

CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
October 22, 2019 – POLICY SESSION

Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Executive Conference Room
55 South State Street
Third Floor
Clearfield, Utah

6:00 P.M. WORK SESSION

Discussion on the Development Agreement and First Addendum to the Put/Call Agreement with Lotus Acquisitions, LLC and Memorandum of Understanding (MOU) – 2 with the Community Development and Renewal Agency (CDRA) and Lotus Company for Redevelopment of Properties Located at Approximately 442 and 448 South State Street (Mabey Place)

(Any items not fully addressed prior to the Policy Session will be addressed in a Work Session immediately following the Policy Session)

City Council Chambers
55 South State Street
Third Floor
Clearfield, Utah

7:00 P.M. POLICY SESSION

CALL TO ORDER:

OPENING CEREMONY:

APPROVAL OF MINUTES:

Mayor Shepherd
Councilmember Peterson
September 17, 2019 – Work Session
October 1, 2019 – Work Session
October 8, 2019 – Policy Session

SCHEDULED ITEMS:

1. **OPEN COMMENT PERIOD**

The Open Comment Period provides an opportunity to address the Mayor and City Council regarding concerns or ideas on any topic. To be considerate of everyone at this meeting, public comment will be limited to three minutes per person. Participants are to state their names for the record. Comments, which cannot be made within these limits, should be submitted in writing to the City Recorder at nancy.dean@clearfieldcity.org.

The Mayor and City Council encourage civil discourse for everyone who participates in the meeting.

Comments pertaining to an agenda item that includes a public hearing or public input should be given as that item is being discussed during the meeting.

2. CONSIDER APPROVAL OF THE AWARD OF PROPOSAL FOR THE SANITARY SEWER CAPACITY STUDY

BACKGROUND: The City solicited proposals for a Sewer Capacity Study. The study would assure the sewer lines servicing six different locations throughout the City are meeting current flow volumes and have the ability to meet future flow volume demands as a result of new development. The City received three proposals which were reviewed by a selection committee. The committee recommended awarding the contract to CRS as the highest scoring proposal. The scope of work in the Request for Proposal (RFP) was a good starting point, but may need to be expanded as the study moves forward; consequently, staff is requesting contingency be higher than usual.

RECOMMENDATION: Approve the award of proposal for the Sewer Capacity Study to CRS Engineers for the bid amount of \$31,766 with an additional amount for contingency costs of \$13,234 for a total cost of \$45,000; and authorize the Mayor's signature to any necessary documents.

3. CONSIDER APPROVAL OF THE AWARD OF PROPOSAL FOR CONSULTING SERVICES TO DEVELOP A BUSINESS PLAN AND CONDUCT A FEE STUDY FOR ALL SERVICES OF THE COMMUNITY SERVICES DEPARTMENT, INCLUDING THE AQUATIC AND FITNESS CENTER, RECREATION, AND ARTS DIVISIONS

BACKGROUND: The City requested proposals to develop a business plan and conduct a fee study for all fees for services charged in the Community Services Department, including the Aquatic and Fitness Center, Recreation, and Arts Divisions. The intent of this study is to complete a thorough evaluation of the actual costs for services provided within the department and utilize that information and the existing Cost Recovery Model as the basis for necessary fee changes. Staff reviewed the proposals and recommends approving the award of proposal to Tom O'Rourke Consulting as the highest scoring proposal.

RECOMMENDATION: Approve the award of proposal for consulting services to develop a business plan and conduct a fee study for all services of the Community Services Department, including the Aquatic and Fitness Center, Recreation, and Arts Divisions to Tom O'Rourke Consulting for \$21,000; and authorize the Mayor's signature to any necessary documents.

4. CONSIDER APPROVAL OF THE AWARD OF BID FOR THE ARTS CENTER ELECTRICAL UPGRADE

BACKGROUND: The City solicited bids to upgrade the electrical service at the Community Arts Center. The electrical upgrade is the next phase to the renovation of the Clearfield Community Arts Center. This renovation would combine the two power services coming into the building into one service, update the main power panels and add additional power capacity to the building. The City received one bid for the project with a bid amount of \$112,258. The project was budgeted at \$85,000. Staff presented three alternatives for completing the project during the City Council work session discussion on October 15, 2109. There appeared to be consensus from the Council that amending the budget so the entire electrical upgrade project could be completed was necessary in an effort to help mitigate any safety issues that might arise in the future.

RECOMMENDATION: Approve the award of bid for the Clearfield Community Arts Center Electrical Upgrade to Northern Utah Electric, Inc. for the bid amount of \$112,258; approve funding for the project bid amount with engineering costs and contingency of \$12,742 for a total project cost of \$125,000; and authorize the Mayor's signature to any necessary documents.

5. CONSIDER APPROVAL OF RESOLUTION 2019R-20 REQUESTING
RECERTIFICATION OF THE CLEARFIELD MUNICIPAL JUSTICE COURT

BACKGROUND: Pursuant to Utah Code Ann. § 78A-7-103, the Clearfield Municipal Justice Court is required to be recertified at the end of each four-year term. The current term of the Clearfield Municipal Justice Court expires in February 2020. In order to be recertified, the City must submit to the Administrative Office of the Courts: an affidavit submitted by the justice court judge, an opinion letter from the city attorney, and a resolution adopted by City Council. Judge Brower is present to discuss the recertification of the Clearfield Justice Court and any other items of common concern for the Council.

RECOMMENDATION: Approve Resolution 2019R-20 requesting recertification of the Clearfield Municipal Justice Court and authorize the Mayor's signature to any necessary documents.

6. POSSIBLE CONSIDERATION OF THE DEVELOPMENT AGREEMENT AND
FIRST ADDENDUM TO THE PUT/CALL AGREEMENT WITH LOTUS
ACQUISITIONS, LLC, AND MEMORANDUM OF UNDERSTANDING (MOU) – 2
WITH THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA)
AND LOTUS COMPANY FOR REDEVELOPMENT OF PROPERTIES LOCATED
AT APPROXIMATELY 442 AND 448 SOUTH STATE STREET (MABEY PLACE)

BACKGROUND: In the spring of 2018 the City purchased the Clearfield Mobile Home Park and partnered with Lotus for redevelopment of the area. The redevelopment is proposed to take place in three phases of residential development with a small amount of commercial space that will occur on the properties located at approximately 442 and 448 South State Street – part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece. The scope of the Development Agreement is limited to the land currently under the control of the City or the Developer. The Memorandum of Understanding (MOU) – 2 deals with the plans for additional development on both sides of State Street. The Community Development and Renewal Agency (CDRA) is also a party to the MOU – 2 and this document would replace the first MOU and its addendum. The Put/Call Agreement specified that the City would purchase the property at 448 South State Street if a Development Agreement with Lotus was not reached by September 1, 2019; but since both parties feel reaching an agreement is close, the First Addendum to the Put/Call Agreement simply extends the deadline for the “put/call” to December 31, 2020.

RECOMMENDATION: Approve the Development Agreement and First Addendum to the Put/Call Agreement with Lotus Acquisitions, LLC, and Memorandum of Understanding (MOU) – 2 with the Community Development and Renewal Agency (CDRA) and Lotus Company and authorize the Mayor's signature to any necessary documents.

COMMUNICATION ITEMS:

Mayor's Report
City Councils' Reports
City Manager's Report
Staffs' Reports

****ADJOURN AS THE CITY COUNCIL AND RECONVENE AS THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA)****

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) AGENDA

1. CONSIDER APPROVAL OF THE MINUTES FROM THE AUGUST 23, 2019 WORK SESSION, THE AUGUST 27, 2019 POLICY SESSION, AND THE SEPTEMBER 24, 2019 WORK SESSION

SCHEDULED ITEM:

2. POSSIBLE CONSIDERATION OF THE MEMORANDUM OF UNDERSTANDING (MOU) – 2 WITH THE CITY AND LOTUS COMPANY FOR REDEVELOPMENT OF PROPERTIES LOCATED AT APPROXIMATELY 442 AND 448 SOUTH STATE STREET (MABEY PLACE)

BACKGROUND: In the spring of 2018 the City purchased the Clearfield Mobile Home Park and the City and CDRA partnered with Lotus through a Memorandum of Understanding on April 10, 2018, for redevelopment of the area. The redevelopment is proposed to take place in phases including the properties located at approximately 442 and 448 South State Street – part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece. The Memorandum of Understanding (MOU) – 2 outlines obligations of a continued partnership with Lotus for additional development on both sides of State Street. The City is also a party to the MOU – 2 and this document would replace the first MOU and its addendum.

RECOMMENDATION: Approve the Memorandum of Understanding (MOU) – 2 with the City and Lotus Company and authorize the Chair’s signature to any necessary documents.

****ADJOURN AS THE CDRA****

Dated this 17th day of October, 2019.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the ‘Americans with Disabilities Act’ provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: JJ Allen, City Manager
MEETING DATE: October 22, 2019
SUBJECT: Development Agreement, MOU-2, and Put-Call Addendum for the Mabey Place / Lotus Project

RECOMMENDED ACTION

Work Session – Discussion of the Development Agreement, MOU-2, and the First Addendum to the Put-Call Agreement.

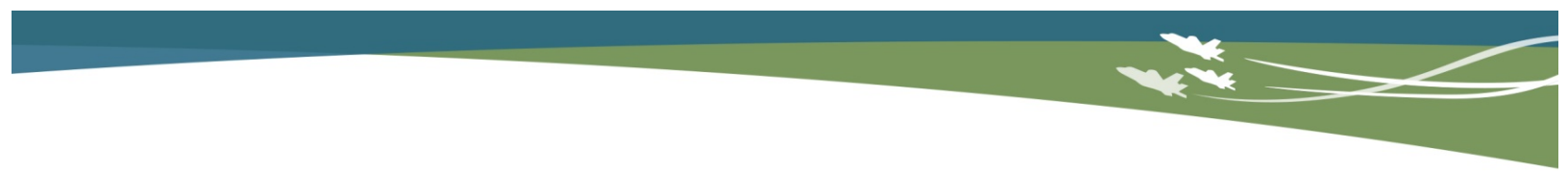
Policy Session (whether October 22 or a future date) – Approve the Development Agreement, MOU-2, and the First Addendum to the Put-Call Agreement with Lotus, and authorize the Mayor's signature to any necessary documents.

DESCRIPTION / BACKGROUND

As introduced in the October 15 Work Session, the attached documents provide for the redevelopment of the Clearfield Mobile Home Park (CMHP) and Minaya properties. This redevelopment is proposed to take place in three phases of residential development (with a small amount of commercial space), that will occur on this property—part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece.

The scope of the Development Agreement is limited to the land currently under the control of the City or the Developer. Notable components of the Development Agreement include:

- Section 2.1(A) – A deferral (not waiver) of City impact fees (not NDSD or NDFD impact fees), accompanied by a 3% annual compounded interest rate for each year of deferral. See Attachment 3.
- Section 2.1(B) – A property swap with UTA, to acquire a 30-foot-wide strip along the west side of the project. UTA agrees that this 30 feet is not necessary for their second track efforts, and having it makes a big difference in the layout of Lotus' concept plan.
- Section 2.2(A) – Lotus will be applying for LIHTC financing for the two apartment buildings in Phase 1a. As noted in the October 15 work session, their intention is to have an 80% LIHTC / 20% market-rate split in these two buildings, with a target of 60% AMI.
- Section 3.1 – Lotus will purchase the property from the City based on the number of units included in each phase. \$8,800 for each apartment and \$14,000 for each townhome. Their



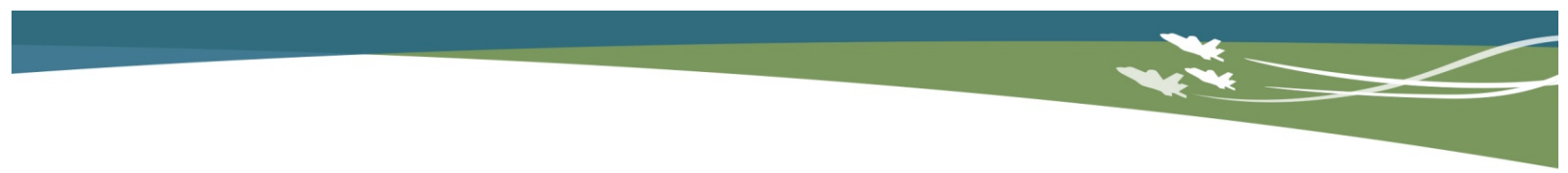
cost of acquiring the Minaya parcel counts toward the cost of the property. The total sale price—after all three phases and assuming the unit counts don’t change—is \$2,973,425.

- Section 4.1(C) – The City will bear the burden of developing the small ½ acre park, with an anticipated completion by the end of the calendar year, 2022. Lotus will bear the burden of installing all public improvements within the public rights-of-way (Depot Street and the West Arterial Road), except for the landscaping in the median of the West Arterial Road.
- Section 5.2 – Lotus will develop the phases as shown in Attachment 4, and summarized below:
 - Phase 1 to commence construction in August 2020.
 - Phase 2 to commence construction in October 2022.
 - Phase 3 to commence construction in October 2025.
- Section 9.4 and Attachment 5 – A handful of modifications to the Form Based Code are listed as authorized. Some of these are minor, but of particular note:
 - In the parking calculation, the development would be able to count on-street parking toward the visitor parking requirement.
 - Larger windows will be used instead of double-hung windows.
 - Front-loaded townhomes will be permitted.
 - Enhanced landscaping and tree canopy will be allowed in lieu of carports (more aesthetically pleasing).

MOU-2 deals with the plans for additional development on both sides of State Street. The CDRA is also a party to MOU-2, and it replaces our first MOU (and its addendum). Key components of MOU-2 include:

- Lotus’ obligations:
 - Pursue property acquisition (of properties identified in Attachment 1), to the extent possible.
 - Continue to work on site planning efforts.
 - While not specified in the MOU-2, Lotus and Better City have conducted quite a bit of outreach to potential commercial tenants, and we would expect these efforts to continue.
- City / CDRA’s obligations:
 - Continue the creation of a new Community Reinvestment Area (CRA). This work will depend heavily on Lotus’ master plan for the entire area.
 - Assist Lotus with property acquisition, if necessary. This could be accomplished with existing funds (remaining from the bond issuance, or park impact fees, for example). Or, if the CDRA needs to exercise eminent domain, the cost of acquisition will be paid by Lotus.

The original Put-Call Agreement specified that Clearfield would purchase the Minaya property from Lotus if we couldn’t reach a Development Agreement by September 1, 2019. We are obviously past



that date now, but both parties agree that we are close to reaching an agreement. Consequently, this First Addendum to the Put-Call Agreement simply extends the deadline for the “put/call” to December 31, 2020.

CORRESPONDING POLICY PRIORITY (IES)

Improving Clearfield’s Image, Livability, and Economy

FISCAL IMPACT

If this Agreement is approved, Clearfield City will receive nearly \$3M from the sale of the Clearfield Mobile Home Park property. The development would also result in significant impact fees (which would be deferred for several years before collection, with interest), as well as building permit and other development fees.

Moreover, if we are successful in the creation of a CRA and capturing tax increment, the CDRA would receive a new funding stream to support the redevelopment efforts of this area. This amount is difficult to estimate at this point, but would be identified during the CRA creation process.

The City issued bonds in early 2018 to purchase the property and promote redevelopment. Payment of this debt service will begin in 2021. Proceeds from the sale of land would cover some of these payments, and there are other resources that we should strongly consider for making up the difference (e.g. tax increment and holding the tax rate after the GO bond expires).

All this said, while the fiscal impacts should not be ignored, this decision is not primarily a fiscal one. It is more fundamental—an investment in the future of our downtown, and the entire Clearfield community.

ALTERNATIVES

General alternatives:

- Approve all documents on October 22 as proposed or with minor agreed upon changes.
- Table the item and schedule it to be discussed again in the October 29 work session (to provide more time for Council to consider the information, suggest significant edits, etc.).
- Table the item and schedule a special Policy Session for October 29 (to provide more time for Council to consider the information, suggest significant edits, etc.).
- Table the item to a different specified date, and direct staff regarding specific aspects that may still need to be addressed.

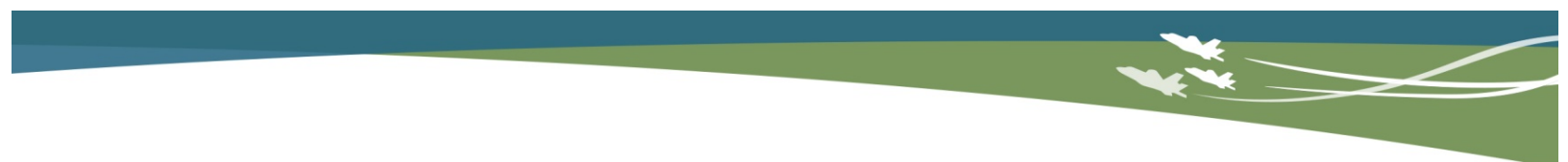
Issue-specific alternatives:

- LIHTC financing:
 - As has been noted previously, Lotus feels strongly that LIHTC financing is critical to the success of Phase 1a. If this is not acceptable to the Council, then we will need to find a different developer.
 - 50/50 vs 80/20 – As noted in the work session, for a period of time, indications were that 50/50 would be sufficient for Lotus to make the project “pencil.” Lotus’ assumption with that was that Clearfield would be paying for the public infrastructure and/or there would be tax increment to offset that cost (\$1.6 million). The current Agreement specifies a maximum of 80% LIHTC units, because Lotus will be paying for the public improvements (Depot Street and the West Arterial Street, with the underground utilities). If the Council would prefer a maximum of 50% LIHTC, the City or CDRA would need to find a way to fund the public improvements.
- Covered parking vs landscaping / tree canopy:
 - This is something that came to light in the late meeting (staff and Lotus) after the October 15 work session. The Form Based Code requires that 50% of the parking stalls for multi-family buildings be covered. Carports, however, are not the most beautiful structures, and they have other drawbacks, too (e.g. tight parking quarters, high damage rates, interference with snow removal, long-term maintenance, etc.). But a primary consideration is that it’s pretty difficult to do both landscaping islands / trees and carports. Lotus would prefer to invest more in beautifying the parking areas with landscaping islands and trees that will ultimately provide a shade canopy, as opposed to installing carports.

SCHEDULE / TIME CONSTRAINTS

As was explained in the October 15 Work Session, if the Council feels comfortable with the Agreement and associated documents and is willing to approve it on October 22, Lotus feels confident that they can meet the deadlines for their financing application (due in December; approval in January). This would result in construction in late spring / early summer 2020, following completion of the land use approval process required by City Code.

If the Council has unresolved concerns, or even just feels the need for more time to consider the information, this item can again be discussed during October 29 Work Session, and be considered for approval in a special Policy Session on October 29. If the Agreement and associated documents are approved on October 29, Lotus will do everything within their power to meet the same deadlines, but are less sure of their success in maintaining the proposed schedule.



If October 29 feels like too much of a rush, Lotus will target the next round of financing (March deadline; April approval). The result would be the construction and purchase schedule shifting by roughly three months.

Please know that we are your staff, and we want to be sure that you are comfortable proceeding forward. We don't want the Council to feel pressured into acting before you are ready. At the same time, we want to convey our confidence in the recommendation to approve, acknowledging that the Council doesn't have the benefit of having spent as much time as staff working through all of the issues.

LIST OF ATTACHMENTS

- Development Agreement
- MOU-2
- First Addendum to Put-Call Agreement

DEVELOPMENT AGREEMENT

Dated the ____ day of October, 2019

By and Between

Clearfield City

And

Lotus Acquisitions, LLC

DEVELOPMENT AGREEMENT

THIS AGREEMENT (the “Agreement”) is entered into as of the __ day of October 2019, between CLEARFIELD CITY, a political subdivision of the State of Utah (the “City”), and LOTUS ACQUISITIONS, LLC a Utah limited liability company (the “Developer”). The aforementioned are sometimes referred to in this Agreement as a “Party,” or collectively as the “Parties.”

WHEREAS:

- (1) The City has invested several years and significant funds into planning for the redevelopment and revitalization of its downtown area; and
- (2) In pursuit of the redevelopment and revitalization of its downtown area, the City issued bonds in early 2018 in order to acquire the Clearfield Mobile Home Park property; and
- (3) The City and Developer entered into a Memorandum of Understanding (MOU-1) in April of 2018 (with a subsequent Addendum 1) to plan specifically for the redevelopment of the Clearfield Mobile Home Park property and the vicinity; and
- (4) The Parties desire to develop a portion of the property described in MOU-1, specifically the Clearfield Mobile Home Park and Minaya properties (“the Site” for purposes of this Agreement); and
- (5) The Parties desire for MOU-1 and its subsequent Addendum 1 to terminate upon the execution of this Agreement and the simultaneous entry into MOU-2 for the remaining properties; and
- (6) The Parties desire that the Site be developed in a unified and consistent fashion pursuant to the provisions of the applicable Urban Residential (UR) or Town Residential (TR) zone within the Form Based Code, with the exception of only those specific variants from the Form Based Code set forth within this Agreement; and
- (7) Development of the Site as pursuant to this Agreement is acknowledged by the Parties to be consistent with Utah’s Land Use Development Management Act and the applicable Urban Residential (UR) or Town Residential (TR) zone, and to operate to the benefit of the City, Developer and the general public; and
- (8) The Parties acknowledge that development of the Site pursuant to this Agreement will result in significant planning and economic benefits to the

City and its residents by, among other things, requiring orderly development of the Site and increasing property tax, sales tax, and other revenues to the City based on improvements to be constructed on the Site; and

- (9) Development of the Site pursuant to this Agreement will also result in significant benefits to Developer by providing assurances to Developer that it will have the ability to develop the Site in accordance with this Agreement; and
- (10) The Parties have cooperated in the preparation of this Agreement; and
- (11) The Parties desire to enter into this Agreement to specify the rights and responsibilities of Developer to develop the Site and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement; and
- (12) The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102.

NOW, THEREFORE, each of the Parties for and in consideration of mutual promises and other good and valuable consideration, does covenant and agree as set forth herein.

ARTICLE 1- DEFINITIONS

The following capitalized terms have the meanings and content set forth in this Article 1, wherever used in this Agreement.

1.1 Certificate of Occupancy

The term "Certificate of Occupancy" means, with respect to a building, a permanent certificate of occupancy for the building that is issued by the City.

1.2 City

The term "City" means the City of Clearfield, a political subdivision of the State of Utah.

1.3 Concept Plan

The documents provided, although not a final site plan as required by Clearfield City code, by the developer depicting the development of the Site, and the phasing thereof, which are attached as Attachment 1.

1.4 County

The term “County” means Davis County, Utah.

1.5 Developer

The term “Developer” means Lotus Acquisitions, LLC, or any development special purpose LLC that is managed by a wholly owned affiliate of Lotus Acquisitions LLC, with its principal offices located at 338 South Temple, Suite B, Salt Lake City, UT 84111.

1.6 Private Improvements

The term “Private Improvements” means the improvements contemplated under this Agreement to be constructed and installed by the Developer on the Site, as more particularly described or referred to in Attachment 1 (the Concept Plan), including all buildings/structures, together with all parking, internal drive lanes, internal sewer, internal water, internal storm sewer, internal curbs and gutters, internal sidewalks and landscaping on the Site, as required by City codes, rules and regulations; all of which are intended to be privately owned and maintained which will be more specifically identified in the approved civil drawings.

1.7 Public Improvements

The term “Public Improvements” means the improvements contemplated under this Agreement to be constructed and installed by the Developer on the Site, as more particularly described or referred to in Attachment 2 together with all Right-of-Way parking, drive lanes, sewer, water, storm sewer, curbs and gutters, sidewalks and landscaping on the Site, as required by City codes, rules and regulations. In particular, this refers to the improvements contained with the public right-of-way for Depot Street, the West Arterial Road, and State Street.

1.8 Permitted Uses

The term “Permitted Use” or “Permitted Uses” shall be limited to the uses permitted by the City code, zoning ordinance and regulations of the City for the Site, with areas that are zoned Urban Residential (UR) or Town Residential (TR) at the time of this Agreement.

1.9 Purchase and Sale Agreement.

The term “Purchase and Sale Agreement” means the purchase and sale agreement, which will be entered into between the City and Developer for the purchase by Developer of property owned by the City that is located within the boundary of the Site.

1.10 Site

The term “Site” means the real property as shown in Attachment 1, subject to future legal descriptions.

ARTICLE 2 - CONDITIONS PRECEDENT TO THE DEVELOPER CONSTRUCTING OR INSTALLING THE PUBLIC AND PRIVATE IMPROVEMENTS

2.1 Conditions Precedent for City

As express conditions precedent to the Developer’s obligation to construct or install the Public and Private Improvements, the City shall meet each of the following conditions precedent:

(A) Upon the Developer’s request, the City shall defer the payment of impact fees for Phase 1a and 1b, subject to a 3% growth rate (to account for inflation), by the Developer according to the schedule of impact fee payments as described in Attachment 3. The City does not have authority to defer impact fees imposed by the North Davis Fire District or North Davis Sewer District.

(B) The City shall ensure that 30 feet of Utah Transit Authority’s (UTA) existing 60-foot-wide strip of property adjacent to the west property line of the Site is able to be incorporated into the Site.

(C) The City will convey to the Developer those areas of the Site owned by the City free and clear of any encumbrances, subject to the terms and conditions of the Purchase and Sale Agreement.

2.2 Conditions Precedent for Developer

As express conditions precedent to the City’s obligation to convey the property to the Developer as set forth in this Agreement, the Developer shall meet each of the following conditions precedent:

(A) The Developer shall obtain approval from the Utah Housing Corporation for the use of low-income housing tax credits (“LIHTC”) to assist with financing a portion of the Public and Private Improvements. The ratio of market-to-LIHTC units is contingent on the final proforma and infrastructure cost. The ratio shall not exceed 80% LIHTC units to 20% market-rate units for phase 1a. The target AMI index shall not fall below 60% AMI for any of the phases. In the event that Phase 1 Tax Credits are not obtained by the developer, the Development Agreement and Concept Plan will require an amendment that is mutually agreed on by the Developer and City.

(B) The Developer shall obtain any and all land use approvals required by Clearfield City Code (e.g. plat, site plan, etc.).

2.3 Failure to Meet the Conditions Precedent

In the event that either party fails to perform any term, covenant or condition precedent described in Sections 2.1 and 2.2, then this Agreement shall be null and void (unless the Parties agree, in writing, to amend the conditions precedent). The Developer shall have no obligation to construct and install the Public and Private Improvements, the City shall have no obligation to convey the property, and the Developer shall have no right to develop the property. The parties will have the rights as stipulated in Addendum 1 to the Put/Call Option Agreement.

ARTICLE 3 – LAND TRANSACTIONS

3.1 Former Clearfield Mobile Home Park Purchase Price

Developer's acquisition price for current and future phases will be determined on a per-unit basis equal to \$8,800 per flat and \$14,000 per townhome. Acreage acquired will not include rights-of-way (ROW) for the West Arterial Road or Depot Street or 0.5-acre park. The purchase price and timing of acquisition for all phases is described in Attachment 4, for an estimated total of \$2,973,425. All square footage below is approximate and subject to survey.

(A) Phase 1a Acquisition

Developer will acquire approximately 250,000 square feet for Phase 1a to accommodate the development of 211 flats. The total acquisition cost for the property for the flats is \$1,856,800 (211 x \$8,800). However, the developer has already acquired from a private landowner approximately 15,000 square feet at a price of \$325,375. The acquisition for the remaining 235,000 (250,000 – 15,000) square feet is to accommodate the 211-flat development. Therefore, the purchase price for the portion of the Clearfield Mobile Home Park property required for the flats is \$1,531,425 (\$1,856,800 - \$325,375), which will be the value paid by Developer to the City. Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(B) Phase 1b Acquisition

Developer will acquire approximately 75,000 square feet for Phase 1b to accommodate the development of 33 townhomes for a purchase price of \$462,000 (33 x \$14,000), paid by the Developer to the City. Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(C) Phase 2 Acquisition

Developer will acquire approximately 63,500 square feet for Phase 2 to accommodate the development of 16 townhomes for a total purchase price of \$224,000 (16 x \$14,000). Using the

same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(D) Phase 3 Acquisition

Developer will acquire approximately 125,000 square feet for Phase 3 to accommodate the development of 54 townhomes for a total purchase price of \$756,000 (54 x \$14,000). Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

3.2 Portions of Former Clearfield Mobile Home Park Property Retained for Public Purposes

The City will retain the property within the West Arterial Road and Depot Street rights-of-way and the 0.5-acre park area, which will not be included in the acreage to be purchased by Developer. Developer shall prepare a subdivision plat to dedicate these rights-of-way and create the park parcel.

3.3 Former Clearfield Mobile Home Park Take Down Schedule

The Developer will qualify to purchase the land in phases as the development schedule is met, according to Attachment 4. This includes closing on the land, receiving all necessary approvals, and commencing construction by the end of the month noted in Attachment 4.

The Developer will acquire property in accordance with the pricing and take down schedule in Attachment 4, and will have the right to accelerate the acquisition of subsequent phases so long as the Developer will be implementing the phased development plan. Developer shall not accelerate acquisition in order to profit from selling the land to another party.

Developer will act in good faith to commence construction according to the schedule. However, should macro or local economic market conditions become unfavorable for new development as determined by a reputable third-party (mutually approved by the Parties), the Developer shall have the right to extend the commencement period until such issues are resolved.

The Developer is allowed one six-month extension on the development permit application date per phase as outlined in Attachment 4 for any phase.

In the event that the Developer and/or City cannot gain control of parcels identified in MOU-2 or the land identified in the UTA land swap, the Developer shall have the right to make modifications to the Concept Plan (Attachment 1) Development Schedule Commencement (Attachment 4), Phasing Schedule, and/or Take Down Schedule as mutually agreed to with the City.

DEVELOPER'S OBLIGATIONS AND UNDERTAKINGS

ARTICLE 4-CONSTRUCTION AND INSTALLATION OF PRIVATE AND PUBLIC IMPROVEMENTS

The Developer also hereby agrees as follows:

4.1 Acquisition of Site and Construction, Installation and Operation of Improvements

(A) Acquisition, Construction, Installation and Operation of Private and Public Improvements. The Developer agrees, at its expense, to complete the acquisition of the Site, undertake the construction and installation of the Private Improvements, and Public Improvements, prior to dedication to the City. The Developer shall construct and install all of the Private Improvements without expense to the City. The Developer shall prepare the Site for construction and installation of the Private Improvements, and construct and install the Private Improvements, in such a manner that the development shall meet applicable parking, landscaping and other requirements of the City's laws and regulations, except for those modifications set forth in Attachment 5. All Improvements shall comply with the City's zoning, building, parking, sign and other ordinances and regulations, except for those modifications set forth in Attachment 5.

(B) City Permits and Certificate of Completion. The Developer shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Private Improvements and shall make application for such permits and approvals directly to the City's Community Development Department and other appropriate agencies and departments as required.

(C) Funding of Public Improvements. The City shall have the sole responsibility for obtaining and securing all required funding for the 0.5-acre park and required parking for the park, with an anticipated completion date in calendar year 2022. Developer shall have the sole responsibility for obtaining and securing all required funding for Depot Street and the West Arterial Road. Developer will bear the cost of burying the power and telecommunication lines along the Site's State Street frontage. The Developer will not be responsible for any portion of the cost relating to the power and telecommunication lines beyond their respective portion, as agreed upon by the Parties. The City shall manage, maintain, operate, and service all Public Improvements at the sole discretion of the City, which may include, but is not limited to, abandoning, up-sizing, modifying, or changing the use and operation of any dedicated Public Improvement. In the event that Lotus is prevented from acquiring the phase 2 and/or phase 3 area identified in Attachment 1, Lotus will be reimbursed for a portion of the cost associated with the arterial road and collector road improvements/infrastructure. These costs will be divided between the phases based on the percentage of the total developable land area for each respective phase.

4.2 Construction and Installation of the Public Improvements

The Developer shall timely design the Public Improvements as set forth in Attachment 2 and shall submit said designs to the City for approval. The Developer shall complete the construction and installation of the Public Improvements in a timely manner and in accordance to the Phasing Plan in Attachment 4 and the Concept Plan in Attachment 1. The Developer shall design, construct and install all of the Public Improvements without expense to the City, except for those items to be funded by the City as provided for in this Agreement, see Attachment 2.

ARTICLE 5 – CONSTRUCTION REQUIREMENTS, ETC.

5.1 Issuance of Permits

The Developer shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Private Improvements and shall make application for such permits and approvals directly to the City Community Development Department and other appropriate agencies and departments as required. The Developer will be responsible for the payment of Private Improvement impact and connection fees, while the City will be responsible for the payment of impact and connection fees associated with the Public Improvements.

5.2 Times for Construction

The Developer agrees that it shall promptly begin and diligently pursue to completion the development of the Site through the construction and installation of the Private Improvements thereon, and that such construction and installation shall in any event timely commence in accordance with the times set forth in the Attachment 4 hereto, unless such date is extended by the City, or the Developer is unable to timely undertake or commence the Private Improvements because of any of the reasons set forth in Section 8.3, Enforced Delay.

5.3 Access to Site

The Private Improvements on the Site and the work of the Developer shall be subject to inspection by representatives of the City. The Developer shall permit access to the Site by the City for purposes of inspection, and, to the extent necessary, to carry out the purposes of this and other sections or provisions of this Agreement. Inspections shall be made during reasonable business hours and shall be made in accordance with standard project safety guidelines.

ARTICLE 6 – LAND USES

6.1 Covenants

The Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that the Developer, and such successors and assigns shall, subject to the terms and conditions contained in this Agreement:

(A) Devote the Site to, and only to and in accordance with, the uses and site designs specified in the Concept Plan (Attachment 1) and this Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the City for uses other than those specified.

(B) Pay when due and on or before the tax payment date all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof that the Developer owns.

(C) Except as otherwise provided herein, commence promptly the construction and installation of the Private Improvements on the Site and pursue diligently the construction and installation of the Private Improvements to completion, and complete the construction and installation of the Private Improvements, on or before the dates set forth in this Agreement.

(D) Prior to the completion of the Private Improvements and the issuance of the applicable Certificate of Occupancy, the Developer shall have no power to convey the Site, or any part thereof, without the prior written consent of the City. The Developer may, however, convey the Site, or any part thereof, prior to the completion of the Private Improvements and the issuance of the applicable Certificate of Occupancy, to: (1) a mortgagee or trustee under a mortgage or deed of trust permitted by this Agreement to obtain funds necessary to construct and install the Private Improvements; or (2) as security for obtaining financing permitted by this Agreement for the purposes of construction and installation of certain buildings, structures, or other Private Improvements; or (3) a new proposed developer pursuant to a development contract containing the applicable terms and conditions of this Agreement binding upon the new proposed developer, and in conformance with and subject to the approval of the City as provided for in this Agreement.

As provided above and elsewhere in this Agreement, until the Private Improvements are completed and a Certificate of Occupancy is issued by the City, the Developer shall obtain the written consent of the City before conveying the Site, or any part thereof. As a condition of granting such written consent, the City may require that any proposed transferee who wishes to purchase all or part of the Site prior to the completion of the Private Improvements and the issuance of a Certificate of Occupancy enter into a written agreement with the City to assume the obligations of the Developer under this Agreement and become a developer of all or part of the Private Improvements described on Attachment 1, and to be bound by the terms of this Agreement and to become the successor in interest to the Developer under this Agreement with respect to such parcel.

(E) Not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any improvements erected or to be erected thereon, or any part thereof.

6.2 Enforcement of Covenants

(A) It is intended and agreed that the agreements and covenants provided in this Article 6 shall be covenants running with the land and without regard to technical classification or

designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that the City shall be deemed beneficiaries of the agreements and covenants provided in Section 6.1 of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided.

(B) The covenants and agreements contained in covenants numbered 6.1(C) and 6.1(D) shall terminate as to a particular parcel of real property of the Site on the date the City has issued the Certificate or Certificates of Occupancy as to the particular parcel of real property on the Site, or as to a particular phase of construction or installation of the Private Improvements, on the date that the City has issued the Certificate(s) of Occupancy to the Developer. The Certificate(s) of Occupancy shall be evidence that the Private Improvements or a particular portion of construction or installation of the Private Improvements on the Site have been completed. The covenants numbered 6.1(A), 6.1(B), and 6.1(E) shall not terminate.

ARTICLE 7– ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

7.1 Representation as to Development

The Developer represents and agrees that its use of the Site, and the Developer's other undertakings pursuant to this Agreement, are and shall be only for the purpose of development of the Site and not for speculation in land holding. The Developer represents to the City that the Developer has not made or created, and that it will not, prior to the proper completion of the Private Improvements, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease (other than to an end user of a building or other portion of the Private Improvements), or any trust or power, or transfer in any other mode or form of or in respect to this Agreement or the Site, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

7.2 Prohibition Against Transfer and Assignment

(A) The Developer further agrees, in view of: (1) the importance of the development of the Site to the general welfare of the community; (2) the public subsidy that has been or will be made available for the purpose of making such development possible; and (3) the fact that a change in the ownership or with respect to the identity of the parties in control of the Developer or the degree thereof until the Private Improvements are completed on the Site, is, for practical purposes, a transfer or disposition of the property owned by the Developer; that, except as otherwise provided below, no change in the ownership of the Site, or change in the majority ownership or control of the Developer, or with respect to the identity of the parties in control of the Developer, shall be permitted without the express written consent of the City until the time that the Private Improvements have been constructed and installed on the Site. The City's decision to approve or

disapprove of a transfer or assignment shall be based upon the City's evaluation of the ability of the proposed successors to construct, install, maintain and operate satisfactory improvements on the Site and provide benefits to the community from the Site which are comparable to those benefits contemplated to be provided by the Developer from the construction, installation, maintenance and operation of its Private Improvements on the Site and of the Public Improvements, as described in this Agreement. The City may require as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement by the Developer;

(2) Any proposed transferee, by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Developer is subject; provided, that there has been submitted to the City for review, and the City has approved, all instruments and other legal documents involved in effecting transfer;

(3) The Developer and any subsequent transferee shall comply with such other conditions as the City may find desirable in order to achieve and safeguard the purposes of this Agreement. Provided, however, that in the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Developer or any successor of the Developer bound in any way by this Agreement or otherwise with respect to any term, covenant or condition of this Agreement, including but not limited to, the construction and installation of the Private and Public Improvements, or any of the obligations with respect thereto; and

(4) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual costs and expenses incurred and due under generally accepted accounting principles, including the Developer's cost of acquiring the portion of the Site being transferred, carrying charges, development costs, and return on investment (not exceeding 5% per annum) to the Developer of the Site and the Private Improvements, if any, theretofore made thereon by it.

(B) Notwithstanding the provisions of this Section 7.2, the Developer may transfer or make a significant change in the ownership or with respect to the identity of the parties in control of the Developer, but only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its successor in interest, to perform its obligations with respect to making the Private Improvements under this Agreement.

(C) The provisions of this Section 7.2 shall terminate upon the issuance of the Certificates of Occupancy for all of the Private Improvements.

7.3 Reports and Notices – Changes in Ownership

The Developer agrees that during the period between execution of this Agreement and the issuance of the applicable Certificate(s) of Occupancy:

(A) The Developer will promptly notify the City of any and all changes whatsoever with respect to: (1) a change in the Project Manager of the Developer; (2) a change in 51% ownership, legal or beneficial of the Developer; (3) a change or any other act or transaction involving or resulting in any change in 51% of the ownership of the Developer; or (4) with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its managers or officers have been notified or otherwise have knowledge or information.

(B) The Developer shall, at such time or times as the City may request, but no more often than twice a year, furnish the City with a complete statement, subscribed and sworn to by the manager or an officer of the Developer, setting forth any person or entity having 51% the ownership interest of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest, their names and the extent of such interest.

7.4 Application to All Forms of Entities

The provisions of this Article shall apply without exception to all forms of business organization, including but not limited to, limited liability companies, corporations, sole proprietorships, joint ventures and partnerships, both general and limited.

ARTICLE 8– REMEDIES

8.1 General Remedies; City and Developer

Subject to the other provisions of this Article 8, in the event of any default or breach of this Agreement or any of its terms, covenants or conditions by any Party hereto, such Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and in any event, do so within thirty (30) calendar days after receipt of such notice or if such default or failure is of a type that cannot reasonably be cured within such thirty (30) day period, within sixty (60) days provided that such cure is commenced within a thirty (30) day period and diligently pursued to completion, unless a longer period of time is agreed to by the Parties pursuant to Section 8.4. In case such action is not taken, or diligently pursued, or the default or breach shall not be cured or remedied within the time periods provided above, the aggrieved Party may institute such proceedings as may be necessary or desirable, at its option, to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations. In the event of any default in or breach of this Agreement by the Developer or the City which is not cured within the time limits contained in this Agreement, the non-defaulting Party may, at its option, take such action as allowed by law, in equity and/or provided for in this Agreement. Any delay by the City in instituting or prosecuting any such

actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.

8.2 Enforced Delay Beyond Party's Control

Neither the City nor the Developer shall be considered in breach of or default in its obligations hereunder, including but not limited to, with respect to the preparation of the Site for development, or the beginning and completion of construction and installation of the Private Improvements or Public Improvements, or progress in respect thereto, in the event of delay in the performance of such obligations due to causes occurring beyond its control and without its fault or negligence, including acts of God, Force Majeure, environmental contamination, geotechnical complications, unforeseen conditions, hazardous material abatement, or of the public enemy or terrorists, wrongful acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, tariffs, freight embargoes, wars and unusually severe weather or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Developer with respect to the preparation of the Site for development or the construction and installation of the Private Improvements or the Public Improvements, as the case may be, can be extended for the period of the delay: Provided, that in order to obtain the benefit of the provisions of this Section, a Party, within fifteen (15) calendar days after becoming aware of any such delay, shall have notified the other Party thereof in writing stating the cause or causes for the delay. The Parties shall mutually agree to the duration of the extension.

8.3 Extensions by City

The City may in writing extend the time for the Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the Developer's obligations nor constitute a waiver of the City's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

8.4 Remedies Cumulative/Non-Waiver

The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by any Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE 9– MISCELLANEOUS PROVISIONS

9.1 Conflict of Interest – City

No member, official, employee, consultant, or agent of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

9.2 No Personal Liability – City

No member, official, employee, consultant, agent or representative of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

9.3 Developer to Indemnify the City

Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employers, which may arise out of any act or failure to act, work or other activity related in any way to the development of the Site, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by the Agreement. This indemnification provision shall not apply to any claims or liabilities that are unrelated to the Site or this Agreement.

9.4 Modification to Form-Based Code

The Developer and City have approved various modifications to the Form-Based Code as set forth in Attachment 5.

9.5 Modifications to Concept Plan

The Parties recognize that the contemplated Private Improvements represent Developer's best attempt to estimate project economics, infrastructure design, project phasing, site layout, dwelling unit density, and traffic circulation to achieve the City's goals and objectives. Both parties acknowledge that these development assumptions are subject to change due to additional information such as architectural design, civil engineering, geotechnical investigation, title searches, UTA ROW requirements, and other unforeseen conditions. Proposed changes to the Concept Plan by the Developer may be approved at the planning staff level, as authorized by Clearfield City Municipal Code §11-5-3(B).

9.6 Notices

A notice or communication under this Agreement, by a Party to another Party, shall be sufficiently given or delivered, if given in writing by personal service, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

(A) In the case of a notice or communication to the City:

Clearfield City
Attn: City Manager
55 South State Street
Clearfield, UT 84015

With a copy to the City Attorney at the same address.

(B) In the case of a notice or communication to the Developer:

Lotus Acquisitions, LLC
Attn: Bryan Wrigley
388 South Temple, Suite B
Salt Lake City, UT 84111

With a copy to:

Strong & Hanni
Attn: H. Burt Ringwood, Esq.
9350 South 150 East, Suite 820
Sandy, UT 84070

or addressed in such other way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this Section.

(C) Notwithstanding the foregoing, the City may make inquiries from time to time regarding the schedule of the Project to the following person:

Joe Torman, President of Construction and Development Telephone: 801-721-0335

9.7 Attachments/Recitals

All Attachments referred to in this Agreement as being attached or to be attached hereto, whether or not in fact attached, the Parties being satisfied that the correct documents can be supplied from the records of the Parties, and Recitals, are incorporated herein and made a part hereof as if set forth in full and are binding upon the Parties to this Agreement.

9.8 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.9 Successors and Assigns of Developer

This Agreement shall be binding upon the Developer and its successors and assigns. Where the term “Developer” is used in this Agreement, it shall mean and include the successors and assigns of the Developer, except that the City shall have no obligation under this Agreement to any unapproved successor or assignee of the Developer where the City’s approval of a successor or assignee is required by this Agreement.

9.10 Mutual Drafting

Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

9.11 No Waiver

Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

9.12 Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

9.13 Attorneys Fees

In the event of a default hereunder, the defaulting Party agrees to pay all costs incurred by the other Party in enforcing this Agreement, including reasonable attorney’s fees, whether by in-house counsel or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

9.14 Governing Law

This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

9.15 Recordation and Running with the Land

This Agreement shall be recorded in the chain of title for the Site. This Agreement shall be deemed to run with the land.

9.16 Entire Agreement

This Agreement and all Attachments thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties

9.17 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.18 Time

Time is of the essence of this Agreement and its Attachments.

9.19 Amendment

This Agreement may only be amended in a writing signed by the Parties hereto.

9.20 Authority

The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its behalf; and the Developer has caused the same to be duly executed in its behalf, on or as of the day and year first above written.

CLEARFIELD CITY

By _____, Mayor

ATTEST:

City Recorder

DEVELOPER:

By _____
Its Manager

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the ____ day of _____, ____, personally appeared before me _____ who being by me duly sworn did say that he is the Mayor of Clearfield City and that the within and foregoing instrument was signed in behalf of Clearfield City by authority of a motion or resolution of its City Council and said _____ duly acknowledged to me that Clearfield City executed the same.

My Commission Expires:

Notary Public
Residing at:

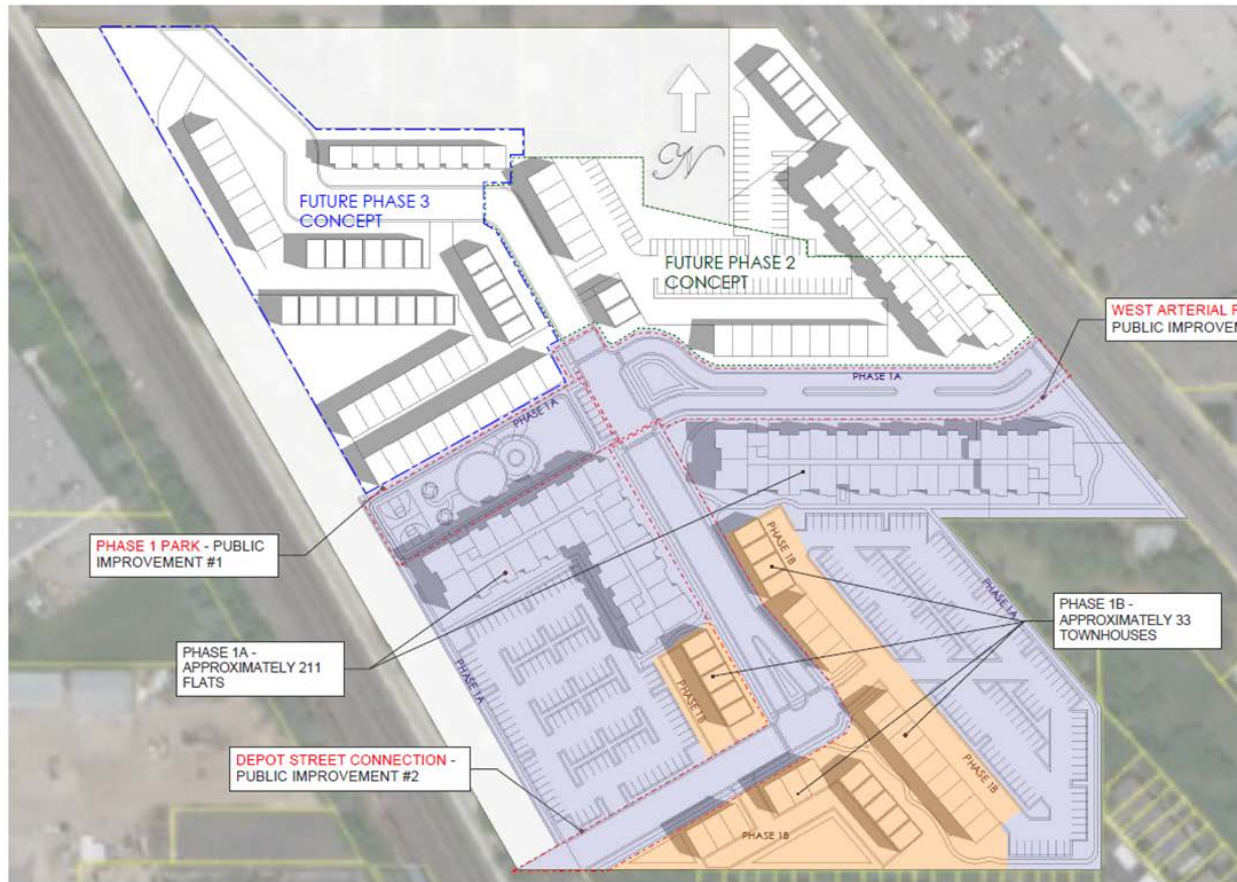
STATE OF _____)
:ss.
COUNTY OF _____)

On the ____ day of _____, ____ personally appeared before me _____, who being by me duly sworn did say, that he is the Manager of _____, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company, and acknowledged to me that said company executed the same pursuant to authority under or as authorized by its operating agreement or other proper authority.

My Commission Expires:

Notary Public
Residing at:

ATTACHMENT 1 – CONCEPT PLAN



A1

SITE PLAN - ATTACHMENT #1

SCALE: NTS

LOTUS

PROJECT
CLEARFIELD DOWNTOWN
REDEVELOPMENT PROJECT
ATTACHMENT #1

Document Date:

rev. date remark

Schematic Site Plan

-0.0

ATTACHMENT 2 – PUBLIC IMPROVEMENTS

Public Improvement #1

Depot Street

- Developer will provide connectivity to Depot Street, which may entail traffic being circulated through the development rather than an alignment along the west property line, as shown in Attachment 1.
- The City will ensure that the connection to Depot Street can be made through the existing UTA ROW at no additional expense to the Developer.
- The completion of the above Public Improvement will occur in accordance with the phasing shown in Attachment 1.

Public Improvement #2

West Arterial Road

- Will begin at State Street and terminate at the park, as shown in Attachment 1.
- Developer funded (except for the landscaping of the 6 ft. median which would be funded by City).
- The completion of the above Public Improvement will occur in Phase 1.

ATTACHMENT 3 – IMPACT FEE DEFERRALS

Impact Fee Deferrals													
Phase	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
1a	-	-	-	-	-	-	-	10%	10%	19%	38%	23%	100%
1b	-	-	-	-	-	-	-	25%	25%	50%	0%	0%	100%

Growth Rate Calculation													
Phase	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
Year Deferral	0	1	2	3	4	5	6	7	8	9	10	11	
1a	-	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%	
1b	-	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%	

The impact fees due and payable during project years 7 through 11 are calculated by multiplying the initial amount of impact fees due at the beginning of the project by 1) the percentage of the impact fee installment (Impact Fee Deferral table above) and 2) the growth rate factor (Growth Rate Calculation table above), in each respective year.

ATTACHMENT 4 – PHASING PLAN

			Flats				Townhomes			Total	
Phase	Development Schedule Commencement	Square Footage	Unit Count	Cost / Unit	Prior Acquisition	Extended Cost	Unit Count	Cost / Unit	Extended Cost	Unit Count	Extended Cost
1a	August 2020	250,000	211	8,800	325,375	1,531,425	-	14,000	-	211	1,531,425
1b	August 2020	75,000	-	8,800	-	-	33	14,000	462,000	33	462,000
SubTotal		325,000	211		325,375	1,531,425	33		462,000	244	1,993,425
2	October 2022	TBD	-	8,800	-	-	16	14,000	224,000	16	224,000
3	October 2025	TBD	-	8,800	-	-	54	14,000	756,000	54	756,000
SubTotal		-	-	8,800	-	-	70		980,000	70	980,000
Total			211		325,375	1,531,425	103		1,442,000	314	2,973,425

ATTACHMENT 5 – FBC MODIFICATION TABLE

BUILDING TYPE STANDARDS (Form Based Code Chapter 5)

MIXED USE BUILDING TYPE:

The two buildings located at the north end of the phase 1 site with commercial ground floors fronting Main Street.

Building Siting

Standard:	Requested Modification:
<i>Front Build to Zone: 0-10 feet</i>	15 foot setback, which is a modification to allow 0-15 feet instead of the 0-10 feet, in the code.
<i>Parking and Vehicular Access must be provided to rear of building</i>	Phase 1 will have a parking ratio of 1.25 stalls per unit. Parallel street parking may be used to fulfill the visitor parking requirement in Phase 1.

Height

Standard:	Requested Modification:
<i>Maximum Overall Height: 4 Stories Buildings taller than three stories shall have a step back of a minimum of 6 feet, which is located between the top of the first story and the top of the third story. The step back is required on street frontage side only.</i>	Compliance through design of the building for the step back requirement is being met or will be met through the design of the building façade, such as the uncovered balconies.
<i>Ground Story Minimum and Maximum Height per Story: 14 feet and 18 feet</i>	12' ceiling height in the commercial retail space.

Street Façade Requirements

Standard:	Requested Modification:
<i>Front Façade Entrance: Mixed Use or Arcade</i>	Flush storefront front-doors for all buildings that front State Street in Phase 1.
<i>Principal Entrance: Front Façade</i>	Flush storefront front-doors for all buildings that front State Street in Phase 1.

MULTI-FAMILY RESIDENTIAL BUILDING TYPE:

Building Siting

Standard:	Requested Modification:
<i>Parking and Vehicular Access must be provided to rear of building.</i>	Phase 1 will have a parking ratio of 1.25 stalls per unit. Parallel street parking may be used to fulfill the visitor parking requirement in Phase 1.

Height

Standard:	Requested Modification:
<i>Buildings taller than three stories shall have a step back of a minimum of 6 feet, which is located between the top of the first story and the top of the third story. The step back is required on street frontage side only.</i>	The developer is proposing to construct and design buildings in accordance with this requirement.

Additional Building Type Design Requirements

Standard:	Requested Modification:
<i>Secondary Building Materials: Limited to details and accents. Include gypsum reinforced fiber concrete for trim and cornice elements; metal for beams, lintels, trim and ornamentation, and exterior architectural metal panels and cladding. *Exterior Insulation and Finishing Systems (EIFS) are permitted for trim only on upper floor facades.</i>	Stucco may be used as a secondary facade material and used on the eaves/cornices of the buildings.
<i>Upper Story Residential Windows: Shall be recessed and double hung.</i>	Developer will utilize larger picture, slider and single-hung window options in lieu of the double-hung requirement. On average windows will be 5-6' tall in lieu of the 4' tall market standard.
<i>Balconies: Balconies must have a minimum area of 60 square feet and are required for a minimum of 40% of the units. All balconies must have a clear connection to the building and be architectural integrated into the building design. Balconies are not allowed to cover more than 40% of a building façade.</i>	Unit balconies must have a minimum depth of 5', and a total square footage no less than 60 square feet.

TOWNHOME BUILDING TYPE:

Building Siting

Standard:	Requested Modification:
<i>Parking and Vehicular Access must be provided to rear of building</i>	Front-loaded townhomes will be permitted.

Additional Building Type Design Requirements

Standard:	Requested Modification:
<i>Secondary Building Materials: Limited to details and accents. Include gypsum reinforced fiber concrete for trim and cornice elements; metal for beams, lintels, trim and ornamentation, and exterior architectural metal panels and cladding. *Exterior Insulation and Finishing Systems (EIFS) are permitted for trim only on upper floor facades.</i>	Stucco may be used as a secondary facade material and used on the eaves/cornices of the building.
<i>Upper Story Residential Windows: Shall be recessed and double hung.</i>	Developer will utilize larger picture, slider and single-hung window options in lieu of the double-hung requirement. On average windows will be 5-6' tall in lieu of the 4' tall market standard.

General Plant Requirements

Standard:	Requested Modification:
<i>The maximum amount of landscape area than may be turf grass is 60%.</i>	This is not yet verified, but will need to be shown or stated in order to decide whether or not there is a modification to be requested or that should be allowed.

OPEN SPACE (Form Based Code Chapter 6)

Standard:	Requested Modification:
<i>Each development is required to have a combined open space and landscaping percentage of twenty percent (20%) with no less than five percent (5%) provided for each.</i> <i>As required by the FBC, each development must incorporate an open space type identified as outlined in Chapter 6 of the code.</i>	The developer will need to identify the open space types (plaza, square or commons) as outlined in Chapter 6 of the FBC. This can be provided during the site plan review process, but is something that should at least be considered.

PARKING (Form Based Code Chapter 8)

Standard:	Requested Modification:
<i>Visitor parking is 15% of required amounts. On street parking directly in front of buildings may count towards required parking.</i> <i>The Residential Multi-family standards apply to all visitor Residential Building Types.</i>	Developer may use on-street parking toward requirement for visitor parking, but not toward requirement for resident parking.
<i>Required covered parking for Multifamily 50% of Required off street Parking Stalls</i>	In exchange for the aesthetic and practical benefits of the enhanced landscaping and tree canopy as shown in Attachment 1, the apartment flats will not be required to have covered parking.

STREETS (Form Based Code Chapter 4)

Standard:	Requested Modification:
<i>West Arterial Road – Neighborhood Street 63 foot ROW (no planted median on this street type)</i>	55 foot ROW (neighborhood street per form-based code excluding the 7 ft. parking on either side):
<i>No median is required for a neighborhood street cross section</i>	6 foot median comprised of planted trees with a curb and gutter.

First Addendum to the Put/Call Agreement

This First Addendum to the Put/Call Agreement (First Addendum”) is made effective this ____ day of October 2019 (the “effective date”), and is being entered into by and among Lotus Acquisitions, LLC, a Utah limited liability company, (“Lotus”), and Clearfield City, a Utah municipality, (“City”), hereinafter referred to collectively as, the “Parties.”

WHEREAS, the Parties entered into a Put/Call Agreement on April 16, 2019 (“Original Put/Call”).

WHEREAS, Section 9 of the Original Put/Call states that “this Agreement (Original Put/Call) may be amended at any time, but only by a written instrument which has been duly approved and executed by the Parties.”

WHEREAS, the Parties desire to amend the Original Put/Call pursuant to Section 9 to change a single date from September 1, 2019 to December 31, 2020.

NOW, THEREFORE, in consideration of the mutual promises, covenants and representations contained herein, the Parties hereto agree as follows:

AGREEMENT

(1) Recitals. The foregoing recitals are incorporated and made an integral part of this First Addendum by this reference.

(2) Amended Language/Cause for Addendum. The Parties agree to replace the fourth “WHEREAS” to the Original Put/Call with the following:

WHEREAS, if the Parties cannot mutually agree to the terms of the Development Agreement on or before December 31, 2020, the Property has no value to Lotus and the City desires to purchase the Property from Lotus.

(3) Original Put/Call. Except for the date change reflected in paragraph 2 above, all other terms and conditions within the Original Put/Call shall remain in place and applicable to the Parties.

(4) Binding Effect. All of the provisions of this First Addendum shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

(5) Severability. If any part or provision of this First Addendum shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this First Addendum except that condition, covenant or other provision of this First Addendum shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(6) Miscellaneous.

- a. Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this First Addendum or in pursuing any remedy provided hereunder or any applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.
- b. Survival. It is expressly agreed that the terms, covenants and conditions of this First Addendum shall survive any legal act or conveyance required under this First Addendum.
- c. Headings. The section and other headings contained in this First Addendum are for reference purposes only and shall not in any way affect the meaning or interpretation of this First Addendum.

IN WITNESS THEREOF, the parties hereto have caused this First Addendum to the Put/Call Agreement to be executed on the date indicated.

LOTUS ACQUISITIONS, LLC

CLEARFIELD CITY

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Attested By: _____

Print: _____

Title: _____

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
September 17, 2019

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Devin Rogers	Police Assistant Chief
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Coordinator
	Kelli Bybee	Communications Assistant
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

VISITORS: Matthew Godfrey – Better City, Matthew Blocker – Lotus, Joe Torman – Lotus, Devin Prouty, Ruth Jones, Chris Uccardi, Susie Petheram – FFKR Architects

Mayor Pro Tem Peterson called the meeting to order at 6:03 p.m.

DISCUSSION ON THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
2018/2019 CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT
(CAPER)

Brad McIlrath, Senior Planner, stated the Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) was an overview of all the accomplishments that were met during the 2018/2019 program year. He explained it was available for public comment until September 24, 2019.

Councilmember Thompson expressed his desire to see more information and opportunities for minority groups included in the CAPER. He discussed information he gathered regarding

computer learning algorithms being used in the application process for mortgage loans and its impediment to fair housing and stated he would forward the information onto staff. Mr. McIlrath stated the purpose of the CAPER was to report on the accomplishments of the previous program year funding. He suggested the information presented by Councilmember Thompson was best suited to be identified as part of the Analysis of Impediments, which was scheduled to be updated during the current budget year.

Mayor Shepherd arrived at 6:12 p.m.

DISCUSSION ON THE MABEY PLACE REDEVELOPMENT LOCATED IN THE VICINITY OF 442 SOUTH STATE STREET

JJ Allen, City Manager, stated based on the concerns that arose from the conversation at the retreat on August 23, 2019, staff followed up with Lotus. He introduced Matthew Godfrey, Better City, Matthew Blocker, Lotus, and Joe Torman, Lotus, who came to discuss the proposed redevelopment and address the Council's concerns.

Mr. Godfrey congratulated the Council for its downtown vision. He discussed more housing was needed on the west side prior to the east side being developed to help ensure better success for the project. He stated financing and the right developer for the east side were crucial. He expressed his opinion that Lotus had the finances and experience with other successful redevelopments to be the best candidate to accomplish the City's vision. He gave a brief background regarding how Lotus decided to partner with the City to redevelop its downtown. Mr. Godfrey reminded the Council that with a downtown redevelopment there would always be a financial gap because the market did not support it on its own, the communities would have to participate and engage with the development.

Mr. Godfrey pointed out the hope was redevelopment would begin with the east side of State Street, but there were some issues with property owners and the financial gap increased due to the sale price for the east side property. This financial gap led Lotus to look into developing the west side of State Street first.

Mr. Godfrey reviewed the purchase price for the Clearfield Mobile Home Park (CMHP). He indicated that price was only one determination when assessing the value of the land. Mr. Godfrey stated another aspect considered when determining the value of the land was what someone would be willing to pay to purchase it. He reviewed cost and cost per unit comparisons of properties in Clearfield, Ogden, and Roy.

Mayor Shepherd referred to one of the comparisons presented, which was an adjacent property to the City's property, and pointed out the cost per unit comparison for that project was not completely accurate because it was located behind another business with no access to State Street unlike the City's property. Mr. Godfrey responded the proposed negotiated price with Lotus was close to the comparisons.

There was a discussion about how the City could pay back the bond needed for redevelopment. Mr. Godfrey reviewed market numbers and the Lotus proforma. He pointed out some of the

costs shown in the proforma would be a benefit to the City in the form of connecting roads and utilities. There was further discussion regarding how Mr. Godfrey calculated his numbers for the financial gap recuperation.

Mr. Godfrey emphasized how tough the current market was. He explained if the City decided to look for other developers it could be tough to find one and then the City would still have a bond with no development to help pay it back.

There was also discussion about the additional properties needed to complete the project. Councilmember Peterson asked for further clarification on the purchase of the additional properties and why the purchase of those properties would not fall on the developer. Mr. Godfrey explained the process required of developers to get the money for their developments and if the banks wouldn't loan to them then the project wouldn't move forward.

Councilmember Thompson asked about the saturation rates and shared his concern about the ability to get the occupancy needed for the proposed development. Mr. Godfrey stated in reality there was not an accurate way to determine if the proposed development would reach its occupancy rate; however, the risk would be the developer's, if occupancy rates were not met.

Mr. Godfrey shared his experience working for Ogden City and how it had to change the market in order to see the desired change wanted by the Council and residents. He compared his experience to what Clearfield City was trying to accomplish.

Mayor Shepherd stated the new proposed numbers from Lotus used to determine the purchase price were more reasonable than the initial numbers.

Summer Palmer, Assistant City Manager, pointed out there were other concerns outside of financial that were expressed at the retreat that should be discussed. Councilmember Peterson shared concerns regarding the timetable for the east side development. She emphasized the west side development could not look like infill and needed to have a noticeable presence. She expressed the need for the development to be a project that would be the City's showcase for its goals and vision. She wondered how the west side development would look, act, and feel different from other comparable projects to help offset the financial investment, and if there would be as much investment on the outside of the development as on the inside so that residents driving past could see the benefit of that investment. She expressed a desire to be able to show residents what could happen when the City partnered with a developer who shared the same vision for the downtown area. Mr. Blocker understood and commented if it was going to cost a premium, the project needed to represent that investment. Councilmember Roper commented the Council was describing the project to residents as something that would stand apart from other projects. He also wondered how the west side development would show the residents what could be expected from the east side redevelopment. He stated the project wasn't about building apartments but rather creating a place.

Councilmember Phipps added he wanted the project to have a reputation that would draw people to it. He added he wanted to see the development become a place where people wanted to be and not just a stepping stone until they could get into what they really wanted in a different

community. Councilmember Thompson wondered how much of the Form Based Code would affect the result of the development. Councilmember Peterson commented the concept plan met the requirements of the Form Based Code. Mr. Allen commented there were a few variations from the Form Based Code.

Joe Torman, Lotus, reminded the Council of its tour of the Artesian Springs project earlier in the summer. He stated that project had a really positive reputation primarily because of its amenities package. He pointed out that great amenity packages were the first things to stand out in any quality development. He stated the size of the proposed development and the potential to use the Low-Income Housing Tax Credit (LIHTC) would allow the developer to put money into a spectacular amenities' package for the project. He stated LIHTC projects were required to have a high quality but Lotus always went above and beyond the requirement. He declared the project would be unlike anything anyone had seen in Clearfield before.

Councilmember Peterson wondered if the City or the developer would complete the mentioned park. Mr. Torman explained the proposed plan stated Lotus would complete the shelling for the park and the City would put in the equipment. Mr. Allen clarified the initial proposal was for there to be a City Park, however, that could still be negotiated with a development agreement.

There was a discussion about different options for the façade that would enhance the proposed development. Mr. Torman emphasized the importance of having professional companies managing the site so that it would be meticulously maintained.

Mr. Torman shared photos to show the vision of the parking for the proposed development. He reviewed the proposed site plan and emphasized the walkability of the proposed community. There was a discussion about the reasons behind the changes made from the initial site plan. There was also a discussion on the interior finish options of the proposed project.

Mr. Allen asked if there were any other questions or concerns from the Council. He reminded the Council the objective of the meeting was to leave with a decision to move forward with Lotus or move on to other options.

Councilmember Bush wondered what other amenities would be included. Mr. Torman discussed pet facilities and how those would be maintained. Mr. Allen asked about a pool. Mr. Torman explained a pool would not be part of phase one but could be something considered in later phases.

Councilmember Peterson asked about other costs not already discussed and what those would be. Mr. Torman explained the eight percent of developable land lost to the Utah Transit Authority (UTA) land easement was one cost, estimated at a \$400,000 loss. Mr. Allen commented it wasn't an easement. He clarified the City found out during due diligence that the property lines were not correct which accounted for the loss in the acreage available for development.

Councilmember Peterson asked for clarification on the request to defer impact fees. Mr. Blocker explained it was proposed the fees would be postponed until approximately year five in order to help with cash flow at the beginning of the proposed project. Mr. Allen said Lotus had agreed to

an inflation component to the payment. He also informed Mr. Torman and Mr. Blocker about certain impact fees that could not be waived, as the City didn't have control over them. He stated if Lotus wanted to see a deferment of those fees then the administrative control boards of those entities would need to be contacted individually by Lotus.

Ms. Palmer brought up parking surface and the density of the project; she wondered why the proposed density was not higher due to shortage of housing in the State of Utah. There was a discussion about building density, parking ratios, and parking options.

Councilmember Phipps shared his concerns with pursuing LIHTC and it not being an advantage for the City. He worried potential tenants of the proposed development would not frequent the east side redevelopment when completed.

Councilmember Peterson asked Mr. Godfrey to share his experience with Ogden City and The Junction in regards to Councilmember Phipps' concerns. Mr. Godfrey discussed the benefits Ogden City saw around The Junction and stated the proposed development for the west side was a great option to have across from the proposed redevelopment for the east side.

Councilmember Phipps reiterated his desire to have permanent residents over temporary ones that were often recognized with rental properties.

Councilmember Peterson stated she felt the City needed both permanent residents and temporary residents of downtown to bring more vibrancy and life to the City. Councilmember Roper recalled attending the Utah League of Cities and Towns conference and highlighted the information shared regarding how the components that made up downtown corridors helped to sustain cities.

The overall consensus was concerns had been resolved and staff had the approval to create a development agreement with Lotus and possibly look into additional housing units.

The Council took a break at 8:15 p.m.

The meeting resumed at 8:22 p.m.

Councilmember Peterson left the meeting at 8:22

DISCUSSION ON THE PROGRESS OF THE AMENDMENTS TO THE FORM BASED CODE

Brad McIlrath, Senior Planner, stated Susie Petheram with FFKR Architects was present and wanted to provide updates on the progress of the Form Based Code (FBC). He reviewed the background to date and the contract with FFKR, which went through the end of October.

Mr. McIlrath and Ms. Petheram led a discussion on the following FBC updates:

- Overall formatting cleanup

- Uses chapter
- Reconfiguration of Streets, Landscape, and Open Space chapters
- New Street and Block Network Chapter – included a Regulating Plan
- Street chapter – streets and streetscape standards
- Open Space chapter- updated to be Civic/Public Open Space
- Landscape chapter- updated to be Site-Specific Landscaping
 - Site Amenities (balconies, courtyards, rooftop gardens, gathering places, etc.)
 - Parking lot standards
- Utah Department of Transportation (UDOT) input and Proposed Corridor Agreement

Ms. Petheram discussed the new proposed zoning map as shown in the staff report. She highlighted the goals, which were to keep zones consistent and simplified. Mr. McIlrath pointed out the purpose of the proposed new zoning was to gradually change as one entered the City. He stated areas to the west behind Depot Street were not included but would now be included with the new proposed zoning map.

Mr. McIlrath stated the Corridor Commerce zoning would extend to 650 North, which would still allow for single story commerce buildings. Councilmember Bush wondered about extending the Corridor Commerce zoning to 800 North. The consensus of the Council was to extend the zoning to 800 North and include Gordon's Copy Shop.

JJ Allen, City Manager, wondered about taking the Civic zoning on the east to the post office as well as include the health department and library on the west. There appeared to be consensus from the Council for the proposed changes.

Mr. McIlrath asked for thoughts on the urban and mixed residential zones. Ms. Petheram clarified the differences and stated the urban residential allowed for more commerce than the mixed residential.

Mr. McIlrath discussed information from UDOT about possible intersection and road plans that could be part of a corridor agreement. There was a discussion regarding what areas should be included in a corridor agreement with UDOT. It was suggested to go from Center Street to 700 South. Mr. McIlrath stated nothing had to be decided immediately, as the corridor agreement had not been started yet. Mr. Allen reminded the Council the cost for the medians would be a factor for the City, as UDOT would not pay for them. Mr. McIlrath suggested looking into Transportation Reinvestment Zones (TRZ) funding.

Mr. McIlrath stated surrounding buildings and building types would be covered in the next update to the Council.

DISCUSSION ON THE FINAL SUBDIVISION PLAT FOR THE MAYFLY RISE TOWNHOMES LOCATED AT APPROXIMATELY 172 AND 140 NORTH MAIN STREET (TINS: 12-001-0212, 12-010-0213, AND 12-001-0002)

Brad McIlrath, Senior Planner, stated the applicant proposed a 49-unit townhome subdivision located at approximately 172 and 140 North Main Street. He pointed out some amendments

made to the original proposal that addressed setbacks and open space requirements. He indicated the subdivision would consist of three properties and have dedications for the individual townhomes units.

Councilmember Bush expressed his opinion that three story buildings were intrusive to neighboring properties on Lakeview. Councilmember Phipps agreed but stated the current code allowed for the proposed development plan for the property.

There was a discussion about the proposed direction of the townhomes. Mr. McIlrath pointed out the proposed project met the current Form Based Code requirements.

DISCUSSION ON PETITIONING DAVIS SCHOOL DISTRICT TO RENAME SOUTH CLEARFIELD ELEMENTARY AND DAVIS COUNTY TO RENAME THE DAVIS COUNTY LIBRARY IN CLEARFIELD

Mayor Shepherd felt it would be worth submitting a request to Davis County to include Clearfield in the name of the new library. There was a discussion about the name being changed to Clearfield North Branch.

He asked for thoughts on a request to the Davis County School District to rename South Clearfield Elementary School. Councilmember Phipps expressed his opinion that a resolution from the City that showed the desire of the residents to rename the school would be beneficial. Councilmember Phipps mentioned the District would not spontaneously change the name so a request would be needed.

There was a discussion on how the City would proceed with making those requests. The consensus of the Council was to have staff draft letters that requested the name changes for the Library and South Clearfield Elementary, which could be approved and signed by all the elected officials.

Councilmember Bush reported he would not be at next week's meeting on September 24, 2019.

Mayor Shepherd passed out the United Way partnership records for the Council to review.

Councilmember Thompson moved to adjourn at 9:15 p.m., seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
October 1, 2019

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Spencer Brimley	Community Development Director
	Trevor Cahoon	Communications Manager
	Kelli Bybee	Communications Assistant
	Jenn Wiggins	Digital Marketing Specialist
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder
EXCUSED:	Summer Palmer	Assistant City Manager

VISITORS: Mark Becraft – North Davis Fire District, Devin Prouty, Chris Uccardi, Ruth Jones, Olivia Jaramillo, Jerome Curran

Mayor Shepherd called the meeting to order at 6:02 p.m.

DISCUSSION ON WINTER PARKING RESTRICTIONS

JJ Allen, City Manager, reviewed the history of the winter parking restrictions ordinance. He discussed the change in State Law regarding the issuance of citations and the effect the law had on the enforcement of the winter parking restrictions. The current winter parking restriction ordinance stated no street parking between the hours of midnight and 5 a.m. from the beginning of November to the 15th of March. He stated the ordinance had been in place for many years; however, the enforcement of the ordinance had changed over the years.

Councilmember Bush wondered if the City was ticketing even when there was not snow. Mr. Allen responded yes it was educational and consistency was necessary so when there was snow the roads were clear. He pointed out if the ordinance was not enforced then there would be no

purpose for having it. Kelly Bennett, Police Chief, stated enforcement happened even when there was no snow and yet the police department still received comments from the public about the lack of enforcement.

Councilmember Thompson arrived at 6:05 p.m.

Mr. Allen acknowledged those present that represented the following departments public works, police, and fire who could speak to any questions or concerns for their respective department. He reviewed information gathered from the City's insurance broker regarding claims that dealt with plowing and winter related accidents for multiple jurisdictions represented by the City's insurer.

Mark Becraft, North Davis Fire District, shared he would always be an advocate for access to plowed surfaces. He expressed his concerns about finding a fire hydrant clear from cars in the winter. He agreed there would be significant difficulty for enforcement on snowy days if the ordinance were to be changed to allow parking when not snowing.

Chief Bennett explained if the ordinance were changed to state no parking only when snowing it would be hard to enforce because the citation issued did not move the car off the street. When citations were given prior to snowy days they served as warnings and reminders of the ordinance that was in place. He stated a lot of the past parking citations written were complaint based. He confirmed his position would be to keep the ordinance as it was currently written.

Adam Favero, Public Works Director, expressed his worry about consistency and the difficulty of informing residents in enough time to get cars off the street in the event of a snowstorm. He explained the challenges of streets being plowed during the day due to traffic and more cars parked on the streets. He pointed out another liability for the City could be the possibility of chipping cars with the sand mix put down.

Stuart Williams, City Attorney, stated enforceability was his biggest concern if the ordinance were changed to allow parking on non-snowing days. He said citations could be viewed as a reminder of wrongdoing regarding existing ordinances.

Councilmember Roper stated there was not a solution that would be fair across the entire City. He explained there were some streets within the City that were narrow and a plow would not be able to make it down the street with cars parked on the side. He was not opposed to changing the dates of enforcement and to allow parking on side lawns when needed. Mr. Williams stated there were environmental issues with parking on the grass. Councilmember Roper stated with safety a priority; the facts supported the plows needed to get down the streets.

Councilmember Peterson wondered if the complaints the Council had received were more concerned with the right to park on the street or with the enforcement of the ordinance. She stated her complaints were more about the enforcement of the ordinance. Mayor Shepherd said he had more people complain about neighbors parking on the road.

Councilmember Bush said one proposed alternative was alternating street sides for parking. There was a discussion about different cities that allowed alternating the parking; those cities generally had that type of enforcement year round.

Councilmember Peterson went back to the initial question of what was the priority for winter parking. She stated serving the residents was high on the list for her, however that needed to be weighed against public safety and the infrastructure of the City. She expressed a desire to find a balance between safety and allowed public access. She felt a change in the dates would be a great starting point. Councilmember Thompson expressed his opinion the priority was to mitigate potential risk and the efficient use of tax dollars. He stated the possibility of a date adjustment sounded reasonable.

Councilmember Peterson wondered if there were fundamental rights for everyone to have access to street parking. Mr. Williams stated there were no fundamental rights for parking on a public street. There was a discussion regarding appropriate areas for parking a car. Ideas were shared to help accommodate the need for extra parking surfaces.

Councilmember Roper stated there was not a fair solution that would balance safety and the impact on the residents. He expressed his opinion to leave the parking restriction ordinance as it was currently written. Councilmember Phipps said it would be unrealistic to tie parking to weather, as the weather is so unpredictable. He expressed the need of access for safety vehicles and was favorable towards a change in the dates of the parking restriction ordinance. Councilmember Peterson expressed her opinion that safety needed to be a top priority. She expressed she would be in support of a change in the dates for the parking restrictions.

The consensus of the Council was to amend the winter parking ordinance so the enforcement period would begin November 15th and end on the last day of February each year.

DISCUSSION ON APPOINTING A YOUTH MEMBER TO THE PLANNING COMMISSION

Mayor Shepherd stated the City currently had a vacancy on the Planning Commission. He said there had been a youth ambassador that regularly attended the Planning Commission meetings; however, due to disparaging remarks from some of the Commission members towards the youth ambassador, the ambassador no longer felt comfortable attending the meetings. Mayor Shepherd expressed a desire to make a change to the ordinance to allow a member of the Youth Commission to become a regular member of the Planning Commission.

Mayor Shepherd stated his goal was to keep the youth engaged in the community. He also pointed out that the opportunity to serve on the Planning Commission would be a great addition to college applications for the youth. Councilmember Roper shared his opinion regarding the importance of giving youth true roles over symbolic roles as symbolic roles could make youth feel like they did not have a voice.

Councilmember Peterson wondered about the legality regarding giving land use authority to individuals who were not old enough to vote. She asked if it could affect the appeals process.

Stuart Williams, City Attorney, stated the decision were made by the Planning Commission as a body not just one member.

Mayor Shepherd stated he would present the idea to the Planning Commission and let them make the decision.

There was a discussion about how the ordinance would need to be reworded if the change were approved.

Councilmember Thompson wondered if there should be an age limit. Mayor Shepherd felt it should be a 16 year old at the minimum.

Spencer Brimley, Community Development Director, said the change to the ordinance would also require an adjustment to the Planning Commission bylaws. Mayor Shepherd stated he felt the change did not need to be made to the bylaws. There was a discussion regarding the bylaws. Mr. Allen suggested there might be other areas of the bylaws that should be revisited as well.

QUARTERLY COMMUNICATIONS UPDATE

Trevor Cahoon, Communications Manager, introduced Jenn Wiggins, Digital Marketing Specialist, and Kelli Bybee, Communications Assistant, and discussed the assignments given to each staff member.

Mr. Cahoon and Ms. Wiggins reviewed and shared key takeaways from the following classes attended during the Public Information Officer (PIO) conference:

- How to communicate with the public during a suicide incident.
- Preparing to respond by preparing for disaster.
- How to respond to negative press.
- How to craft layered, powerful messaging in an impactful way.
- Podcast and community outreach.

There was a discussion about how the City could use podcasts to reach new audiences.

Mr. Cahoon led a discussion on the following goals set for the communications department:

- Improve Clearfield City's Image
- Individual department needs

Mr. Cahoon and Ms. Bybee led an interactive discussion on branding identity for the City with the Council. The following questions were asked and the Mayor and Council were asked to respond with first impressions:

- Ask yourself if your organization was a car, what kind of a car would it be? Get specific, and define the year, make, model and color. It is a coupe or sedan? Import or domestic? Convertible?
- If your organization was a famous celebrity, who would it be and why?
- If your organization had a spirit animal, what kind of animal would it be?

- If Clearfield was to choose an archetype to play D&D what would it be?
- What are the physical characteristics of your brand?
- What is your brand's character?
- How is the relationship between your brand and your consumer?
- What are the values and guiding principles of your brand?
- Who do you portray as a target group for your brand?
- How do consumers perceive themselves when engaging with your brand or product?

Mr. Cahoon informed the Council that many of the same techniques used in the discussion would be used with focus groups to help identify how the residents viewed Clearfield City. The results from the focus group would then be used to determine how to enhance the view of Clearfield City.

Councilmember Bush moved to adjourn at 8:46 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.

CLEARFIELD CITY COUNCIL MEETING MINUTES
7:00 P.M. POLICY SESSION
October 8, 2019

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
EXCUSED:	Nike Peterson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Teresa Allen	Victim Services Coordinator
	Delaney Combe	Victim Housing Advocate
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Spencer Brimley	Community Development Director
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Manager
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

VISITORS: Daniel Huntington, Grifols Biomat, Nicole Curran, Jerome Curran, Russell Barton, Kristi Bush, Richard Nielson, Lisa Nielson, Bob Bercher, Haylee McMannus, Sharron McMannus, Kathryn Murray, Devin Prouty, Chris Uccardi

Mayor Shepherd called the meeting to order at 7:02 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Open Comment Period there were forms to fill out by the door.

Councilmember Bush led the opening ceremonies.

APPROVAL OF THE MINUTES FROM THE SEPTEMBER 10, 2019 WORK SESSION AND THE SEPTEMBER 24, 2019 POLICY SESSION

Councilmember Roper moved to approve the minutes from the September 10, 2019 work session and the September 24, 2019 policy session; as written, seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, Roper and Thompson. Voting NO – None. Councilmember Peterson was not present for the vote.

PRESENTATION OF THE YARD OF THE YEAR AWARDS

Councilmember Phipps reviewed the process for selecting winners for the Yard of the Year Awards. He reported the Parks and Recreation Commission had selected the winners for the annual “Yard of the Year Contest.” He stated staff and the Council were pleased to recognize the winners for doing their part in beautifying the community. He announced Robert and Larue Hawthorn were selected as the first place winners, with Richard and Lisa Nielson and Robert and Nonnie Hulse as runners up.

Mayor Shepherd commended all award recipients for their efforts throughout the year towards the beautification of the City.

OPEN COMMENT PERIOD

Nicole Curran, resident, asked if there was a way to accommodate winter parking for large families and those vacationing at homes in the City during the holidays. She explained the difficulty of parking at her house. She encouraged the Council to lift the restriction on days when it was not snowing.

Jerome Curran, resident, stated he had been a resident for 18 plus years. He wondered why the winter parking restrictions had to be so absolute. He felt there could be a better middle ground to accommodate both safety and comfort for residents. He requested the reasoning behind the absoluteness of the ordinance. He offered the idea of sending out text message alerts on days when parking was not allowed.

APPROVAL OF THE AWARD OF BID FOR THE CITY HALL UNINTERRUPTED POWER SUPPLY PROJECT

Curtis Dickson, Community Services Deputy Director, stated the City solicited bids for the replacement of the Uninterrupted Power Supply (UPS) unit at City Hall. He explained the unit was the original unit for the building and it was nearing the end of its service life. He pointed out the UPS unit provided power to key areas and electronic components of City Hall during the time between a power outage and when the generator turned on. Mr. Dickson mentioned the fiscal year 2020 (FY20) budget included \$75,000 for the project. He noted the lowest responsible bidder was Sunrise Service with a bid amount of \$68,464.85. He indicated staff recommended the project be awarded to Sunrise Service for the bid amount and approve contingency of \$6,535.15 for a total project cost of \$75,000.

Councilmember Phipps asked about an explanation for the varying costs seen in the bid proposals. Mr. Dickson said one reason might be the products and manufacturers used by different bidders. He explained the new system proposed was a verified system and would do the job. Councilmember Phipps asked about the average life expectancy for the system. Mr. Dickson reported the life expectancy should be 15 to 20 years.

Councilmember Phipps moved to approve the award of bid for the City Hall uninterrupted power supply project to Sunrise Service, Inc. for the bid amount of \$68,464.85; approve funding for the project bid amount with contingency of \$6,535.15 for a total project cost of \$75,000; and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, Roper and Thompson. Voting NO – None. Councilmember Peterson was not present for the vote.

APPROVAL OF ORDINANCE 2019-26 AMENDING TITLE 7, CHAPTER 3, SECTION 22 – MOTOR VEHICLES AND TRAFFIC SAFETY, SNOW REMOVAL OF THE CITY'S CODE

JJ Allen, City Manager, stated the City Council had discussed the possibility of amending the winter parking ordinance at length during the October 1, 2019 work session. He reviewed staff had been requested to prepare an ordinance amending the time frame to restrict winter parking. He commented the new dates for the winter parking restriction were reduced and if the proposed ordinance were approved the effective restriction dates would be from November 15th to the last day of February the following year. He pointed out updates to the start date and the end date were the only changes directed for staff to adjust.

Mayor Shepherd asked if there was a need for further discussion. Councilmember Bush reported his recent attendance at a neighborhood party on Villa Drive. He shared some of the residents indicated a desire for the parking restrictions all year long. He reported in that area cars parked on both sides of the street. Councilmember Bush said when looking at an ordinance the Council had to look at its impact to the entire City. He stated some streets in the City were very narrow.

Councilmember Thompson moved to approve Ordinance 2019-26 amending Title 7, Chapter 3, Section 22 – Motor Vehicles and Traffic Safety, Snow Removal of the City's Code and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, Roper and Thompson. Voting NO – None. Councilmember Peterson was not present for the vote.

COMMUNICATION ITEMS

Mayor Shepherd

1. Thanked North Davis Fire District (NDFD) for the open houses and appreciated all those involved with the successful events.
2. Attended National League of Cities (NLC) to prepare for the meeting next month.
3. Reported he would be out of town October 12 through 19.

Councilmember Bush

1. Attended the Water Conference in Chicago. Reported on the great information gained for the Sewer District and the City.
2. Attended the Utah League of Cities and Towns (ULCT) conference.
3. Attended the Utah Transit Authority (UTA) facility tour and had the chance to simulate driving the Front Runner train. Shared information on proposed plans to get two tracks and extend bus routes over the next few years.
4. Attended Night Out Against Crime. It was good.
5. Attended the NDFD open house.

Councilmember Phipps – nothing to report.

Councilmember Roper – thanked members of the Police Department for meeting with and providing a tour for the Youth Commission.

Councilmember Thompson

1. Discussed the Impact Tax reform collaborative workshop and asked if anyone would be able to attend. Mayor Shepherd said he would be at the meeting.
2. Reported he would be out of town at the Mosquito Abatement Conference in Bryce Canyon.

STAFF REPORTS

JJ Allen, City Manager - reported the monthly report would be sent out by the end of the night.

Nancy Dean, City Recorder –reviewed the Council’s schedule:

- Work Session on October 15, 2019
- Policy Session on October 22, 2019
- Work Session on October 29, 2019
- Election Day coming up, ballots should be sent out soon. Reviewed the ballots could be mailed, dropped in the ballot box, or delivered in person on the day of the election.

Trevor Cahoon, Communications Coordinator – reviewed upcoming events with the Council:

- Updated the events on Trello Board for next three months.
- Shrek Jr. was currently performing at the Arts Center and tickets were on sale.
- October 12, 2019 - Be Ready Emergency Preparedness presentation at City Hall. Residents were invited to attend.
- October 16, 2019 – Virtual ribbon cutting for the Cornerstone bathroom.
- October 17, 2019 – Employee Benefit Fair 2 to 4 p.m.
- October 17, 2019 – Third Thursday Soiree trunk or treat event at 6:30 p.m. Stated if decorating a trunk come between 5:30 p.m. and 6:00 p.m. to prepare. Spots were first come first serve at City Hall in the south parking lot.
- October 26, 2019 – Boonanza tickets were on sale. Parents did not need to pay but the kids would have a fee to participate.
- October 23-30, 2019 – Dumpster clean up event would be in the neighborhoods

There being no further business to come before the Council, **Councilmember Roper moved to adjourn at 7:35 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Phipps, Roper, and Thompson. Voting NO – None.** Councilmember Peterson was not present for the vote.



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Adam Favero, Public Works Director
MEETING DATE: October 22, 2019
SUBJECT: RFP for the Sewer Capacity Study

RECOMMENDED ACTION

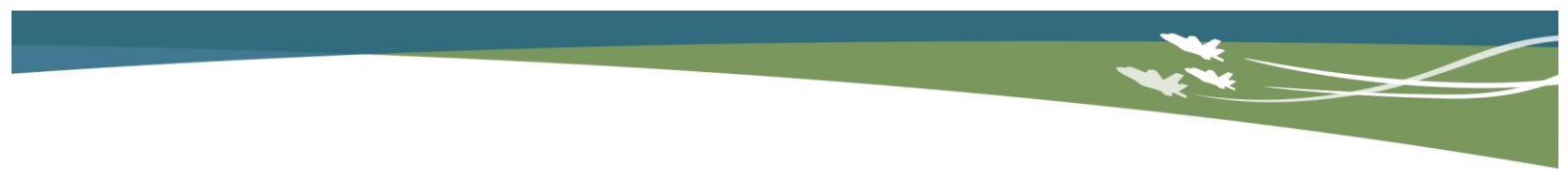
Approve the award of proposal for the Sewer Capacity Study to CRS Engineers for the bid amount of \$31,766 with an additional amount for contingency cost of \$13,234 for a total cost of \$45,000 and authorize the Mayor's signature on all necessary documents.

DESCRIPTION / BACKGROUND

The purpose of the Sewer Capacity Study is to assure the sewer lines servicing 6 different locations throughout the City are meeting current flow volumes and have the ability to meet future demand as it relates to flow volumes, as a result of new development. The budgeted amount for this project was \$85,000. The budget amount was based on discussions with engineering firms and consultants prior to the RFP being posted. Each firm that applied did not come close to this total budgeted amount.

The selection committee for this study was comprised of Adam Favero; Public Works Director, Spencer Brimley; Community Development Director, and Brad Wheeler; Street Superintendent. We received three proposals for this study, by the following firms: CRS, CEC, and JUB Engineering. The committee evaluated each proposal on a set of criteria. Scoring was close amongst the three proposals. The committee discussed each proposal in great detail, weighing out the pros and cons of each applicant. Following this discussion the committee decided to recommend the selection of CRS as the engineering firm for the Sewer Capacity Study.

The committee's main objective was to find the engineering firm who had the greatest understanding, as it related to sewer capacities and analyses. Being financially responsible was another goal the committee shared. While CRS's total project cost was the median of the three firms, the committee is confident their cost for the work to be completed and their qualification would be the right fit for this project. CEC is the City's current contracted engineering firm. Their proposal was the lowest of the three, and although we appreciate the proposals costs being sensitive to City budgets and those limited dollars, we believe CEC will still have a role in this project. The Council may recall that Clearfield City is currently advertising for City Engineer to help with



projects of this very nature. Since the posting just closed and there has not been a selection made, staff believes we will need CEC in the role of City Engineer for this project. Their work with the consultant will allow for technical expertise and a check and balance system for the project.

JUB's total cost on for the study was the highest of the group at \$46,155, but staff did not feel the pricing for their proposal was consistent with the amount of work included in the proposal JUB did not add enough value to their proposal to justify the addition cost.

The RFP provided a basic scope of work for this project. The scope of work in the RFP is a good starting point, but may need to be expanded as the study moves forward. For this reason, staff has asked for a contingency amount that may be a little higher than usual.

CORRESPONDING POLICY PRIORITY (IES)

Provide Quality Municipal Services with well-planned facilities and infrastructure

Improving Clearfield's Image, Livability and Economy

It is vital to our community that the City's infrastructure is properly managed to sustain current demand while providing sufficient capacities for the future of Clearfield.

FISCAL IMPACT

- 525201 631006 \$85,000 budgeted.

ALTERNATIVES

N/A

SCHEDULE / TIME CONSTRAINTS

Following approval the project would commence in the fall of 2019. This would allow CRS to start the capacity study before winter weather conditions. Starting at this time will also be important to allow time to design the new sewer line for 350 South, which would be necessary as a result of the pending Mabey Place redevelopment effort.

LIST OF ATTACHMENTS

- Sewer Capacity Study Consultant Tabulation Scores-Spreadsheet

Sewer Capacity Study Consultants
Selection Committee
Scoring Tabulation Sheet

	Adam Favero	Spencer Brimley	Brad Wheeler
CRS	46	40	42
CEC	43	38	42
JUB	39	40	43



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Eric Howes, Community Services Director
MEETING DATE: October 22, 2018
SUBJECT: Recreation and Aquatic & Fitness Center Fee Study

RECOMMENDED ACTION

Authorize staff to engage the services of a professional consulting firm to develop a business plan and to conduct a fee study for all fees for services charged in the Community Services Department, including the Aquatic & Fitness Center, Recreation, and Arts Divisions.

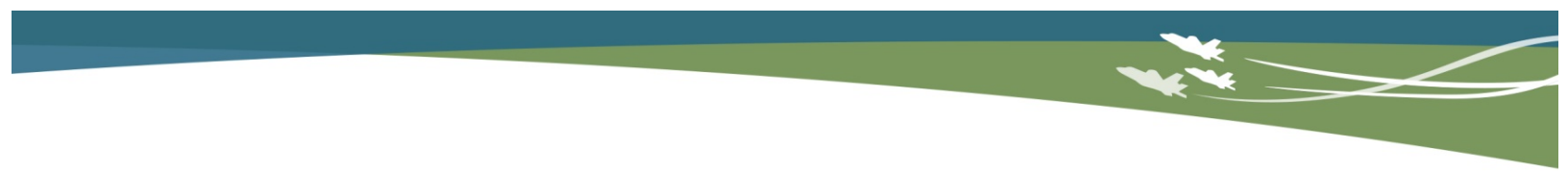
DESCRIPTION / BACKGROUND

Many of the fees for services provided by the Community Services Department have been in place since the Aquatic and Fitness Center was opened in 2005. The intent of this proposed study is to complete a thorough evaluation of the actual costs for services provided within the department and to utilize that information and the existing Cost Recovery Model as the basis for necessary fee changes.

Revenues for the Aquatic and Fitness Center have been in a pattern of decline for the past couple of years. Some of that decline could possibly be attributed to additional fitness centers that have come to the area in recent years. However, a failure to adjust fees as needed and the widespread application of discounted membership fees has also contributed to the decline. While the mission of the Community Services Department is not necessarily to achieve 100% cost recovery it is critically important to the long-term viability of the services that we offer, that we are aware of, and meet, cost recovery goals.

The revenue projections for the current fiscal year are based upon the implementation of new fees with the intent of adopting the recommended fees as soon as a comprehensive study could be completed. The process would include the following five steps:

1. An evaluation of existing business principles, finance philosophy, staffing, and facilities.
2. A Pricing and fee structure evaluation.
3. Pricing and fee structure recommendations.
4. Financial stability and sustainability recommendations
5. An implementation plan.



The end result of the process would provide us with a business plan to guide service delivery decisions, cost recovery goals, fee change recommendations, and an implementation plan. It is proposed that funding for the study come from fund balance as a one-time expenditure. Staff has contacted several firms experienced in this type of analysis and would be able to start work within the next 30 days if approved. Based on a review of the proposals received from four separate firms, staff would recommend that we work with Thomas J. O'Rourke. His bio and proposal are included for review.

IMPACT

a. FISCAL

\$21,000

b. OPERATIONS / SERVICE DELIVERY

The goal is to develop a business plan for the future and to ensure that fees for services provided are sufficient to meet the city's cost recovery goals for services.

ALTERNATIVES

It is possible that staff could complete this analysis and make the necessary recommendations. The challenge is that there is a tremendous amount of data that will need to be reviewed and having an outside firm that specializes in this type of work would be substantially faster and would provide an unbiased recommendations based upon hard data.

SCHEDULE / TIME CONSTRAINTS

With current revenue projections based upon fee increases, it is in the best interests of the City to implement new fees as soon as possible in an effort to meet those budgeted goals.

LIST OF ATTACHMENTS

Bio for Thomas O'Rourke

Proposal from Thomas J. O'Rourke

THOMAS J O'ROURKE

Tom O'Rourke is currently part of the parks and recreation consulting team for Brandstetter Carroll, Inc. Brandstetter Carroll is a national Architectur, Engineering, and Planning firm with locations in Lexington Ky, Dallas TX, Cincinnati OH, and Cleveland OH. Tom is responsible for the operational, programming, and financial recommendations of park and recreation master plans. Tom is also in his fourth year as a Professor of Practice at Clemson University in the Department of Parks Recreation and Tourism Management. He is responsible for teaching at the graduate and undergraduate levels and working with other faculty to assist communities, agencies, and practitioners in a variety of capacities. Tom's focus at Clemson is in creating innovative and entrepreneurial models and solutions to issues facing the parks and recreation field.

Tom previously served as the Executive Director of the Charleston County Park and Recreation Commission (CCPRC) from 2001-2018 leading the Agency through the largest capital project, budget, and attendance growth in the agency's history. During Tom's tenure at CCPRC the agency grew from 5,000 acres of parkland to over 12,000 acres of protected parkland. CCPRC has been nationally recognized for operating an ever-expanding park system with little reliance on tax subsidies for operations and growth.

Educating professionals in the Parks and Recreation field has always been a significant part of Tom's work. Tom is a frequent presenter at numerous State, National and International Conferences. He also has served as a member of the Board of Regents for the Revenue Development and Management School, the Supervisors Management School, and also the NRPA Directors School. Tom is currently the Director of the Parks Foundations School which will be held in Oglebay, WV.

Previously, Tom served as the Executive Director of the Parklands Foundation of Charleston County, Inc., he also served as the Director of the Mt. Pleasant Recreation Department in Mt. Pleasant South Carolina. Tom also worked as Manager of the Sports and Recreation Division for Seamon Whiteside and Associates, a Landscape Architect and Engineering firm. Tom's first job was as a high school Athletic Director and Coach.

Tom has recently been elected as Council Member for the Town of Mt. Pleasant, in Mt. Pleasant South Carolina, and serves as the chair of the finance committee.. He has been married to Jackie O'Rourke for 40 years. They have three grown and married children and two grand children. Recreation is Tom's profession but his passion has always been coaching. When time allows he serves as a Track and Field coach, (Pole Vault.) He has coached State Championship teams and numerous State Qualifying Pole Vaulters.

Clearfield City Parks and Recreation

Clearfield City, Utah

Proposal For

Five Step Business Plan

To include;

1. Evaluation of Existing Business Principals, Finance Philosophy, Staffing, and Facilities
2. Pricing and Fee Structure evaluation
3. Pricing and Fee Structure Recommendations
4. Financial Stability and Sustainability Recommendations
5. Implementation Plan

Tom O'Rourke,
528 E. Rice Planters Ln.
Mt. Pleasant, SC 29464

Understanding of the Scope of the Project:

The communities within the state of Utah, and especially the areas around Salt Lake City, are some of the fastest growing communities in the United States. Clearfield City, is one of these cities that will be experiencing such rapid growth. The Recreation Department in Clearfield City is one of the leading departments in the State of Utah. Because of such rapid growth, and the demands of the citizens, it will be essential to work with staff to create a fair, equitable, and easy to understand business plan to guide the department into the future in such a way that takes into consideration the rapid growth of the area.

The work ahead of us is far more than revisiting a cost recovery program. On the front end, this study should create new business philosophies with principals that guide future financial decisions. Conversely, the last and final important piece to the study will be to create a sustainable financing plan for the foreseeable future.

Scope:

Prior to First Visit and First Meeting:

- A. Prepare a package for the consultant to include;
 - 1. List of programs and fees
 - 2. Last 3-year budget information, by category
 - 3. Cost Recover data – (how close have you gotten?)
 - 4. Census data – with 10-year projections
 - 5. Capital Budget to include any bonding information
 - 6. Organizational Chart
 - 7. Document on any vendors or contractors that you use.

The naming of a project manager and a project team from the department.

Project Manager - Contact person for Consultant

Project Team – A steering Committee comprised of key senior staff members.

Visit One – Day One

- A. An open discussion with senior staff members on the financial philosophy of Parks and Recreation within Clearfield City. (This should be prior to the Kick Off meeting.
- B. Kick-off Meeting with staff
- C. Tour of all facilities within the department, to include those that manage those facilities and programs.
- D. Additional meeting with Special Event staff

Visit one – Day Two

Cost Recovery Day

- A. The day will be to identify and create a consensus on the existing Cost Recovery Program.
- B. Dinner with the Project Team

Visit one – Day Three

Pricing Day

Discussions for Pricing

- A. Market Rate Pricing
- B. Alternate Pricing
 - 1. Prime time/ Non-Prime-Time
 - 2. Season/Off-season
 - 3. Group Pricing
 - 4. Age segments
 - 5. Volume Rates
 - 6. Partnership Rates
 - 7. Resident/Non-Resident Rates

8. School Rates
9. High Value/Low Volume Rates
10. Low Value/High Volume Rates

Visit Two – Day One

Draft Recommendations on the following, (with the steering Committee;)

- A. Fee recommendations – based on cost recovery
- B. Revenue enhancement generators
- C. Expense savings recommendations
- D. Sponsorship plan
- E. Vendor / Partner recommendations
- F. Park Foundation recommendations

Visit Two – Day Two

- Follow up on any “tabled” items
- Discuss and finalize the FINAL recommendations

Visit Three – If Needed

Presentation of Findings to any group the department that needs a final presentation.

Fee Schedule:

Tom's Fee: \$200.00 Hour

Clerical Design person – \$75.00 Hour

Hours for Tom

Review of Materials	8 Hours
Visit one	30 Hours
Preparation For Visit 2	10 Hours
Visit two	20 Hours
Final Recommendation	10 Hours
Research	6 Hours

Tom Total 84 Hours. X \$200 = \$16,800

Clerical Work

Prepare the graphics for final report, 8 Hours X \$75.00 = \$600.00

Expenses

Hotel – \$1,400

Rental Car - \$600

Air Fare – 2 trips \$1,600

Expense Total. \$3,600

Total Expenses	
Hourly rates	\$17,400
Expenses	\$3,600

Total for project \$21,000



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Curtis Dickson
MEETING DATE: October 22, 2019
SUBJECT: Community Arts Center Electrical Upgrade

I. RECOMMENDED ACTION

Approve the award of bid for the Clearfield Community Arts Center Electrical upgrade to Northern Utah Electric, Inc. for the bid amount of \$112,258; approve funding for the project bid amount with engineering costs and contingency of \$12,742 for a total project cost of \$125,000; and authorize the Mayor's signature to any necessary documents.

DESCRIPTION / BACKGROUND

The City solicited bids to upgrade the electrical service at the Community Arts Center. There was only one bid received for the project and it came in at \$112,258.00. The project was budgeted at \$85,000.

Staff presented three alternatives for completing the project during the City Council work session discussion on October 15, 2019, which are detailed below. There appeared to be consensus from the Council that amending the budget so the entire electrical upgrade project could be completed was necessary in an effort to help mitigate any safety issues that might arise in the future.

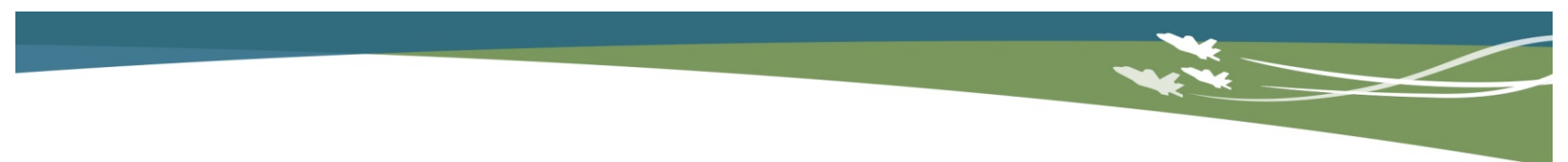
II. IMPACT

a. FISCAL

The FY 2019 budget has \$85,000 budgeted for the Community Arts Center electrical upgrade. Depending on the Council's decision, the budget would need to be amended up to \$40,000 to cover the entire scope of the project including engineering, project work, and contingency.

b. OPERATIONS / SERVICE DELIVERY

The electrical upgrade is the next phase to the renovation of the Clearfield Community Arts Center. This piece of the renovation would combine the two power services coming into the building into one service, update the main power panels and add additional power capacity to the building as its operations continues to expand.



III. ALTERNATIVES

Alternatives for the project are the following:

- Reject the current bid and add additional money for the project to the FY2020 budget.
- Approve the project for a total cost of \$125,000 and amend the budget in the amount of \$40,000 to cover the current project scope, engineering and contingency funds.
- Reduce the scope by \$19,478.00 as proposed by the bidder (See attachment) to reduce the project cost to \$95,510 and amend the project budget \$20,000 to cover the project scope, engineering and contingency costs.

IV. SCHEDULE / TIME CONSTRAINTS

The schedule/time constraints for this project are the following:

- In order to minimize the impact to all of the programs and activities located at the Arts Center, the window of time to complete this project is November 25 to December 31. This is when programs and activities are at a minimum and staff would not need to reschedule and or cancel any activities at the Arts Center.
- There are some items the contractor would need to order by November 1, 2019 in order to have the materials here to complete the project on time.

If the Council decides to not amend the budget for the additional funds, the project will need to wait until the fall of 2020 in order to not disrupt the programming at the Arts Center. Additionally, it would delay the renovation of the first and second floors of the Arts Center as they are currently laid out in the Facilities Capital Replacement Plan.

LIST OF ATTACHMENTS

Clearfield Community Arts Revised Price

Northern Utah Electric Inc

263 East 550 South Kaysville Utah 84037
Off 801-547-0404 Cell 801-807-8185 Fax 801-547-0454
Korey.hansen@gmail.com

October 9, 2019

Revised Price Proposal **Revised**

Clearfield City Community Arts Bldg

To: Clearfield City

Attention Todd Freeman

In an effort to bring the price down, and while looking at the entire scope, many of the items have to be completed to finish the 3- phase conversion for the building. One item that can stand alone and be completed later is the upgrading of the panels out in the building space. Panels 1P2, 1P3, 1P4, 2P1, 2P2, & 2P3 can be replaced later. We would still leave the breakers feeding the panels as 3- phase breakers and we would terminate the old panel feeders onto these breakers with the third phase not being used. This work could be done later on, without causing any problems.

- Delete the removal and replacement of the 6- panels mentioned above, with new wires, conduits and labor.

Total Price of this deduct \$ -19,748.00

[This would bring the revised price of the project down to **\$ 95,510.00**]

Respectfully Submitted

Korey Hansen

Northern Utah Electric Inc



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Stuart E. Williams, City Attorney
Lisa Peterson, Court Clerk Supervisor
MEETING DATE: October 22, 2019
SUBJECT: Recertification of the Clearfield Municipal Justice Court

I. RECOMMENDED ACTION

Staff recommends the approval of Resolution 2019R-20, and the recertification of the Clearfield Municipal Justice Court.

II. DESCRIPTION / BACKGROUND

Pursuant to Utah Code Ann. § 78A-7-103, the Clearfield Municipal Justice Court is required to be recertified at the end of each four-year term. The current term of the Clearfield Municipal Justice Court expires in February 2020. In order to be recertified, the City must submit to the Administrative Office of the Courts:

- an affidavit submitted by justice court judge,
- an opinion letter from the city attorney, and
- a resolution adopted by city council.

Each of the above items are attached to this Staff Report for your review, and are required to be submitted to the Administrative Office of the Court **no later than November 8, 2019.**

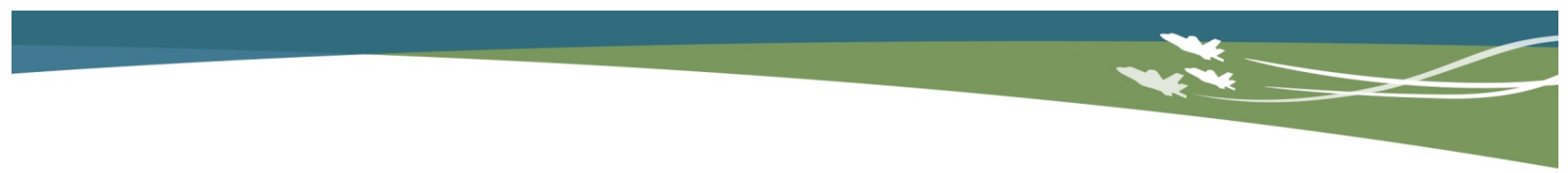
III. FISCAL IMPACT

The recertification of the Clearfield Municipal Court will result in no additional costs above those previously budgeted expenditures associated with the operation of the court.

IV. ALTERNATIVES

Subject to alternative direction from the Council, staff believes the following to be viable alternatives at this time:

- a. Approve Resolution 2019R-20 as currently drafted, see Attachment C.

- 
- b. Direct staff to make amendments to Resolution 2019-20, and bring a new draft of Resolution 2019R-20 back to Council for further discussion at a future work or policy session.*
 - c. Not Approve Resolution 2019R-20.*

* It should be noted that selection of alternative b or c may cause an interruption in court services, as well as result in a great deal of legally complex ramifications.

V. SCHEDULE / TIME CONSTRAINTS

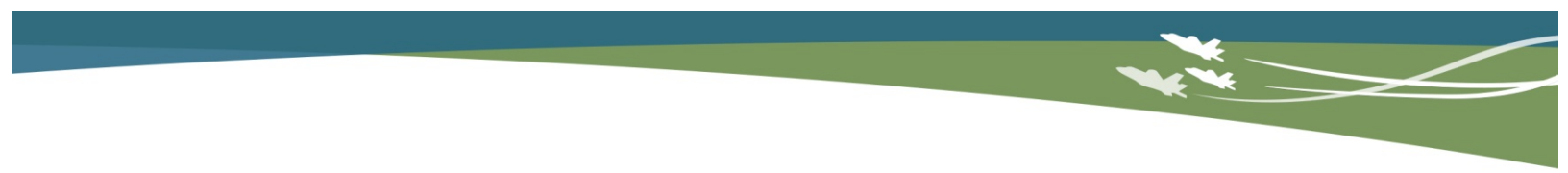
The Administrative Office of the Courts requires Resolution 2019R-20 and the additional documentation discussed above and attached hereto to be delivered to their office by **November 8, 2019.**

VI. LIST OF ATTACHMENTS

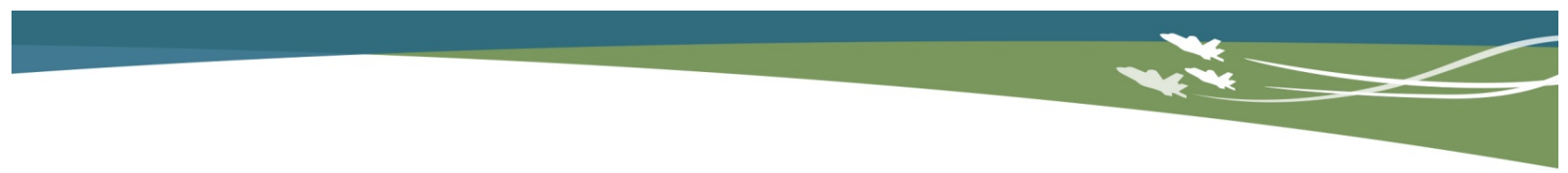
Attachment A: Affidavit submitted by justice court judge

Attachment B: Opinion letter from the city attorney

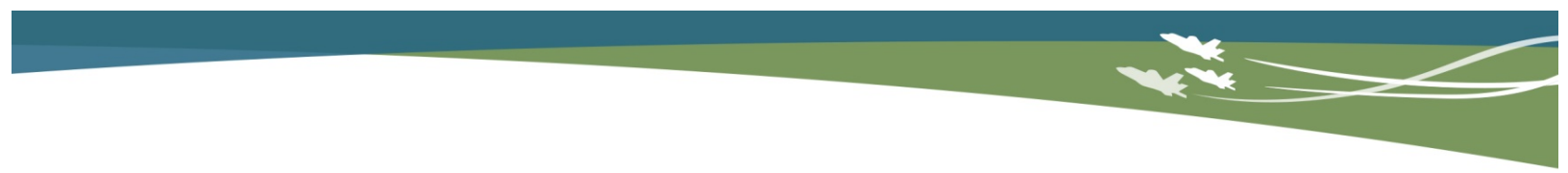
Attachment C: Resolution 2019R-20



ATTACHMENT A



ATTACHMENT B



ATTACHMENT C

COURT CERTIFICATION AFFIDAVIT

Court Location: CLEARFIELD MUNICIPAL JUSTICE COURT

Judge: BRIAN E. BROWER

Address: 55 S. STATE ST., 3RD FL.
CLEARFIELD, UT 84015

Telephone: 801.525.2760

Level of Court (Circle one): I II III IV

Average Case Filings Per Month: 427 (2016 - Present)

Daily Court Hours: M-F 8am - 5pm (except holidays)

Number of Full-time Clerks: 3
Hours Worked Per Week Per Clerk: 40

Number of Part-time Clerks: 2
Hours Worked Per Week Per Clerk: 24

This form is divided into two parts. Section I contains those requirements that are statutory and cannot be waived. Section II contains minimum requirements established by the Judicial Council, and those requirements may be waived pursuant to the procedure set forth in the Instructions to Applicant included with this Application for Recertification.

Comes now Judge BRIAN E. BROWER,

Justice Court Judge for CLEARFIELD MUNICIPAL JUSTICE COURT,

and, except as specifically noted below, certifies as follows:

SECTION I

**THE FOLLOWING ITEMS ARE STATUTORY AND CANNOT BE WAIVED.
CERTIFICATION WILL NOT BE GRANTED UNLESS EACH REQUIREMENT IS MET.**

Please indicate Yes or No to each of the following:

1. All official court business is conducted in a public facility. Yes. (other than occasional off-site/remote video hearings on in-custody matters when necessary).
2. Court is open daily. Yes. (except holidays).
3. The hours of court operation are posted conspicuously. Yes.
4. The judge and the clerk attend court at regularly scheduled times based on the level of the court. Yes.
5. The judge is compensated at a fixed rate, within the statutory range. Yes.
6. The responsible governmental entity provides and compensates sufficient clerical personnel necessary to conduct the business of the court. Yes.
7. The responsible governmental entity assumes the expenses of the travel of the judge for purposes of required judicial education. Yes.
8. The responsible governmental entity assumes the expenses of the travel of each clerk for the purposes of attending training sessions conducted by the Judicial Council. Yes.
9. The responsible governmental entity provides the Court with:
 - a. Sufficient prosecutorial support Yes.
 - b. Funding for attorneys for indigent defendants, as appropriate Yes.
 - c. Sufficient local law enforcement officers to attend court as provided by statute Yes.
 - d. Security for the court as provided by statute Yes.
 - e. Witness and juror fees Yes.
 - f. Appropriate copies of the Utah Code, the Justice Court Manual, state laws affecting local governments, local ordinances and other necessary legal reference materials Yes.
10. Fines, surcharges and assessments which are payable to the state are forwarded as required by law. Yes.

11. Court is held within the jurisdiction of the court, except as provided by law (78A-7-212).
Yes.
12. All required reports and audits are filed as required by law or Rule of the Judicial Council.
Yes.
13. A record of all court proceedings is maintained by an appropriate audio recording system.
Yes.

SECTION II

Section II contains minimum requirements established by the Judicial Council, and those requirements may be waived or an extension granted pursuant to the procedure set forth in the Instructions to Applicant included with this Application for Recertification.

Please indicate YES or NO to each of the following:

1. Court is open each day as appropriate for the classification of the court. Yes.
2. The judge is available to attend court and to conduct court business as needed. Yes.
3. Minimum furnishings in the courtroom include:
 - a. Desk and chair for the judge Yes.
 - b. A six inch riser Yes.
 - c. Desk and chair for the court clerk Yes.
 - d. Chairs for witnesses Yes.
 - e. Separate tables and appropriate chairs for plaintiffs and defendants Yes.
 - f. A Utah State flag Yes.
 - g. A United States flag Yes.
 - h. A separate area and chairs for at least four jurors Yes.
 - i. A separate area with appropriate seating for the public Yes.
 - j. An appropriate room for jury deliberations Yes.
 - k. An appropriate area or room for victims and witnesses which is separate from the public Yes.
 - l. A judicial robe Yes.
 - m. A gavel Yes.
 - n. Current bail schedules Yes.
 - o. A copy of the Code of Judicial Administration Yes.
 - p. Necessary forms and supplies Yes.

- q. Office space for the judge Yes.
- r. Office space for the court clerk Yes.
- s. Secure filing cabinets Yes.
- t. Appropriate office supplies Yes.
- u. A cash register or secured cash box Yes.
- v. At least one computer with internet access Yes.
- w. Access to a copy machine Yes.
4. The appropriate number of clerks as required by the classification of the court are present during the time court is open each day and as needed during court sessions. Yes.
5. Does the applicant have a law enforcement department? Yes.
6. If the applicant does not have a law enforcement department, identify the law enforcement agency which will provide law enforcement services for the applicant: _____

7. A security ^{Plan} has been submitted consistent with C.J.A. Rule 3-414. Yes.
8. The court electronically reports to the Driver License Division, the Bureau of Criminal Identification and the Administrative Office of the Courts as required. Yes.
9. If the court is a **Class I** court: N/A
- ~~a. Judge is employed on a full-time basis _____~~
- ~~b. Dedicated courtroom which meets the master plan guidelines adopted by the Judicial Council _____~~
- ~~c. Court has a jury deliberation room _____~~
- ~~d. Judge's chambers, clerk's office, and courtroom are in the same building _____~~
- ~~e. Judge has his or her own private chambers _____~~
- ~~f. Clerk's office is separate from any other entity _____~~
- ~~g. Court is open during normal business hours _____~~

10. If the court is a **Class II** court:

a. Court is open (check one)

☐ 201-300 average monthly filings: at least 4 hours/day

☐ 301-400 average monthly filings: at least 5 hours/day

☒ 401-500 average monthly filings: at least 6 hours/day

b. Trial calendar is set at least weekly Yes.

c. Courtroom configuration is permanent Yes.

d. Courtroom, judge's chambers, and clerk's office are within the same building Yes.

e. Judge has his or her own private chambers Yes.

11. If the court is a **Class III** court: N/A.

~~a. Trial calendar is set at least every other week ☐~~

~~b. Court is opened (check one):~~

~~☐ 61-150 average monthly filings: at least 2 hours/day~~

~~☐ 151-200 average monthly filings: at least 3 hours/day~~

12. If the court is a **Class IV** court: N/A.

~~a. Trial calendar is set at least monthly ☐~~

~~b. Court is open at least 1 hour per day ☐~~

13. If you have responded with a "no" to any item in Section II above, you must request a waiver or extension below and justify that request. If waiver or extension of any requirement is requested, please specify each requirement and indicate factors which demonstrate a need for the waiver or extension. For any requested extension, please include the requested extension period. (To receive a waiver or extension of any requirement, the information requested in this section must be provided. Remember that statutory requirements cannot be waived or extended).

I am familiar with the minimum operational standards for this court, and except as noted above, those standards are currently met or exceeded. During the current term of the court, I have met with the appropriate governing body of the City to review the budget of the court, review compliance with the minimum requirements and operational standards, and discuss other items of common concern.

DATED this _____ day of _____, 20____.

Justice Court Judge

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed on this _____ day of _____, 20____.



Legal Department

55 South State Street
Clearfield, UT 84015
Phone: 801.525.2771
Fax: 801.525.2866

City Attorney: Stuart Williams
City Assistant Attorney: Brie Brass

October 9, 2019

Clearfield City Mayor & Councilmembers
55 South State Street
Clearfield, Utah 84015

RE: Justice Court Recertification for a new 4-year term
Commencing February 1, 2020

Dear Mayor and Councilmembers:

As required by section Utah Code Ann. § 78A-7-103, as amended, and the Utah Rules of Judicial Administration, I have reviewed the recertification requirements for the Clearfield Municipal Justice Court. In undertaking this review, I have reviewed:

- (a) The applicable statutes;
- (b) The Utah Judicial Counsel's instruction and forms for recertification;
- (c) The Affidavit, affirming compliance with the mandatory certification conditions precedent, signed by the Municipal Justice Court Judge, Brian Brower;
- (d) A draft Resolution requesting recertification of the City's Justice Court presently before the Council for consideration; and
- (e) Such other documents, law and materials as deemed necessary to form an opinion, which include the amended Security Plan for the Court.

Based on this review, it is my opinion that the City desires to maintain a Justice Court and operate it in full material compliance with the all of the applicable laws of the State of Utah and the Judicial Council's Rules. It is my opinion that the Justice Court is currently in full material compliance with all requirements for a lawful operation of a justice court and the Clearfield Municipal Court is fully capable of maintaining and operating such a court in a fiscally sound and legally appropriate manner.

Therefore, this legislative body is authorized and is within its legal rights to execute the Resolution pending before it, and requests recertification of the Clearfield Municipal Justice Court, by the Board of Justice Court Judges and the Utah Judicial Council.

Sincerely,

Stuart E. Williams
Clearfield City Attorney

CLEARFIELD CITY RESOLUTION 2019R-20

A RESOLUTION REQUESTING RECERTIFICATION OF THE CLEARFIELD MUNICIPAL JUSTICE COURT

WHEREAS, Utah Code Ann. § 78A-7-103 requires that all Justice Courts within the State of Utah be recertified at the end of each four-year Justice Court term; and

WHEREAS, the Clearfield Municipal Justice Court term shall expire on the 1st day of February, 2020; and

WHEREAS, the Clearfield City Council has received an opinion letter from the Clearfield City Attorney, which communication sets forth the requirements related to the operation of a Justice Court and the feasibility of continuing to maintain the City's Justice Court; and

WHEREAS, the Clearfield City Council has determined that it is in the best interest of Clearfield City for it to continue to provide for a Justice Court.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CLEARFIELD CITY, UTAH, AS FOLLOWS:

- Section 1. Clearfield City hereby requests recertification of the Clearfield Municipal Justice Court by the Board of Justice Court Judges and the Utah Judicial Council.
- Section 2. Clearfield City and the Clearfield City Council hereby affirms their desire and willingness to continue to meet all applicable lawful requirements set forth by the Judicial Council and by State law for the continued operation of the Clearfield Municipal Justice Court for the next 4-year term of the Court, except as to any requirements waived by the Utah Judicial Council.
- Section 3 This Resolution shall take effect immediately.

Adopted by the City Council of Clearfield, Utah, this 22nd day of October, 2019.

ATTEST:

CLEARFIELD CITY

Nancy R. Dean, City Recorder

Mark Shepherd, Mayor

Vote of the Council

AYE:

NAY:

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
8:00 A.M. WORK SESSION

August 23, 2019

(This meeting was held prior to a City Council work session.)

Megaplex Theaters at The Junction
Second Floor
2341 Kiesel Avenue
Ogden, Utah 84401

PRESIDING:	Kent Bush	Chair
PRESENT:	Nike Peterson	Director
	Vern Phipps	Director
	Tim Roper	Director
	Mark Shepherd	Director
	Karece Thompson	Director
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Devin Rogers	Police Assistant Chief
	Adam Favero	Public Works Director
	Brad Wheeler	Streets Superintendent
	Eric Howes	Community Services Director
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Coordinator
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

Chair Bush called the meeting to order at 8:00 a.m.

DISCUSSION ON ADDENDUM #1 TO THE CITY CENTRE TAX INCREMENT
PARTICIPATION AGREEMENT

JJ Allen, City Manager, explained Argentine Corner had been in Clearfield for about a decade and would like to expand its operations. He mentioned it would like to relocate its restaurant to the retail space at City Centre. He stated the intention was not to abandon the other store but use it as a distribution center. Mr. Allen noted there was a \$50,000 gap between the total tenant improvements costs for restaurant use and City Centre's tenant improvement allowances of \$60 per square foot. He reported representatives from both the City Centre development and Argentine Corner approached the City to ask if there were any financial assistance which could

be provided to help offset the gap. He reviewed the following proposal with the Board that could potentially help bridge the gap:

- The CDRA could front the City Centre \$50,000 to close the gap on the tenant improvements required to bring Argentine Corner to the space.
- Improvements could be completed by the end of the year, allowing for Argentine Corner to open by January 2020.
- The incentive payment per the existing TIF Agreement for Tax Year 2018 was \$72,042 and distributed in the spring of 2019 so that would be used as the baseline amount.
- Beginning with tax year 2019 and each year running through tax year 2023, if the calculated incentive payment exceeded the baseline \$72,042, then the excess would be retained by the CDRA until the \$50,000 was recuperated.
- Once the \$50,000 was reimbursed to the CDRA, City Centre would be entitled to the full amount of the calculated incentive payment through the remainder of the term.
- If the calculated incentive payment in any of the years was less than the baseline \$72,042, then the CDRA would not receive any reimbursement for that year.
- If, after the expiration of the project area and the Agreement, the sum of the annual reimbursements to the CDRA did not total \$50,000, the remainder of the loan would be forgiven.

Mr. Allen expressed his opinion the likelihood of the CDRA not recuperating its investment would be low. He noted based on estimated calculations, the CDRA should be made whole within a few years. He suggested staff had been working on the details of the agreement for a while and it was scheduled for the Board's consideration during a policy meeting on August 27, 2019. He reviewed the options of the Board for approval, denial, or tabling the matter.

Director Thompson stated there were several negative reviews on Google about the service and worried the issues were employment related. He noted there were positive reviews about the food. He expressed his concern that if the business were to grow this could add an additional burden to staff and therefore, if the issues continued he did not feel it would be a wise investment. There was a discussion about Argentine Corner, its successes, its challenges, its operational style, various cultural differences, and its plans for relocation.

Director Shepherd reported the investment would bring a restaurant to the downtown which desired to operate 24 hours per day 7 days a week at least in the corner bar portion of the space. He pointed out Argentine Corner planned to sign a 15 year lease with the assurance it could be renewed for another 15 years. Director Shepherd commented the developer was also planning on allowing the tenant use of the parking on the west side of the building for its operations to encourage the partnership. He noted both the developer and the restaurant were committed to the investment.

Director Peterson mentioned she was comfortable with the proposal because of the components both with longevity and the financial investments of both the tenant and developer. She felt the investment to have it restaurant ready would be worth the investment and create vibrancy downtown even if the venture were to fail.

Director Roper pointed out when reviewing online comments there was usually some negativity that could be found. He expressed his opinion the investment would help residents understand the vision of the City for its downtown. There was a discussion about the minimal associated risks and the involvement the CDRA could have with investing in the City. Director Bush expressed his opinion he thought it would be great.

Director Phipps asked if the \$50,000 was for infrastructure. Mr. Allen responded the tenant only recently provided the list of improvements that would be necessary to have the space improved, but those had not been included in the presentation. He recalled some of the specific items and explained essentially the money would be used to convert the space so it could be restaurant ready.

Director Thompson stated his issue was related to the employment and the service aspects. He explained his desire was for a business to be successful and expressed his worry about it given his research. Mr. Allen responded those concerns could be conveyed to the business. Summer Palmer, Assistant City Manager, reported she recently met with Davis Tech stating it was a group which focused on working with small business owners. She pointed out any business would have growing pains, but that group could be a good resource for Argentine Corner if it chose to take advantage of its programs which would be free. She mentioned the service might help mitigate concerns and also provide some valuable trainings at no cost. There was a discussion about risks associated with growing a business, the changes impacting a business model, and trainings available which could assist business owners. Director Phipps suggested it was a good idea to introduce the owners of Argentine Corner to the specialized training that could assist in its business' success. Director Thompson expressed his opinion it would be good to pass along the concerns and let Argentine Corner know of the available resources.

Chair Bush asked if City Centre would allow Argentine Corner to put up a sign. Spencer Brimley, Director of Community Development, responded staff had received a proposal; however, it was under review and for the most part appeared to be doable, but there were still some unanswered questions that staff was working to address.

Director Shepherd moved to adjourn the CDRA work session and reconvene as the City Council in work session at 8:40 a.m., seconded by Director Thompson. The motion carried upon the following vote: Voting AYE – Director Peterson, Phipps, Roper, and Thompson. Voting NO – None.

The City Council work session minutes are in a separate location.

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
7:00 P.M. POLICY SESSION

August 27, 2019

(This meeting was held following a City Council policy session.)

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Kent Bush	Chair
PRESENT:	Nike Peterson	Director
	Vern Phipps	Director
	Tim Roper	Director
	Karece Thompson	Director
EXCUSED:	Mark Shepherd	Director
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Coordinator
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

VISITORS: Chris Uccardi, Ruth Jones, Devin Prouty, Kathryn Murray, Samuel Jacobsen, Bob Bercher, Matthew Jacobsen, Harrisen Arave, Mike Arave, Archie R. Gomez

Chair Bush called the meeting to order at 8:08 p.m.

APPROVAL OF THE MINUTES FROM THE JUNE 18, 2019 WORK SESSION AND THE JUNE 25, 2019 POLICY SESSION

Director Peterson moved to approve the minutes from the June 18, 2019 work session and the June 25, 2019 policy session, as written; and authorize the Chair's signature to any necessary documents, seconded by Director Thompson. The motion carried upon the following vote: Voting AYE – Directors Peterson, Phipps, Roper, and Thompson. Voting NO – None. Director Shepherd was not present for the vote.

APPROVAL OF ADDENDUM #1 TO THE CITY CENTRE TAX INCREMENT PARTICIPATION AGREEMENT

Summer Palmer, Assistant City Manager, indicated representatives from both City Centre and Argentine Corner inquired if any financial assistance was available to facilitate the relocation of Argentine Corner to the commercial store front at City Centre. She explained the commercial pad would need to be improved in order to have a restaurant use the space. She noted the CDRA currently had a Tax Increment Participation Agreement with City Centre that specified how and when it qualified for the tax increment revenue generated by the development. Ms. Palmer reported the CDRA could work through the TIF by way of an addendum to help offset the gap so a restaurant could use the space.

She mentioned the addendum was discussed during the mid-year retreat on August 23, 2019. She noted staff recommended the CDRA provide \$50,000 from RDA 7 tax increment revenue and approve the addendum with its terms for repayment. Ms. Palmer pointed out the addendum included a baseline amount of \$72,042 which was the increment distributed in the spring of 2019. She explained from year 2019 through 2023 if the calculated incentive payment exceeded the baseline of \$72,042, then the excess would be retained by the CDRA until the \$50,000 was recuperated. She noted if for some reason RDA 7 were to close, the CDRA would then forgive any remaining balance.

She mentioned the addendum had been updated since the prior discussion to include Attachment B which itemized the Argentine Corner tenant improvements and the stipulation was removed requiring the business to sign a long time lease. Ms. Palmer indicated the improvements were for the building to facilitate a restaurant in the space and if things did not work in that space long term with Argentine Corner it would be ready for another restaurant. She stated the recommendation of staff would be to approve Addendum #1 to the City Centre Tax Increment Participation Agreement.

Director Thompson expressed his appreciation for the amendments that had been made to the addendum since the previous meeting. He felt the changes would allow another viable business the opportunity for the space if Argentine Corner was not able to meet its contract requirements with City Centre. Ms. Palmer responded success rates in the restaurant industry were unpredictable; therefore, the stipulation was removed. She pointed out the funds were designed to prepare the space for restaurant use whether now or in the future rather than tying the CDRA to the success of a specific tenant.

Director Roper expressed his enthusiasm for the proposal and felt it would be an improvement for the City and the area. He stated it would be an opportunity for the CDRA to invest in itself and Clearfield.

Chair Bush noted City Centre was willing to dedicate the parking area to the west of the building for patrons of the restaurant. He questioned whether or not something should be included to ensure that promise was fulfilled. Ms. Palmer answered the City had received a site plan and there would likely be an agreement in place to have some parking available for the restaurant. JJ Allen, City Manager, recalled there was an agreement in place already where a certain number of

stalls were reserved for the commercial space. He stated the developer had expressed a willingness to provide more parking than was specified in the agreement to help with the partnership. He acknowledged if the Board felt the parking area was important then it could be proposed as a condition to the addendum. Chair Bush asked the Board whether or not it should be added to the addendum. Director Phipps expressed his opinion it would be in the best interest of the owner that the restaurant be successful, so if there was a problem it would likely be remedied. Director Roper stated if it was addressed in another document it was not necessary for any redundancy in the addendum.

Director Roper moved to approve Addendum #1 to the City Centre Tax Increment Participation Agreement and authorize the Chair's signature to any necessary documents, seconded by Director Peterson. The motion carried upon the following vote: Voting AYE – Directors Peterson, Phipps, Roper, and Thompson. Voting NO – None. Director Shepherd was not present for the vote.

There being no further business to come before the Community Development and Renewal Agency, **Director Phipps moved to adjourn at 8:17 p.m., seconded by Director Roper. The motion carried upon the following vote: Voting AYE – Directors Peterson, Phipps, Roper, and Thompson. Voting NO – None.** Director Shepherd was not present for the vote.

The City Council policy session minutes are in a separate location.

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
6:45 P.M. WORK SESSION
September 24, 2019
(This meeting was held prior to the regularly scheduled City Council policy session.)

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Vern Phipps	Vice-Chair
EXCUSED:	Kent Bush	Chair
PRESENT:	Nike Peterson	Director
	Tim Roper	Director
	Mark Shepherd	Director
	Karece Thompson	Director
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder
EXCUSED:	Adam Favero	Public Works Director
	Eric Howes	Community Services Director

VISITORS: Mr. and Mrs. Steve Wilcox, Kathryn Murray

Vice-Chair Phipps called the meeting to order at 6:45 p.m.

DISCUSSION ON THE CLEARFIELD STATION APARTMENTS TAX INCREMENT
FINANCING (TIF) PARTICIPATION AGREEMENT

Summer Palmer, Assistant City Manager, stated the Clearfield Station Community Development Area (CDA) was created for the primary purpose of capturing tax increment to help pay for the cost of public infrastructure connected with the development of the UTA property located at approximately 1250 South State Street. She mentioned the participation agreement set forth the provisions under which the CDRA would reimburse the developer, Clearfield Station, LLC, for its costs associated with the public infrastructure improvements for the construction of the Clearfield Station Apartments.

She noted the CDRA received its first tax increment revenue from the CDA in the spring, which was sooner than anticipated so the tax increment financing (TIF) was not in place for the payment. She explained staff had been working with the Garn Group to prepare the TIF agreement. Ms. Palmer reported usually the agreement would be in place prior to the construction, but given the circumstances the document was finessed to account for the work that had been accomplished. She indicated the development agreement documented the TIF would be used for the repayment of the improvements and the actual expenses incurred for the infrastructure of the boxcar and express roads. She mentioned the TIF Participation Agreement outlined the conditions and agreements for the distribution of future tax increment payments.

Ms. Palmer explained the developer had fulfilled its obligations; therefore, once an approved agreement was in place, the CDRA would begin reimbursement of the developer from the tax increment revenue distributions that it received each spring from Davis County. She reported staff thought the maximum amount eligible for repayment had been agreed upon; however, after a phone conversation earlier in the day with the Garn Group there appeared to be some questions that would need to be addressed. She noted staff would be meeting with the developer again to vet any additional concerns about the costs incurred which would be eligible for repayment.

Ms. Palmer highlighted the efforts of staff and the City Engineer to date to accurately reflect the costs incurred by the developer that were used for the boxcar and express roads. She explained staff would continue to go through the vetting process with the developer until a total amount was agreed upon and then the TIF agreement with those totals would be presented to the Board for its consideration in a policy session. JJ Allen, City Manager, pointed out staff was not expecting the total amount to change dramatically.

Director Thompson questioned whether the Board or the developer would determine what the final number was which would be included in the TIF agreement. Ms. Palmer explained the City would ask the developer to substantiate the amount it felt was eligible for reimbursement tied to the designated infrastructure costs in the development agreement. Mr. Allen noted it was a negotiation between the parties but in the end both would need to agree on the final number.

Director Peterson wondered what would happen if an agreement could not be reached. Ms. Palmer expressed her opinion an impasse was not likely because the developer had been willing to work with staff thus far; however, there were a few more questions that needed to be addressed before an amount could be agreed upon. There was a discussion on the methodology that had been used to help further clarify the costs associated with the road improvements. Ms. Palmer indicated the TIF participation agreement would be brought to the Board again for its review and consideration once those amounts had been finalized.

Director Shepherd moved to adjourn at 6:56 p.m., seconded by Director Thompson. The motion carried upon the following vote: Voting AYE – Directors Peterson, Phipps, Roper, Shepherd and Thompson. Voting NO – None.

The City Council policy session minutes are in a separate location.