideration of all revenue sources, including impact fees, future debt costs, alternative funding sources and the dedication of

system improvements, which may be used to finance system improvements.[3] In conjunction with this revenue analysis, there must be a determination that impact fees are necessary to achieve an equitable allocation of the costs of the new facilities between the new and existing users.[4]

Proportionate Share Analysis

The written impact fee analysis is required under the Impact Fees Act and must identify the impacts placed on the facilities by development activity and how these impacts are reasonably related to the new development. The written impact fee analysis must include a proportionate share analysis, clearly detailing each cost component and the methodology used to calculate each impact fee. A local political subdivision or private entity may only impose impact fees on development activities when its plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future (UCA 11-36a-302).

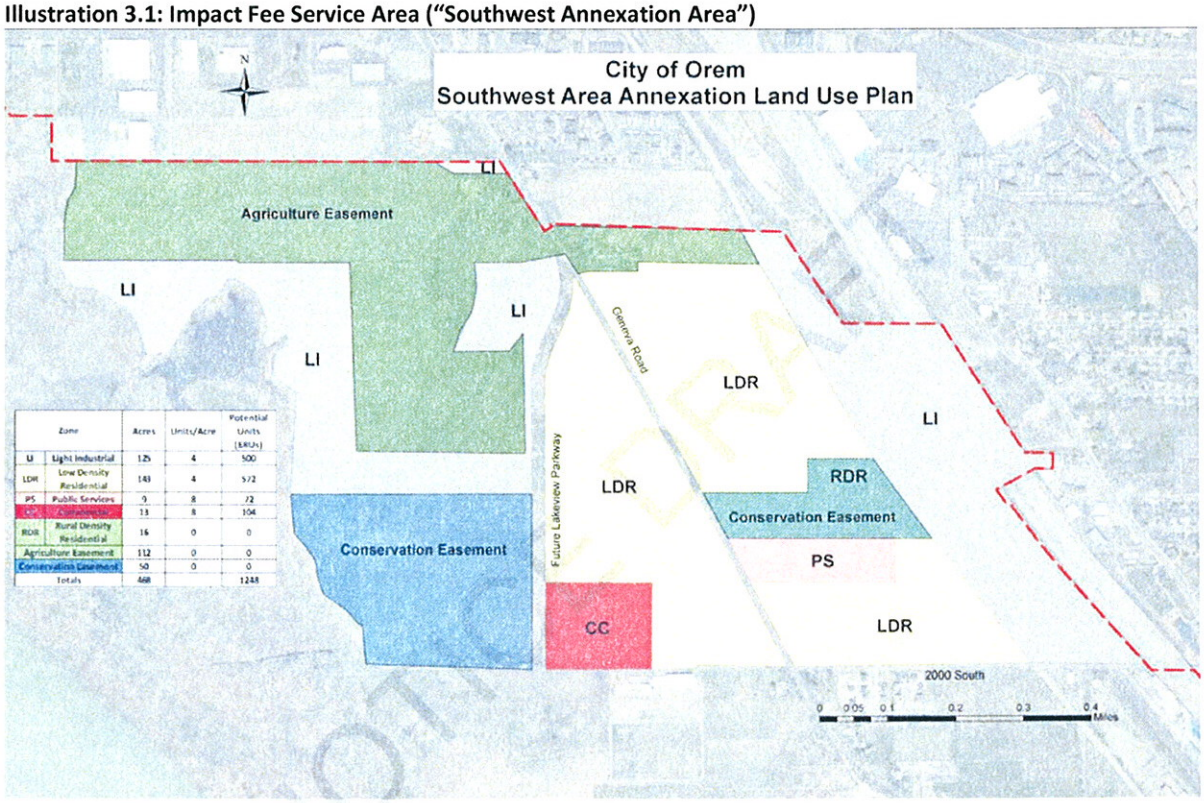
[3] 11-36a-302(2)
[4] 11-36a-302(3)

Section 3: Overview of Service Area And Demand Analysis

Service Areas

Utah Code requires the impact fee enactment to establish one or more service areas within which impact fees will be imposed.[5] The impact fees identified in this document will be assessed to the southwest annexation area.

Illustration 3.1: Impact Fee Service Area ("Southwest Annexation Area")



Zone		Acres	Units/Acre	Potential Units (ERUs)
LI	Light Industrial	125	4	500
LDR	Low Density Residential	143	4	572
PS	Public Services	9	8	72
CC	Commercial	13	8	104
RDR	Rural Density Residential	16	0	0
Agriculture Easement		112	0	0
Conservation Easement		50	0	0
Totals		468		1248

Impact fees have become an ideal mechanism for funding not only growth-related infrastructure, but recouping costs of current system. The IFFP and IFA analysis are designed to accurately assess the true impact of a particular user upon the City's infrastructure and prevent existing users from subsidizing new growth. Impact fees should be used to fund the costs of growth-related capital infrastructure and/or to fund the costs of utilizing excess capacity of an existing system. This is based upon the historic funding of the existing infrastructure and the intent of the City to equitably allocate the costs of growth-related infrastructure in accordance with the true impact that a user will place on the system.

Demand Units

As shown in Table 3.2, the growth in ERUs is expected to reach 1,398 units by buildout, which is an increase of 1,248 units above the 150 which already have sewer service. An increase of 779 ERUs is expected within the ten-year IFFP analysis window. The population in this area is expected to increase from 503 people in 2015, to 2,419 people at buildout. In 2025, the population is projected to be 1,698.

[5] UC 11-36a-402(a)

Table 3.2: Annexation Area Sanitary Sewer ERU Projections

Year	Est. ERUs
2015	**150**
2016	180
2017	216
2018	259
2019	311
2020	373
2021	448
2022	537
2023	645
2024	774
2025	**929**
2026	1,115
2027	1,337
2028	1,398
2029	1,398
2030	1,398

Level of Service Standards

Impact fees cannot be used to finance an increase in the level of service to current or future users of capital improvements. Therefore, it is important to identify the sanitary sewer level of service currently provided within the City to ensure that the new capacities of projects financed through impact fees do not exceed the established standard.

Collection

The City identifies the proposed level of service (LOS) for pipe sizing in the area at 0.0004 cfs per ERU. The existing LOS per ERU, based on the existing capacity per pipe divided by the number of ERUs currently being served is 0.011 cfs per ERU. The proposed LOS is lower than the existing LOS, which indicates the existing collection infrastructure has some excess capacity. A buy-in component is not utilized in this impact fee analysis because the existing infrastructure is in the annexation area and had no direct cost to Orem City. Thus, there is no associated cost for the new development to buy into.

Although the existing pipes have excess capacity which will be utilized by new growth, additional collection infrastructure will be needed to maintain the 0.0004 cfs per ERU proposed level of service and accommodate the demand created by new growth. The cost of those future facilities is described in Section 5: Capital Facility Analysis.

Treatment

The City identifies a level of service (LOS) of 80 gallons per capita per day for the sewer treatment facility as both the proposed LOS for the annexation area and the existing LOS for current Orem residents. The treatment plant was recently expanded to provide additional capacity, which new growth will utilize. The expansion was completed specifically for the Lindon, Vineyard, and annexation area demand.

Section 4: Existing Facilities Inventory

The intent of the equity buy-in component is to recover the costs of the unused capacity in existing infrastructure from new development. This section addresses any excess capacity within the sewer system.

Excess Capacity

Collection

As described in the previous section, the existing collection system has excess capacity in the pipes. However, a buy-in component is not utilized in this impact fee analysis because the existing infrastructure is in the annexation area at no direct cost to Orem City.

Treatment

The original treatment plant had a capacity of 12,260,000 gallons. The plant was expanded to provide an additional 1,240,000 gallons of capacity. The expansion will serve a portion of the Lindon, Vineyard, and the annexation area demand. The remaining portion will be served by the original treatment plant capacity. New growth in the annexation area will purchase capacity from the system at a blended rate of $2.98 per gallon. Below are charts which breakout the buy-in costs associated with the annexation area use. The total buy-in component is calculated using the original cost of existing treatment assets as presented by the City less any funding from grants and other sources.

Table 4.1: Cost per Gallon Used by Annexation Area

Facility	Facility Value (Less Other Funding)	Capacity (Gallons)	Cost per Gallon
Original Plant	$26,640,000	12,260,000	$2.17
Expansion	$13,603,137	1,240,000	$10.97
Total	**$40,243,137**	**13,500,000**	**$2.98**

Table 4.2: Determination of Value of Existing Collection Facilities Related to New Growth

	Gallons to Maintain LOS	Gallons Needed, including 15% Buffer Required by State	Cost per Gallon	Total Eligible Cost to IFA
Annexation Area	334,646	393,487	$2.98	**$1,172,974**

The annexation area will use 393,487 gallons of capacity. The total value of treatment capacity used to accommodate new growth in the annexation area will be $1,172,974.

Manner of Financing Existing Public Facilities

The City has funded its existing capital infrastructure through a combination of different revenue sources, including general fund revenues, property taxes, developer contributions, the issuance of debt, and grant monies. This analysis has removed all funding that has come from federal grants and donations from non-resident citizens to ensure that none of those infrastructure items are included in the level of service.

Section 5: Capital Facility Analysis

This section describes the future capital facilities needed to provide sewer service to the annexation area.

Collection

While some collection infrastructure already exists in the annexation area, additional infrastructure will be needed to accommodate growth in the area. As described in Table 5.1, the future facilities will cost $3,364,926. Orem anticipates it will not borrow funds to finance the capital projects. If funds are borrowed in the future, they may be paid back with interest. According to Orem City, the future facilities are sized to serve 1,248 ERUs.

Table 5.1: Future Collection Infrastructure Needed

Project	Amount	Unit	Cost per Unit	2014 Construction Cost Total	% to Growth	Total Impact Fee Eligible Cost
8" SDR-35	7,737	Linear Feet	$72	$557,064	100%	$557,064
10" SDR-35	3,450	Linear Feet	$78	$269,100	100%	$269,100
15" SDR-35	2,867	Linear Feet	$96	$275,232	100%	$275,232
New 15" line	4,274	Linear Feet	$120	$512,880	100%	$512,880
48" Manhole	56	Each	$3,500	$196,000	100%	$196,000
60" Manhole	2	Each	$4,300	$8,600	100%	$8,600
72" Manhole	10	Each	$6,000	$60,000	100%	$60,000
Force Main	4,189	Linear Feet	$90	$377,010	100%	$377,010
Lift Station	2	Each	$350,000	$700,000	100%	$700,000
Property Easements	30,000	Square Feet	$2.50	$75,000	100%	$75,000
8" SDR-35 w/ Trench Patch	2,263	Linear Feet	$80	$181,040	100%	$181,040
Union Pacific & UTA Application Fees	1	Each	$10,000	$10,000	100%	$10,000
Jack and Bore under RR & UTA Tracks	220	Linear Feet	$650	$143,000	100%	$143,000
Sub Total				**$3,364,926**		**$3,364,926**
Interest and Cost of Issuance from Debt Financing						**-**
TOTAL						**$3,364,926**

Treatment

The existing treatment plant, including the recent expansion, will provide enough capacity for the anticipated new growth. Thus, no additional treatment infrastructure is included in this impact fee analysis.

System vs. Project Improvements

System improvements are defined as existing public facilities designed to provide services to service areas within the community at large and future public facilities that are intended to provide services to service areas within the community at large.[6] Project improvements are improvements and facilities that are planned and designed to provide service for a specific development (resulting from a development activity) and considered necessary for the use and convenience of the occupants or users of that development.[7] This analysis only includes the costs of system improvements related to new growth within the proportionate share analysis.

[6] UC 11-36a-102(20)
[7] UC 11-36a102(13)

Equity of Impact Fees

Impact fees are intended to recover the costs existing capacity of existing capital infrastructure used by future growth. The impact fee calculations are structured for impact fees to fund the percentage of excess capacity utilized by new growth in the proportionate share analysis as presented in the impact fee analysis. Even so, there may be years that impact fee revenues cannot cover the annual growth-related expenses.

Necessity of Impact Fees

An entity may only impose impact fees on development activity if the entity's plan for financing system improvements establishes that impact fees are necessary to achieve parity between existing and new development. This analysis has identified the improvements to public facilities and the funding mechanisms to complete the suggested improvements. Impact fees are identified as a necessary funding mechanism to help offset the costs of existing capital improvements utilized by new growth. In addition, alternative funding mechanisms are identified to help offset the cost of future capital improvement.

Section 6: Sewer Impact Fee Calculation

The calculation of impact fees relies upon the information contained in this analysis. Impact fees are calculated based on many variables centered on proportionality and level of service. The City currently provides sanitary sewer to its residents and businesses. The sanitary sewer system has sufficient capacity to handle new growth through build-out while maintaining the same LOS.

Proposed Sewer Impact Fee

The following paragraph describes the methodology used for calculating impact fees in this analysis.

Plan Based (Fee Based on Defined CFP)

Impact fees can be calculated using a specific set of existing facility costs and determining the percentage of excess capacity to be used by future development. The total project costs are divided by the total demand units the projects are designed to serve. Under this methodology, it is important to indentify the existing level of service and determine any excess capacity in existing facilities that could serve new growth.

Sewer Impact Fee Calculation

The sewer impact fees proposed in this analysis will be assessed within the southwest annexation area. The tables below illustrate the appropriate buy-in component. The impact fee calculations also include the costs to conduct this impact fee analysis. The proportionate share analysis determines the proportionate cost assignable to new development based on the existing capital projects and the estimated excess capacity utilized by new ERU demand.

Table 6.1: Calculation of Proportionate Impact Fee

	Cost to Growth	ERUs Served	Fee Per ERU
Future Collection (Including Financing Costs)	$3,364,926	1,248	$2,696
Buy-in to Existing Treatment	$1,172,974	1,248	$940
Impact Fee Balance*	-	779	-
Professional Expense	$5,334	779	$7
Total	$4,543,234		$3,643

*No impact fee has been imposed by Orem City for this area in the past, so there is no accumulated fund balance.

A total of $4,543,234 is identified as the cost to growth for new development activity. The total fee per ERU is estimated at $3,643.

Non-Standard Sewer Impact Fees

Under the Impact Fees Act the fee may be adjusted to more closely match the true impact that the land use will have upon public facilities.[8] This adjustment could result in a lower impact fee if the City determines that a particular user may create a different impact than what is standard for its land use.

[8] 11 36a 402(1)(c)

Table 6.2: Impact Fee per Meter Size

Meter Size (In.)	ERU Multiplier*	Impact Fee per Meter Size
3/4	1.00	$3,643
1"	1.67	$6,084
1-1/2"	3.33	$12,131
2"	5.33	$19,417
3"	11.67	$42,514
4"	20.00	$72,860
6"	41.67	$151,803

*ERU Multiplier is based on AWWA M6 Manual "Water Meters."

Consideration of all Revenue Sources

The Impact Fees Act requires the proportionate share analysis to demonstrate that impact fees paid by new development are the most equitable method of funding growth-related infrastructure. See Section 5 for further discussion regarding the consideration of revenue sources.

Expenditure of Impact Fees

Legislation requires that impact fees should be spent or encumbered within six years after each impact fee is paid. Impact fees collected in the next five to six years should be spent only on those projects outlined in the CFP as growth related costs to maintain the LOS or buy-in to the existing system.

Proposed Credits Owed to Development

The Impact Fees Act requires that credits be paid back to development for future fees that will pay for growth-driven projects included in the Capital Facilities Plan that would otherwise be paid for through user fees. Credits may also be paid to developers who have constructed and donated facilities to that City that are included in the CFP in-lieu of impact fees. This situation does not apply to developer exactions or improvements required to offset density or as a condition of development. Any project that a developer funds must be included in the CFP if a credit is to be issued.

In the situation that a developer chooses to construct facilities found in the CFP in-lieu of impact fees, the decision must be made through negotiation with the developer and the City on a case-by-case basis.

Growth-Driven Extraordinary Costs

The City does not anticipate any extraordinary costs necessary to provide services to future development.

Summary of Time Price Differential

The Impact Fees Act allows for the inclusion of a time price differential to ensure that the future value of costs incurred at a later date are accurately calculated to include the costs of construction inflation. An inflation component was NOT used to estimate the existing capital project costs in current year dollars due to the fact that only original values/costs are allowed we calculating buy-in costs.