

REGULAR MEETING

**AGENDA
AND
STAFF MEMO**

HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032
City Council Regular Meeting
June 2, 2016

6:00 p.m. Regular Meeting

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

- I. Call to Order
- II. Pledge of Allegiance: Council Member Kelleen Potter
- III. Prayer/Thought: By Invitation (Default Council Member Jeffery Bradshaw)
- IV. Minutes for Approval: April 21, 2016 Work Meeting and May 5, 2016 Work Meeting
- V. Open Period for Public Comments
 1. Approval of Local Consent for Dining Club Liquor License - The Social LLC, Located at 98 South Main Street
 2. Approval of Local Consent for Off-Premise Beer Sales License - Super Carniceria Mini Market, Located at 37 West 100 South
 3. Jenny Dorsey – People’s Health Clinic Annual Report
 4. Approval of the GDA Planning and Engineering Consulting Contracts
 5. Ordinance 2016-11 - An Ordinance Amending the Setbacks and Parking of the C-2 and C-4 Design Criteria
 6. Approval of Power Industrial Park - Building Permit Hardship Request per Heber Municipal Code 15.08.030
 7. Clarify the Terms of the Reversionary to Non-Reversionary Lease Agreements Approved by the City Council on March 17, 2016
 8. Reconsideration of Tabled Agenda Item - Approval of the FAA Grant Offer for Airport Improvement Program (AIP) Project No. 3-49-0011-027-2016 - RPZ Land Acquisition
 9. Consideration of Closed Meeting Pursuant to Utah Code Annotated §54-2-205

Ordinance 2006-05 allows Heber City Council Members to participate in meetings via telecommunications media.

In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact Michelle Limon at the Heber City Offices (435) 654-0757 at least eight hours prior to the meeting.

Posted on May 26, 2016, in the Heber City Municipal Building located at 75 North Main, Wasatch County Building, Wasatch County Community Development Building, Wasatch County Library, on the Heber City Website at www.ci.heber.ut.us, and on the Utah Public Notice Website at <http://pmn.utah.gov>. Notice provided to the Wasatch Wave on May 26, 2016.

Memo

To: Mayor and City Council
From: Mark K. Anderson
Date: 05/26/2016
Re: City Council Agenda Items for June 2, 2106

REGULAR MEETING

Item 1 – Approval of Local Consent for Dining Club Liquor License – The Social LLC, Located at 98 South Main Street: Vanessa Kibble is seeking local consent for a Dining Club Liquor License for the new Social LLC, located at 98 South Main. See enclosed staff report from Tony Kohler and information about the business provided by Mrs. Kibble. Staff indicates that the application is consistent with City Ordinance and would recommend approval.

Item 2- Approval of Local Consent for Off-Premise Beer Sales License – Super Carniceria Mini Market, Located at 37 West 100 South: Alicia Hinojosa is seeking local consent for a Off-Premise Beer License for the Super Carniceria Mini Market located at 37 West 100 South. Mrs. Hinojosa is a new owner of this business. Enclosed is a copy of the application and staff report from Tony Kohler, which indicates the application meets the requirements of City Ordinance.

Item 3 – Jenny Dorsey – People’s Health Clinic Annual Report: Jenny Dorsey and possibly other representatives from the Clinic will appear before the Council to give an annual report of the People’s Health Clinic activities. Enclosed is a PowerPoint presentation that will be shared with the Council. Currently, the City has tentatively budgeted a \$5,000 contribution to the People’s Health Clinic for fiscal year 2016-17.

Item 4 – Approval of the GDA Planning and Engineering Consulting Contracts: In April, the Council selected GDA as the new airport consultant. To formalize the relationship, enclosed are proposed agreements with GDA Engineering for Planning and Engineering Services. Mark Smedley, Councilmember Crittenden and I met with Jeremy McAlister to discuss proposed modifications to the contracts. See enclosed agreements. Staff would recommend approval.

Item 5 – Ordinance 2016-11 – An Ordinance Amending the Setbacks and Parking of the C-2 and C-4 Design Criteria: At the last two work meetings, the Council has discussed this Ordinance that is being recommended by the Planning Commission to amend the setback and parking requirements in the C-2 and C-4 Design Criteria. See enclosed staff report and Ordinance. Staff would recommend approval.

Item 6 – Three Strings Holdings – Request for Issuance of a Building Permit Under Section 15.080.030B of the Heber City Municipal Code: At the last City Council meeting, Bart Mumford informed the Council that Questar's inability to install natural gas in the Power Industrial Park was creating a hardship for Three Strings Holdings/Probst Electric. See enclosed staff report and letter from Three Strings. Consistent with direction given by the Council at the last meeting, staff would recommend that Council ratify their decision to allow staff to issue a temporary building permit as provided by City Ordinance.

Item 7 – Clarify the Terms of the Reversionary to Non-Reversionary Lease Agreements Approved by the City Council on March 17, 2016: At the last City Council meeting Paul Boyer indicated hangar owners were looking for clarity from the Council on the intent of the March 17th meeting where the Council agreed to allow for the conversion of 9 reversionary hangar leases to non-reversionary if a \$2,000 per year lease conversion fee were paid in addition to a higher ground lease on the unimproved property. Below is an email sent to the Council on May 19th on this matter:

Mayor & Council:

I had broached the issue that Paul Boyer brought to the Council tonight earlier today with Jeff Smith to see what his recollection of this issue was concerning the number of years that a \$2,000 payment would be made by those wishing to convert their hangar lease from reversionary to non-reversionary. Attached is the cash flow projections prepared by Councilman Smith that the Council reviewed when this decision was made. Because all options showed a \$1,500 payment for 30 years on the non-reversionary side, I assumed that the intent of the motion was to require this payment for 30 years if hangar owners were to accept the offer to convert.

In reviewing the March 17, 2016 minutes, (see today's Council packet 5/19/16) the intent is not real clear. But there was also no discussion about the fee extending beyond the current lease period either. If you can provide me clarity regarding your intent on this matter, it would help get this issue resolved. If you want it put on a future agenda for discussion, I would be happy to do that as well.

Thanks,

Mark

Enclosed is the draft language for the new lease that I had shared with Gerry Hall which requires the conversion fee payment to be made for 30 years. Also enclosed are copies of NPV analysis of future cash flows using different assumptions that were prepared by Council Member Smith and minutes of the March 17th, 2016 meeting.

To put the magnitude of the change in perspective, I have included a spreadsheet that shows how many years each lessee would be required to pay the conversion fee if it were to start in 2017 and end when their current lease expires. Also, I have modified the NPV analysis to show a \$2,000 payment for a 30 and 24 year period. The 24 year period is the average

number of payments that would be made by the hangar owners based on when their current leases expire. This assumes that a \$2,000 payment would be made for any partial year as well. Had I understood that the payment was to be made over the life of the remaining lease only, I would have not recommended that we wait nine months before the conversion would take effect. The Council should discuss what the intent of their motion was so I can have clarity in how to reflect it in the proposed lease agreements.

Item 8 – Reconsideration of Tabled Agenda Item - Approval of the FAA Grant Offer for Airport Improvement Program (AIP) Project No. 3-49-0011-027-2016 – RPZ Land

Acquisition: The City has received a grant offer from the FAA in the amount of \$1,305,547 for the reimbursement of the Maverik land purchase, which was made to protect the airport Runway Protection Zone (RPZ). Additionally, monies have been allocated in the grant to fence the open part of the property, which could include costs to cut the curb and install a driveway to the property. This grant will pay for 90.62% of the total project costs and UDOT Aeronautics and Heber City will each be responsible for 4.685% of the costs or, \$67,496 each. Staff would recommend that the Council authorize Mayor McDonald to sign the grant agreement. (See enclosed grant agreement and associated grant assurances) The fencing of the property is something that will need additional discussion by the Council before a final product is selected.

The Council tabled this action based on concerns with how this grant might further commit the City to maintain the airport forever or go to a CII airport. Mark Smedley will be at the meeting to answer questions related to this issue with the Council. In my discussions with him, he indicates that acceptance of this grant does not obligate the City to go to a CII/DII airport configuration as this land is needed to protect the current RPZ for a BII airport, nor does it make the City subject to any new conditions regarding maintenance of the airport that are not already existing due to acceptance of previous FAA grants.

Enclosed is an email from John Sweeney indicating that the FAA is willing to extend acceptance of this grant until June 10, 2016.

Allison Lutes is still working on document research on this issue. By early next week, I should be able to provide you with FAA grant agreements, grant assurances and minutes from City Council meetings where the grants were accepted by the City.

Item 9 – Consideration of Closed Meeting Pursuant to Utah Code Annotated §54-2-205:

MINUTES

1 Heber City Corporation
2 City Council Meeting
3 April 21, 2016
4 4:00 p.m.
5

6 WORK MEETING
7

8 The Council of Heber City, Wasatch County, Utah, met in Work Meeting on April 21, 2016, in
9 the City Council Chambers in Heber City, Utah
10

11 I. Call to Order
12 City Managers Memo
13
14

Present: Mayor Alan McDonald
Council Member Jeffery Bradshaw
Council Member Heidi Franco (Arrived at 4:04 p.m.)
Council Member Kelleen Potter
Council Member Jeffrey Smith
Council Member Ronald Crittenden

Excused: None

Also Present: City Attorney Mark Smedley
City Planner Tony Kohler
Chief of Police Dave Booth
City Recorder Michelle Limón

15 Others in Attendance: Phil Sarnoff, Rick McCloskey, Darren Tuddenham, Bev Zimmerman,
16 Rich Hansen, Dennis Jensen, Maggie AbuHaidar, Craig Hoggan, Ed Parkinson, Russell Funk,
17 Jason Bleyl, Dave Hansen, Paul Boyer, Paul Berg, Mel McQuarrie, Dale Stewart, Matt Parker,
18 Nick Lopez, Richard Clark, Larry Newhall, Laurie Wynn, Jeremy McAlister, Klay Nelson,
19 Francis Harrison, and others whose names were illegible.
20

21 Mayor McDonald called the meeting to order and welcomed those in attendance. He asked Bart
22 Mumford to introduce the new Assistant City Engineer, Russell Funk.
23

24 1. Joint Meeting with the Planning Commission to Continue Discussion on Proposed
25 Amendments to the Heber City Zoning Ordinance
26 Draft Form Based Code Version 2 (updated April 20, 2016)
27

28 Mayor McDonald advised this item had been moved to a later date, to be determined.
29

30 3. Darren Tuddenham and Ed Parkinson - Request to Vacate a Stubbed Roadway/Public
31 Right of Way Located at 680 North Mill Road and Quit Claim the Property the Adjacent
32 Property Owners For a Private Driveway

1 Staff Report
2 Tuddenham/Parkinson Proposal
3 Stone Creek Phase One Amendment
4

5 Ed Parkinson presented his and Tuddenham's rationale in support of their proposal to vacate the
6 700 North stubbed roadway; they believed it was redundant and unnecessary, given that
7 construction on the initial piece of the bypass road was scheduled to begin soon. Tuddenham
8 and Parkinson were seeking to convert the stubbed roadway to a private driveway, narrowing the
9 road to 25 feet, removing the curb and gutter on both sides and reclaiming the area with
10 landscaping and trees. They believed the City would benefit by not having to maintain the
11 roadway, it would increase the property tax revenue by increasing lot sizes, and it would help
12 control the traffic onto the bypass road and Mill Road. It would also benefit Stone Creek in that
13 they would not have to build a connecting road piece, and there would be contiguous lots along
14 the back side of the development.

15
16 Parkinson then addressed each of the 17 items outlined in Tony Kohler's staff report for the
17 Council.

18
19 Parkinson confirmed they were seeking to have the City quitclaim the roadway to them, with no
20 financial consideration to the City. The cost to them to convert the roadway into a private
21 driveway and to remove the utilities was estimated at approximately \$25,000. Mumford
22 confirmed there would be no additional cost borne by the City, over and above what the City
23 normally did with a developer. He clarified the current proposal was to take care of all of the
24 costs to make the City whole to convert and remove the utilities, and in return, the City would
25 quitclaim the right-of-way to the owners. Mumford next reviewed the history of the bypass road
26 and the anticipated traffic patterns. He felt the proposed vacation of the road stub would not
27 have a significant impact on the traffic. He opined that it was a "kind of a wash" to anticipate
28 what impact it would have, and it was not something one could easily determine.

29
30 Parkinson addressed the bulleted concerns Anderson raised in his City Manager's Memo:
31 1) regarding the 1300 East section, Parkinson explained that initially, it could increase the traffic
32 slightly, but once the east side connection with the bypass road was constructed, the residents in
33 that area would see a significant decrease in the traffic flow through that area; and 2) regarding
34 the approval generating additional similar requests, Parkinson felt this was a unique situation,
35 with two accesses within 5 houses of each other, less than two blocks; and 3) regarding the City
36 potentially being criticized for having given away property that could have served as a
37 transportation corridor, Parkinson stated it could happen, but he felt the pros outweighed the cons
38 in this case. Finally, Parkinson asserted that he felt their proposal addressed the State code
39 requirements outlined in Kohler's staff memo, that A) good cause existed for the vacation, and
40 B) there would not be any resulting material injury; it was a "win win" proposal for all parties.

41
42 Rick McClosky, the developer of Stone Creek, expressed his support for the proposal, noting that
43 they never liked the stub road, but it was put in due to the uncertainty as to the bypass road. He
44 added they would use their contractor to cap the utilities and reconstruct the area, and in fact they
45 had already received a bid from the contractor to do so. Council Member Franco expressed

1 concern with having only two outlets for the development. Discussion followed concerning the
2 timing of the phases of the development and the bypass road.

3
4 Council Member Crittenden asked whether Stone Creek's concerns had been addressed in the
5 negotiations with Red Ledges regarding the bypass road. McClosky was confident that all of the
6 issues were being addressed, and would be resolved in time for the public hearing, which he
7 understood would be May 19. Council Member Franco inquired whether the value of the land
8 could be determined to see if it was equal to or greater than the cost of the capping. Mayor
9 McDonald stated that there were enough questions regarding the proposal, and it would warrant
10 putting the issue back on another work meeting. In the meantime, staff would work on
11 addressing some of the questions from the Council.

12
13 2. Phillip Sarnoff - Executive Director of Bike Utah, Discussion Regarding the Economic
14 and Safety Benefits for Communities to Provide Trails for Bikers and Walkers
15 **Bike Utah Presentation**

16
17 Council Member Potter introduced Mr. Sarnoff, and added that the City could not underestimate
18 the importance of transportation bicycling; further, a safe environment should be ensured for
19 those who biked and walked within the City. She added that a local event, "Road Respect", was
20 planned for June 9 to elevate awareness regarding the benefits of bicycle riding and bicycle
21 safety. Sarnoff presented a PowerPoint regarding Bike Utah and the state of bicycling in Utah,
22 currently and in the future. He also highlighted how bicycle tourism would add economically to
23 the area. Police Chief Booth added that the "Road Respect" campaign started when he was
24 approached by an area bicyclist to raise awareness regarding bicycling, and in 2015, the first
25 "Road Respect" campaign began. As a result, Booth noted that bicycle/road rage complaints
26 dropped substantially. He felt it was a very successful campaign.

27
28 4. Request for a Zone Map Amendment of 16.04 Acres of Property Located between 300
29 and 500 East to 750 North from the RA-2 Residential-Agricultural Zone to R-1
30 Residential Zone

31 **Staff Report**

32
33 Tony Kohler reviewed the re-zoning request from RA-2 Residential Agriculture to RA-1
34 Residential. The request was consistent with the General Plan; however the Planning
35 Commission continued the request until the City had studied the Transfer of Development
36 ("TDR") rights issue. The TDR analysis found that the TDRs would not function as originally
37 hoped, and the petitioner requested the item be placed back on the agenda for consideration. The
38 Planning Commission recommended approval of the re-zoning request.

39
40 Discussion followed regarding concerns with up-zoning from RA-2 to RA-1 and a possible offer
41 by the City to purchase the property. Council Member Franco expressed concern regarding how
42 the IRS would view the property owners' tax deduction based on the higher density and the City's
43 possible purchase at the RA-2 price, rather than the RA-1 price; she wondered whether it was a
44 legal transaction. City Attorney Smedley recommended the City seek guidance from the IRS
45 regarding any concerns to ensure everything was on record. It was noted that any transaction
46 with the property owners would need to be open, transparent and considered an arm's length

1 transaction. Council Member Bradshaw cautioned that any offer should not in any fashion be
2 perceived as being tied to the re-zoning. It was further noted that another third party submitted a
3 purchase offer, so if the City were to make an offer, it should be within the same parameters of
4 the third party purchase. Council Member Bradshaw added that the IRS would require an
5 objective appraisal, and the credentials of the appraiser. He didn't believe the IRS would view a
6 potential City purchase as problematic. Smedley agreed with Bradshaw's assessment, as long as
7 the City offer was within the same parameters as the other third party offer, and there were
8 objective appraisals of the property.
9

10 Paul Berg noted that the Dukes were moving forward with their proposed zone change, they had
11 a concept, and were discussing the plan with developers. They became aware the City had some
12 interest in the property, so Berg approached the City on their behalf. The Dukes were aware the
13 property would likely be sold at a discount to the City, as the City proposed the use for cemetery
14 land. In discussions with City staff, Berg learned the City did not have the cash available for a
15 lump sum payment, so the Dukes offered the following proposals: 1) the City could propose a
16 payment plan; 2) offer tax credits; or 3) offer naming rights. Up until present, the City had not
17 submitted a formal offer to the Dukes.
18

19 Council Member Crittenden expressed that an up-zone was not a legal right, but rather a right to
20 submit a request, and as a legislative body, it was the Council's decision whether to do it or
21 not. Berg countered that should the Council decide not to up-zone, then it would be going
22 against the General Plan, as this zone change was consistent with the General Plan. The Zoning
23 Plan was not consistent with the General Plan, thus the need for the Dukes to submit their re-
24 zoning request. Kohler reviewed the history concerning the evolution of the City's General and
25 Zoning Plans. He then stated that this was not a unique request, it had been done before by other
26 property owners in the past, and in general, it was good practice to make the zoning consistent
27 with the General Plan. Smedley commented that the Master Plan was considered a
28 recommendation, and the Council would not be bound by the Plan.
29

30 Following discussion, the Council was in favor of moving this item to the next regular meeting.
31

32 5. Discussion Regarding a Resolution Opposing the Heber City Airport Becoming a CII
33 Airport and Asking Our Congressional Delegation and Governor for Assistance in
34 confirming with the FAA the Financial Ramifications of Our Choosing to Stay as a BII
35 Status Airport
36

37 Council Member Crittenden reviewed that the pending discussion would relate to a resolution
38 that he would like to vote on in the regular meeting, and what financial or liability impacts may
39 result should the City Council state it did not want to expand to a C-II category airport. He asked
40 Kelsey Berg, with Representative Jason Chaffitz' office to discuss the process to involve Federal
41 representatives. Berg stated she had attended the County airport meeting, as well as other City
42 Council meetings, and was aware of the main issues: 1) regarding safety, and which jurisdiction
43 had the authority to exclude large aircraft landings at Heber City, whether the FAA could
44 override that authority; and 2) what were the consequences if Heber City didn't want to expand
45 the airport, in spite of an FAA request to do so.
46

1 Berg explained the process they would undertake with Senator Hatch and Senator Lee to join in a
2 letter to the FAA. It would include a list of questions and would request a response by a certain
3 date. She asked the Council to give them a list of questions to include, and estimated the process
4 could take about a month before they had a response. Mayor McDonald polled the Council on
5 whether they wanted to proceed with a resolution. The Council was favorable to the foregoing.
6

7 Airport Advisory Board Chairman Mel McQuarrie felt there was some confusion about
8 expansion, and stated that a C-II conversion would stay within the airport fence, and while the
9 Runway Protection Zone ("RPZ") would increase, it would not take what was already on the
10 land, it would limit what could later be placed on the land. He added there were many
11 unknowns, and the study needed to be conducted.
12

13 Richard Clark expressed that the citizens of the valley had a right to live without excessive
14 pollution and noise; he felt Heber City had a right to make a resolution that it wanted a B-II
15 airport and go forward with that. He felt some, including the FBO, encouraged as many large
16 aircraft to come into the airport to try and encourage the FAA.
17

18 6. Discussion for the Consideration of Budgeting for and Seeking a Full-Time Airport
19 Manager
20

21 Council Member Crittenden felt the airport issues had taken an inordinate amount of City
22 Manager time, and the part-time Airport Manager position was not sufficient to address the
23 issues with the airport. Further, Crittenden felt there would be more public support if there were
24 more activities going on at the airport to involve the public, but the position would require full-
25 time. Council Member Franco felt the need was for an Assistant City Manager to oversee the
26 airport, Public Works, Planning and Human Resources. Council Member Potter noted that the
27 City qualified for a full-time human resources position. After further discussion, the Council
28 was in favor of putting the issue on a budget meeting agenda, scheduled for April 28.
29

30 7. Discuss Airport Landing Fee Increases and the City Sponsor Providing Public Airplane
31 Parking Space at the Airport
32

33 Council Member Crittenden felt the City was not receiving its fair share of the fees larger aircraft
34 were paying, noting that large aircraft paid a lot of money to park in the FBO hangar, and a
35 relatively small amount in landing fees. Crittenden felt the fees could be based on aircraft
36 weight. He added that the City should consider public aircraft hangars and tie-downs, apart from
37 those offered by the current FBO and its current fee structure. Mayor McDonald agreed with
38 Crittenden regarding the public parking spaces and that landing fees should be increased. It was
39 agreed that this issue would be put before the Airport Advisory Board for discussion.
40

41 Craig Hoggan, OK3-Air's legal counsel noted that the FBO was concerned about this issue as
42 well, and they wanted to be involved in the discussion, since they were in the business of
43 collecting the fees for the City. He noted there was already a fee structure in place based on
44 aircraft weight, whereby those weighing below 8,000 pounds were not being charged landing
45 fees. Further, Hoggan addressed the conception that there was not a public ramp - the ramp in
46 front of the FBO was a public ramp, that wasn't necessarily free, but it was a public ramp, as

1 confirmed with the FAA. Hoggan then addressed the issue regarding passage of a resolution
2 opposing the C-II category upgrade. He felt the City did not need a resolution to talk to the FAA
3 and get answers to their questions. He felt the process should play out before making a decision
4 and urged the Council to let the planning process proceed, find what would be recommended,
5 then make an informed decision.

6
7 Council Member Franco requested that OK3-Air provide the financial information that had been
8 requested by the Council in a motion passed in the prior month. Hoggan responded that he had
9 been working with Mark Smedley for over a month; OK3-Air felt it was appropriate to have a
10 non-disclosure agreement ("NDA"), because without it, the information would be subject to
11 GRAMA. Franco argued that the information had been requested since January, it was a public
12 airport, and it should be public information. Hoggan disagreed, stating that it was a private
13 enterprise and it was important that OK3-Air's information be protected from disclosure to
14 competitors.

15
16 Discussion followed concerning the type of information sought. Mark Smedley opined that if
17 the Council was looking simply for a profit and loss statement, it should always be open for
18 review by the Council Members; however, if the Council wanted hard copies of the financial
19 information, or if it was going to be discussed, it was not unreasonable to ask for a minimum
20 NDA. Smedley asked that the Council clarify what they were looking for.

21
22 Maggie AbuHaidar, General Counsel of OK3-Air, stated that six years ago, there was a request
23 for financial information, and at the time there was discussion on the issue that it had never
24 before been requested under the lease, and whether that right had been waived. In an attempt to
25 avoid a legal discussion, the City Council members went to OK3-Air, and Nadim AbuHaidar did
26 provide the information. Since that time, there had not been another request for financial
27 information. AbuHaidar clarified they were not in the business of withholding their financial
28 information, but they were in the business of protecting their financial information, and in light
29 of recent interest in a potential second FBO, the financial information would be of interest to
30 other parties, thus the need to protect the information. Finally, AbuHaidar stated the information
31 would be with the Council soon.

32
33 Council Member Crittenden asked that Mark Smedley report back with his opinion on what the
34 lease meant, had it been complied with, and what could the Council ask for without an NDA.

35
36 8. Consideration of Closed Meeting Pursuant to Utah Code Annotated §54-2-205 (1)(a)
37 discussion of the character, professional competence, or physical or mental health of an
38 individual AND (1)(c) strategy sessions to discuss pending or reasonably imminent
39 litigation

40
41 Council Members Crittenden and Franco stated there were issues that needed to be addressed in
42 closed session prior to the regular meeting, as those issues had some bearing on certain items to
43 be addressed during the regular meeting.

44
45 Council Member Potter moved that the Council get dinner then use the break before the regular
46 meeting to move into a closed session. Council Member Franco amended the motion to state

1 that the purpose of the closed session was to discuss pending or reasonably imminent litigation
2 and personnel.

3
4 Council Member Potter amended the motion as stated. Council Member Franco made the
5 second. Voting Aye: Council Members Bradshaw, Franco, Potter, Smith and Crittenden.

6
7 9. Other Items as Needed

8
9 With no further business, the meeting was adjourned to enter into closed session as stated, prior
10 to the scheduled regular meeting.

11
12
13

Michelle Limon, City Recorder

14
15
16
17

1 Heber City Corporation
2 City Council Meeting
3 May 5, 2016
4 5:00

5
6 WORK MEETING

7
8 The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on May 5, 2016, in
9 the City Council Chambers in Heber City, Utah

10
11 I. Call to Order
12 [City Manager Memo](#)

13
Present: Mayor Alan McDonald
Council Member Jeffery Bradshaw
Council Member Heidi Franco
Council Member Kelleen Potter
Council Member Jeffrey Smith
Council Member Ronald Crittenden

Excused: None

Also Present: City Manager Mark Anderson
City Attorney Mark Smedley
City Engineer Bart Mumford
City Planner Tony Kohler
Chief of Police Dave Booth
City Recorder Michelle Limón

14 Others in Attendance: Ryan Davis, David Wade, Diana Hyde, Bob Hyde, Zachary Johnson, Dori
15 O'Dell, Kenneth O'Dell, Dave Hansen, Paul Berg, Nathan Eaton, Marci Harvey, Raton Butler,
16 Beth Ann Schneider, Earl Tingey, Barry Potter, Tate Potter, Michelle Holmes, Mckenin
17 Shingleton, Dallin Brown, David Anderson, Maggie AbuHaidar, Craig Hoggan, David
18 Eldredge, Dennis Jensen, Tracy Taylor, Dusty Smith and others whose names were illegible.

19
20 Mayor McDonald welcomed everyone to the meeting. He acknowledged that all
21 Council Members were in attendance with the exception of Council Member Crittenden; he
22 would be in attendance shortly.

23
24 1. Ryan Davis - WCDA LLLP, Discuss Development of Meadows at South Fields
25 [Engineering Staff Report](#)
26 [Developer Request](#)
27 [Email From Ken and Dori O'Dell](#)
28 [Letter from Robert and Diana Hyde](#)
29

1 Ryan Davis was present at the meeting to discuss the development of Meadows at South
2 Fields. It was noted that the O'Dells and Hydes were present at the meeting as well.

3
4 Mr. Davis gave a summary of the property in discussion. He explained the property was by the
5 O'Dell property, and it was annexed into the City. At the time it was annexed, the City asked for
6 over two acres of land for the bypass road, which they gave to the City at that time. Mr. Davis
7 went on to explain their plan was to demolish and create two building lots on what is now the
8 O'Dell's property. He said when the City asked for the full, buildout of the road, they were fine
9 with doing that. However, they were at the point they needed to sell the home, and they sold it to
10 the O'Dells. Mr. Davis indicated the full buildout of the road would result in less than 10 feet to
11 the sidewalk from the O'Dell's home. Mr. Davis said the thing that made sense to him at this
12 point was to not allow a front yard that small. What they would recommend was a smaller road
13 width in front of the home. He stated it was a safety issue, and he doesn't see any other
14 circumstance where the City would recommend that.

15
16 Mr. Davis added that the annexation agreement indicated they should work with the Hyde family
17 for the buildout of the road as well. He indicated that their proposal was to shrink the road width
18 in front of the Hyde's home as well.

19
20 Mayor McDonald said he thought the Council would understand their positions.

21
22 Mr. Hyde addressed the Council. He stated they had owned their property for 30 years. They
23 are from Heber City and that is their house. He went on to say when they bought the property,
24 they never dreamed they would have to give up ground. Mr. Hyde explained that
25 everything they have built, he had done himself; his whole life was right there. They would do
26 whatever they had to do to keep it theirs. Mr. Hyde stated they were not going to dedicate
27 anything. He informed the Council they had not been offered anything financially. He inquired
28 how that helped him - it doesn't.

29
30 Mrs. O'Dell addressed the Council. She stated they felt the same way. She explained
31 they purchased the home, and they were not told any of the issues in front of the house. She
32 indicated it was mind boggling to them. They don't want to give up anything either. Mrs. O'Dell
33 informed the Council they were even closer to the road than the Hydes, and her husband parks in
34 front of the house for safety reasons. She explained that cars fly down the road way too
35 fast. Mrs. O'Dell explained the home was already too close to the road, and it would be against
36 City Code to bring the road that close to the home. She reiterated when they purchased the
37 home, it was known about the road; however they didn't know.

38
39 Mr. Mumford addressed the Council, and he indicated there were different options that could be
40 considered and acknowledged these were difficult situations. Mr. Mumford explained the
41 situation started approximately ten to 15 years ago as a part of the City's Master Plan, which
42 was to plan and accommodate for the City as it grew. He went on to say, when this development
43 and annexation came before the City; they had them do a developer's agreement to be in
44 conformity with the Master Plan. Mr. Mumford explained the City had a bottle neck in the area
45 in question, and the City wanted certain things in return for the annexation, which was they
46 needed to build the road to the Master Plan. Mr. Mumford pointed out at the time, they had

1 control of the O'Dell property, which was the Newton property. In addition, it was anticipated
2 they would have to work with the Hydes.

3
4 Mr. Mumford brought the Council forward several years, and he indicated that they had all the
5 issues worked out, except for the road in front of the two homes. He went on to say it sounded
6 like they haven't come to an agreement with the property owners, and they are asking for
7 modifications to the developer's agreement. Mr. Mumford explained to the Council if setbacks
8 were not met, the road would take precedence over the setbacks.

9
10 Mr. Mumford indicated in the original annexation agreement, it required them to provide a 72-
11 foot right-of-way road standard. He indicated the more critical issue was the asphalt width than
12 the right-of-way width in order to move and accommodate the traffic.

13
14 Mr. Mumford pointed out the agreement wasn't with the property owners; it was with the owners
15 that did the annexation agreement. In addition, it didn't sound like a lot of discussion had
16 occurred over the years. Mr. Mumford went on to say the City didn't specify how the property
17 should be acquired; however, it's usually negotiated. He stated that he knew what the City's
18 needs were. However, the problem was if the Council just waved it, the City would have to deal
19 with it down the road; but the council could do that.

20
21 Mr. Mumford inquired if there was an option that they could come up, which was a
22 compromise. Mr. Mumford indicated there was supposed to be an 8-foot trail in the area, and he
23 pointed out the trail to the Council. He suggested they could cut the trail down to five feet. He
24 pointed out that would be three feet, and then they could take out the parking in front of the two
25 houses, which would be an additional 10-feet. Then they could bow out 10 feet. Mr. Mumford
26 stated, other than that, they were going to start to get into travel lanes. He added what they
27 had done in the past, temporarily, was no parking on both sides of the road because of safety.

28
29 Mr. Mumford indicated the road needed to migrate to the Master Plan, which would require
30 some acquisition from the property owners. Mr. Mumford pointed out the developer proposed
31 36-feet of asphalt, which was the City's smallest road. He noted the next option would be 43-feet
32 of asphalt. Mr. Mumford discussed the different options for the road as outlined on the diagram,
33 which were shown in red line, green line and blue line.

34
35 Council Member Franco indicated that it didn't sound like the Hyde's had been offered anything
36 for their property. It was her opinion that they should not even be considering the site plan until
37 the developer had exhausted their intentions. Mr. Davis informed the Council that Mr. Hyde
38 hasn't wanted to do it; therefore, they couldn't talk about it further. Council Member Franco
39 stated that was one issue. The other issue was they lost control of the other home, and they lost
40 control of the setback; therefore, they caused the issue.

41
42 David Wade - Property Owner

43
44 Mr. Wade addressed the Council. He informed them the property was his retirement. He noted
45 they would get less out of the property than what they purchased for it. Mr. Wade explained that
46 was not what he did. The property was an investment for his retirement. He went on to explain

1 his partner was the one who took the house. He noted that what they were trying to do was
2 workout a reasonable thing. He added, at the time of the annexation, it was a reasonable
3 agreement that they could work with the property owner. However, they don't have the power to
4 buy from the property owners.

5
6 Mr. Wade went on to say the property values still had not come up to the point of what
7 they bought it for. He said, I guess we could get really hard-nosed, but he thought they should
8 work out a reasonable solution. He stated the City has this road, it's been like this, and it could
9 stay like it is.

10
11 Mayor McDonald inquired if the Council would like to leave the road as it was. Council
12 Members Potter, Smith, and Bradshaw indicated no, they would not like to do that. Mayor
13 McDonald stated that idea was off the table.

14
15 Council discussion followed. Council Member Bradshaw indicated it was not an easy situation.
16 He said he was very hesitant to take any property from the O'Dells or the Hydes. He went on to
17 say, at the same time, he realized it was a busy road and a bottle neck, and no one knew better
18 than the property owners. He noted even if it was marked as no parking, he was sure people
19 would still park there.

20
21 Council Member Bradshaw stated he was not sure what the best solution was. He indicated that
22 he did not want to take any property from the land owners, nor did he want to take any
23 development rights away.

24
25 Council Member Smith said it was a very unfortunate situation. He indicated that he did not see
26 any reason to take any property from the property owners. He pointed out if we went with the
27 other option, there would still need to be a transfer of property, which he did not think was the
28 best solution.

29
30 Council Member Potter stated it seemed when developers come to annex, the City tried to expect
31 something, and it's part of the City's plan. In addition, it seemed less safe to her.

32
33 Mr. Davis indicated there were different ways to look at the situation, and he said you know we
34 have worked on this. He stated you don't know the situation or the background. Mr. Davis
35 explained if you were developing a community, and you want to control traffic, you wouldn't
36 build a wide road. Mr. Davis discussed development in California in regards to roads that were
37 not as wide. He noted that road development depended on what your objective was. He said if
38 you want fast traffic, you build the roads wide and straight.

39
40 Mayor McDonald indicated the developers needed to sit down and work out another
41 solution, and then they could bring it back to another Work Meeting.

42
43 2. Review Leadership Circle LLC's Request for a Small Subdivision/Lot Split for a
44 Specialty Grocery to be Located at Approximately 989 South Main Street
45 [Staff Report and Plat Map](#)

1 Zach Johnson was present at the meeting to discuss the small subdivision/lot split for a specialty
2 grocery to be located at approximately 989 South Main Street.

3
4 Mr. Johnson informed the Council they were planning to adjust the lot lines and a portion of the
5 lot would have a flag lot to the south. He went on to say, they would provide a cross access
6 easement to the property, which would be on the plat as well.

7
8 Council Member Franco expressed concern the building would not be compatible with the form
9 based code. It was noted, once the form base code came into effect, they would be looking at
10 something more like the Auto Zone development. Council Member Potter questioned what the
11 point was, unless they gave them an exception.

12
13 Discussion followed regarding the Planning Commission's recommendation that would be forth
14 coming regarding design criteria. Mr. Kohler informed the Council, if they, the
15 Planning Commission, denied the proposed amendments; the developer would have to default to
16 their other site plan. He added that as of today the subdivision was not impacted by that
17 particular thing.

18
19 Council Member Franco stated that she did not see the alternative site plan. Mr. Kohler stated
20 he did not provide both site plans because the Planning Commission recommended this one.

21
22 Mr. Kohler indicated they had preliminary discussions with UDOT, and UDOT requested that
23 they located the proposed access directly across from 1000 South. It was indicated they would
24 take out the two curb cuts and put in just one curb cut.

25
26 Council Member Franco indicated that they were really excited for the development to come.
27 She inquired what Mr. Johnson felt about the new design standards and the form base code. Mr.
28 Johnson inquired if it would apply to them? Mr. Kohler explained what applied to them today,
29 was what was in effect today. In addition, it all depended on if the City Council accepted the
30 recommendation of the Planning Commission next week.

31
32 Council Member Franco indicated that they wanted to preserve the historical history of the
33 City. She asked Mr. Johnson to please consider that. Furthermore, they are trying to work with
34 Mr. Kohler as much as possible.

35
36 3. Recap From Participants of the Council and Managers Conference in St. George This
37 Past Week, to Share Ideas Learned That We Could Apply to Heber City and its
38 Management. Discuss Instituting a Policy of Asking for a Recap From Any City Staff or
39 Council Who Attend a Conference or Meeting at City Expense

40
41 Mr. Anderson indicated the Council wanted to obtain information from City Staff and employees
42 and have them give a recap on conferences they attended.

43
44 Mayor McDonald gave each Council Member an opportunity to speak regarding a conference
45 topic they thought was valuable to share with the group.

1 Mr. Anderson inquired how far Council Member Crittenden wanted to go with the topic at
2 hand. It was decided that written material from Staff would be appropriate for conferences they
3 attended - especially for those things that would affect and apply to the City.

4 4. Hazard Mitigation Plan Update

6
7 Mr. Anderson explained that every September they have an Consolidated Plan they have to
8 update, which is maintained on a AOG basis. The Plan pertains to how they can protect current
9 City residents, the City, and resources.

10
11 Mr. Anderson indicated that he didn't know that it was a big deal, but it was meaningful to make
12 sure the community knows how to deal with these type of events.

13
14 Council Member Franco inquired if they wanted to do this type of education, where should they
15 put it? In addition, do they have the disaster mitigation plan on their website? Mr. Anderson
16 indicated they did not - not to his knowledge.

17
18 Mr. Anderson said this was what was being proposed, and he would suggest it be brought
19 forward to next meeting to be adopted. Council Member Franco questioned if everything
20 was up-to-date. Mr. Anderson said he didn't know; they didn't generate the figures.

21
22 Council Member Franco inquired if the plan was on the City's website or placed in the City's
23 newsletter. Mr. Anderson indicated he would pose that question to Mr. Kohler during agenda
24 prep meeting on Monday.

25 26 5. Other Items as Needed

27
28 Council Member Crittenden stated that David Church said the Council could discuss items they
29 may want to talk about; they just couldn't vote on the item. Council Member Crittenden
30 indicated the airport perimeters need to be rezoned, and he had brought this issue up before. He
31 said he got in trouble for mentioning it. He added that it was one of the City's assurances, and
32 he couldn't get it on an agenda.

33
34 Council Member Crittenden stated there were things he would like to bring up and discuss; and
35 he thought they could under this agenda item. He pointed out there was no open discussion for
36 the Council. Mayor McDonald stated he could put it on the agenda; just don't add it the last two
37 days.

38
39 Discussion followed regarding the FAA. Council Member Crittenden indicated that he didn't
40 want to be in the box that Mr. Hoggan referred to, which they would be in if the let the FAA
41 people come and talk to the Council before they were ready. He went on to say the FAA
42 had been neglecting the City, and now all of a sudden they want to come and talk.

43
44 Mayor McDonald indicated if there was someone that high up in the FAA here, let him come and
45 speak to the Council. They don't have to ask him one question. Mayor McDonald's
46 recommendation for the Council was to listen to him, and then they could save their questions.

1 Mr. Anderson added he was communicating with the FAA about Council Member Franco's
2 questions about grant assurances. He stated the FAA was mindful of what was going at the City,
3 and they are concerned.

4
5 Council Member Crittenden indicated he didn't want the FAA to come on May 19 unless they
6 were ready with the delegation. Council Member Franco said she would support that; she didn't
7 want to preclude the delegation from getting in there and doing some negotiations.

8
9 Mayor McDonald indicated that he just wanted to listen to the FAA.

10
11 With no further business to come before the Council at this time during the Work Meeting, the
12 Work Meeting adjourned in favor of recessing into a Closed Meeting at 8:25 p.m.

13
14 Council Member Bradshaw moved to go into Closed Session at 8:25 p.m. for the purpose of a
15 Strategy Session to Discuss the Sale or Purchase of Real Property, AND strategy sessions to
16 discuss pending or reasonably imminent litigation pursuant to Utah State Code Annotate, §52-
17 4-205 (1)(c)(e). Council Member Franco seconded the motion. Voting Aye: Council Members
18 Bradshaw, Franco, Potter, Smith, and Crittenden.

19
20
21
22

Michelle Limon, City Recorder
23
24
25
26

TAB 1

Re: The Social LLC at 98 South Main Street Liquor License

The petitioner is requesting local consent for a Dining Club Liquor License at 98 South Main Street. The city code requires these facilities to be located in a commercial zone and to be setback from other uses as per Heber Code Section 5.08.050, shown below. The Department of Alcoholic Beverage Control has found the facility meets the required setbacks from churches, school, etc. The proposed facility is consistent with Chapter 5.08 of Heber City Code.



Applicable Codes

Section 5.08.050 Restrictions on Location

A. No alcohol license shall be granted to any facility for on-premise consumption of alcohol if such facility is located within 600 feet of any public or private school, church, public library, public playground, or park, as measured from the nearest entrance of the facility by following the shortest route of ordinary pedestrian travel to the property boundary of the public or private school, church, public library, public playground, or park.

B. No alcohol license shall be granted to any facility for on-premise consumption of alcohol if such facility is located within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the facility to the nearest property boundary of the public or private school, church, public library, public playground, or park.

C. The City Council may consider the proximity of the facility to any educational, religious, and recreational facility, including nursery schools, infant day care centers, trade and technical schools, and teen/youth facilities or other relevant factors in reaching a decision on whether to issue an alcohol license for on-premise or off-premise consumption.

From: Nina Mcdermott [<mailto:nmcdermott@utah.gov>]

Sent: Thursday, May 19, 2016 2:52 PM

To: Tanner Lenart

Subject: Re: Sidetrack Grama

There are no documents because there was no proximity issue as the community locations were not within the 200/600 foot distance.

here is a copy of the note from the database.

general proximity to the Main Street Park 200 S Main (642') and St Lawrence Catholic Church 5 S 100 W (640')

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THE SOCIAL, LLC

May 25, 2016
Vanessa Kibble
675 S Falkirk Rd
Heber City UT 84032

Dear Council,

My husband and I both work as chefs in Park City, UT. In 2014 we founded a consulting group and catering company called Chapman Industry Services, LLC and have seen a considerable amount of success. Finally the time seems right to capitalize on our knowledge and skill and open up our own upscale casual eatery.

We are choosing to invest our capital in Heber and specifically in the former Sidetrack Cafe because I believe as a chef you have to be inspired by your surroundings and supported by your community. We have so many incredible resources at our disposal in Wasatch County, the Littman's from Good Grains and the Kohler's from Heber Valley cheese just to name a few. I truly believe it is time to create a platform for these purveyors and feature their products in a local restaurant.

What better restaurant than the former Sidetrack Cafe? The building exudes the very essence of Heber Valley charm. We are looking forward to the honor of restoring a historic landmark to its former glory and redesigning a coveted outdoor space into something that is emblematic of Heber's past, a personification of Heber's present, and a portrayal of Heber's future.

It is our belief by designing such a dining experience we will alleviate the need or desire of Heber locals to travel anywhere outside of town for a memorable evening. In fact it is our goal to generate interest and accolades for the Heber area. We are ready to capitalize on the population growth and create an adult and family focused eatery that mimics the cosmopolitan feel of a larger city while maintaining a small town sensibility.

Main Street Social, Heber is the name of our restaurant and our mission is to be the premier bistro dining experience in Wasatch County. This will be accomplished by offering homemade dishes using local, fresh ingredients at a competitive price. Our goal is for each customer to feel as though they are a guest in our home, while supporting and highlighting local businesses and their products. With this I ask the council to allow us to retain the dining club license by granting us local consent. We will be able to continue on the path we embarked, reserve capital and enhance the community by providing Heber its first chef driven restaurant and delivering a level of service and cuisine that is innovative and worthy of acclaim.

Sincerely yours,



Vanessa Kibble

The Social, LLC

Overview

The Social, LLC is registered as a limited-liability corporation. Our two founders, Vanessa Kibble and Robert Kibble, are co-owners and founders. No outside investors are involved at this point in time, though there might be an opportunity for that as the business grows. The Social was created with the specific purpose of opening a restaurant in the Heber City, UT area with the DBA *Main Street Social, Heber*.

Management Team

Our business is a collaboration between a father and daughter: Robert and Vanessa Kibble. Robert is the Chief Financial Officer and Vanessa is the Chief Operating Officer. Our management team combines financial prowess with classic culinary technique.

Co-Founder & Chief Financial Officer, Robert F. Kibble

Mr. Robert F. Kibble co-founded Mission Ventures, a venture capital firm in San Diego, CA, and has over 30 years of venture capital investing experience. Previously, he served for 13 years as a Founding General Partner of Paragon Venture Partners. Prior to that, Mr. Kibble was a Vice President at CitiCorp Venture Capital from 1980 to 1983. His early career includes investment banking on Wall Street. Mr. Kibble serves as a Director of BizRate.com, Big Stage Entertainment, SodaHead, Andigilog Inc., Bullrun Financial, Inc., DispenseSource, Complexions Rx Inc., Mochila, Nexiant, Inc., VMIX Media Inc., and Eveo. He represented Mission's leadership role in prior portfolio investments in Sandpiper Networks and Shopzilla. Mr. Kibble was a Director of National Venture Capital Association and Alignment Software, Inc. He has earned an MBA from the Darden School at the University of Virginia and a Bachelors degree, with honors, in Natural Sciences from Oxford University.

Co-Founder & Chief Operating Officer, Vanessa M. Kibble

Vanessa started her professional career with the intent to teach. She attended Lesley University in Cambridge, MA, earning a B.A. in child development & human services and an M.S in clinical counseling. After graduating and working as a program coordinator for Head Start, Vanessa Choose to follow her passion and seek employment in the culinary world. Lacking the experience of many culinary professionals her age, she decided to attend the San Diego Culinary Institute, where she earned a certificate in culinary arts. Following her studies Vanessa moved to London where she worked as a chef for Gordon Ramsay at the prestigious Claridges Hotel. Continuing on the path of fine dining Vanessa held prominent positions at Roganics in London under chef Simon Rogan; La Valencia Resort & Spa; Jean-George at the St. Regis, Deer Valley; High West Distillery & Saloon; and Handle, Park City under chef Briar Handley. In 2014 Vanessa and her husband founded Chapman Industry Services, a culinary consulting and design firm. The catering division operates under the DBA Main Street Social, PC. Vanessa started

doing high end catering in the Park City area for exclusive clients as well as charity work for organizations such as Friends of Animals and Wasatch High School. Working as a chef has allowed Vanessa to combine her passions, mentoring others and cooking.

Advisors

Currently we do not have an official team of advisors. We are relying on the local community of chefs and restaurant owners for support and advice. As we become established as a profitable business we will seek to assemble an informed and experienced board of directors.

Main Street Social, Heber

SNACKS

(Served All Day)

Smoked Trout Dip \$6

Creme Fraiche | Dill | Lavash

Patty Melt \$8

Bison | Grilled Onions | Smoked Bacon

Pork Scratchins' \$6

Char Sui | Lime | Cilantro Aioli

Roasted Corn Caps \$5

Togarashi | Ricotta Salata | Romesco

Triple Cooked Chips \$5

BLACKBOARD SPECIALS

(Available 5pm - 9pm)

Starters

Summer Corn Soup with Blue Crab - \$8

White Bean Hummus with Crispy Garbanzos, Pickles & House Naan - \$5

Mandarin & Chicken Liver Pate - \$6

Entrees

Free Form Ravioli & Rabbit Cacciatore - \$22

Seared Mackerel with Confit Potatoes & Summer Escabeche - \$18

Wild Mushroom & Soft Poached Duck Egg Polenta - \$15

Chop Special \$26

Half Chicken OR Pork Tenderloin

Served Family Style for up to 4 people with chef's selection of sides

SALADS

Warm Carrot Salad \$9

Sous Vide Carrots, Sprouted Quinoa Tabbouleh Salad, Housemade Yogurt, Carrot Pistou,

Toasted Petitas, Cardamon & Honey Citrus Vinaigrette

Kamut Grain Bowl (Vegan) \$9

Roasted & Marinated Beets, Kamut Salad with Shallot, Cucumber and Fresh Herbs, Oranges,

Dried Cherries, Fennel, Apple Cider & Agave Vinaigrette

Winter Greens Salad \$6

Leaves with Vinaigrette

Main Street Social, Heber

SOUPS

Soup of the Day \$6

SANDWICHES

(Available 11am - 4pm)

Coffee Rubbed Brisket \$12

Roasted Garlic and Rosemary Marinated Tomatoes, Black Radish/Horseradish/Ginger Aioli,
Arugula & Caramelized Shallots

Smoked Turkey Breast \$12

Brined & Smoked Roasted Turkey Breast, Carrot Slaw, Sliced Apples, Herbed Pistou & Heber
Valley Cascade Raw Cheddar

Honey Baked Ham \$12

Brown Sugar Cured & Honey Basted Baked Ham, Honey Dijon Aioli, & Heber Valley Swiss
Girl Cheese

Trout Salad Tartine \$12

Roasted & Marinated Trout, Avocado, Shaved Carrots & Cucumber Herbed Salad (Dill &
Parsley), Shoots & Sprouts, & Lemon Aioli (Vegan)

Veggie \$12

Grilled Squash, Marinated Grilled Sweet Peppers, Roasted Shallots, Avocado, Baba Ghanoush,
Sprouted Quinoa, Baby Kale & Lemon Tahini Aioli (Vegan)

SWEETS

Utah Scone \$6

Brownie \$6

Apple Turnover \$6

TAB 2

Heber City Council
Meeting date: June 2, 2016
Report by: Anthony L. Kohler

Re: Mini Market at 37 West 100 South

The petitioner, Alicia Hinojosa, is purchasing the existing store at this location and is requesting to change ownership of license for the off-premise beer license. At the time of licensure, the petitioner will need to post the required \$2,000 bond to the City. The petitioner submitted a clean background check. There are no location requirements for off-premise beer licenses for the City Code other than location within a Commercial Zone. The proposed Off-premise Beer Retailer's License is consistent with Section 5.08.060 of Heber City Code, conditional upon a clean background check being submitted.

Section 5.08.060

B. Off-premise Beer Retailer's License.

An off-premise beer retailer's license may sell beer at retail in the original containers to go. Such license shall not permit consumption upon the premises.

1. All store managers are subject to a criminal background check pursuant to the standards set forth in Section 5.08.030(B)(2).
2. Any facility requiring Off-premise Retail Licenses shall be located in the C-2, C-3, C-4, and MURCZ Zones.
3. Beer shall not be disbursed under any license within the City between the hours of one a.m. and five a.m.
4. Beer shall not be sold by any licensee to any person under the influence of intoxicating liquor, beverage or drugs.
5. No licensee shall sell, give away, dispense or deliver beer to any person under the age of twenty-one years.
6. No licensee, employee or other person shall sell or dispense beer within the City unless they are twenty-one years of age or older unless the licensee's sales are restricted to the selling of beer for off-premises use in its original container in which case the licensee, employee, or other person selling the beer need only be 18 years of age, except any such 18, 19, or 20 year old must be supervised by a person 21 years of age or older who is on the premises.
7. All licensees shall be strictly responsible for the compliance with all rules and regulations governing the sale of beer as adopted by the City Council.
8. The beer license of any licensee charged with the violation of this Chapter may be suspended by order of the Mayor, pending disposition of the charges.
9. Tap beer shall not be sold by off-premise beer retailers.
10. Beginning July 1, 1987, no person shall be granted a license to operate or maintain a trade, profession or calling, the transaction or carrying on of which requires a license within the City, if such person operates an establishment which, as part of its business, serves alcoholic beverages, as defined in Section 3A-1-5(l), Utah Code Annotated, to the public for consumption on the premises, unless that person shall show by certificate(s) granted by the Utah Department of Alcoholic Beverage Control, or by adequate proof of the existence of such certificate(s), that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premises has completed the Alcohol Training and Education Seminar, as required in Section 32A17-3(1), Utah Code Annotated.
11. Every new employee, hired after the licensee has been licensed in compliance with subsection A of this Section, who is required to complete this seminar shall complete the seminar within six months of commencing employment.
12. Violation of this Section shall result in revocation of the license granted under this Chapter, unless compliance with this Section is completed within two months of the time that licensee first became aware that such violation occurred.



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

**APPLICATION for LOCAL CONSENT:
BEER, WINE AND ALCOHOL ESTABLISHMENTS**

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

A. **Business Name** Super Carnecinia Mini Market
Proposed local business address: 37 West 100 South Heber

B. **Ownership Type:** Corporation Partnership Proprietorship **LLC**
If Corporation list Corp. name _____
(Attach a copy of Certificate of Incorporation)

C. **Information on:** President General Partner **Sole Proprietor**
Name Alicia Hinogasa Home Phone 385-207-6111
Home Address 73 E 500 S Provo 84606
Mailing Address _____
(Street Number) (City) (State) (Zip)

D. **Information on:** Local Manager **Partner** Representative Responsible for Business
Name Francisco Toribio Home Phone _____
Home Address 73 East 500 South Provo UT 84606
Mailing Address _____
(Street Number) (City) (State) (Zip)
Date of Birth 1/16/84 Place of Birth _____

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

E. **Give a brief description of the proposed establishment and alcohol license requested, and check the appropriate box or boxes.**
Super Market with Beer Sales

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

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

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

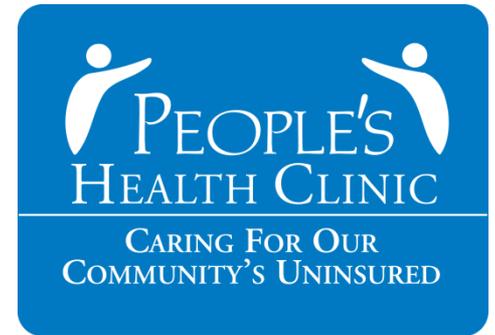
H. Verification of Accuracy - Acknowledgment of Responsibility

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

[Signature]
Authorized Business Owner

5/24
Date

TAB 3



People's Health Clinic

2016 Heber City

Building a healthier community, one patient at a time!

Making an Impact Since 2000

2,500

Clinic Days

30,000

Clinic Hours

78,052

Patient Visits

1,854

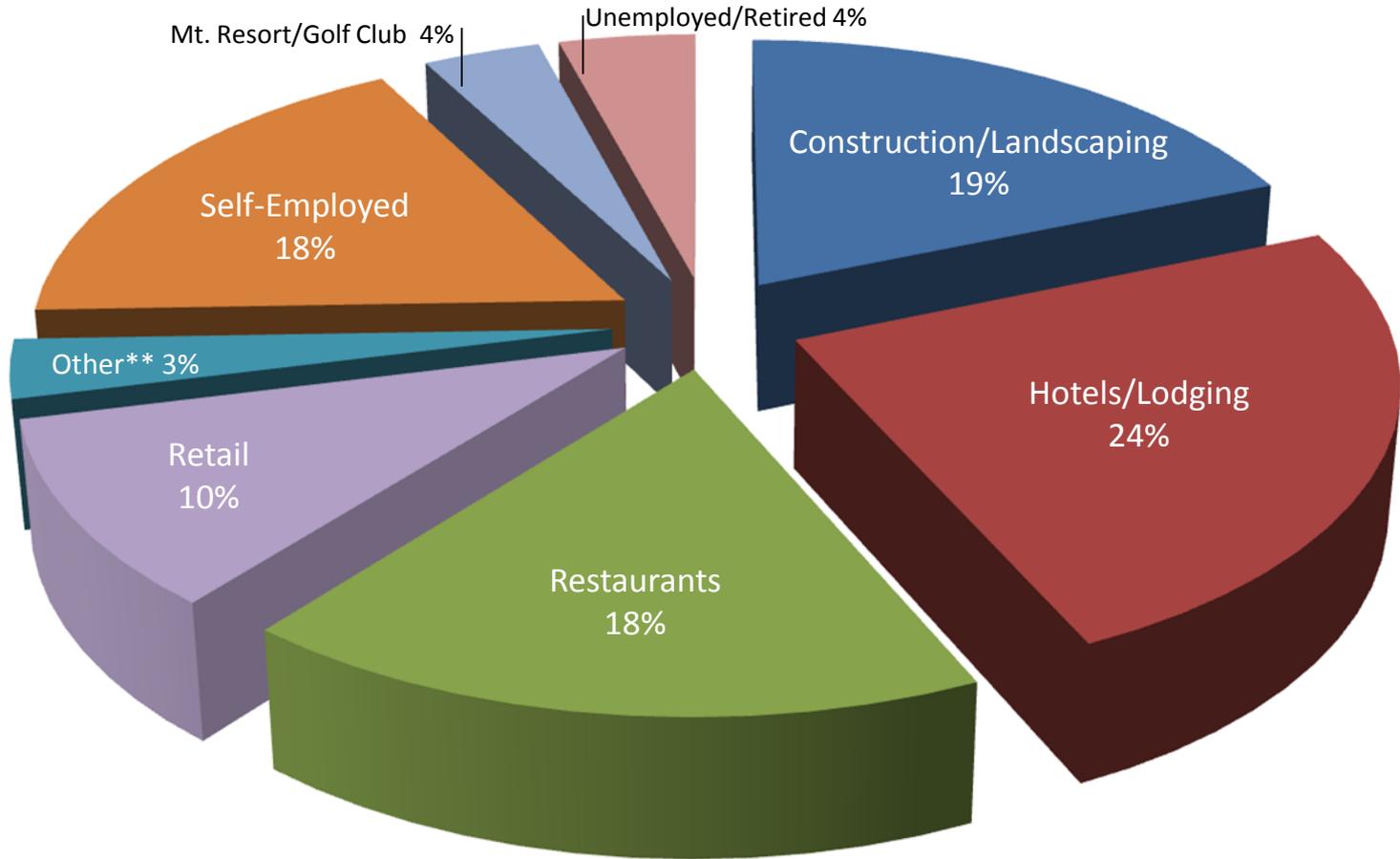
Healthy Babies

57,934

Volunteer Hours

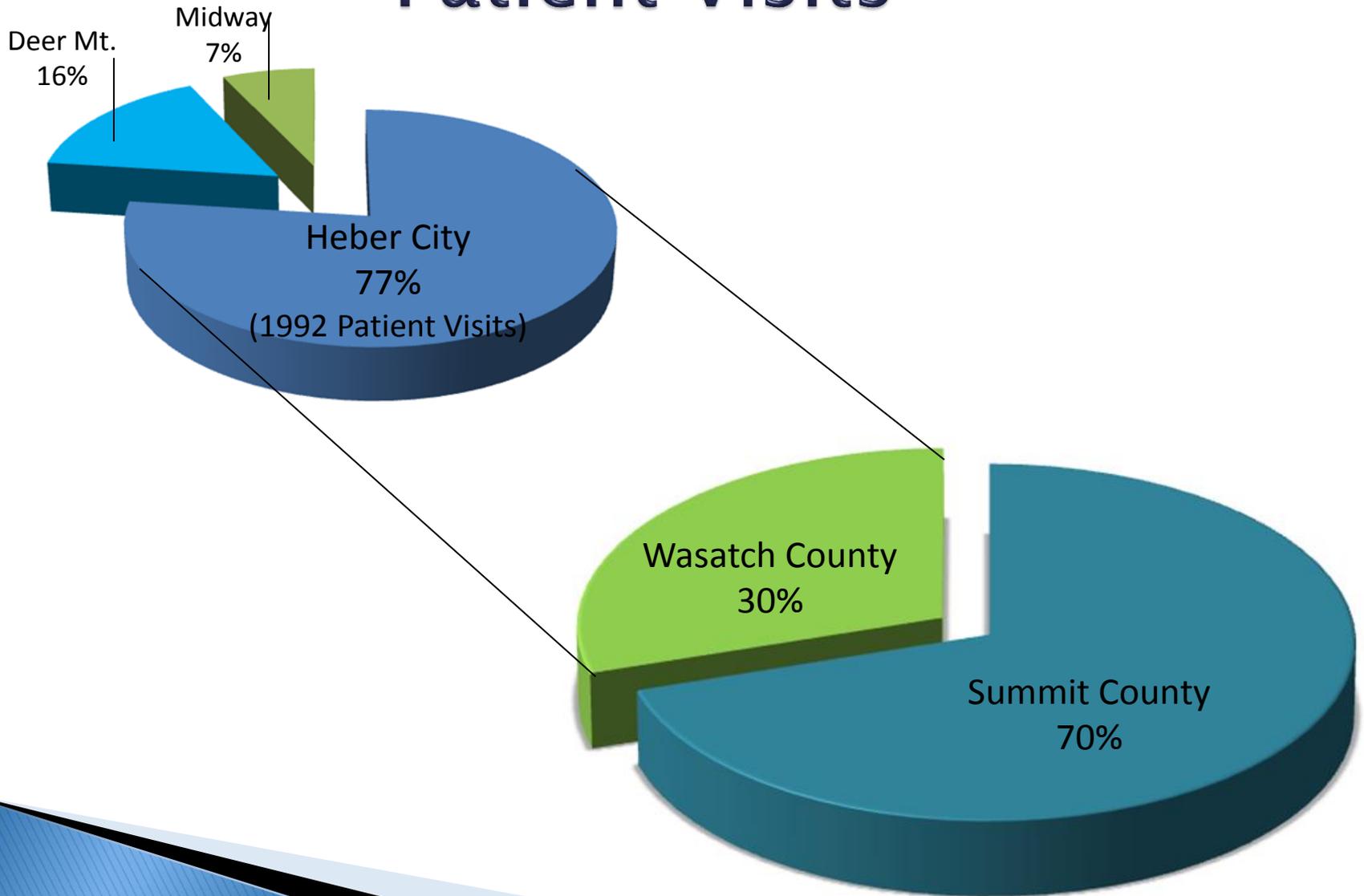


PEOPLE'S HEALTH CLINIC 2015 TOTAL PATIENT VISITS BY INDUSTRY



**Includes Community Organizations, City and County Workers

Heber City/Wasatch County Patient Visits



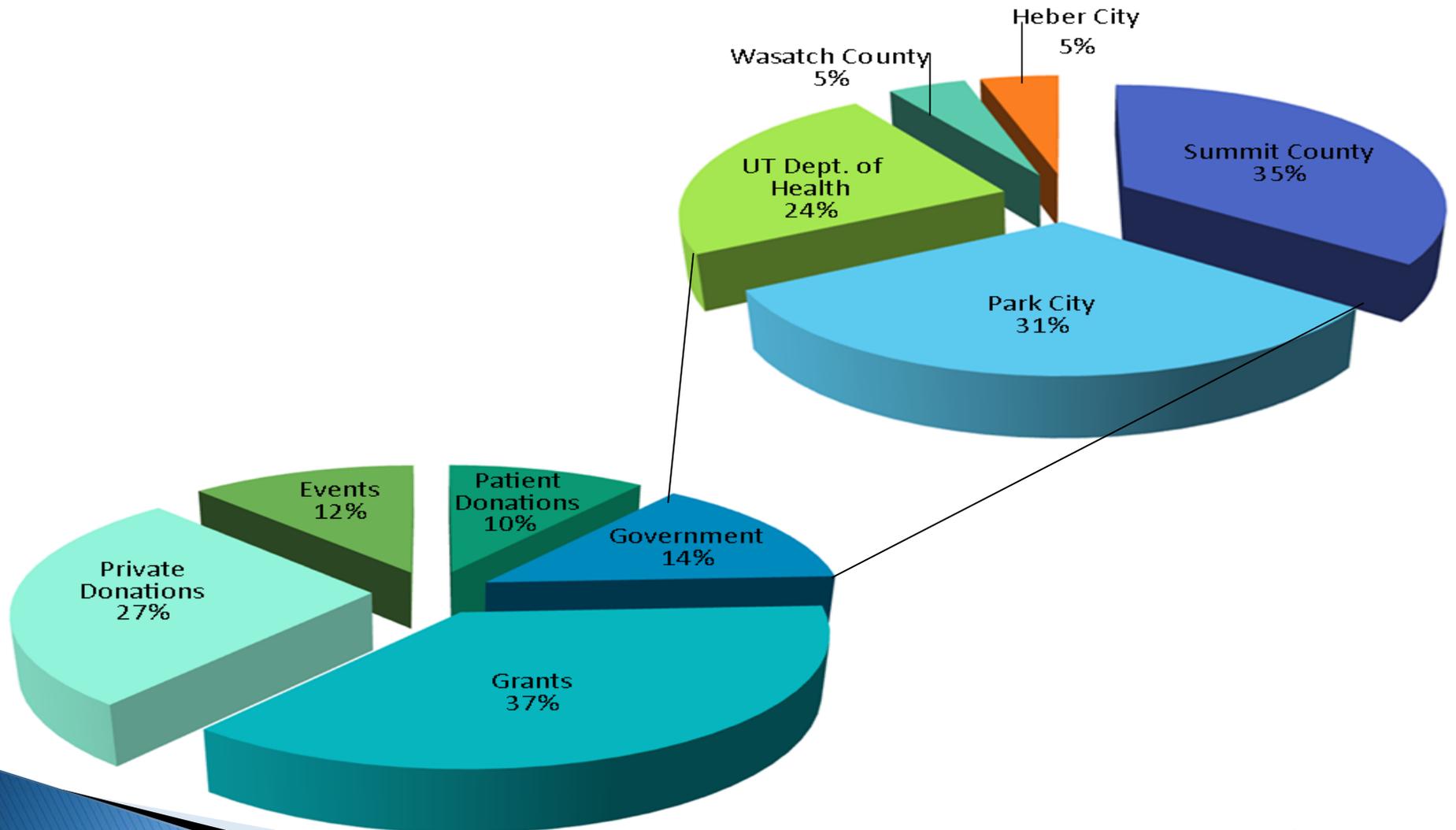
Did You Know...

- ▶ 96% of our patients are employed
- ▶ Average cost per patient visit – \$66
 - A more cost-effective means of treating non emergencies
 - 85% of our patients contribute to their care
- ▶ 1 out of 5 Wasatch County Residents is uninsured.*
- ▶ 52.7% of Heber City patients earn less than 100% of the Federal Poverty Level
 - For a family of 4, that equals an annual income of \$24,250**
 - Wasatch County median family income in 2015 was \$65,207*

**2015 Community Action Partnership of Utah Annual Report on Poverty
(Uninsured 18-64 –18.5%, uninsured under 18 12.1%)*

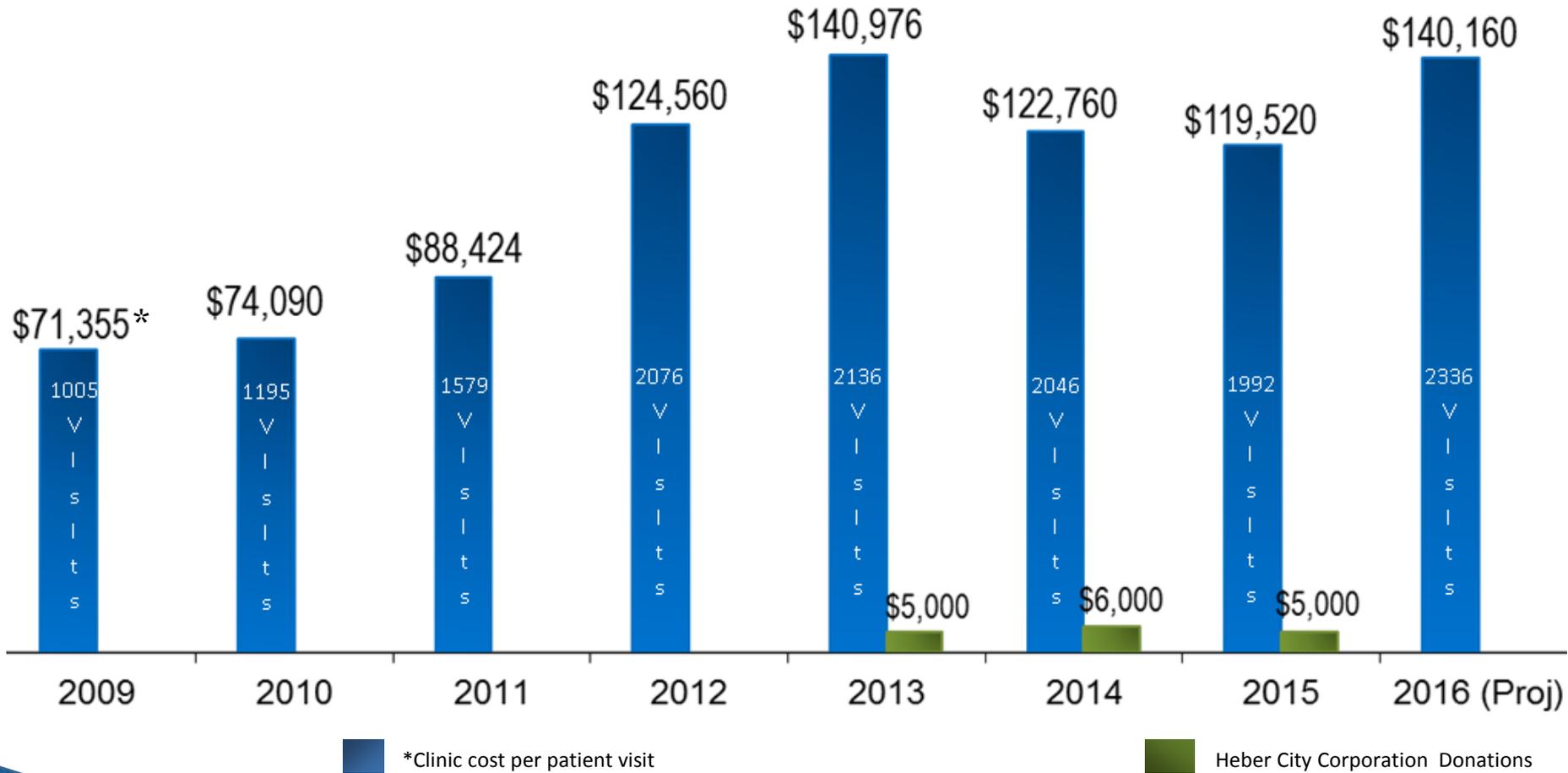
***US Dept. of Health & Human Services*

2015 Sources of Income



Operating Budget
\$911,383

History of Heber City Patient Clinic Costs and Heber City Donations



Average cost per patient is \$66 and is determined by dividing total patient visits into total dollars expended by the clinic.

Expanding Clinic Service Hours

Now Providing Health Care
5-Days a Week!



Monday
8AM-1PM
Same Day Appointments

Tuesday
9AM-7PM

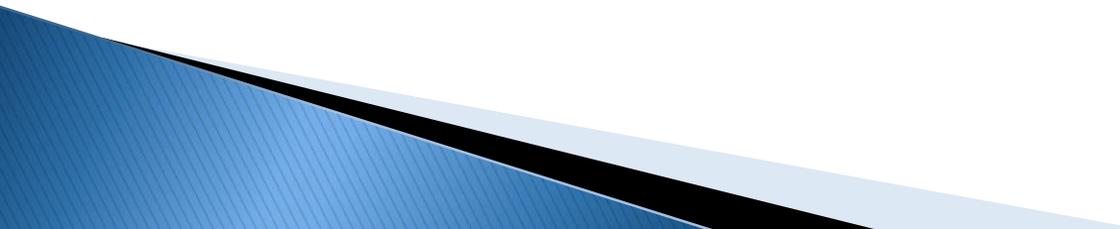
Wednesday
Pre-Natal Care
8AM-5PM

Thursday
8AM-5PM

Friday
8AM-1PM
Same Day Appointments

All Visits by Appointment Only – 435.333.1850

Heber Clinic on the Horizon?

- ▶ Clinic projections indicate that patient visits from Heber City will continue to increase
 - ▶ Interest expressed by local medical professionals to establish a People's Health satellite Clinic in Heber City.
 - ▶ Heber City presence will provide increased access to quality healthcare for Heber City residents.
 - ▶ Expansion requires expanded Partnerships with Heber City Corporation, Wasatch County Government and New Partnerships with Community Businesses and Community Members.
- 

Heber City & Wasatch County Partners...



Dr. Jill B. Faatz, MD
Heber Valley Clinic

"I have an obligation to serve people. The People's Health Clinic offers vital service to people of Heber."



Dr. Scott Phillips, DC
Lifestyle Chiropractic & Wellness Center



Dr. Tory Goode, OD
Mountain View Family Eyecare



Betty Wade, RD CD CDE
Heber Valley Clinic



Dr. Christopher Cook, DO
Heber Valley Clinic

"Like most Doctors I got into medicine to help people. Having this opportunity at the Clinic fills that need. I love volunteering at People's Health Clinic, it's one of the highlights of my week."



Dr. E.J. Raven, DC
Freedom Chiropractic

"The People's Health Clinic provides a critical service to our community. If we do not support the solution then we are supporting the problem."



Dr. Jeremy Clark, DO
Intermountain Healthcare



Krista Clark, PT
Wellspring Physical Therapy



Dr. Reed Lobrot, DDS
Back of the Wasatch Family Dentistry



Dr. Jeffery S. Ellis, DDS, DMD
Heber Children's Dentistry

We Provide...

Primary Care	Dental 	Chronic Illness Care	Prenatal 
Health Education	Women's Health	Pediatrics 	Specialties
Vision 	Community Resource Referrals	Health Care 5-days a Week	Healthcare Resource Referrals 

TAB 4

FIVE YEAR GENERALIZED ENGINEERING AGREEMENT

FOR

HEBER CITY MUNICIPAL AIRPORT

Between Heber City, Utah
&
Graham, Dietz and Associates, Inc.,
DBA
GDA Engineers

DRAFT

APRIL 2016

GDA
ENGINEERS

ENGINEERING • SURVEYING • PLANNING

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between Insert Owner-Heber City, Utah (“Owner”) and Graham, Dietz and Associates dba GDA Engineers (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: Insert brief description or insert project list from RFQ. Airport engineering services including updates to the airport’s GIS information, imagery, survey, safety critical items, environmental studies (environmental assessments, categorical exclusions) related to eligible FAA/State projects, assistance with aviation land use planning, pavement preservation, land acquisition, design and inspection services for safety area compliance, and other aviation related incidental engineering services as required by the Sponsor, including meetings, presentations, or other public relations. (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer’s services under this Agreement are generally identified as follows: N/A – Individual projects added by Amendment.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, ~~as its sole remedy,~~ including but not limited to, to the recovery of direct damages, if any, resulting from such failure and any other remedy provided by the law or this Agreement.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* In the event the owner is not at fault, no penalties shall accrue to Owner for failure to pay. If Owner fails to make any payment due Engineer for services and expenses within 60 ~~30~~ days after receipt of Engineer's invoice, ~~then;~~ then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by ~~law~~ judicial rate of interest, if less) from said ~~thirtieth~~ sixtieth day; and
 2. If after the provisions of B and B1 have expired or triggered, then Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Part 1. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from ~~any use, reuse, or~~ modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose beyond the original intent, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. by either party upon 30 days written notice in the event of **substantial failure** by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

3) Engineer shall have no liability to Owner on account of such termination.

- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

|

D. *Payments Upon Termination:*

1. Absent intentional acts or gross negligence constituting a breach on the part of the Engineer, in the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state ~~in which the Project is located~~ of Utah.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. ~~Owner~~ Engineer agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.

- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. ***Indemnification by Engineer:*** To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. ***Indemnification by Owner:*** Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability,"** [as specifically approved by Owner.](#)

- C. *Environmental Indemnification*: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation*: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence*: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver*: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of three years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

F. *Attorney's Fees*: In accordance with Exhibit H, in the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside council), either with or without litigation, on appeal or otherwise, the losing non-prevailing party to the controversy shall pay to the successful prevailing party reasonable attorney's fees incurred by such prevailing party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

E.G. *Failure to Perform*: In accordance with Exhibit H, "Failure to Perform" as used in this Agreement, shall mean, in addition to those acts specified previously, the nonperformance in a timely manner by a party to this Agreement of any material obligation, in whole or in part, required of such party by the terms of this Agreement or required by local, state or federal law, ordinance or statute in the effect on the date of this Agreement, or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement, including but not limited to specific performance.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b)

the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
- 16.17. *Day*—The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 17.18. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
- 18.19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19.20. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

- 20-21. *Engineer*—The individual or entity named as such in this Agreement.
- 21-22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
- 22-23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 23-24. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
- 24-25. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
- 25-26. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
- 26-27. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
- 27-28. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
- 28-29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 29-30. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
- 30-31. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 31-32. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 32-33. *Sponsor*—The term Sponsor is interchangeable with the term Owner as defined herein.
- 33-34. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

34-35. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

35-36. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

36-37. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

37-38. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

38-39. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

Day:

0. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 10 – ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

10.018.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services. – not used.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. – not used.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
– not used.
- D.
- E. ~~Exhibit E, Notice of Acceptability of Work. – not used (Note: never used)~~
- E.
- F. Exhibit F, Construction Cost Limit. – not used (Note: never used)
- G. Exhibit G, Insurance.

- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. – not used.
- J. Exhibit J, Special Provisions.

[NOTE TO USER: If an exhibit is not to be included in the specific agreement, indicate "not used" after that exhibit in the list above.]

J. _____

10.028.02

otal Agreement

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Exhibits listed in Paragraph 8.01 may be added or amended as individual projects are approved and as agreed upon by both parties.

10.038.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

10.048.04

ngineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of **any thing anything** of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: []

By: []

Print name: []

Title: []

Date Signed: []

Address for Owner's receipt of notices:

[]

Designated Representative (Paragraph 8.03.A):

[]

Title: []

Phone Number: []

E-Mail Address: []

Engineer: Graham, Dietz and Associates dba
GDA Engineers

By:

Print name: ~~Dustin Spomer~~ Jeremy McAlister, PE, PE

Title: ~~Heber City CEO~~ Office Manager

Date Signed:

Engineer License or Firm's Certificate No. (if required):

~~9017917-2202XXXXXX~~

State of: ~~XXXXXX~~ Utah

Address for Engineer's receipt of notices:

2211 W. 3000 S., Suite B502-33rd Street
Heber City, UT 84032 Cody, WY 82414

Designated Representative (Paragraph 8.03.A):

~~Project Manager or Department Manager Name~~ Jeremy McAlister, PE

Title: ~~Project Manager or Department Manager~~ Heber City Office Manager

Phone Number: ~~307-587-3411 or~~ 435-315-3168

E-Mail Address: ~~XXXXXX~~ jmcAlister@gdaengineers.com

FIVE YEAR GENERALIZED PLANNING AGREEMENT

FOR

HEBER CITY MUNICIPAL AIRPORT

Between Heber City, Utah
&
Graham, Dietz and Associates, Inc.,
DBA
GDA Engineers

DRAFT

APRIL 2016

GDA
ENGINEERS

ENGINEERING • SURVEYING • PLANNING

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between Insert Owner Heber City, Utah (“Owner”) and Graham, Dietz and Associates dba GDA Engineers (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: Insert brief description or insert project list from RFQ-Airport planning services including airport master plan update and/or airport layout plan updates, updates to the airport’s AGIS information, environmental studies relating to eligible FAA/State projects, assistance with aviation land use planning, land acquisition, safety area compliance, and other aviation related incidental planning services as required by the Sponsor, including meetings, presentations, or other public relations (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer’s services under this Agreement are generally identified as follows: N/A – Individual projects added by Amendment.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- ~~E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, including but not limited to, the recovery of direct damages, if any, resulting from such failure and any other remedy provided by the law or this Agreement.~~
- ~~E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.~~

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- ~~B. *Failure to Pay:* In the event the owner is not at fault, no penalties shall accrue to Owner for failure to pay. If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice, then:~~
 - ~~1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law judicial rate of interest, if less) from said sixtieth day; and~~
 - ~~2. If after the provisions of B and B1 have expired or triggered, then Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full~~

all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

~~B.—Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:~~

~~0.—amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and~~

~~0.—Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.~~

E.C. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

F.D. Sales or Use Taxes: If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used

by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Part 1. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer,

or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

~~C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.~~

D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose beyond the original intent, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

~~— If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.~~

6.056.04 Electronic Transmittals

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.066.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.076.06 Suspension and Termination

- A. *Suspension:*
 - 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
 - 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

- B. *Termination*: The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. ~~by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.~~
 - a. ~~by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.~~
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination*: The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. Absent intentional acts or gross negligence constituting a breach on the part of the Engineer, in the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
- ~~1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.~~
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.086.07 Controlling Law

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located of Utah.
- ~~This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.~~

6.106.08 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner Engineer Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6-116.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6-126.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6-136.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work

itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability,"** as specifically approved by Owner.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.146.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of three years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.156.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid

and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

F. *Attorney's Fees*: In accordance with Exhibit H, in the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing non-prevailing party to the controversy shall pay to the successful prevailing party reasonable attorney's fees incurred by such prevailing party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

E-G. *Failure to Perform*: In accordance with Exhibit H, "Failure to Perform" as used in this Agreement, shall mean, in addition to those acts specified previously, the nonperformance in a timely manner by a party to this Agreement of any material obligation, in whole or in part, required of such party by the terms of this Agreement or required by local, state or federal law, ordinance or statute in the effect on the date of this Agreement, or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement, including but not limited to specific performance.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
- 16.17. *Day*—The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

- 17-18. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
- 18-19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19-20. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
- 20-21. *Engineer*—The individual or entity named as such in this Agreement.
- 21-22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
- 22-23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 23-24. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
- 24-25. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
- 25-26. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
- 26-27. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
- 27-28. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
- 28-29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 29-30. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30-31. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31-32. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32-33. *Sponsor* – The term Sponsor is interchangeable with the term Owner as defined herein.

33-34. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

34-35. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

35-36. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

36-37. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

37-38. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

38-39. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

Day:

0. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 10—ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

10.018.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services. – not used.
- B. Exhibit B, Owner’s Responsibilities.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. – not used.
 - D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
– not used.
 - D.
 - E. Exhibit E, Notice of Acceptability of Work. – not used ~~(Note: never used)~~
 - E.
 - F. Exhibit F, Construction Cost Limit. – not used ~~(Note: never used)~~
 - G. Exhibit G, Insurance.
 - H. Exhibit H, Dispute Resolution.
 - I. Exhibit I, Limitations of Liability. – not used.
 - J. Exhibit J, Special Provisions.
- [NOTE TO USER: If an exhibit is not to be included in the specific agreement, indicate "not used" after that exhibit in the list above.]
- J.

10.028.02

T

otal Agreement

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Exhibits listed in Paragraph 8.01 may be added or amended as individual projects are approved and as agreed upon by both parties.

10.038.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

10.048.04

E

ngineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of ~~any thing~~anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: []

By: []

Print name: []

Title: []

Date Signed: []

Engineer: Graham, Dietz and Associates dba
GDA Engineers

By:

Print name: ~~Dustin Spomer~~ Rick Patton, PE

Title: ~~CEO~~ Planning Department Manager

Date Signed:

Engineer License or Firm's Certificate No. (if required):

~~N/A~~ XXXXXX

State of: ~~XXXXXX~~

Address for Owner's receipt of notices:

[]

Address for Engineer's receipt of notices:

502 33rd Street
Cody, WY 82414

Designated Representative (Paragraph 8.03.A):

[]

Title: []

Phone Number: []

E-Mail Address: []

Designated Representative (Paragraph 8.03.A):

~~Project Manager or Department Manager Name~~ Jeremy
McAlister, PE

Title: ~~Project Manager or Department Manager~~ Heber City
Office Manager

Phone Number: 307-587-3411 or 435-315-3168

E-Mail Address: ~~XXXXXX~~ jmcAlister@gdaengineers.com

TAB 5

1 Heber City Planning Commission
2 Report by: Anthony L. Kohler
3 Meeting date: May 12, 2016
4

5 **Re: Public Hearing for setback and parking amendment to the C-2 & C-4 Design Criteria**
6

7 May 12, 2016 has been set as a public hearing to consider an amendment to the C-2 & C-
8 4 Design Criteria. The design criteria requires buildings to be close to the street with parking in
9 the rear or side of the buildings. Upon being approached by the Specialty Grocery Store, the
10 Planning Commission asked for an amendment to be drafted that would allow a building to be
11 setback with parking in the front if it is located between similarly developed sites.
12

13 **Setback and Parking Location Exception**
14

15 Any main building which exceeds 12,000 square feet, and which is located between two existing
16 buildings which are (a) both located on the same side of the street, (b) both located within 300
17 feet of that main building, (c) both situated in excess of the maximum 40 foot street setback, and
18 (d) situated with parking in front of the main building; may be permitted a setback and parking
19 location exceptions by the Planning Commission as follows:
20

- 21 1. The maximum street setback of such main building may be increased to 100 feet from
22 the street property line; and
- 23 2. Parking to include up to one driveway with an aisle, not to exceed _____ feet in width,
24 for parking on each side of the driveway. All said described parking locations may be
25 situated in front of the building.
26



27

ORDINANCE NO. 2016-11

AN ORDINANCE ADOPTING SECTION 113 OF THE C-2 AND C-4 DESIGN CRITERIA.

BE IT ORDAINED by the City Council of Heber City, Utah, that Section 113 of the C-2 and C-4 Design Criteria, is **adopted** to read as follows:

SECTION 113-SETBACK AND PARKING LOCATION EXCEPTION

Any main building which exceeds 12,000 square feet, and which is located between two existing buildings which are (a) both located on the same side of the street, (b) both located within 300 feet of that main building, (c) both situated in excess of the maximum 40 foot street setback, and (d) situated with parking in front of the main building; may be permitted a setback and parking location exceptions by the Planning Commission as follows:

1. The maximum street setback of such main building may be increased to 100 feet from the street property line; and
2. Parking to include up to one driveway with an aisle of parking on each side of the driveway. All said described parking locations may be situated in front of the building.

This Ordinance shall take effect and be in force from and after (a) its adoption, (b) a copy has been deposited in the office of the City Recorder and (c) a short summary of it has been published in the Wasatch Wave, but not prior to the _____ day of _____, 2016.

ADOPTED and PASSED by the City Council of Heber City, Utah this _____ day of _____, 2016, by the following vote:

	AYE	NAY
Council Member Jeffery M. Bradshaw	_____	_____
Council Member Heidi Franco	_____	_____

Council Member Kelleen L. Potter _____

Council Member Jeffrey Smith _____

Council Member Ronald R. Crittenden _____

APPROVED:

Mayor Alan McDonald

ATTEST:

_____ Date: _____
RECORDER

Date of First Recording: _____

TAB 6

HEBER CITY CORPORATION

ENGINEERING STAFF REPORT

MEETING TYPE:	Regular Council Meeting	MEETING DATE:	June 2, 2016
SUBMITTED BY:	Bart L Mumford	FILE NO:	15015
APPROVED BY:	Mark K. Anderson		
SUBJECT:	POWER INDUSTRIAL PARK - BUILDING PERMIT HARDSHIP REQUEST		

PURPOSE

To present Three Strings Holdings hardship request to allow building permits in the Power Industrial Park subdivision prior to project final acceptance.

RECOMMENDED ACTION

That the Council grants Three Strings Holdings request if they concur that it meets the requirements outlined in Section 15.08.030 of the City Code.

BACKGROUND/HIGHLIGHTS

Normally a subdivision must be 100% complete prior to the City granting final acceptance and issuing building permits. However, Section 15.08.030B of the City Code states that:

The City Council may grant an exception to requiring final completion and allow a 60-day temporary building permit to be issued on the lots within a subdivision prior to final acceptance if they make all of the following findings:

- A. The developer has experienced a hardship, not self imposed, based on unavailability of products/improvements required by City Standards;
- B. The items missing do not compromise life, health or safety;
- C. The developer provides a plan that demonstrates that all improvements can be completed within 30 days;
- D. It is deemed to be in the best interest of the City to allow temporary building permits to be issued;
- E. Developer/Builder shall retain title to the lots until building completion.

The Power Industrial Park development is nearly finished with all subdivision improvements. They anticipate having them completed within the next 30 days. The main outstanding item at this time is the gas installation which has been postponed several weeks by Questar. Additional items include minor cleanup and utility and sign adjustments. Three Strings would like to begin building their buildings ahead of having the gas complete, as outlined in their attached letter. Where these are the only outstanding items, Staff

would recommend the City Council consider granting this hardship request and allow temporary building permits to begin to be issued.

FISCAL IMPACT

None

LEGAL IMPACT

None

15015SR IndPk Power Hardship 160602.doc

May 25, 2016

Heber City
75 North Main
Heber City, UT 84032

RE: Hardship letter for Temporary Building Permit

Three Strings Holdings, LLC ("Three Strings") hereby submits this letter of hardship requesting that Heber City grant an exception as outlined in §15.08.030 of the Heber City Code and sets forth the following facts to support the granting of the temporary building permit.

Three Strings is currently suffering a hardship as a result of the delay caused by not all public improvements being completed. The delay has not been a result of any actions by Three Strings but rather is a result of Questar's failure to install all gas lines as previously agreed. Questar has begun work and will complete the matter within 30 days.

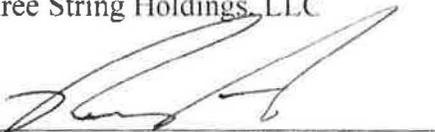
The missing improvements, including the gas lines and all punch list items do not compromise any life, health, or safety issues for the short time that the temporary building permit will be issued.

Three Strings as the developer of the property has in place a plan that will allow all improvements to be completed within the next 30 days and will ensure that such occurs. This will also include all remaining punch list items.

The issuance of the temporary building permit will benefit both Three Strings, as well as Heber City in allowing this project to move forward.

Three Strings will hold title to all lots until the subdivision is approved and thereby ensure that the public improvements listed above will be completed.

Three String Holdings, LLC

A handwritten signature in black ink, appearing to read 'Riley Probst', is written over a horizontal line.

Riley Probst
Managing Member

Tab 7

V. RENTALS, FEES AND CHARGES.

Subject to re-negotiation and change of rental rates as hereinafter provided, the Lessee agrees to pay the City for the use of the premises, facilities, rights, services and privileges granted herein, the following rental, payable to Heber City.

A. As consideration for the right to convert the prior hangar lease agreement from reversionary to non-reversionary, a \$2,000 annual payment will be paid for 30 years as a lease conversion fee during the term of this lease and any new leases that may be entered into with the final payment being due in the year 2046. Additionally, annual rental for the above-described parcel is \$.337 per square foot for the entire lease footprint.

<u>Parcel</u>	<u>Area</u>	<u>Rate</u>
Daniel #27	9,025 sq. feet	33.7¢ sq. foot

B. The rent of the above described land for each following year of the agreement shall be \$5,041.43, and is due and payable to Heber City Corporation, in advance, on the first day of each calendar year of the Agreement.

C. Rents provided for herein, excluding the \$2,000 annual lease conversion fee, are subject to an annual change per the Consumer Price Index (C.P.I.)

D. All payments due the City under this Lease, including rent, that are not paid on or before thirty (30) days from the due date shall incur a late fee of ten (10%) percent for each 90 days or portions thereof that the amount remains delinquent.

E. All payments due the City under this Lease shall be delivered to the Heber City Corporation, 75 North Main Street, Heber City, Utah 84032 or as otherwise directed in writing by the City.

Heber City Corporation
Lease Conversion Fee Analysis
26-May-16

Hangar #	Lease Expiration	# Years
Daniel 5	Jan-31	15
Daniel 23	Jun-40	24
Daniel 24	Mar-43	27
Daniel 25	Apr-39	23
Daniel 26	Apr-39	23
Daniel 27	Jun-43	27
Daniel 28	Aug-43	27
Daniel 29	Feb-43	27
Daniel 30	Apr-39	23
		<u>216</u>

Assumes \$2,000 payment for every year or portion thereof of remaining lease.
Average number of payments = 24

24 year Lease Conversion fee

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar

Excluding all County Property Tax Revenue

Total 30 Yr Increase from Current Owners \$ (180,270)

Assumptions

Hangar Rate	\$ 0.3350	per/sqft
Unimproved Ground Rate	\$ 0.1675	per/sqft
CPI Assumption	2%	
Discount Rate	3.5%	
Leasehold Hangar	5625	sqft
Leasehold Unimproved	3400	sqft
Estimated Initial Hangar Value	\$ 250,000	
Monthly Lease Fee	\$ 2,000	
Heber City Prop Tax Rat	0.141%	
Est Demo Cost (2015 \$':	\$ (30,000)	

Year	Reversionary			Total Revenue
	Ground Lease	Prop Taxes	Hangar Sale	
1	\$ 2,454	\$ 353		\$ 2,806
2	\$ 2,503	\$ 338		\$ 2,841
3	\$ 2,553	\$ 324		\$ 2,877
4	\$ 2,604	\$ 310		\$ 2,914
5	\$ 2,656	\$ 296		\$ 2,952
6	\$ 2,709	\$ 282		\$ 2,991
7	\$ 2,763	\$ 268		\$ 3,031
8	\$ 2,819	\$ 254		\$ 3,073
9	\$ 2,875	\$ 240		\$ 3,115
10	\$ 2,933	\$ 226		\$ 3,158
11	\$ 2,991	\$ 212		\$ 3,203
12	\$ 3,051	\$ 197		\$ 3,248
13	\$ 3,112	\$ 183		\$ 3,295
14	\$ 3,174	\$ 169		\$ 3,344
15	\$ 3,238	\$ 155		\$ 3,393
16	\$ 3,303	\$ 141		\$ 3,444
17	\$ 3,369	\$ 127		\$ 3,496
18	\$ 3,436	\$ 113		\$ 3,549
19	\$ 3,505	\$ 99		\$ 3,603
20	\$ 3,575	\$ 85		\$ 3,659
21	\$ 3,646	\$ 71		\$ 3,717
22	\$ 3,719	\$ 56		\$ 3,776
23	\$ 3,794	\$ 42		\$ 3,836
24	\$ 3,870	\$ 28		\$ 3,898
25	\$ 4,863	\$ 14	\$ 250,000	\$ 254,877
26	\$ 4,960	\$ 353		\$ 5,313
27	\$ 5,059	\$ 335		\$ 5,394
28	\$ 5,161	\$ 317		\$ 5,478
29	\$ 5,264	\$ 300		\$ 5,563
30	\$ 5,369	\$ 282		\$ 5,651
31	\$ 5,477	\$ 264		\$ 5,741
32	\$ 5,586	\$ 247		\$ 5,833
33	\$ 5,698	\$ 229		\$ 5,927
34	\$ 5,812	\$ 212		\$ 6,023
35	\$ 5,928	\$ 194		\$ 6,122
36	\$ 6,047	\$ 176		\$ 6,223
37	\$ 6,167	\$ 159		\$ 6,326
38	\$ 6,291	\$ 141		\$ 6,432
39	\$ 6,417	\$ 123		\$ 6,540
40	\$ 6,545	\$ 106		\$ 6,651
41	\$ 6,676	\$ 88		\$ 6,764
42	\$ 6,809	\$ 71		\$ 6,880
43	\$ 6,946	\$ 53		\$ 6,998
44	\$ 7,084	\$ 35		\$ 7,120
45	\$ 7,226	\$ 18		\$ 7,244
46				\$ (141,071)
47				
48				
49				
50				
51				
Total	\$ 200,036	\$ 8,284	\$ 250,000	\$ 317,249
	NPV of Total Revenue			\$167,309

Year	Non-Reversionary			Total Revenue
	Ground Lease	Conversion Fee	Prop Taxes	
1	\$ 3,023	\$ 2,000	\$ 353	\$ 5,376
2	\$ 3,084	\$ 2,000	\$ 353	\$ 5,436
3	\$ 3,146	\$ 2,000	\$ 353	\$ 5,498
4	\$ 3,208	\$ 2,000	\$ 353	\$ 5,561
5	\$ 3,273	\$ 2,000	\$ 353	\$ 5,625
6	\$ 3,338	\$ 2,000	\$ 353	\$ 5,691
7	\$ 3,405	\$ 2,000	\$ 353	\$ 5,757
8	\$ 3,473	\$ 2,000	\$ 353	\$ 5,825
9	\$ 3,542	\$ 2,000	\$ 353	\$ 5,895
10	\$ 3,613	\$ 2,000	\$ 353	\$ 5,966
11	\$ 3,685	\$ 2,000	\$ 353	\$ 6,038
12	\$ 3,759	\$ 2,000	\$ 353	\$ 6,112
13	\$ 3,834	\$ 2,000	\$ 353	\$ 6,187
14	\$ 3,911	\$ 2,000	\$ 353	\$ 6,264
15	\$ 3,989	\$ 2,000	\$ 353	\$ 6,342
16	\$ 4,069	\$ 2,000	\$ 353	\$ 6,422
17	\$ 4,150	\$ 2,000	\$ 353	\$ 6,503
18	\$ 4,233	\$ 2,000	\$ 353	\$ 6,586
19	\$ 4,318	\$ 2,000	\$ 353	\$ 6,671
20	\$ 4,404	\$ 2,000	\$ 353	\$ 6,757
21	\$ 4,493	\$ 2,000	\$ 353	\$ 6,845
22	\$ 4,582	\$ 2,000	\$ 353	\$ 6,935
23	\$ 4,674	\$ 2,000	\$ 353	\$ 7,027
24	\$ 4,768	\$ 2,000	\$ 353	\$ 7,120
25	\$ 4,863	\$ -	\$ 353	\$ 5,215
26	\$ 4,960	\$ -	\$ 353	\$ 5,313
27	\$ 5,059	\$ -	\$ 353	\$ 5,412
28	\$ 5,161	\$ -	\$ 353	\$ 5,513
29	\$ 5,264	\$ -	\$ 353	\$ 5,616
30	\$ 5,369	\$ -	\$ 353	\$ 5,722
31	\$ 5,476	\$ -	\$ 353	\$ 5,829
32	\$ 5,586	\$ -	\$ 353	\$ 5,938
33	\$ 5,698	\$ -	\$ 353	\$ 6,050
34	\$ 5,812	\$ -	\$ 353	\$ 6,164
35	\$ 5,928	\$ -	\$ 353	\$ 6,280
36	\$ 6,046	\$ -	\$ 353	\$ 6,399
37	\$ 6,167	\$ -	\$ 353	\$ 6,520
38	\$ 6,291	\$ -	\$ 353	\$ 6,643
39	\$ 6,417	\$ -	\$ 353	\$ 6,769
40	\$ 6,545	\$ -	\$ 353	\$ 6,897
41	\$ 6,676	\$ -	\$ 353	\$ 7,028
42	\$ 6,809	\$ -	\$ 353	\$ 7,162
43	\$ 6,945	\$ -	\$ 353	\$ 7,298
44	\$ 7,084	\$ -	\$ 353	\$ 7,437
45	\$ 7,226	\$ -	\$ 353	\$ 7,579
Total	\$ 217,359	\$ 15,863	\$ 353	\$ 281,221
	Total Revenue			\$137,110

30 year. Lease conversion fee

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar

Excluding all County Property Tax Revenue

Total 30 Yr Increase from Current Owners \$ (168,270)

Assumptions

Hangar Rate	\$ 0.3350	per/sqft
Unimproved Ground Rate	\$ 0.1675	per/sqft
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50				
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8	\$ 3,473	\$ 2,000	\$ 353	\$ 5,825
9	\$ 3,542	\$ 2,000	\$ 353	\$ 5,895
10	\$ 3,613	\$ 2,000	\$ 353	\$ 5,966
11	\$ 3,685	\$ 2,000	\$ 353	\$ 6,038
12	\$ 3,759	\$ 2,000	\$ 353	\$ 6,112
13	\$ 3,834	\$ 2,000	\$ 353	\$ 6,187
14	\$ 3,911	\$ 2,000	\$ 353	\$ 6,264
15	\$ 3,989	\$ 2,000	\$ 353	\$ 6,342
16	\$ 4,069	\$ 2,000	\$ 353	\$ 6,422
17	\$ 4,150	\$ 2,000	\$ 353	\$ 6,503
18	\$ 4,233	\$ 2,000	\$ 353	\$ 6,586
19	\$ 4,318	\$ 2,000	\$ 353	\$ 6,671
20	\$ 4,404	\$ 2,000	\$ 353	\$ 6,757
21	\$ 4,493	\$ 2,000	\$ 353	\$ 6,845
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25	\$ 4,863	\$ 2,000	\$ 353	\$ 7,215
26	\$ 4,960	\$ 2,000	\$ 353	\$ 7,313
27	\$ 5,059	\$ 2,000	\$ 353	\$ 7,412
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36	\$ 6,046		\$ 353	\$ 6,399
37	\$ 6,167		\$ 353	\$ 6,520
38	\$ 6,291		\$ 353	\$ 6,643
39	\$ 6,417		\$ 353	\$ 6,769
40	\$ 6,545		\$ 353	\$ 6,897
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42	\$ 6,809		\$ 353	\$ 7,162
43	\$ 6,945		\$ 353	\$ 7,298
44	\$ 7,084		\$ 353	\$ 7,437
45	\$ 7,226		\$ 353	\$ 7,579
Total	\$ 217,359	\$ 15,863	\$ 293,221	
	Total Revenue			\$141,778

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar

Excluding all County Property Tax Revenue

Total 30 Yr Increase from Current Owners \$ 78,042

Assumptions

Hangar Rate	\$	0.32	per/sqft
Unimproved Ground Rate	\$	0.16	per/sqft
CPI Assumption		2%	
Discount Rate		3.5%	
Leasehold Hangar		5625	sqft
Leasehold Unimproved		3400	sqft
Estimated Initial Hangar Value	\$	250,000	
Monthly Lease Fee	\$	2,000	
Heber City Prop Tax Rate		0.115%	
Est Demo Cost (2015 \$'s)	\$	(30,000)	



Reversionary

Year	Ground Lease	Prop Taxes	Hangar Sale	Total Revenue
1	2,344.00	286.50		2,630.50
2	2,344.00	276.95		2,620.95
3	2,390.88	267.40		2,658.28
4	2,438.70	257.85		2,696.55
5	2,487.47	248.30		2,735.77
6	2,537.22	238.75		2,775.97
7	2,587.97	229.20		2,817.17
8	2,639.72	219.65		2,859.37
9	2,692.52	210.10		2,902.62
10	2,746.37	200.55		2,946.92
11	2,801.30	191.00		2,992.30
12	2,857.32	181.45		3,038.77
13	2,914.47	171.90		3,086.37
14	2,972.76	162.35		3,135.11
15	3,032.21	152.80		3,185.01
16	3,092.86	143.25		3,236.11
17	3,154.72	133.70		3,288.42
18	3,217.81	124.15		3,341.96
19	3,282.17	114.60		3,396.77
20	3,347.81	105.05		3,452.86
21	3,414.77	95.50		3,510.27
22	3,483.06	85.95		3,569.01
23	3,552.72	76.40		3,629.12
24	3,623.78	66.85		3,690.63
25	3,696.25	57.30		3,753.55
26	3,770.18	47.75		3,817.93
27	3,845.58	38.20		3,883.78
28	3,922.49	28.65		3,951.14
29	4,000.94	19.10		4,020.04
30	4,080.96	9.55		4,090.51
31	5,231.00		250,000.00	255,231.00
32	5,335.62			5,335.62
33	5,442.33			5,442.33
34	5,551.18			5,551.18
35	5,662.20			5,662.20
36	5,775.45			5,775.45
37	5,890.96			5,890.96
38	6,008.77			6,008.77
39	6,128.95			6,128.95
40	6,251.53			6,251.53
41	6,376.56			6,376.56
42	6,504.09			6,504.09
43	6,634.17			6,634.17
44	6,766.86			6,766.86
45	6,902.19			6,902.19
46	7,040.24			7,040.24
47	7,181.04			7,181.04
48	7,324.66			7,324.66
49	7,471.16			7,471.16
50	7,620.58			7,620.58
51-Demo Net	\$ 220,373	\$ 4,441	\$ 250,000	\$ 394,065
	NPV of Total Revenue			\$161,094

Non-Reversionary

Year	Ground Lease	Conversion Fee	Prop Taxes	Total Revenue
1	\$ 2,888	\$ 1,500	\$ 287	\$ 4,675
2	\$ 2,946	\$ 1,500	\$ 287	\$ 4,732
3	\$ 3,005	\$ 1,500	\$ 287	\$ 4,791
4	\$ 3,065	\$ 1,500	\$ 287	\$ 4,851
5	\$ 3,126	\$ 1,500	\$ 287	\$ 4,913
6	\$ 3,189	\$ 1,500	\$ 287	\$ 4,975
7	\$ 3,252	\$ 1,500	\$ 287	\$ 5,039
8	\$ 3,317	\$ 1,500	\$ 287	\$ 5,104
9	\$ 3,384	\$ 1,500	\$ 287	\$ 5,170
10	\$ 3,451	\$ 1,500	\$ 287	\$ 5,238
11	\$ 3,520	\$ 1,500	\$ 287	\$ 5,307
12	\$ 3,591	\$ 1,500	\$ 287	\$ 5,377
13	\$ 3,663	\$ 1,500	\$ 287	\$ 5,449
14	\$ 3,736	\$ 1,500	\$ 287	\$ 5,522
15	\$ 3,811	\$ 1,500	\$ 287	\$ 5,597
16	\$ 3,887	\$ 1,500	\$ 287	\$ 5,673
17	\$ 3,965	\$ 1,500	\$ 287	\$ 5,751
18	\$ 4,044	\$ 1,500	\$ 287	\$ 5,830
19	\$ 4,125	\$ 1,500	\$ 287	\$ 5,911
20	\$ 4,207	\$ 1,500	\$ 287	\$ 5,994
21	\$ 4,291	\$ 1,500	\$ 287	\$ 6,078
22	\$ 4,377	\$ 1,500	\$ 287	\$ 6,164
23	\$ 4,465	\$ 1,500	\$ 287	\$ 6,251
24	\$ 4,554	\$ 1,500	\$ 287	\$ 6,341
25	\$ 4,645	\$ 1,500	\$ 287	\$ 6,432
26	\$ 4,738	\$ 1,500	\$ 287	\$ 6,525
27	\$ 4,833	\$ 1,500	\$ 287	\$ 6,619
28	\$ 4,929	\$ 1,500	\$ 287	\$ 6,716
29	\$ 5,028	\$ 1,500	\$ 287	\$ 6,815
30	\$ 5,129	\$ 1,500	\$ 287	\$ 6,915
31	\$ 5,231		\$ 287	\$ 5,518
32	\$ 5,336		\$ 287	\$ 5,622
33	\$ 5,443		\$ 287	\$ 5,729
34	\$ 5,551		\$ 287	\$ 5,838
35	\$ 5,662		\$ 287	\$ 5,949
36	\$ 5,776		\$ 287	\$ 6,062
37	\$ 5,891		\$ 287	\$ 6,178
38	\$ 6,009		\$ 287	\$ 6,296
39	\$ 6,129		\$ 287	\$ 6,416
40	\$ 6,252		\$ 287	\$ 6,538
41	\$ 6,377		\$ 287	\$ 6,663
42	\$ 6,504		\$ 287	\$ 6,791
43	\$ 6,634		\$ 287	\$ 6,921
44	\$ 6,767		\$ 287	\$ 7,054
45	\$ 6,902		\$ 287	\$ 7,189
46	\$ 7,041		\$ 287	\$ 7,327
47	\$ 7,181		\$ 287	\$ 7,468
48	\$ 7,325		\$ 287	\$ 7,611
49	\$ 7,471		\$ 287	\$ 7,758
50	\$ 7,621		\$ 287	\$ 7,907
Net	\$ 244,265		\$ 14,325	\$ 303,590
	NPV of Total Revenue			\$134,052

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar

Excluding all County Property Tax Revenue

Total 90 Yr Increase from Current Owners \$ 71,223

Assumptions

Hangar Rate	\$	0.32	per/sqft
Unimproved Ground Rate	\$	0.16	per/sqft
CPI Assumption		2%	
Discount Rate		3.5%	
Leasehold Hangar		5625	sqft
Leasehold Unimproved		3400	sqft
Estimated Initial Hangar Value	\$	250,000	
Monthly Lease Fee	\$	2,000	
Heber City Prop Tax Rate		0.115%	
Est Demo Cost (2015 \$'s)	\$	(30,000)	

2

Reversionary

Year	Ground			Total Revenue
	Lease	Prop Taxes	Hangar Sale	
1	2,344.00	286.50		2,630.50
2	2,390.88	276.95		2,667.83
3	2,438.70	267.40		2,706.10
4	2,487.47	257.85		2,745.32
5	2,537.22	248.30		2,785.52
6	2,587.97	238.75		2,826.72
7	2,639.72	229.20		2,868.92
8	2,692.52	219.65		2,912.17
9	2,746.37	210.10		2,956.47
10	2,801.30	200.55		3,001.85
11	2,857.32	191.00		3,048.32
12	2,914.47	181.45		3,095.92
13	2,972.76	171.90		3,144.66
14	3,032.21	162.35		3,194.56
15	3,092.86	152.80		3,245.66
16	3,154.72	143.25		3,297.97
17	3,217.81	133.70		3,351.51
18	3,282.17	124.15		3,406.32
19	3,347.81	114.60		3,462.41
20	3,414.77	105.05		3,519.82
21	3,483.06	95.50		3,578.56
22	3,552.72	85.95		3,638.67
23	3,623.78	76.40		3,700.18
24	3,696.25	66.85		3,763.10
25	3,770.18	57.30		3,827.48
26	3,845.58	47.75		3,893.33
27	3,922.49	38.20		3,960.69
28	4,000.94	28.65		4,029.59
29	4,080.96	19.10		4,100.06
30	4,162.58	9.55		4,172.13
31	5,231.00	287.00	250,000.00	255,518.00
32	5,335.62	287.00		5,622.62
33	5,442.33	287.00		5,729.33
34	5,551.18	287.00		5,838.18
35	5,662.20	287.00		5,949.20
36	5,775.45	287.00		6,062.45
37	5,890.96	287.00		6,177.96
38	6,008.77	287.00		6,295.77
39	6,128.95	287.00		6,415.95
40	6,251.53	287.00		6,538.53
41	6,376.56	287.00		6,663.56
42	6,504.09	287.00		6,791.09
43	6,634.17	287.00		6,921.17
44	6,766.86	287.00		7,053.86
45	6,902.19	287.00		7,189.19
46	7,040.24	287.00		7,327.24
47	7,181.04	287.00		7,468.04
48	7,324.66	287.00		7,611.66
49	7,471.16	287.00		7,758.16
50	7,620.58	287.00		7,907.58
S1-Demo				(\$173,411.98)
Net	\$ 222,191	\$ 10,181	\$ 250,000	\$ 308,960
			NPV of Total Revenue	\$147,559

Non-Reversionary

Year	Ground		Prop Taxes	Total Revenue
	Lease	Conversion Fee		
1	\$ 2,888	\$ 1,500	\$ 287	\$ 4,675
2	\$ 2,946	\$ 1,500	\$ 287	\$ 4,732
3	\$ 3,005	\$ 1,500	\$ 287	\$ 4,791
4	\$ 3,065	\$ 1,500	\$ 287	\$ 4,851
5	\$ 3,126	\$ 1,500	\$ 287	\$ 4,913
6	\$ 3,189	\$ 1,500	\$ 287	\$ 4,975
7	\$ 3,252	\$ 1,500	\$ 287	\$ 5,039
8	\$ 3,317	\$ 1,500	\$ 287	\$ 5,104
9	\$ 3,384	\$ 1,500	\$ 287	\$ 5,170
10	\$ 3,451	\$ 1,500	\$ 287	\$ 5,238
11	\$ 3,520	\$ 1,500	\$ 287	\$ 5,307
12	\$ 3,591	\$ 1,500	\$ 287	\$ 5,377
13	\$ 3,663	\$ 1,500	\$ 287	\$ 5,449
14	\$ 3,736	\$ 1,500	\$ 287	\$ 5,522
15	\$ 3,811	\$ 1,500	\$ 287	\$ 5,597
16	\$ 3,887	\$ 1,500	\$ 287	\$ 5,673
17	\$ 3,965	\$ 1,500	\$ 287	\$ 5,751
18	\$ 4,044	\$ 1,500	\$ 287	\$ 5,830
19	\$ 4,125	\$ 1,500	\$ 287	\$ 5,911
20	\$ 4,207	\$ 1,500	\$ 287	\$ 5,994
21	\$ 4,291	\$ 1,500	\$ 287	\$ 6,078
22	\$ 4,377	\$ 1,500	\$ 287	\$ 6,164
23	\$ 4,465	\$ 1,500	\$ 287	\$ 6,251
24	\$ 4,554	\$ 1,500	\$ 287	\$ 6,341
25	\$ 4,645	\$ 1,500	\$ 287	\$ 6,432
26	\$ 4,738	\$ 1,500	\$ 287	\$ 6,525
27	\$ 4,833	\$ 1,500	\$ 287	\$ 6,619
28	\$ 4,929	\$ 1,500	\$ 287	\$ 6,716
29	\$ 5,028	\$ 1,500	\$ 287	\$ 6,815
30	\$ 5,129	\$ 1,500	\$ 287	\$ 6,915
31	\$ 5,231	\$	\$ 287	\$ 5,518
32	\$ 5,336	\$	\$ 287	\$ 5,622
33	\$ 5,443	\$	\$ 287	\$ 5,729
34	\$ 5,551	\$	\$ 287	\$ 5,838
35	\$ 5,662	\$	\$ 287	\$ 5,949
36	\$ 5,776	\$	\$ 287	\$ 6,062
37	\$ 5,891	\$	\$ 287	\$ 6,178
38	\$ 6,009	\$	\$ 287	\$ 6,296
39	\$ 6,129	\$	\$ 287	\$ 6,416
40	\$ 6,252	\$	\$ 287	\$ 6,538
41	\$ 6,377	\$	\$ 287	\$ 6,663
42	\$ 6,504	\$	\$ 287	\$ 6,791
43	\$ 6,634	\$	\$ 287	\$ 6,921
44	\$ 6,767	\$	\$ 287	\$ 7,054
45	\$ 6,902	\$	\$ 287	\$ 7,189
46	\$ 7,041	\$	\$ 287	\$ 7,327
47	\$ 7,181	\$	\$ 287	\$ 7,468
48	\$ 7,325	\$	\$ 287	\$ 7,611
49	\$ 7,471	\$	\$ 287	\$ 7,758
50	\$ 7,621	\$	\$ 287	\$ 7,907
Net	\$ 244,265		\$ 14,325	\$ 303,590
			NPV of Total Revenue	\$134,052

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar
Excluding all County Property Tax Revenue

Total 30 Yr Increase from Current Owners \$ 73,215

Assumptions

Hangar Rate	\$	0.3350	per/sqft
Unimproved Ground Rate	\$	0.1675	per/sqft
CPI Assumption		2%	
Discount Rate		3.5%	
Leasehold Hangar		5625	sqft
Leasehold Unimproved		3400	sqft
Estimated Initial Hangar Value	\$	250,000	
Monthly Lease Fee	\$	2,000	
Heber City Prop Tax Rate		0.141%	
Est Demo Cost (2015 \$'s)	\$	(30,000)	

3

Reversionary

Year	Ground Lease		Prop Taxes	Hangar Sale	Total Revenue
	Lease	Fee			
1	\$ 2,454	\$ 353			\$ 2,806
2	\$ 2,503	\$ 341			\$ 2,844
3	\$ 2,553	\$ 329			\$ 2,882
4	\$ 2,604	\$ 317			\$ 2,921
5	\$ 2,656	\$ 306			\$ 2,962
6	\$ 2,709	\$ 294			\$ 3,003
7	\$ 2,763	\$ 282			\$ 3,045
8	\$ 2,819	\$ 270			\$ 3,089
9	\$ 2,875	\$ 259			\$ 3,134
10	\$ 2,933	\$ 247			\$ 3,179
11	\$ 2,991	\$ 235			\$ 3,226
12	\$ 3,051	\$ 223			\$ 3,274
13	\$ 3,112	\$ 212			\$ 3,324
14	\$ 3,174	\$ 200			\$ 3,374
15	\$ 3,238	\$ 188			\$ 3,426
16	\$ 3,303	\$ 176			\$ 3,479
17	\$ 3,369	\$ 165			\$ 3,533
18	\$ 3,436	\$ 153			\$ 3,589
19	\$ 3,505	\$ 141			\$ 3,646
20	\$ 3,575	\$ 129			\$ 3,704
21	\$ 3,646	\$ 118			\$ 3,764
22	\$ 3,719	\$ 106			\$ 3,825
23	\$ 3,794	\$ 94			\$ 3,888
24	\$ 3,870	\$ 82			\$ 3,952
25	\$ 3,947	\$ 71			\$ 4,017
26	\$ 4,026	\$ 59			\$ 4,085
27	\$ 4,106	\$ 47			\$ 4,153
28	\$ 4,188	\$ 35			\$ 4,224
29	\$ 4,272	\$ 24			\$ 4,296
30	\$ 4,358	\$ 12			\$ 4,369
31	\$ 5,476	\$ 353	\$ 250,000		\$ 255,829
32	\$ 5,586	\$ 353			\$ 5,939
33	\$ 5,697	\$ 353			\$ 6,050
34	\$ 5,811	\$ 353			\$ 6,164
35	\$ 5,927	\$ 353			\$ 6,280
36	\$ 6,046	\$ 353			\$ 6,399
37	\$ 6,167	\$ 353			\$ 6,520
38	\$ 6,290	\$ 353			\$ 6,643
39	\$ 6,416	\$ 353			\$ 6,769
40	\$ 6,544	\$ 353			\$ 6,897
41	\$ 6,675	\$ 353			\$ 7,028
42	\$ 6,809	\$ 353			\$ 7,162
43	\$ 6,945	\$ 353			\$ 7,298
44	\$ 7,084	\$ 353			\$ 7,437
45	\$ 7,225	\$ 353			\$ 7,578
46	\$ 7,370	\$ 353			\$ 7,723
47	\$ 7,517	\$ 353			\$ 7,870
48	\$ 7,668	\$ 353			\$ 8,021
49	\$ 7,821	\$ 353			\$ 8,174
50	\$ 7,977	\$ 353			\$ 8,330
51					\$ (173,412)
Total	\$ 232,601	\$ 12,524	\$ 250,000		\$ 321,713
				NPV of Total Revenue	\$152,694

Non-Reversionary

Year	Ground Lease		Conversion Fee	Prop Taxes	Total Revenue
	Lease	Fee			
1	\$ 3,023	\$ 1,500	\$ 353		\$ 4,876
2	\$ 3,084	\$ 1,500	\$ 353		\$ 4,936
3	\$ 3,146	\$ 1,500	\$ 353		\$ 4,998
4	\$ 3,208	\$ 1,500	\$ 353		\$ 5,061
5	\$ 3,273	\$ 1,500	\$ 353		\$ 5,125
6	\$ 3,338	\$ 1,500	\$ 353		\$ 5,191
7	\$ 3,405	\$ 1,500	\$ 353		\$ 5,257
8	\$ 3,473	\$ 1,500	\$ 353		\$ 5,325
9	\$ 3,542	\$ 1,500	\$ 353		\$ 5,395
10	\$ 3,613	\$ 1,500	\$ 353		\$ 5,466
11	\$ 3,685	\$ 1,500	\$ 353		\$ 5,538
12	\$ 3,759	\$ 1,500	\$ 353		\$ 5,612
13	\$ 3,834	\$ 1,500	\$ 353		\$ 5,687
14	\$ 3,911	\$ 1,500	\$ 353		\$ 5,764
15	\$ 3,989	\$ 1,500	\$ 353		\$ 5,842
16	\$ 4,069	\$ 1,500	\$ 353		\$ 5,922
17	\$ 4,150	\$ 1,500	\$ 353		\$ 6,003
18	\$ 4,233	\$ 1,500	\$ 353		\$ 6,086
19	\$ 4,318	\$ 1,500	\$ 353		\$ 6,171
20	\$ 4,404	\$ 1,500	\$ 353		\$ 6,257
21	\$ 4,493	\$ 1,500	\$ 353		\$ 6,345
22	\$ 4,582	\$ 1,500	\$ 353		\$ 6,435
23	\$ 4,674	\$ 1,500	\$ 353		\$ 6,527
24	\$ 4,768	\$ 1,500	\$ 353		\$ 6,620
25	\$ 4,863	\$ 1,500	\$ 353		\$ 6,715
26	\$ 4,960	\$ 1,500	\$ 353		\$ 6,813
27	\$ 5,059	\$ 1,500	\$ 353		\$ 6,912
28	\$ 5,161	\$ 1,500	\$ 353		\$ 7,013
29	\$ 5,264	\$ 1,500	\$ 353		\$ 7,116
30	\$ 5,369	\$ 1,500	\$ 353		\$ 7,222
31	\$ 5,476	\$ 1,500	\$ 353		\$ 7,329
32	\$ 5,586	\$ 1,500	\$ 353		\$ 7,436
33	\$ 5,698	\$ 1,500	\$ 353		\$ 7,544
34	\$ 5,812	\$ 1,500	\$ 353		\$ 7,654
35	\$ 5,927	\$ 1,500	\$ 353		\$ 7,766
36	\$ 6,046	\$ 1,500	\$ 353		\$ 7,879
37	\$ 6,167	\$ 1,500	\$ 353		\$ 7,993
38	\$ 6,291	\$ 1,500	\$ 353		\$ 8,108
39	\$ 6,417	\$ 1,500	\$ 353		\$ 8,224
40	\$ 6,545	\$ 1,500	\$ 353		\$ 8,341
41	\$ 6,676	\$ 1,500	\$ 353		\$ 8,459
42	\$ 6,809	\$ 1,500	\$ 353		\$ 8,578
43	\$ 6,945	\$ 1,500	\$ 353		\$ 8,698
44	\$ 7,084	\$ 1,500	\$ 353		\$ 8,819
45	\$ 7,225	\$ 1,500	\$ 353		\$ 8,941
46	\$ 7,370	\$ 1,500	\$ 353		\$ 9,064
47	\$ 7,518	\$ 1,500	\$ 353		\$ 9,188
48	\$ 7,668	\$ 1,500	\$ 353		\$ 9,313
49	\$ 7,822	\$ 1,500	\$ 353		\$ 9,439
50	\$ 7,978	\$ 1,500	\$ 353		\$ 9,566
Total	\$ 255,715	\$ 17,625	\$ 318,340		\$ 318,340
				NPV of Total Revenue	\$140,276

Heber City Corporation

Reversionary vs. Non-Reversionary Lease
75'x75' Hangar

Excluding all County Property Tax Revenue

Total 30 Yr Increase from Current Owners \$ (183,270)

Assumptions

Hangar Rate \$ 0.3350 per/sqft
Unimproved Ground Rate \$ 0.1675 per/sqft
CPI Assumption 2%
Discount Rate 3.5%
Leasehold Hangar 5625 sqft
Leasehold Unimproved 3400 sqft
Estimated Initial Hangar Value \$ 250,000
Monthly Lease Fee \$ 2,000
Heber City Prop Tax Rat 0.141%
Est Demo Cost (2015 \$) \$ (30,000)



Year	<u>Reversionary</u>			Total Revenue
	Ground Lease	Prop Taxes	Hangar Sale	
1	\$ 2,454	\$ 353		\$ 2,806
2	\$ 2,503	\$ 338		\$ 2,841
3	\$ 2,553	\$ 324		\$ 2,877
4	\$ 2,604	\$ 310		\$ 2,914
5	\$ 2,656	\$ 296		\$ 2,952
6	\$ 2,709	\$ 282		\$ 2,991
7	\$ 2,763	\$ 268		\$ 3,031
8	\$ 2,819	\$ 254		\$ 3,073
9	\$ 2,875	\$ 240		\$ 3,115
10	\$ 2,933	\$ 226		\$ 3,158
11	\$ 2,991	\$ 212		\$ 3,203
12	\$ 3,051	\$ 197		\$ 3,248
13	\$ 3,112	\$ 183		\$ 3,295
14	\$ 3,174	\$ 169		\$ 3,344
15	\$ 3,238	\$ 155		\$ 3,393
16	\$ 3,303	\$ 141		\$ 3,444
17	\$ 3,369	\$ 127		\$ 3,496
18	\$ 3,436	\$ 113		\$ 3,549
19	\$ 3,505	\$ 99		\$ 3,603
20	\$ 3,575	\$ 85		\$ 3,659
21	\$ 3,646	\$ 71		\$ 3,717
22	\$ 3,719	\$ 56		\$ 3,776
23	\$ 3,794	\$ 42		\$ 3,836
24	\$ 3,870	\$ 28		\$ 3,898
25	\$ 4,863	\$ 14	\$ 250,000	\$ 254,877
26	\$ 4,960	\$ 353		\$ 5,313
27	\$ 5,059	\$ 335		\$ 5,394
28	\$ 5,161	\$ 317		\$ 5,478
29	\$ 5,264	\$ 300		\$ 5,563
30	\$ 5,369	\$ 282		\$ 5,651
31	\$ 5,476	\$ 264		\$ 5,741
32	\$ 5,586	\$ 247		\$ 5,833
33	\$ 5,698	\$ 229		\$ 5,927
34	\$ 5,812	\$ 212		\$ 6,023
35	\$ 5,928	\$ 194		\$ 6,122
36	\$ 6,047	\$ 176		\$ 6,223
37	\$ 6,167	\$ 159		\$ 6,326
38	\$ 6,291	\$ 141		\$ 6,432
39	\$ 6,417	\$ 123		\$ 6,540
40	\$ 6,545	\$ 106		\$ 6,651
41	\$ 6,676	\$ 88		\$ 6,764
42	\$ 6,809	\$ 71		\$ 6,880
43	\$ 6,945	\$ 53		\$ 6,998
44	\$ 7,084	\$ 35		\$ 7,120
45	\$ 7,226	\$ 18		\$ 7,244
46				\$ (141,071)
47				
48				
49				
50				
51				
Total	\$ 200,036	\$ 8,284	\$ 250,000	\$ 317,249
			NPV of Total Revenue	\$167,309

Year	<u>Non-Reversionary</u>			Total Revenue
	Ground Lease	Conversion Fee	Prop Taxes	
1	\$ 3,023	\$ 1,500	\$ 353	\$ 4,876
2	\$ 3,084	\$ 1,500	\$ 353	\$ 4,936
3	\$ 3,146	\$ 1,500	\$ 353	\$ 4,998
4	\$ 3,208	\$ 1,500	\$ 353	\$ 5,061
5	\$ 3,273	\$ 1,500	\$ 353	\$ 5,125
6	\$ 3,338	\$ 1,500	\$ 353	\$ 5,191
7	\$ 3,405	\$ 1,500	\$ 353	\$ 5,257
8	\$ 3,473	\$ 1,500	\$ 353	\$ 5,325
9	\$ 3,542	\$ 1,500	\$ 353	\$ 5,395
10	\$ 3,613	\$ 1,500	\$ 353	\$ 5,466
11	\$ 3,685	\$ 1,500	\$ 353	\$ 5,538
12	\$ 3,759	\$ 1,500	\$ 353	\$ 5,612
13	\$ 3,834	\$ 1,500	\$ 353	\$ 5,687
14	\$ 3,911	\$ 1,500	\$ 353	\$ 5,764
15	\$ 3,989	\$ 1,500	\$ 353	\$ 5,842
16	\$ 4,069	\$ 1,500	\$ 353	\$ 5,922
17	\$ 4,150	\$ 1,500	\$ 353	\$ 6,003
18	\$ 4,233	\$ 1,500	\$ 353	\$ 6,086
19	\$ 4,318	\$ 1,500	\$ 353	\$ 6,171
20	\$ 4,404	\$ 1,500	\$ 353	\$ 6,257
21	\$ 4,493	\$ 1,500	\$ 353	\$ 6,345
22	\$ 4,582	\$ 1,500	\$ 353	\$ 6,435
23	\$ 4,674	\$ 1,500	\$ 353	\$ 6,527
24	\$ 4,768	\$ 1,500	\$ 353	\$ 6,620
25	\$ 4,863	\$ 1,500	\$ 353	\$ 6,715
26	\$ 4,960	\$ 1,500	\$ 353	\$ 6,813
27	\$ 5,059	\$ 1,500	\$ 353	\$ 6,912
28	\$ 5,161	\$ 1,500	\$ 353	\$ 7,013
29	\$ 5,264	\$ 1,500	\$ 353	\$ 7,116
30	\$ 5,369	\$ 1,500	\$ 353	\$ 7,222
31	\$ 5,476	\$ 1,500	\$ 353	\$ 7,329
32	\$ 5,586	\$ 1,500	\$ 353	\$ 7,438
33	\$ 5,698	\$ 1,500	\$ 353	\$ 7,548
34	\$ 5,812	\$ 1,500	\$ 353	\$ 7,659
35	\$ 5,928	\$ 1,500	\$ 353	\$ 7,771
36	\$ 6,046	\$ 1,500	\$ 353	\$ 7,884
37	\$ 6,167	\$ 1,500	\$ 353	\$ 8,000
38	\$ 6,291	\$ 1,500	\$ 353	\$ 8,117
39	\$ 6,417	\$ 1,500	\$ 353	\$ 8,237
40	\$ 6,545	\$ 1,500	\$ 353	\$ 8,357
41	\$ 6,676	\$ 1,500	\$ 353	\$ 8,479
42	\$ 6,809	\$ 1,500	\$ 353	\$ 8,602
43	\$ 6,945	\$ 1,500	\$ 353	\$ 8,727
44	\$ 7,084	\$ 1,500	\$ 353	\$ 8,853
45	\$ 7,226	\$ 1,500	\$ 353	\$ 8,981
46				
47				
48				
49				
50				
51				
Total	\$ 217,350	\$ 15,863	\$ 353	\$ 278,221
			Total Revenue	\$132,582

1
2 Council Member Franco expressed she was concerned about adopting the Resolution; she
3 thought the City was going to borrow money from itself. Mr. Anderson explained they have not
4 needed to. He went on to say they have about 1.4 million dollar of impact fees available for the
5 project, and they have not exceeded yet the amount of impact fees they have available;
6 however, it will soon occur.

7
8 Council Member Bradshaw pointed out they had a motion on the table, which had not been
9 seconded.

10
11 Council Member Bradshaw made the second on the motion as made previously by Council
12 Member Crittenden.

13
14 Council Member Crittenden reiterated his motion, which was: moved to approve Resolution No.
15 2016-08, a Resolution of Declaration of Official Intent of the City Council of Heber City, Utah
16 (The "City") to Reimburse Itself From the Proceeds of Bonds for Certain Capital Expenditures
17 Advanced by the City; Establishing the Maximum Principal Amount of Such Expenditures; and
18 Authorizing Incidental Action with the clear understanding that it's for an option not that they are
19 bonding only making it available. Council Member Bradshaw seconded the motion. Members
20 voting Aye: Council Member Bradshaw, Smith and Crittenden. Members voting Nay: Council
21 Member Franco and Potter. The motion passed with three votes in the affirmative.

22
23 3. [Mike Johnston, Final Plat Approval for the Tripp Subdivision, a 14 Lot Subdivision](#)
24 [Located at Approximately 350 East Airport Road](#)
25 [Tripp Subdivision](#)
26

27 Mayor McDonald indicated that Mr. Nichols was present to discuss the Tripp Subdivision, which
28 was a 14 lot subdivision located on East Airport Road. Mr. Kohler explained the subdivision
29 made application prior to the moratorium; therefore, it was not subject to the moratorium. There
30 were no questions or comments from the Council.
31

32 Council Member Bradshaw moved to approve the Tripp Subdivision, which was located at
33 approximately 350 East Airport Road as presented. Council Member Crittenden made the
34 second. Voting Aye: Council Member Bradshaw, Franco, Potter, Smith, and Crittenden. The
35 motion passed unanimously.
36

 37 4. [Request to Convert the Hangar Leases for Daniel Hangars 5, 22-30 from Reversionary to](#)
38 [Non-Reversionary Leases](#)
39 [Council Member Smiths Analysis](#)
40

41 Mayor McDonald introduced agenda item number 4; a request to convert the hangar leases for
42 Daniel Hangars 5, 22-20 from reversionary to non-reversionary leases. He inquired if the
43 Council had any questions or comments.
44

 45 Council Member Smith stated he did a little bit more looking into this and on pages 3 and 4, page
46 3 looked at a full 30 years so page 4 is probably more pertinent because it takes into account that

1 some of the hangars have already been in use for at least five years. He went on to say, in order
2 to have net present value equal, instead of \$1,500 the monthly fee would be somewhere
3 around \$3,300. He noted that would be keeping in mind of a \$250,000 sale price if they were to
4 continue reversionary. He stated when you net present values calculations outside of ten
5 years, it's very subjective. He continued, on the 50 year on page 3, it was just over \$2,000 -
6 starting day one with a brand new hanger.

7
8 Council Member Franco inquired of Council Member Smith if he could tell her why he
9 assumed property taxes would not increase on the non-reversionary given the land values or mill
10 rates. Mr. Anderson said he could answer Council Member Franco's question. He started to
11 explain the way truth and taxation worked. Council Member Franco indicated that she
12 understood that part. She went on to say you can't assume that they won't have future tax
13 increases in the future especially given schools.

14
15 Mr. Anderson indicated it was impossible to project what tax increases might be. He indicated
16 taxes could go down as well as bonds are retired at the school district or any entity. Council
17 Member Franco indicated that was her concern. Council Member Smith stated that would affect
18 a small piece of the middle. He would say not accounting for increasing property taxes was very
19 much immaterial in this case.

20
21 Council Member Crittenden referred to page 4; he said page 4 reflected the fact the hangars have
22 had a better rate for four or five years, and is probably more accurate. Council Member Smith
23 indicated yes, it was assuming if they were talking about a hypothetical hangar, and that hangar
24 had been leased on a reversionary lease for five years.

25
26 Council Member Crittenden said isn't it true too that the analysis was to the conservative side. It
27 was using present rates of interest or nearby that are historically at their lowest. The \$3,300
28 wouldn't probably change downward; if anything, it could change upward with changes in the
29 considerations. Council Member Smith stated to be completely unbiased, it could go either
30 way. One of the biggest factors would be the \$250,000 sale price in year 31. He went on to
31 say having a large outlier, like \$250,000, when talking about yearly amounts of \$2,000 to
32 \$6,000, if it moved by \$50,000, it could affect the \$3,300 down or up if you received \$300,000
33 for it. He stated it could swing quite a bit.

34
35 Council Member Crittenden indicated he could see they were not equal at this point. He went on
36 to say, they had some people in for interviews for being the City's consulting firm, and one firm
37 brought in an accounting firm for airports. The comment was made that reversionary was better
38 for cities. He stated at the very minimum they needed to look at the difference so they were
39 equal. Council Member Crittenden said he knew it had been back and forth between the Airport
40 Board and the City Council that they go with the non-reversionary. They were putting a lot of
41 future in it. He stated he liked some of the things about the non-reversionary

42
43 Mayor McDonald inquired what the Council wanted to do; did they want to move forward and
44 approve it or place a hold on it.

1 Motion: Council Member Franco moved to request to convert the hangar leases for Daniel's
2 Hangars 5, 22-30 from reversionary to non-reversionary leases at the price of an additional
3 \$1,500 per year on top of the other \$500 year they were already paying for a total of \$2,000 a
4 year. The motion failed for lack of a second.

5
6 Council Member Crittenden clarified Council Member Smith's analysis. He indicated the \$500
7 was the base fee that everyone paid for non-reversionary; the \$1,500 they have offered was to
8 make it equal. He went on to say the analysis was what it needed to be to make it equal. He
9 stated they just heard Council Member Smith's analysis was they needed \$3,300 to make it equal;
10 he didn't know why they would accept \$1,500.

11
12 Council Member Crittenden indicated he would like to have the information worked out on paper
13 and send it back to the hangar owners to look at the \$3,300 and come back with a better offer.

14
15 Council Member Franco pointed out the hangar owners have come back twice with two different
16 offers, and they have shown a good faith offer. She went on to say our Council Member did all
17 the latest data and all models could be picked apart. She went on to say everything was almost
18 even either way in regards to eventual outcome. In addition, the City costs were not in here. She
19 inquired where do you want to take the risks. She questioned do you want the City to take the
20 risk of the old buildings and try to maintain them, or do you want it to be the private owner's
21 risk. Council Member Franco stated she was willing to let them take the risk.

22
23 Council Member Crittenden noted there were two analyses done. He indicated that he thought
24 the first was too low. In addition, all the property taxes were left off. Then Council Member
25 Smith did a new analysis, and he believed there was a long ways from \$1,500 to \$3,300.

26
27 Council Member Franco stated there was some agenda information provided to the Airport
28 Board regarding the property tax issue, and there was quite a dispute whether reversionary
29 leases are being depreciated by the private property owner. She said that's not a political battle
30 that had gone to court yet; however, it is something to do with property taxes.

31
32 Council Member Crittenden stated we have the interest of the entire community and
33 schools because we are all part of it, but the property tax was not a big issue for the airport; the
34 airport was a little part of it. Council Member Franco said I would submit that the property tax
35 was the only thing that benefits the general fund.

36
37 Council Member Potter clarified that the prices and the \$1,500 were just numbers that came
38 about because they were looking at current prices because they wanted a better lease. There
39 was no comparison at other airports? Council Member Franco indicated that was correct. There
40 was no comparison at any other airports. It was the hangar owner's good faith effort to say they
41 knew all the new leases would be non-reversionary, and they wanted to pay more for a non-
42 reversionary themselves.

43
44 Motion: Council Member Crittenden moved to offer to Daniel Hangars 5, and 22-30 to change
45 from Reversionary to Non-Reversionary for an additional \$2,000 plus \$500. Council Member
46 Bradshaw made the seconded.

1 Discussion followed regarding the motion. Council Member Franco indicated that some hangar
2 owners may and some may not accept the terms. Council Member Franco inquired if Council
3 Member Smith could run through the analysis and see what difference it would make with the
4 \$2,000.

5
6 Council Member Smith indicated they were talking about a hypothetical situation with the
7 model; however, \$2,000 would bring it much closer. Council Member Franco inquired if
8 would favor the non-reversionary. Council Member Smith indicated it would still favor the
9 reversionary; but they would still be a few hundred dollars off per year.

10
11 Discussion followed regarding depreciated property taxes and the Model.

12
13 Gerry Hall - Heber Hangar Owner

14 Mr. Hall indicated that he would like to clarify a few things, especially the property tax issue
15 and making the numbers exactly equal.

16
17 Mr. Hall went on to say there was a significant difference in the models. The one only looks at
18 the cash flow to the City, and the other looks at the property tax to the City as well as
19 the County. It's a significant difference in what the hangar owners are paying to the City. He
20 noted if you look at bumping it up to the City, once you get to a certain point, you are looking at
21 an extra \$5,000 in property taxes. Mr. Hall stated with that said, we want to be on the same
22 footing as the other hangar owners.

23
24 Council Member Smith pointed out all the other hangars and future hangars were going to
25 be non-reversionary. He questioned on the \$1,500 offer, how many of the reversionary owners
26 were going to accept this proposal? Mr. Hall indicated he got all the hangar owners together,
27 and they discussed the \$1,500 number; the majority said the \$1,500 said the proposal was
28 acceptable. Mr. Hall indicated that he had run the numbers in the model and he discussed some
29 of the inconsistencies in the model.

30
31 Council Member Smith stated if they did adopt Council Member Franco's or Council Member
32 Crittenden's motion, I would hate to see three owners accept it and then they had some
33 reversionary and some non-reversionary.

34
35 Mr. Hall indicated he couldn't speak for everyone else; one or two may not go for it. However,
36 he had spoken to enough of them that they want to.

37
38 Council Member Crittenden inquired if Mr. Hall could respond to the fact that they had been
39 negotiating, and if his motion passed, it's a firm offer. If it's a mistake, they could fix it.

40
41 Paul Boyer, - Hangar Owner No. 19

42 Mr. Boyer pointed out it was asked if anyone has done a survey outside of Heber. He said to his
43 knowledge in the last six year St. George, Utah; Grand Junction, Colorado; and Billings,
44 Montana had gone through the process of going from reversionary to non-reversionary, and they
45 did not do it the way Heber City was. Mr. Boyer explained the way the other entities went
46 through their process.

1 Mr. Boyer indicated when you look at a chart like this; he didn't understand it a lot. It didn't
2 show the risks involved. Council Member Crittenden said one of the presentations showed that
3 Heber Airport was the fifth highest out of 33 in the number of locally owned based
4 aircraft. Something is causing the owners to be here. He went on to say if that is the attitude,
5 there must be a demand for the hangars.

6
7 Mr. Boyer explained there were two airports separate airports here - 31 Daniel Hangars and 31
8 Hangar Row Hangars. He went on to say, the problem with those hangars, if you have a BII to
9 CII conversion, they would go away, and what are you going to do with those individuals? Mr.
10 Boyer went on to discuss what Provo did in that situation and what other cities have done.

11
12 Council Member Crittenden stated, I want us to be fair. Our airport is vibrant because of our
13 pilots. At the same time, I am feeling we have inherited a lot of problems. However, we need to
14 have whatever income was needed and fair. Mr. Boyer indicated by far, the hangar owners
15 have currently come up with more revenue for the City than anyone else, including the
16 FBO. We are collectively the backbone of your airport.

17
18 Mr. Anderson inquired in case the motion passed, would it be possible to establish a deadline to
19 accept the offer. It was said the last time they did a conversion, they gave them until the end of
20 the year. Mr. Anderson indicated the City had not sent out any billing for the current calendar
21 year; they had been waiting to see what happened. Council Member Crittenden indicated that he
22 thought six months would be acceptable, which would be September 2016.

23
24 Council Member Crittenden amended his motion to add the offer was available for six months,
25 and it would take effect in January 2017. Council Member Bradshaw seconded the
26 amendment. Voting Aye: Council Member Jeffery Bradshaw, Council Member Heidi Franco,
27 Council Member Kelleen Potter, Council Member Jeffrey Smith, Council Member Ronald
28 Crittenden. The motion passed unanimously.

29
30 **5. Award Construction Bid for Main Street Water Replacement from 500 North to 750**
31 **North Main**
32 **Staff Report - Contract Award**
33

34 Mayor McDonald indicated the City was looking to replace some waterlines on Main Street -
35 500 North to 750 North Main. He invited Mr. Mumford to explain the project. Mr. Mumford
36 explained the waterline line project to replace the lines from 500 North Main to 750 North Main.

37
38 He noted they received three bids, Geneva Rock was the low bidder, and his recommendation
39 was to award the project to said construction company.

40
41 Council Member Franco inquired if they were going to have the same ground water
42 problems. Mr. Mumford indicated they would not. The area was much shallower; in addition,
43 they put in the provisions the company had to deal with the ground water.

44
45 Council Member Ronald Crittenden moved to approve the Construction Bid for the Main Street
46 Water Replacement to the low bidder, Geneva Rock. Council Member Jeffrey Smith made the

Tab 8



U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer	<u>April 13, 2016</u>
Airport/Planning Area	<u>Heber City Municipal Airport-Russ McDonald Field</u>
AIP Grant Number	<u>3-49-0011-027-2016 (Contract No. DOT-FA16NM-1001)</u>
DUNS Number	<u>089493811</u>

TO: Heber City Corporation, Utah
(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated March 7, 2016, for a grant of Federal funds for a project at or associated with the Heber City Municipal Airport-Russ McDonald Field, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Heber City Municipal Airport-Russ McDonald Field (herein called the "Project") consisting of the following:

Acquire Land for Approaches (Parcel 7); Install Perimeter Fencing

which is more fully described in the Project Application.

NOW THEREFORE, according to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 90.63 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$1,305,547.
The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):
 - \$0 for planning
 - \$45,881 for airport development or noise program implementation
 - \$1,259,666 for land acquisition.
2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the project period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.
The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).
The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs – Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application and as accepted by the FAA to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before May 31, 2016, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount

of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

- 10. United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
- 11. System for Award Management (SAM) Registration And Universal Identifier.**
- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- B. Requirement for Data Universal Numbering System (DUNS) Numbers
1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
 2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
 3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-606-8220) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- 12. Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
- 13. Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
- 14. Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.
- 15. Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
- 16. Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to

be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

17. **Maximum Obligation Increase for Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- A. may not be increased for a planning project;
 - B. may be increased by not more than 15 percent for development projects;
 - C. may be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.
18. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.
19. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if non-federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
 - B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
 - C. Immediately disclose to the FAA whenever the Sponsor: (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.
20. **Ban on Texting When Driving.**
- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts
21. **Trafficking in Persons.**
- A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, and subrecipients of private or public Sponsors (private entity). Prohibitions include:
 1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;

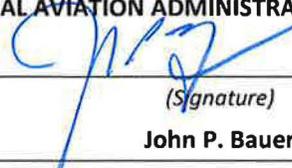
2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
 3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.
- B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –
1. Is determined to have violated the Prohibitions; or
 2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either—
 - a. Associated with performance under this agreement; or
 - b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by the FAA at 2 CFR part 1200.
22. **Exhibit “A” Property Map.** The Exhibit “A” Property Map dated October 27, 2008, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.
23. **Current FAA Advisory Circulars for AIP Projects:** The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the *Current FAA Advisory Circulars Required For Use In AIP Funded and PFC Approved Projects*, dated December 31, 2015, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
24. **Assurances:** The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.
25. **Agency Agreement:** The FAA, in tendering this Offer on behalf of the United States, recognizes the existence of an Agency relationship between the Sponsor, as principal, and the Utah Division of Aeronautics, as agent. The Sponsor agrees that it will not amend, modify, or terminate said Agency Agreement without prior written approval of the FAA or its designated representative.
26. **Update Approved Exhibit “A” Property Map for Land in Project:** The Sponsor understands and agrees to update the Exhibit “A” Property Map to standards satisfactory to the FAA and submit it in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Exhibit “A” Property Map is an allowable cost within the scope of this project.
27. **Protection of Runway Protection Zone:** The Sponsor agrees to prevent the erection or creation of any structure, place of public assembly, or other use in the runway protection zone, as depicted on the Exhibit "A": Property Map, except for NAVAIDS that are fixed by their functional purposes or any other structure permitted by the FAA. The Sponsor further agrees that any existing structures or uses within the Runway Protection Zone will be cleared or discontinued by the Sponsor unless approved by the FAA.
28. **Land Acquisition:** The Sponsor agrees that no payments will be made on the grant until the Sponsor has presented evidence to the FAA that it has recorded the grant agreement, including the grant assurances in the public land records of the county courthouse. The Sponsor understands and agrees that recording the grant agreement legally enforces these requirements, encumbrances and restrictions on the obligated land.
29. **Final Project Documentation:** The Sponsor understands and agrees that in accordance with 49 USC 47111, and the Airport District Office's concurrence, that no payments totaling more than 97.5 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be satisfactorily completed. Satisfactorily complete means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement; and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list.

#

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

ACKNOWLEDGEMENT
 STATE OF Colorado
 COUNTY OF Denver
 On April 15, 2016, before me, a Notary Public, personally appeared _____, who proved to me through satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the foregoing instrument in their authorized capacity by their signature on the instrument.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

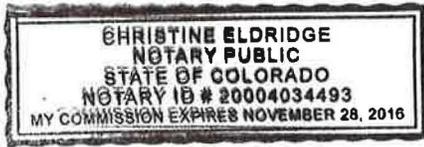
John P. Bauer

(Typed Name)

Manager, Denver Airports District Office

(Title of FAA Official)

Christine Eldridge



PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this _____ day of _____, _____.

ACKNOWLEDGEMENT
 STATE OF _____
 COUNTY OF _____
 On _____, before me, a Notary Public ,
 personally appeared _____, who
 proved to me through satisfactory evidence to be the person
 whose name is subscribed to the foregoing instrument and
 acknowledged to me that _____ executed the foregoing
 instrument in their authorized capacity by their signature on the
 instrument.

HEBER CITY CORPORATION, UTAH

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By:

(Printed Name of Sponsor's Authorized Official)

Title:

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Utah. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ (location) this _____ day of _____, _____.

By

(Signature of Sponsor's Attorney)

ACKNOWLEDGEMENT
 STATE OF _____
 COUNTY OF _____
 On _____, before me, a Notary Public ,
 personally appeared _____, who proved
 to me through satisfactory evidence to be the person whose name
 is subscribed to the foregoing instrument and acknowledged to me
 that _____ executed the foregoing instrument in their authorized
 capacity by their signature on the instrument.

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.



ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that --

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Northwest Mountain Region
Colorado, Idaho, Montana, Oregon,
Utah, Washington, Wyoming

Denver Airports District Office
26805 East 68th Avenue, Suite 224
Denver, Colorado 80249

Phone: (303) 342-1254
Fax: (303) 342-1260

April 13, 2016

The Honorable Alan W. McDonald
Mayor, Heber City Corporation
75 North Main
Heber, Utah 84032

Dear Mayor McDonald:

We are enclosing two copies of the Grant Offer for Airport Improvement Program (AIP) Project No. 3-49-0011-027-2016 at the Heber City Municipal-Russ McDonald Field. Please read this letter and the Grant Offer carefully.

To properly enter into this agreement, you must do the following:

- The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than May 31, 2016 in order for the grant to be valid.
- The Sponsor's attorney must sign and date the grant agreement *after* the Sponsor.
- You may not make any modification to the text, terms or conditions of the grant offer.
- We ask that you return one executed copy of the Grant Offer. Please keep the other copy of the grant for your records.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

Please note Grant Condition No. 6 requires you to complete the project without undue delay. To ensure proper stewardship of Federal funds, **you are expected to submit payment requests for reimbursement of allowable incurred project expenses in accordance with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status which will impact future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.
 2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

Once the project is completed and all costs are determined, we ask that you close the project without undue delay and submit the final closeout report documentation as required by FAA's Denver Airports District Office.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards. **A copy of a "Single Audit Certification Form" is enclosed.** Please complete and return a copy to our office with the executed Grant Agreement. Please make a copy for your files.

John Sweeney is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. If you should have any questions, please contact John Sweeney at 303-342-1263.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,



John P. Bauer
Manager, Denver Airports District Office

Enclosures

Mark Anderson

From: John.Sweeney@faa.gov
Sent: Monday, May 23, 2016 2:49 PM
To: manderson@ci.heber.ut.us
Cc: Kristin.Brownson@faa.gov; John.Bauer@faa.gov
Subject: RE: Extension to Accept Grant AIP 027

Mark,

Consider this email an extension for the grant acceptance until June 10th, 2016. Because of the type of funding involved with this project we are not able to extend it beyond that point, as it could jeopardize other AIP projects throughout UT. Also please consider the letter sent to the mayor and city council dated May 19th, 2016. The City currently owns the B-II RPZ and is in complete control of it, regardless of whether the FAA reimburses the City, they are responsible to ensure that only compatible land uses are allowed within the RPZ. If the City decides to proceed with non compatible uses, the FAA believes this may put the City in noncompliance with their grant assurances, specifically 21, copied below.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

Please feel free to contact me with any additional questions or concerns the City might have.

Thanks,

John Sweeney
Community Planner
FAA-Denver ADO
303-342-1263

From: Mark Anderson [<mailto:manderson@ci.heber.ut.us>]
Sent: Monday, May 23, 2016 10:22 AM
To: Sweeney, John (FAA)
Cc: Brownson, Kristin (FAA)
Subject: Extension to Accept Grant AIP 027

John:

The Heber City Council has requested additional time to consider acceptance of grant AIP 027. The current acceptance deadline in the letter sent by John Bauer is May 31, 2016. Please confirm in writing what additional time is available for the Council to consider acceptance of this grant. In conversation with Kristin Brownson, she indicated that some additional time could be offered.

Thank you,

Mark

Mark K. Anderson
Heber City Manager
75 North Main
Heber City, UT 84032
phone 435-654-0757
fax 435-654-2743



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