



## CITY COUNCIL AGENDA

Notice is hereby given that the Draper City Council will hold a **Business Meeting** beginning at **5:30 p.m.** on **Tuesday, May 28, 2013** in the City Council Chambers at 1020 East Pioneer Road, Draper, Utah.

*(Timings listed for each item on the agenda are approximate and may be accelerated or delayed)*

**The Agenda will be as follows:**

### STUDY MEETING

- 5:30 p.m. 1.0 Dinner**
- 6:00 p.m. 2.0 Presentations**
- a. Drug-Free Draper – Gaile Dupree
  - b. UTA Update – David Goeres, Chief Safety Officer
- 6:30 p.m. 3.0 Council/Manager Reports**

### BUSINESS MEETING

- 7:00 p.m. 1.0 Call to Order:** Mayor Darrell Smith
- 7:00 p.m. 2.0 Comment/Prayer and Flag Ceremony:** to be announced
- 7:10 p.m. 3.0 Presentation**
- a. Day Dairy Barn – Historic Preservation Commission
- 7:25 p.m. 4.0 Citizen Comments:** *To be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be restricted to items not listed on the agenda and limited to three minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing to the City Recorder prior to noon the day before the meeting. Comments pertaining to an item on the agenda should not be given at this time but should be held until that item is called.*
- 7:45 p.m. 5.0 Consent Items**
- a. Minutes of the May 7, 2013 Council Meeting

- b. Construction Agreement No. 13-156 with Geneva Rock Products, Inc. for 13490 South/Vista Station Roadway Project
- c. Professional Services Agreement No. 13-158 with Hansen, Allen, and Luce for the SunCrest Regional Detention Basin.
- d. Construction Agreement No. 13-159 with Acme Construction, Inc. for the 11800 South Sidewalk Project
- e. Surplus of obsolete electronic equipment

- 7:50 p.m.**
- 6.0 Public Hearing: Ordinance #1045**, Amending the Zoning Map for 1.44 acres from RA1 to CN, property located at 12214 South 900 East (Quilter's Lodge Zone Change). Staff presentation by Dennis Workman.
  - 7.0 Public Hearing: Ordinance #1046**, Amending the Zoning Map for 1.52 acres from RA1 to RA2, property located at 13105 South Boulter Street (Troy Dana Zoning Map Amendment). Staff presentation by Dan Boles.
  - 8.0 Public Hearing:** Amending the Sunset at Draper Ridge Phase 2 Plat by removing Parcel A and amending all notes pertaining to Parcel A. The amendment to the Sunset at Draper Ridge Phase 2 plat is being accomplished through a note that will be added to the Galena Grove plat (See Item 9). Staff presentation by Dennis Workman.
  - 9.0 Action Item:** Approval of Galena Grove Final Plat located at Galena Park Drive and 700 West. Staff presentation by Dennis Workman.
  - 10.0 Action Item:** Consideration of declaring property surplus and authorizing the sale to David and Jennifer DiMarzio, 15373 S. Falcon Pointe Court. Staff presentation by Doug Ahlstrom.
  - 11.0 Adjourn** to Closed Meeting to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual. (If needed).

SALT LAKE COUNTY/UTAH COUNTY, STATE OF UTAH

I, the Deputy City Recorder of Draper City, certify that copies of the agenda for the **Draper City Council** meeting to be held the **28<sup>th</sup> day of May, 2013**, were posted on the Draper City Bulletin Board, Draper City website [www.draper.ut.us](http://www.draper.ut.us), the Utah Public Meeting Notice website at [www.utah.gov/pmn](http://www.utah.gov/pmn), and sent by facsimile to The Salt Lake Tribune, and The Deseret News.

Date Posted: 05/24/2013

City Seal



*Angie Olsen*  
 Angie Olsen, CMC, Deputy City Recorder  
 Draper City, State of Utah

**PUBLIC HEARING PROCEDURE AND ORDER OF BUSINESS**

*In compliance with the American with Disabilities Act, any individuals needing special accommodations including auxiliary communicative aides and services during this meeting shall notify Tracy Norr, CMC, City Recorder, 576-6502 or [tracy.norr@draper.ut.us](mailto:tracy.norr@draper.ut.us), at least 24 hours prior to the meeting. Meetings of the Draper City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone and the meeting will be conducted pursuant to Draper City Municipal Code 2-1-040(e) regarding electronic meetings.*

CONSENT  
ITEM #A

**MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY,  
MAY 7, 2013, IN THE DRAPER CITY COUNCIL CHAMBERS 1020 EAST PIONEER  
ROAD, DRAPER, UTAH.**

*"This document, along with the digital recording, shall constitute the complete meeting minutes  
for this City Council meeting."*

PRESENT: Mayor Darrell Smith, Councilmembers Bill Rappleye, Troy Walker, Alan  
Summerhays, Jeff Stenquist, and Bill Colbert. Councilmember  
Summerhays was excused.

STAFF PRESENT: David Dobbins, Russ Fox, Tracy Norr, Bryan Roberts, Troy Wolverton,  
Rhett Ogden, Garth Smith, Danyce Steck, Russ Adair, Joe Bryant

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**Study Meeting**

**1.0 Council/Manager Reports**

1.1 Council/Manager reports were moved to the end of the business meeting.

**2.0 Adjourn to Closed Meeting**

6:17 PM

2.1 **A motion to adjourn to a closed meeting to discuss litigation, property acquisition,  
and the character and professional competence or physical or mental health of an  
individual was made by Councilmember Walker and seconded by Councilmember  
Colbert. The motion carried unanimously.**

**Business Meeting**

**1.0 Call to Order**

7:07:27 PM

1.1 Mayor Smith called the meeting to order and welcomed those in attendance. He noted  
Councilmember Summerhays is excused.

**2.0 Comment/Prayer and Flag Ceremony**

7:07:42 PM

2.1 City Engineer Troy Wolverton offered the opening prayer. The pledge of allegiance was  
led by Police Chief Bryan Roberts.

### **3.0 Citizen Comments**

7:09:54 PM

- 3.1 Ryan McClellan, 2153 Eagle Crest Drive, spoke representing residents of Suncrest who would like a stop sign at Eagle Crest Drive and Eagle Chase Drive. He said there is a lot of traffic crossing the road because of the new park, trail access, and open space. He said a bicycle pedestrian accident occurred, and he has been talking to the Engineering Department about getting a stop sign. He cited the Engineering Department's reasons to oppose the stop sign, saying the addition of a stop sign could make the intersection more dangerous, liability could be more if standards are not in compliance, stop signs are not to be used to control speed, the use of multi-way stop signs is for intersections where traffic is equal, and there must be 5 or more accidents that would have been prevented by the stop sign. Mr McClellan said the purpose of the stop sign would not be to control traffic, there are no stop signs on Traverse Ridge Road, and confusion can be eliminated by a "stop sign ahead" sign. He said he thinks there is equal traffic from both directions. He said there has only been one accident, but he does not think there needs to be additional accidents, especially involving children. He said a stop sign would have prevented the accident because people work both ways at stop signs. He said it is irrelevant that the child failed to stop at the posted stop sign.

7:21:00 PM

- 3.2 Brittany Lees, 15242 Eagle Chase, said she lives at the intersection. Her child plays at that intersection, and she would like the stop sign.

7:21:36 PM

- 3.3 There were no other citizen comments.

### **4.0 Consent Items**

- a. **Approval of Minutes of April 16, 2013, and April 23, 2013, City Council Meetings**
- b. **Resolution #13-25, Appointing Glade Robbins as Public Works Director**
- c. **Resolution #13-26, Reappointing Marsha Vawdrey and Kent Player to the Planning Commission**
- d. **Amendment to Agreement #12-99 with TNT Auctions, Inc. to Renew Contact for Retail Sale Services (Auction of Surplus Property)**
- e. **Final Plat for Galena Grove Subdivision, Located at Galena Park Drive and 700 West**
- f. **Agreement #13-115 with Acme Construction for 13200 South Construction**
- g. **Agreement #13-121, 13490 South/Vista Station Roadway Project Right-of-Entry Agreement with Union Pacific Railroad**
- h. **Agreement #13-122, 13490 South/Vista Station Roadway Project Right-of-Entry Agreement with Utah Transit Authority**
- i. **Agreement #13-125, Memorandum of Understanding with Draper HAM Radio Association**

**j. Second Amendment to Agreement #12-40 with Craeco to renew the Contract for Asphalt Crack Sealing Compound**

7:22:13 PM

**4.1 A motion to pull Item E was made by Councilmember Walker and seconded by Councilmember Colbert. The motion carried unanimously.**

7:23:29 PM

**4.2 A motion to approve the remaining consent items was made by Councilmember Stenquist and seconded by Councilmember Walker.**

7:23:54 PM

**4.3 A roll call vote was taken with Councilmembers Stenquist, Rappleye, Colbert, and Walker voting in favor. The motion carried.**

7:24:12 PM

4.4 Councilmember Rappleye noted the city purchased and owns the equipment used by the HAM Radio Association.

**5.0 Public Hearing: Resolution #13-26, Adoption of Tentative Budget for Fiscal Year 2013-2014.**

7:24:59 PM

5.1 Danyce Steck reviewed the formatting for the budget book. She discussed financial sources and the changes in fund balance projected for the next five years and the changes made following the study session. She noted the Class B & C road funds has been used to its extent. The Capital Improvement Projects fund will end this year with a \$3.8 million balance, and no new projects have been budgeted. One project to discuss in the future is to add space at city hall for impacts of staffing increases. She noted there are no projects in the impact fee funds. A project needs to be allocated to the park impact fee fund in the next budget year. She said the utility funds are healthy and strong and have responsible balances.

7:32:57 PM

5.2 Danyce Steck said the tentative budget was added to the website for public review. David Dobbins thanked Mrs. Steck for her efforts. He said the staff is ready to work with the council on any budget-related questions. Mrs. Steck added that narrative will be added to the final budget for each department.

7:34:25 PM

5.3 The public hearing was opened.

7:34:35 PM

5.4 Shawn Benjamin, 360 West 13165 South, said his only question said the group that the Youth Council falls under has been moved. With that change, he said Maridene Hancock

has stepped in and helped with an interim budget. He said there is not an established budget and he does not see any allocation for the Youth Council. Mrs. Steck said it is included under the City Manager's budget.

7:37:05 PM

5.5 There were no further comments and the public hearing was closed.

7:37:14 PM

5.6 Councilmember Colbert explained the process for adoption of the budget. Mayor Smith noted the final adoption is scheduled for June 18. David Dobbins said an additional public hearing will be held on June 4.

7:38:08 PM

5.7 **A motion to suspend the rules was made by Councilmember Colbert and seconded by Councilmember Walker. The motion carried unanimously.**

7:38:42 PM

5.8 **A motion to approve Resolution #13-26, adopting the tentative budget for fiscal year 2013-2014 was made by Councilmember Colbert and seconded by Councilmember Walker.**

7:38:58 PM

5.9 **A roll call vote was taken with Councilmembers Colbert, Walker, Stenquist, and Rappleye voting in favor. The motion carried.**

6.0 **Public Hearing: Consideration of Declaring Property Surplus and Authorizing the Sale of the Encroachment to Ted and Cossette Morton, 2116 East Falcon Ridge Drive.**

7:39:14 PM

6.1 Russ Fox said this is a new encroachment. David Dobbins said the property was not considered as open space so there is no restriction on selling it. Mr. Fox said the property owners have offered to purchase the property at \$9 per square foot. Councilmember Colbert said the purchaser must also do the survey.

7:42:13 PM

6.2 Cossette Morton, 2116 Falcon Ridge Drive, said they were told they were responsible for the area up to the swale when they moved into the home. They would like to purchase the land. Councilmember Colbert said he appreciates the property owners trying to make the encroachment right. Councilmember Stenquist asked if there had been any agreement with the former property owners (Suncrest or Zions) about encroaching onto the property. Mrs. Morton said there was not.

7:44:17 PM

6.3 The public hearing was opened. There were no comments and the public hearing was closed.

7:44:40 PM

**6.4 A motion to suspend the rules was made by Councilmember Colbert and seconded by Councilmember Walker. The motion carried with Stenquist opposed.**

7:45:11 PM

**6.5 A motion to declare the property surplus and authorize the sale to Ted and Cossette Morton was made by Councilmember Colbert and seconded by Councilmember Walker.**

7:45:42 PM

6.5 Councilmember Colbert said this is a reasonable offer and is consistent with other actions. Councilmember Stenquist said he opposed the suspension of the rules but he is not against selling the property. Councilmember Rappleve said he worried that a lot of the properties are similar and he hopes we don't lock everyone into having to purchase the property due to differences.

7:47:17 PM

**6.6 The motion carried unanimously.**

**7.0 Public Hearing: Consideration of declaring property surplus and authorizing the sale of the property to David and Jennifer DiMarzio, 15373 S. Falcon Pointe Court.**

7:47:45 PM

7.1 Russ Fox said Mrs. DiMarzio had requested the city's consideration in the sale of the property for her garden. This is not an encroachment and is not part of the Suncrest open space. It is about 2,100 square feet. The property to be sold does not include the swale.

7:49:33 PM

7.2 Councilmember Colbert said he would prefer to sell the swale as well.

7:49:53 PM

7.3 Jennifer DiMarzio, 15373 Falcon Pointe Court, said the survey was completed. The swale was not included in the survey due to costs. She would like the property. She said the property is of more value to her than anyone else. She said the dirt next to her property was promised to be a park and she paid \$50,000 extra for that promise. She said she would like to negotiate the price. Mayor Smith said the council established the price for selling surplus property. She said the addition of the property added no value to the home value in an appraisal that was done today.

7:53:10 PM

7.4 The public hearing was opened.

7:53:12 PM

7.5 Jerry Vaughan, 2126 Falcon Ridge Drive, read a letter from her husband, Gary. The letter summarized his feelings about the property. He did say the residents are being overcharged in light of the amount the city paid for the property and in light of the economic situation. He said he disagrees with any allegation of encroachment. He was also told to care for the property. It is a fire-break for the property. He provided recommendations and expressed willingness to meet with the councilmembers.

7:56:44 PM

7.6 Tony Magliocchino, 2138 Falcon Ridge Drive, said he is a recent resident to Suncrest and has a similar situation. The previous owner landscaped beyond the property boundaries. He said he had been warned about the landslide issues and with the landscaping felt the landslide issues had been addressed. He said the landscaping is more erosion resistant than having weeds there, which is what would happen if the land is returned to natural conditions. He said \$9 per square foot is not realistic.

8:00:54 PM

7.7 Shawn Benjamin, 360 West 13165 South, said his recollection of the price was largely determined because of encroachments and was punitive. He said it seems reasonable that if there is no encroachment, a less punitive rate might be appropriate.

8:02:02 PM

7.8 There were no further comments and the public hearing was closed.

8:02:10 PM

7.9 Councilmember Rappleye said he feels this item should follow the normal course and not take action at this meeting. Councilmember Stenquist asked if the city is simply approving the sale or approving the sale at a given price. Mr. Dobbins said the council could declare the property as surplus and direct staff to work with the property owner. Councilmember Colbert said he is concerned with raising the fire issue. Other neighborhoods do not have the swale to buffer them from fires. He said he would like to see reasonable provisions to become FireWise, but he does not feel he has the right to remove native vegetation on city property to reduce the fire danger for his property. Councilmember Stenquist acknowledged the fact that the encroachment characterization is not accurate in this case, but the previous owner did not seem to have a problem. The city has a different set of standards and has to maintain consistent policies. In his mind, if there is no public use for the property and the proceeds could benefit the public in other ways, yet has set the price too high, the public will not benefit. He said a reasonable selling price that both parties can agree on would be in the public interest. There are differences where developers were given additional density in exchange for open space. That is not the case in this situation. He said a fair selling price should be negotiated. Councilmember Rappleye agreed.

7.10 This item will follow the normal course.

**8.0 Public Hearing: Ordinance #1044, Amending Draper City Municipal Code Regarding Tower Signs.**

8:12:52 PM

8.1 Dan Boles said there was an applicant who proposed making this text change. He reviewed the qualifications for this type of sign and explained the proposed changes. He said the CC zone is added to the list of zones to allow an electronic message center, the property requirement is reduced from 15 acres to three acres, and the requirement is for 400 feet of lot frontage. There are approximately 18 properties that would qualify for electronic message centers. Councilmember Stenquist noted the qualification still pertains only to freeway frontage. When asked about comparisons for the size, Russ Fox said the tower sign at Lone Peak Hospital is 200 square feet. The electronic message center is half of that. Billboards are approximately 1,000 square feet.

8:20:10 PM

8.2 LaVar Christensen gave some background on the request and said this is an example of a process well taken. It has been nine months working with the Planning Commission to satisfy the concerns. Staff did a marvelous job. He said professionals wanted to locate near the new Lone Peak Hospital. The Canyon Crest Medical center now has 30 medical professionals who moved to Draper. The situation is not conducive to a monument sign. He said the cost prohibitive nature of the electronic signs will help keep them from proliferating. He said using 15 acres as a standard was arbitrary. A separate medical district was not needed because of the CC district. Because the zone is confined to I-15 frontage, UDOT has a more liberal standard than the city. The Planning Commission has given unanimous approval for the proposed ordinance.

8:23:19 PM

8.3 Councilmember Rappleye asked if it makes sense to have the sign split or leave it up to the business to determine the space for an electronic sign within the 200 square foot limit. Mr. Christensen said he likes the discretionary powers and suggested variations such as what the council may reasonably approve in the best interest of the community. He said he initially ask for a larger space but tried to stay within the confines of the current code. Councilmember Walker suggested using the language "up to 200 square feet."

8:26:03 PM

8.4 Jed Bindrup, 12301 Mariah Circle, said they have tried to follow the ordinance. His concern is that there are 14 spaces for 30 professionals, and there is also the Granger Medical Center coming in. Everyone knows there is a Canyon Crest building, but no one knows what is in the building. A small monument sign is not sufficient for all the names. He said the building has multiple specialists. He said he would like the flexible language but hopes it would not take another nine months to get the ordinance changed. He thanked the council for their time and consideration.

8:28:38 PM

8.5 The public hearing was opened.

8:28:46 PM

8.6 Shawn Benjamin, 360 West 13165 South, said the idea of the 400' element is a little disconcerting although he recognized that the Canyon Crest building is not identifiable until you go there. He said he feels this ordinance may create an arbitrary standard. He said maybe a tiered system based on the size of the lot may be more fair.

8:30:59 PM

8.7 Mr. Christensen said the request initially included increased sign area to 250 square feet, but to simplify it, the focus was on the actual space and what could be done to qualify as an applicant. He said he likes the flexibility in the motion to say "up to" but want the application to move forward.

8:33:11 PM

8.8 Mayor Smith said he is thrilled to see Dr. Bindrup and his associates to move to Draper. He said the Planning Commission obviously was aware of the council's reticence to have these types of signs.

8:34:08 PM

8.9 Russ Fox said the text amendment could be changed to remove the 50% limitation. The automatic dimming and changing are still included. Councilmember Colbert said there has been a long process and has a unanimous recommendation from the Planning Commission, so he is hesitant to make any changes to their recommendation. Councilmember Walker said he agrees with the process, but wonders why we would restrict the area for electronic signs. Councilmember Rappleye said there is a logistical reason for the electronic messaging signs, including cost sharing for the sign.

8:40:30 PM

**8.10 A motion to suspend the rules was made by Councilmember Stenquist and seconded by Councilmember Walker. The motion carried unanimously.**

8:40:47 PM

**8.11 A motion to approve Ordinance #1044 was made by Councilmember Stenquist and seconded by Councilmember Colbert.**

8:40:57 PM

**8.2 A motion to amend the motion was made by Councilmember Walker to add an "up to 250 square foot for the sign, with the applicant to have the flexibility of determining how much would be electronic or traditional or combination. The motion was seconded by Councilmember Rappleye.**

8:42:52 PM

8.13 Councilmember Colbert said he feels the amendment counters the process that took place by the Planning Commission. Councilmember Rappleye said the flexibility makes sense.

8:43:47 PM

**8.14 A roll call vote for the amendment was taken with Councilmembers Walker, Rappleye voting in favor and Councilmembers Colbert and Stenquist opposed.**

8:44:16 PM

**8.15 A motion to amend the motion was made by Councilmember Stenquist to strike paragraph 6(i) from the ordinance. The motion was seconded by Councilmember Rappleye.**

8:45:11 PM

**8.16 A roll call vote was taken on the second amendment with Stenquist, Rappleye, and Walker voting in favor and Councilmember Colbert opposed. The motion carried.**

8:45:36 PM

**8.17 A roll call was taken on the amended original motion with Councilmembers Stenquist, Rappleye, and Walker voting in favor and Councilmember Colbert opposed.**

## **9.0 Council/Manager Reports**

8:48:29 PM

9.1 Councilmember Walker said Tad Draper would like improvements to the Town Center by building a historic Fort Draper at the old Park School property.

8:50:36 PM

9.2 Councilmember Colbert asked about the stop sign as requested. David Dobbins said a warrant study will be done for the site. The challenge is the liability the city takes on. Councilmember Rappleye suggested a small round-about. Mr. Dobbins said the neighbors will be told the result of the study. He suggested a policy about how requests for stop signs are handled. Councilmember Colbert also asked if any improvements can be done on Deer Ridge Drive this year. Mr. Dobbins said there is nothing scheduled for that.

8:55:21 PM

92.3 David Dobbins said the Parks, Trails and Recreation committee wants to stay as one board. He also said that to create or expand a Special Service District, all potential property owners need to be notified. If over 30% of the property owners, either by number or value of property, the special service district cannot be formed or increased. The city cannot force anyone into it. Discussion was held about limiting service in areas that are not in a district. Mr. Dobbins also asked if the council wants to talk at a future

meeting about the Suncrest issue about dividing single homes into rentals (such as basement apartments). The consensus of the city was not to take action at this time.

8:59:51 PM

2.4 Russ Fox said there is another request for property purchase next to Honeybee Park. The canal runs through the park and splits the park. The adjoining development has expressed interest in purchasing the property for additional development. There is no connection to the property from the other side of the canal. The consensus was to pursue the negotiations.

9:03:40 PM

2.5 Chief Bryan Roberts distributed the printed 2012 Police Department Annual Report. He also invited the council to a program on May 15 regarding bullying. He also said an open house will be held on May 16 to discuss the South Mountain/Town Centre parking issues. Chief Roberts said the Department of Justice has release the COPS grant application. The department will apply for two school resource officers. He reviewed the funding terms for the positions if the grant is received.

9:08:36 PM

2.6 Russ Fox said he has been meeting with DR Horton regarding the Tall Wood subdivision at Suncrest. An open house will be held with the Homeowners Association next week to get resident input on what they expect for the neighborhood relating to a gated community. Councilmember Colbert said he does not want the city to subsidize snow removal on the private roads or pay for gates. Mr. Fox said the gates are required by the plat.

**9.0 Adourn to Redevelopment Agency Meeting, Municipal Building Authority Meeting, and Traverse Ridge Special Service District Meeting**

9:12:13 PM

**9.1 A motion to adjourn to a Redevelopment Agency meeting was made by Councilmember Rappleye and seconded by Councilmember Walker. The motion carried unanimously.**

**CONSENT  
ITEM #B**

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<u>Mayor &amp; City Council</u>
<b>From:</b>	<u>Troy Wolverton, City Engineer</u>
<b>Date:</b>	<u>May 28, 2013</u>
<b>Subject:</b>	<u>Agreement 13-156 – Construction Agreement with Geneva Rock Products, Inc. for the 13490 South/Vista Station Roadway Project</u>
<b>Applicant Presentation:</b>	<u>Draper City</u>
<b>Staff Presentation:</b>	<u>Troy Wolverton, Engineering</u>
<b>RECOMMENDATION:</b> That City Council authorize the Mayor to sign Construction Agreement #13-156 to Geneva Rock Products, Inc. for the 13490 South/Vista Station Roadway Project.	
<b>BACKGROUND AND FINDINGS:</b> We recommend awarding the contract to Geneva Rock Products, Inc. for the 13490 South/Vista Station Roadway Project in the amount of \$2,185,328.75. The project consists of constructing 13490 South from 200 West to Vista Station and Vista Station to the west edge of the railroad underpass and includes 24-inch waterline, storm drain and detention basins. Contract documents for the project were made available on May 14, 2013 until the bid opening date on May 23, 2013. Seven bids were received ranging from \$2,185,328 to \$3,170,953. The lowest bid was from Geneva Rock Products, Inc.	
<b>FISCAL IMPACT:</b> Finance Review: \$3,000,000 <ul style="list-style-type: none"><li>• CIP Account 41-53-1641</li></ul>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Bid Tabulation</li><li>• Construction Agreement</li></ul>	



# 13490 SOUTH/VISTA STATION BLVD ROADWAY PROJECT BID TABULATION

April 23, 2013

BIDS OPENED: MAY 23, 2013 AT 1:00 PM

Bid Item	Description	Quantity	Unit	Engineer's Estimate		Geneva Rock Products, Inc.		Kilgore Companies		S and L	
				Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
1	Storm Water Pollution Prevention Plan	1	LS	\$20,000.00	\$20,000.00	\$17,200.00	\$17,200.00	\$27,000.00	\$27,000.00	\$15,829.30	\$15,829.30
2	Temporary Construction Fence	5,900	LF	\$2.00	\$11,800.00	\$1.50	\$8,850.00	\$3.14	\$18,526.00	\$1.79	\$10,561.00
3	Clearing and Grubbing	1	LS	\$40,000.00	\$40,000.00	\$25,975.00	\$25,975.00	\$33,900.00	\$33,900.00	\$29,137.23	\$29,137.23
4	Remove 36-Inch CMP	93	LF	\$15.00	\$1,395.00	\$5.50	\$511.50	\$16.50	\$1,534.50	\$18.11	\$1,684.23
5	Remove 24-Inch ADS	200	LF	\$15.00	\$3,000.00	\$10.50	\$2,100.00	\$16.50	\$3,300.00	\$12.05	\$2,410.00
6	Detention Basin Demolition - 13490	1	LS	\$10,000.00	\$10,000.00	\$4,375.00	\$4,375.00	\$7,700.00	\$7,700.00	\$6,778.33	\$6,778.33
7	Detention Basin Earthwork - 13490	1	LS	\$50,000.00	\$50,000.00	\$36,160.00	\$36,160.00	\$49,000.00	\$49,000.00	\$40,900.35	\$40,900.35
8	Detention Basin Earthwork - Vista	1	LS	\$30,000.00	\$30,000.00	\$24,600.00	\$24,600.00	\$23,000.00	\$23,000.00	\$33,497.95	\$33,497.95
9	Surcharge Existing Culvert	1	LS	\$10,000.00	\$10,000.00	\$3,950.00	\$3,950.00	\$3,090.00	\$3,090.00	\$28,584.90	\$28,584.90
10	Roadway Excavation	16,675	CY	\$15.00	\$250,125.00	\$7.75	\$129,231.25	\$14.38	\$239,786.50	\$7.90	\$131,732.50
11	Embankment Fill	2,880	CY	\$20.00	\$57,600.00	\$3.00	\$8,640.00	\$4.77	\$13,737.60	\$3.77	\$10,857.60
12	Design/Build - Retaining Walls	1	LS	\$50,000.00	\$50,000.00	\$3,620.00	\$3,620.00	\$74,000.00	\$74,000.00	\$55,444.50	\$55,444.50
13	13490 MSE Retaining Wall	1	LS	\$35,000.00	\$35,000.00	\$68,000.00	\$68,000.00	\$8,550.00	\$8,550.00	\$9,430.10	\$9,430.10
14	15- Inch Reinforced Concrete Pipe	515	LF	\$50.00	\$25,750.00	\$46.00	\$23,690.00	\$35.00	\$18,025.00	\$51.31	\$26,424.65
15	18- Inch Reinforced Concrete Pipe	950	LF	\$65.00	\$61,750.00	\$45.00	\$42,750.00	\$45.50	\$43,225.00	\$49.97	\$47,471.50
16	24-Inch Reinforced Concrete Pipe	1,661	LF	\$80.00	\$132,880.00	\$51.50	\$85,541.50	\$52.50	\$87,202.50	\$54.86	\$91,122.46
17	36-Inch Reinforced Concrete Pipe	285	LF	\$100.00	\$28,500.00	\$84.00	\$23,940.00	\$79.50	\$22,657.50	\$79.16	\$22,560.60
18	4' x 4' Cleanout Box	10	Ea	\$2,500.00	\$25,000.00	\$3,250.00	\$32,500.00	\$2,260.00	\$22,600.00	\$3,921.52	\$39,215.20
19	4' x 5' Cleanout Box	2	Ea	\$5,500.00	\$11,000.00	\$4,100.00	\$8,200.00	\$3,000.00	\$6,000.00	\$5,393.37	\$10,786.74
20	Trench Drain Connections	10	Ea	\$500.00	\$5,000.00	\$386.00	\$3,860.00	\$300.00	\$3,000.00	\$481.88	\$4,818.80



# 13490 SOUTH/VISTA STATION BLVD ROADWAY PROJECT BID TABULATION

April 23, 2013

BIDS OPENED: MAY 23, 2013 AT 1:00 PM

Bid Item	Description	Quantity	Unit	Engineer's Estimate		Geneva Rock Products, Inc.		Kilgore Companies		S and L	
				Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
21	Concrete Headwall	1	Ea	\$5,000.00	\$5,000.00	\$1,700.00	\$1,700.00	\$2,060.00	\$2,060.00	\$8,605.60	\$8,605.60
22	Single Grate Hooded Inlet Box	7	EA	\$3,500.00	\$24,500.00	\$3,200.00	\$22,400.00	\$1,450.00	\$10,150.00	\$2,677.47	\$18,742.29
23	Single Grate Hooded Combination Box	2	Ea	\$7,000.00	\$14,000.00	\$4,300.00	\$8,600.00	\$2,700.00	\$5,400.00	\$4,667.01	\$9,334.02
24	Vista Outlet Structure	1	LS	\$18,000.00	\$18,000.00	\$12,500.00	\$12,500.00	\$8,700.00	\$8,700.00	\$14,293.55	\$14,293.55
25	13490 Control Structure	1	LS	\$18,000.00	\$18,000.00	\$12,760.00	\$12,760.00	\$6,560.00	\$6,560.00	\$13,750.06	\$13,750.06
26	13490 Outlet Structure	1	LS	\$18,000.00	\$18,000.00	\$16,100.00	\$16,100.00	\$10,800.00	\$10,800.00	\$11,227.52	\$11,227.52
27	24-inch Connection, Vista Station	1	LS	\$2,500.00	\$2,500.00	\$5,500.00	\$5,500.00	\$7,200.00	\$7,200.00	\$3,776.08	\$3,776.08
28	24-inch Connection, 200 W 13490 S	1	LS	\$29,800.00	\$29,800.00	\$8,900.00	\$8,900.00	\$22,750.00	\$22,750.00	\$34,385.39	\$34,385.39
29	24-inch Class 350 D.I. Pipe	3,850	LF	\$177.00	\$681,450.00	\$132.00	\$508,200.00	\$123.00	\$473,550.00	\$124.40	\$478,940.00
30	24-inch 11 1/4" Bend	1	EA	\$5,200.00	\$5,200.00	\$510.00	\$510.00	\$2,600.00	\$2,600.00	\$2,679.02	\$2,679.02
31	24-inch 22 1/2" Bend	6	EA	\$5,650.00	\$33,900.00	\$2,410.00	\$14,460.00	\$2,700.00	\$16,200.00	\$2,638.02	\$15,828.12
32	24-inch 45" Bend	1	EA	\$6,000.00	\$6,000.00	\$2,515.00	\$2,515.00	\$2,800.00	\$2,800.00	\$2,861.73	\$2,861.73
33	24-inch Butterfly Valve	5	EA	\$16,800.00	\$84,000.00	\$8,500.00	\$42,500.00	\$7,000.00	\$35,000.00	\$6,956.00	\$34,780.00
34	24-inch Tee	1	EA	\$5,850.00	\$5,850.00	\$10,320.00	\$10,320.00	\$5,600.00	\$5,600.00	\$5,628.98	\$5,628.98
35	8-inch Fire Hydrant Assembly	3	EA	\$8,500.00	\$25,500.00	\$9,365.00	\$28,095.00	\$9,000.00	\$27,000.00	\$9,056.46	\$27,169.38
36	3-inch Combination Air / Vacuum Release Station	3	EA	\$12,500.00	\$37,500.00	\$11,700.00	\$35,100.00	\$9,000.00	\$27,000.00	\$11,169.79	\$33,509.37
37	4-inch Combination Air / Vacuum Release Station	1	EA	\$14,750.00	\$14,750.00	\$12,000.00	\$12,000.00	\$11,100.00	\$11,100.00	\$21,373.30	\$21,373.30
38	36-inch Casing Pipe, Corner Creek	1	LS	\$27,500.00	\$27,500.00	\$57,000.00	\$57,000.00	\$34,000.00	\$34,000.00	\$49,628.23	\$49,628.23
39	36-inch Casing Pipe, RR ROW	1	LS	\$70,000.00	\$70,000.00	\$68,000.00	\$68,000.00	\$51,000.00	\$51,000.00	\$1,601.50	\$1,601.50



# 13490 SOUTH/VISTA STATION BLVD ROADWAY PROJECT BID TABULATION

April 23, 2013

BIDS OPENED: MAY 23, 2013 AT 1:00 PM

Bid Item	Description	Quantity	Unit	Engineer's Estimate		Geneva Rock Products, Inc.		Kilgore Companies		S and L	
				Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
40	12-inch Existing Pipeline Termination Hydrant	1	LS	\$4,500.00	\$4,500.00	\$6,240.00	\$6,240.00	\$7,500.00	\$7,500.00	\$8,297.79	\$8,297.79
41	Concrete Sidewalk	10,640	SF	\$4.00	\$42,560.00	\$4.00	\$42,560.00	\$4.00	\$42,560.00	\$3.45	\$36,708.00
42	Concrete Curb & Gutter	2,423	LF	\$20.00	\$48,460.00	\$16.50	\$39,979.50	\$18.50	\$44,825.50	\$19.72	\$47,781.56
43	Granular Borrow	11,040	CY	\$25.00	\$276,000.00	\$18.00	\$198,720.00	\$15.00	\$165,600.00	\$20.87	\$230,404.80
44	Untreated Base Course	4,260	CY	\$30.00	\$127,800.00	\$20.00	\$85,200.00	\$19.00	\$80,940.00	\$23.03	\$98,107.80
45	6" HMA Surface Course (PG 64-22)	5,940	Ton	\$70.00	\$415,800.00	\$60.00	\$356,400.00	\$66.00	\$392,040.00	\$68.23	\$405,286.20
46	Raised Island	110	LF	\$35.00	\$3,850.00	\$18.00	\$1,980.00	\$33.48	\$3,682.80	\$18.43	\$2,027.30
47	Manhole to Finish Grade	16	Ea	\$650.00	\$10,400.00	\$550.00	\$8,800.00	\$620.00	\$9,920.00	\$399.00	\$6,384.00
48	Water Valve to Finish Grade	10	Ea	\$450.00	\$4,500.00	\$424.00	\$4,240.00	\$415.00	\$4,150.00	\$342.00	\$3,420.00
49	Pavement Striping and Marking	1	LS	\$8,500.00	\$8,500.00	\$3,575.00	\$3,575.00	\$4,850.00	\$4,850.00	\$4,375.32	\$4,375.32
50	Install Sign	15	Ea	\$350.00	\$5,250.00	\$294.00	\$4,410.00	\$350.00	\$5,250.00	\$287.85	\$4,317.75
51	Revegetation	1	Ea	\$20,000.00	\$20,000.00	\$12,370.00	\$12,370.00	\$10,800.00	\$10,800.00	\$11,514.00	\$11,514.00
<b>Subtotal</b>					<b>\$2,947,870.00</b>		<b>\$2,185,328.75</b>		<b>\$2,237,422.90</b>		<b>\$2,265,986.60</b>
<b>Grand Total</b>					<b>\$2,947,870.00</b>		<b>\$2,185,328.75</b>		<b>\$2,237,422.90</b>		<b>\$2,265,986.60</b>

- 4 Vancon Inc \$2,372,589.15
- 5 Staker Parson DBA Reynolds Excavation \$2,474,992.75
- 6 Lyndon Jones Construction \$2,973,184.00
- 7 Noland & Son Construction Company \$3,170,953.35

Project Manager

**CONSTRUCTION AGREEMENT #13-156**

**13490 SOUTH/VISTA STATION ROADWAY PROJECT**

**PART 1. GENERAL**

**Date:** This Contract made this 28th day of MAY, 2013

**1.1 Contractor**

Name: Geneva Rock Products, Inc.  
Address: P.O. Box 538, Orem, Utah 84059  
which is a corporation organized in the State of Utah.  
Telephone: (801) 281-7900  
Contractor's Representative: Mike Alter  
Utah License number: 239696-5501

**1.2 Owner** (herein called "Owner" or "City")

**Draper City Corporation**, a municipal corporation of the State of Utah. The Draper Engineering Division is located at 1020 East Pioneer Road; Draper, Utah 84020.

Telephone: (801) 576-6546  
Fax: (801) 576-6388

**1.3 Project.** This project shall be known as the **13490 SOUTH/VISTA STATION ROADWAY PROJECT** which consists of, but it not limited to, roadway, waterline, and storm drain construction, more specifically described in the Contract Documents, herein called the "Project."

**1.4 Engineer** means the City's representative and agent for this Construction Contract, or any other person designated to the Contractor in writing by the City Engineer.

**1.5 Construction Contract.** The construction contract shall consist of the following documents: the Invitation to Bid, Bidder Information, Additional Instructions to Bidders, Bid of the Contractor, Bid Bond, Conditional Notice of Award, this Construction Agreement, Notice to Proceed, Insurance Requirements, the City of Draper Engineering Standards and Specifications, Project Drawings, Change Orders or Supplemental Agreements, including the Bid Forms, Addenda to the Drawings and/or Specifications, and Measurement and Payment, collectively referred to as the Contract Documents, all of which are incorporated herein by reference. In the case of conflict in the Contract Documents, the documents shall govern in the order set out in General Conditions.



1.6 **DEFINITIONS.** The definitions of words set out in the General Conditions for Municipal Construction (sometimes herein called the "General Conditions") shall apply throughout this Agreement unless the context clearly indicates otherwise.

1.7 **INSURANCE.** The Contractor shall acquire and maintain during the term of the Contract insurance in the amount specified in **EXHIBIT A** attached hereto. Coverage shall be maintained for one year after the Project Acceptance for Maintenance Date.

1.8 **LIABILITY.** The Contractor shall save, keep and hold harmless the City, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorneys fees, that may at any time arise or be set up because of damages to property, bodily injury or personal injury received by reason of or in the course of performing Work which may be occasioned by any willful, negligent or wrongful acts or omissions of the Contractor, any of the Contractor's employees or any subcontractor. The City will not be held liable for any accident, loss or damage to the Work prior to its completion and acceptance.

1.9 **NO DAMAGE CLAUSE.** The Contractor herewith specifically waives claims against the City for damages for any hindrance or delay not caused by the fault of the City. Contractor will, in lieu thereof, be granted extensions of time for delays not the fault of the Contractor, his suppliers, subcontractors, or sub-subcontractors. The Contractor shall not make any claim for damages against the City for any hindrance or delay for claims made until after the City has been notified of the claim and has had 24 hours to respond.

1.10 **PERFORMANCE AND PAYMENT BONDS.** Contractor shall furnish to the City a payment and performance bond satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of 100% of the contract Amount according to the terms of this Agreement. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of one year following the date of Project Acceptance for Maintenance, which guarantee shall be covered by the terms of the performance bond.



## **PART 2. SCOPE OF WORK**

### **2.1 Generally.**

A. Contractor shall furnish all labor, materials, equipment, bonds, insurance, permits, fees, and all other charges, expenses or assessments of whatever kind or character to complete the Project, consisting of the work described in the Contract Documents.

B. Work shall conform in all ways to the most recent edition of the Draper City Standard Specifications and Details for Municipal Construction, along with all existing ordinances.

C. As required by Section 63G-11-103, Utah Code Annotated (1953 as amended), Contractor certifies it has registered and participates in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the state.

**2.2 Subcontractors.** No part of this contract shall be subcontracted by the Contractor without approval by the Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by Contractor. The Contractor shall not award work to any Subcontractor in excess of fifty percent (50%) of the contract price, without prior written approval of the City.

**2.3 City's Right to Order Changes in the Work.** Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, order changes in the work, provided that doing so does not alter the scope of the contract work. If the Contractor believes that any such change cannot be performed within the time allowed for the Project, or for that phase of the Project, or that such a change does alter the scope of the contract work, or that Contractor cannot perform the change except at additional cost, then it shall promptly so notify the Engineer in writing.

**2.4 City's Unilateral Suspension of Work.** Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, order suspension of the Work for any reason, upon written notice to the Contractor.

**2.5 Differing Site Conditions.** Information provided about the Project construction site is provided by the City or its agents as a convenience to the Contractor and its subcontractors. The Contractor should verify all such information independently unless the parties specifically agree in writing otherwise. In the event that the Contractor encounters site conditions which would have been reasonably foreseeable from a visit to the Project site, and from a review of the materials provided to the Contractor by the City prior to the Contractor's bid submission, then the Contractor shall be responsible for all additional Work, costs and expenses associated with those differing site conditions. If, on the other hand, the Contractor encounters site conditions which would not have been reasonably foreseeable from a visit to the Project site, and from a review of the materials provided to the Contractor by the City prior to the Contractor's bid submission, then the Contractor shall be paid for the reasonable costs and expenses of the Work resulting from the differing site conditions as provided in Section 6.02 of the

General Conditions.

**PART 3. MONEY AND TIME**

**3.1 CONTRACT PRICE**

A. The Contract Price includes the cost of the Work specified in the Contract Documents, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character.

B. The schedule of prices awarded as separate items from the bid schedule are as follows:

#	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT
1	Storm Water Pollution Prevention Plan	1	LS	\$17,200.00	\$17,200.00
2	Temporary Construction Fence	5,900	LF	\$1.50	\$8,850.00
3	Clearing and Grubbing	1	LS	\$25,975.00	\$25,975.00
4	Remove 36-Inch CMP	93	LF	\$5.50	\$511.50
5	Remove 24-Inch ADS	200	LF	\$10.50	\$2,100.00
6	Detention Basin Demolition - 13490	1	LS	\$4,375.00	\$4,375.00
7	Detention Basin Earthwork - 13490	1	LS	\$36,160.00	\$36,160.00
8	Detention Basin Earthwork - Vista	1	LS	\$24,600.00	\$24,600.00
9	Surcharge Existing Culvert	1	LS	\$3,950.00	\$3,950.00
10	Roadway Excavation	16,675	CY	\$7.75	\$129,231.25
11	Embankment Fill	2,880	CY	\$3.00	\$8,640.00
12	Design/Build - Retaining Walls	1	LS	\$3,620.00	\$3,620.00
13	13490 MSE Retaining Wall	1	LS	\$68,000.00	\$68,000.00
14	15- Inch Reinforced Concrete Pipe	515	LF	\$46.00	\$23,690.00
15	18- Inch Reinforced Concrete Pipe	950	LF	\$45.00	\$42,750.00
16	24-Inch Reinforced Concrete Pipe	1,661	LF	\$51.50	\$85,541.50
17	36-Inch Reinforced Concrete Pipe	285	LF	\$84.00	\$23,940.00
18	4' x 4" Cleanout Box	10	Ea	\$3,250.00	\$32,500.00
19	4' x 5" Cleanout Box	2	Ea	\$4,100.00	\$8,200.00
20	Trench Drain Connections	10	Ea	\$386.00	\$3,860.00
21	Headwall	1	Ea	\$1,700.00	\$1,700.00



22	Single Grate Hooded Inlet Box	7	EA	\$3,200.00	\$22,400.00
23	Single Grate Hooded Combination Box	2	Ea	\$4,300.00	\$8,600.00
24	Vista Outlet Structure	1	LS	\$12,500.00	\$12,500.00
25	13490 Control Structure	1	LS	\$12,760.00	\$12,760.00
26	13490 Outlet Structure	1	LS	\$16,100.00	\$16,100.00
27	24-inch Connection, Vista Station	1	LS	\$5,500.00	\$5,500.00
28	24-inch Connection, 200 W 13490 S	1	LS	\$8,900.00	\$8,900.00
29	24-inch Class 350 D.I. Pipe	3,850	LF	\$132.00	\$508,200.00
30	24-inch 11 1/4° Bend	1	EA	\$510.00	\$510.00
31	24-inch 22 1/2° Bend	6	EA	\$2,410.00	\$14,460.00
32	24-inch 45° Bend	1	EA	\$2,515.00	\$2,515.00
33	24-inch Butterfly Valve	5	EA	\$8,500.00	\$42,500.00
34	24-inch Tee	1	EA	\$10,320.00	\$10,320.00
35	8-inch Fire Hydrant Assembly	3	EA	\$9,365.00	\$28,095.00
36	3-inch Combination Air / Vacuum Release Station	3	EA	\$11,700.00	\$35,100.00
37	4-inch Combination Air / Vacuum Release Station	1	EA	\$12,000.00	\$12,000.00
38	36-inch Casing Pipe, Corner Creek	1	LS	\$57,000.00	\$57,000.00
39	36-inch Casing Pipe, RR ROW	1	LS	\$68,000.00	\$68,000.00
40	12-inch Existing Pipeline Termination Hydrant	1	LS	\$6,240.00	\$6,240.00
41	Concrete Sidewalk	10,640	SF	\$4.00	\$42,560.00
42	Concrete Curb & Gutter	2,423	LF	\$16.50	\$39,979.50
43	Granular Borrow	11,040	CY	\$18.00	\$198,720.00
44	Untreated Base Course	4,260	CY	\$20.00	\$85,200.00
45	6" HMA Surface Course (PG 64-28)	5,940	Ton	\$60.00	\$356,400.00
46	Raised Island	110	LF	\$18.00	\$1,980.00
47	Manhole to Finish Grade	16	Ea	\$550.00	\$8,800.00
48	Water Valve to Finish Grade	10	Ea	\$424.00	\$4,240.00



49	Pavement Striping and Marking	1	LS	\$3,575.00	\$3,575.00
50	Install Sign	15	Ea	\$294.00	\$4,410.00
51	Revegetation	1	LS	\$12,370.00	\$12,370.00
<b>GRAND TOTAL</b>					<b>\$2,185,328.75</b>

**GRAND TOTAL IN WRITING: Two million, one hundred eighty five thousand, three hundred eighty five dollars and seventy five cents.**

3.2. **Contract Time, Changes in Contract Time.** The work on this Project shall commence within ten (10) days of receipt of the Notice to Proceed, which will be provided for each schedule. The work for shall be completed within a maximum of **120 calendar days** of the commencement of the project. The parties agree that this is a reasonable time for completion of the work. Work stoppage due to inclement weather conditions and other factors must be approved by the Engineer. The Contractor shall notify the Engineer of a claim of delay due to inclement weather within one (1) week of the days claimed as delayed. Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, change the time of performance of the Agreement, provided that doing so does not alter the scope of the contract work. If the Contractor believes that any such change cannot be performed except at additional cost or without the extension of time of performance of the contract, or an extension of time for that phase of the contract, then it shall promptly so notify the Engineer in writing. Time is of the essence of this agreement.

**3.3 Punch List Time**

A. Pursuant to Section 5.04 of the General Conditions, the Work will be complete and ready for final payment within thirty (30) days after the date Contractor receives Engineer's Final Inspection Punch List unless exemptions of specific items are granted by Engineer in writing or an exception has been specified in the Contract Documents.

B. Permitting the Contractor to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the Owner of any of Owner's rights under this Agreement.



### 3.4 LIQUIDATED DAMAGES.

#### A. **Late Completion: Time is of the essence of the Contract Documents.**

Contractor agrees that Owner will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Section 5.06 of the General Conditions. Contractor and Owner agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, Contractor agrees to pay the following sums to the Owner as liquidated damages and not as a penalty.

1. **Late Contract Time Completion: Five Thousand Dollars (\$5,000)** for each day or part thereof that expires after the Contract Time until the Work is accepted as substantially complete as provided in Section 5.03 of the General Conditions, which the parties believe is a fair estimate of the loss the City will suffer due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, and which the parties agree is not a penalty.

2. **Late Punch List Time Completion: Five Thousand Dollars (\$5,000)** for each day or part thereof if the Work remains incomplete after thirty (30) days following the time the punch list is delivered to the Contractor, provided that no such damages shall be collected until after the Contract Completion Date. The parties agree that this is not a penalty. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the Contractor by certified mail.

B. **Work Sequence Completion:** Time is of the essence of sequenced work. If a work sequence is specified, then for each day or part thereof that exceeds the specified time and until Engineer determines such work sequence is Substantially Complete, the Contractor agrees to pay the following sums per day to the OWNER as liquidated damages and not as a penalty.

C. **Survey Monuments:** No land survey monument shall be disturbed or moved until Engineer has been properly notified and the Engineer's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that Contractor will pay as liquidated damages the sum of \$1,000 to cover such damage and expense. Only the Engineer's licensed surveyor shall reset the monument, and at the Contractor's sole cost.



**D. Interruption of Public Services:** No interruption of public utility services or damage to public service facilities, defined herein as an interruption to City potable water supply, street lighting, storm water or irrigation systems, herein called Public Service Facilities, shall be caused by Contractor, its agents or employees, without the Engineer's prior approval. Owner and Contractor agree that in the event Owner suffers damages from such interruption, the amount of liquidated damages stipulated above shall not be deemed to be a limitation upon Owner's right to recover the full amount of such damages. Contractor shall immediately notify the owner of the public utility if Contractor, or any subcontractor or other agent or employee of Contractor interrupts or damages Public Service Facilities. In addition, the Contractor shall immediately notify the Engineer of any such interruption, and in the case of an interruption to Public Service Facilities or services, the Contractor shall immediately notify the Public Works Department by the fastest means possible. The Public Works Departments telephone number is 576-6517; the City's emergency dispatch number is 831-4000. The City ENGINEERING or Public Utilities Departments may sometimes also be reached by dialing 911. Contractor shall pay within 30 days of receiving a written statement for any charges for repairs or damages arising out of the damage to or interruption of Public Service Utilities or services.

**E. Deduct Damages from Monies Owed Contractor:** Owner shall be entitled to deduct and retain liquidated damages out of any money which may be due or become due the Contractor. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such amounts and shall return such excess to the Owner.

### 3.5 PAYMENT PROCEDURES

**A. Progress Payments.** Contractor shall submit applications for payment, but not more often than once every 30 days. Payment shall not become due or payable for any contract item not provided or installed by Contractor according to the Contract Documents, unless otherwise approved by the Engineer. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work.

1. **Withholding Payment.** Owner reserves the right to withhold payment from Contractor for non-compliance with any provision of the Contract Documents.



**B. Final Payment.**

1. **Submittal.** Final payment shall not be made until the Contractor has delivered and Engineer has accepted the following submittals:

- a. A written request for final payment, signed by the Contractor's Representative,
- b. An affidavit from the Contractor's Representative, and reasonable evidence that all payments due and owing to subcontractors, laborers, suppliers of equipment and Materials, and all other outstanding indebtedness of the Contractor related to the Project have been fully paid, discharged, or waived by the person owed the money;
- c. All Project Material inspection and testing reports,
- d. Evidence that the performance bond has been extended for the one year warranty period; and
- e. Waiver of Lien, Full and Final Release form.

2. **Evidence of Payment.** The Engineer may, at his sole option, accept evidence by the Contractor that arrangements have been made for such payments based thereon.

3. **Payment to Subcontractors, Suppliers.** If the City reasonably believes that Contractor has failed to pay Subcontractors, suppliers of Materials, or laborers for work on the Project within a reasonable time of when payment is due, then City may, at its discretion, either pay unpaid bills and withhold from the Contractor's payment, or make a claim against any bond for this Project in the amount of the Engineer's estimate of the amount of money he deems sufficient to pay any such lawful claim. The City shall notify the Contractor of any such payment.

4. **Price Adjustments:** City may, in its discretion, make partial payment to the Contractor for certain non-conforming work in advance of any negotiated settlement reached between the Contractor and the City, provided the Contractor requests in writing that this be done, and the Engineer approves it. Contractor agrees that any such payments made by the City are "payments in advance" and that any money which becomes due when the final settlement is negotiated will not constitute payments "withheld" or "retained" under State law.

5. **City Released From Claims:** The payment and acceptance of the final Contract Price due and the adjustment and payment for any Work done in accordance with any alterations of the same, shall release the City from any and all claims of Contractor on account of Work performed under the Contract Documents or any Change Order thereof, except for those claims specifically agreed to as reserved and unresolved by the City.

3.6 **Extra Work.** No money will be paid to the Contractor for any additions, deletions or revisions in the Work as stipulated in the General Conditions, unless a contract for such has been made in writing and executed by the City and Contractor.

3.7 **Bond Releases.** In addition to those remedies allowed the City under Subsection 3.5(B)(3) above, the City may withhold release of a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project, or any uncorrected substandard work, until Contractor supplies a release of the City satisfactory to it signed by all persons who have supplied labor or materials to the Project. The Contractor shall supply to the Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

3.8 **Change Orders.** Any change order which increases the total contract amount must be approved by a written certification by the ENGINEER.

#### **PART 4. DEFAULT**

4.1 **DEFAULT EVENTS.** Upon the occurrence of one or more of the following events:

A. **Breach.** If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;

B. **Substantial Failure to Perform.** If Contractor substantially fails to perform any part of this Agreement;

C. **Repeated Failure or Inability to Perform.** If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of 72 hours;

D. **Insolvency, Inability to Pay Debts, Bankruptcy.** If Contractor (i) shall become insolvent in a bankruptcy sense; (ii) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. §101 [10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of 90 days; (iv) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of 90 days; (v) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of 90 days; (vi) shall be dissolved; (vii) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation,



or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains un-dismissed for a period of 90 days; (viii) shall voluntarily suspend substantially all of its business operations; (ix) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) shall take action for the purpose of any of the foregoing,

**Then** the City may, after serving ten (10) days' written notice (or such time set out in the notice in the City's reasonable discretion) on the Contractor and its surety of the City's intention to terminate the services of Contractor, and if within such notice period after serving such notice, the violation is not corrected to City's reasonable satisfaction, may take over the work and prosecute it to completion by contract or by any other method it may deem advisable. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for such work as provided in this Agreement.

4.2 **HEARING.** The Contractor shall be entitled to a hearing before the City's department head responsible for the Project, or his or her designee(s) upon the issue of termination if it submits a written request there for within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

4.3 **WAIVER.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

4.4 **CONTINUE PERFORMANCE.** The Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this Part.

4.5 **REMEDIES NOT EXCLUSIVE.** The rights and remedies of the City provided in this part shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.



**PART 5. MISCELLANEOUS COVENANTS**

**5.1 ASSIGNMENT NOT BINDING WITHOUT WRITTEN CONSENT**

A. City and Contractor agree no assignment of any right or interest in the Contract Documents will be made without the written consent of the City and the Contractor. No assignment will release or discharge the City or the Contractor from any duty or responsibility under the Contract Documents unless specifically authorized in writing.

B. Contractor shall make no assignment of money that is due without the City's written consent (except to the extent that the effect of this restriction may be limited by law or regulation).

**5.2 BINDING TERMS.** City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

**5.3 CONTROLLING LAW.** This Agreement shall be construed in accordance with and enforced under the laws of the State of Utah.

**5.4 ASSIGNMENT.** The Contractor shall not assign nor transfer any interest in this agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

**5.5 UNENFORCEABLE CONTRACT, WAIVERS.** In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

**5.6 ENTIRE AGREEMENT.** This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written modification signed by the parties.

**5.7 WORKING HOURS.** All work performed by the Contractor, its subcontractors, material-men, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless special prior arrangements for other hours have been requested and approved in writing by the Engineer. Contractor shall minimize noise disturbance to the surrounding neighborhood by maintaining efficient noise attenuation devices on all noise generating equipment as determined by the Engineer and Draper City Council.



5.8 **THIRD PARTY RIGHTS.** Nothing herein is intended to confer rights of any kind in any third party.

5.9 **PARTIES' REPRESENTATIVES.** For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered, or sent by facsimile transmission, or mailed by certified mail, postage pre-paid, to the parties at the following addresses:

Contractor: Contractor's Representative designed at the top of this document, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Draper City: Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

5.10 **SEVERABILITY.** Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

5.11 **INTERPRETATION.** The parties hereto acknowledge that the Agreement has been prepared after extensive negotiations and the opportunity for each party to review the Agreement with and obtain advice from their respective legal counsel. In construing the Agreement or any Addendum to it, the fact that one party or the other may have drafted its various provisions shall not affect the interpretation of such provisions.

5.12 **CITY'S GENERAL RIGHT TO TERMINATE.** The City may terminate this Agreement for any reason for its own convenience upon notice to the Contractor, provided that the City shall pay Contractor for Work performed by the Contractor, its subcontractors, and materials supplied according to the Contract Documents. The City shall not owe the Contractor, its subcontractors or sub-subcontractors, any of their officers, employees, or suppliers damages for early termination other than as provided in this paragraph.

5.13 **COMMUNICATIONS, MEETINGS.** Contractor's representative shall promptly and fully respond to communications from the City Representative about the Project work, and shall meet with the City Representative about the Project as often at such times as the City Representative shall request.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set out at the top of this Agreement.

**DRAPER CITY**

\_\_\_\_\_  
DRAPER CITY MAYOR

ATTEST: \_\_\_\_\_  
DRAPER CITY RECORDER

**CONTRACTOR**

\_\_\_\_\_  
Type or print: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: (if corporation)

\_\_\_\_\_  
Title: \_\_\_\_\_



**CORPORATE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )

: ss

County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ and \_\_\_\_\_, who, being by me duly sworn on oath did say that they are the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors; and said persons acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC,

Residing in \_\_\_\_\_

My commission Expires: \_\_\_\_\_



## EXHIBIT A INSURANCE REQUIREMENTS

### INSURANCE REQUIREMENTS FOR PARTIES CONTRACTING WITH DRAPER CITY

PROJECT:  
DATE:

Contracting party shall procure and maintain for the duration of the contract insurance against any claims which may arise from or in connection with the performance of the work hereunder by the contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contracting party's bid.

#### A. MINIMUM LIMITS OF INSURANCE

Contracting party shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate, for bodily injury, personal injury and property damage. Broad Form Commercial General Liability is required.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. "Any Auto" coverage is required.
3. Workers' Compensation and Employer's Liability: (1) Workers' compensation limits as required by the Labor Code of the State of Utah and (2) Employer's Liability limits of \$ 500,000 per accident.

Contracting party shall provide City with copies of certificates for all policies with an endorsement that they are not subject to cancellation without thirty (30) calendar days prior to written notice to the City. The City, its officers and employees, shall be named as additionally insured on the Contracting party's general and automobile liability insurance.



CONSENT  
ITEM #C

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Troy Wolverton, City Engineer</b>
<b>Date:</b>	<b>May 28, 2013</b>
<b>Subject:</b>	<b>Agreement 13-158 – Professional Consulting, Engineering and Design Services Between Draper City and Hansen, Allen and Luce, Inc. for the Suncret regional Detention Basin</b>
<b>Applicant Presentation:</b>	<b>Draper City</b>
<b>Staff Presentation:</b>	<b>Troy Wolverton, Engineering</b>
<b>RECOMMENDATION:</b> Approve Agreement 13-158 – Professional Consulting, Engineering and Design Services Between Draper City and Hansen, Allen and Luce, Inc. for the Suncrest Regional Detention Basin	
<b>BACKGROUND AND FINDINGS:</b> Draper City has entered into a memorandum of understanding (MOU) with DJ Investments Group to allow the design and construction of a regional storm water detention basin in Hogg Hollow (April 16, 2013). The City desires to complete the design of the regional detention basin, the access roads, the regional storm drain trunk system and the Suncrest Overflow and prepare documents for bidding in early 2014.	
<b>FISCAL IMPACT: Finance Review: \$349,000</b> <ul style="list-style-type: none"><li>• Zions/DJI Settlement \$1.9MIL</li></ul>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Agreement 13-158</li><li>• Proposed Scope of Work (HAL)</li><li>• Proposal Budget (HAL)</li><li>• MOU</li></ul>	

SUNCREST REGIONAL DETENTION BASIN

AN AGREEMENT FOR PROFESSIONAL CONSULTING, ENGINEERING and DESIGN SERVICES  
BETWEEN DRAPER CITY AND HANSEN, ALLEN & LUCE, INC

THIS AGREEMENT made and entered into this May 29, 2013, by and between DRAPER CITY, a municipal corporation (hereinafter referred to as "City", and Hansen, Allen & Luce, Inc., a Utah Corporation (hereinafter referred to as "Consultant").

City and Consultant agree as follows:

1. **RETENTION AS CONSULTANT**

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Paragraph 2. Consultant warrants it has the qualifications, experience and facilities to properly perform said services.

This agreement is not intended and shall not be construed to create any right or impose any duty, expressly or by implication, in favor of any person or entity who is not a direct party to this agreement. All services and extra services to be performed by Consultant hereunder will be performed for the exclusive use and benefit of City, and no other person or entity may, or is entitled to use or rely upon any such services or the information or reports generated by Consultant as a result of such services.

2. **DESCRIPTION OF SERVICES**

**Project Description**

Draper City has entered into a memorandum of understanding (MOU) with DJ Investments Group to allow the design and construction of a regional storm water detention basin in Hogg Hollow (April 16, 2013). The City desires to complete the design of the regional detention basin, the access roads, the regional storm drain trunk system and the Suncrest Overflow and prepare documents for bidding in early 2014.

**Scope of Services**

Task 100 - Project initiation, geotechnical investigation and surveying  
Task 200 - Preliminary Design  
Task 300 - Final Design  
Task 400 - Bidding Services  
Task 500 - Services During Construction

Please see **Exhibit A**, the scope of work taken from proposal.

Consultant has the right to decline to perform any services or extra services requested by City without liability. Professional services provided by the Consultant under this Agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's same profession currently practicing in the same locality under similar conditions. No other representation, warranty or guarantee, express or implied, is included or intended in the Agreement, or in any report, opinion or document.



3. **COMPENSATION AND PAYMENT**

Except for authorized extra services (pursuant to Paragraph 4), the total compensation payable to Consultant by City for the services described in Paragraph 2 shall be earned on a Maximum Fee Not to Exceed \$349,000 (three thousand forty nine thousand dollars and zero cents). Additional pre-approved services if any shall be billed at the rates set in **Exhibit B**.

All payments shall be made within thirty (30) calendar days after the Consultant has provided City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to City. Invoices shall be made no more frequently than on a monthly basis, and should describe the work performed, including a list of man-hours by personnel classification, if billing is on a per hour basis. City agrees to pay a finance charge of 1 ½% per month on past due accounts, or the maximum allowed by law if such maximum is less than 1 ½% per month.

Additional response required by reviewing authorities will be completed upon City approval (pursuant to Paragraph 4).

4. **EXTRA SERVICES**

City shall pay Consultant for those extra services authorized or requested in writing in addition to the services described in Paragraph 2, in such amounts as mutually agreed to in advance (see attached Exhibit A). City and Consultant will agree in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. Extra services shall be charged as not to exceed the previously written amount as the agreed-upon services.

5. **SERVICES BY CITY**

City will make available for Consultant's review all available information regarding project conditions or requirements that may be relevant to or affect the services to be performed under this Agreement, including, but not limited to, information City knows, assumes or may suspect with respect to hazardous or potentially hazardous substances or wastes. City will immediately transmit to Consultant any new information concerning the project that becomes available to it, either directly or indirectly, during the performance of this Agreement. City agrees to render reasonable assistance as requested by Consultant so the performance of the services under this Agreement may proceed without delay or interference. Consultant will not be liable for any advice, judgment or decision based on inaccurate or incomplete information furnished by City, and the Consultant shall not be required to investigate or evaluate the accuracy or completeness of any information furnished by City.

6. **PROGRESS AND COMPLETION**

Consultant shall commence work on the agreed upon tasks immediately following the execution of this agreement. Consultant acknowledges the schedule associated with completion and it is understood that time is of the essence in the performance of requested tasks. All work associated with the Design Services and Bidding Services Phases shall be completed on or before December 31, 2014.



7. **OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation, including duplication of same prepared by Consultant in the performance of these services, shall become the property of City upon completion of the discreet tasks or termination of the consulting services pursuant to this agreement and upon payment in full of all compensation then due Consultant, but may be used only in conformance with all terms of this agreement.

8. **PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This Agreement is for professional services, which are personal services to City. The following person is deemed to be a key member or employee of the Consultant's firm, and shall be directly involved in performing or assisting in the performance of this work:

Greg Poole, P.E.

Should this individual be removed from assisting in this contracted work for any reason, the consultant will provide qualifications of a suitable replacement and a work plan detailing how tasks will be reassigned. If City finds the replacement unacceptable City may terminate this Agreement.

This Agreement is not assignable by Consultant or City.

9. **HOLD HARMLESS**

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold City harmless from any damage, liability or cost to the extent caused by the Consultant's negligent acts, errors or omissions in the performance of professional services under this agreement.

City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost to the extent caused by City's negligent acts, errors or omissions and for anyone for whom City is legally liable, arising from the professional services under this agreement.

The Consultant is not obligated to indemnify City in any manner whatsoever for City's own negligence.

City hereby agrees, to the fullest extent permitted by law, that Consultant's total liability to City for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to any services or this Agreement, from any cause or causes, including but not limited to Consultant's negligence, errors, omissions, strict liability, breach of contract, or otherwise, will not exceed \$1,000,000.00, per claim and in the aggregate. In no event shall Consultant be liable for exemplary or punitive damages.

10. **INSURANCE**

Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry:

(1) Workers compensation insurance adequate to protect Consultant from claims under workers compensation acts, and



## AGREEMENT 13-158

- (2) Professional errors and omissions insurance in the amount of \$1,000,000, per claim and in the aggregate.

Understanding that the Consultant uses personal vehicles in the performance of professional services under this agreement, the Consultant agrees to maintain reasonable automobile insurance on the vehicle.

All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of Utah. Consultant shall provide City with copies of certificates (on City certificate form) for all policies with an endorsement that they are not subject to cancellation without thirty (30) calendar days prior written notice to City. City, its officers and employees, shall be named as additional insured on Consultants commercial general liability and automobile liability insurance.

### 11. **RELATIONSHIP OF THE PARTIES**

The relationship of the parties to this Agreement shall be that of independent contractors and that in no event shall Consultant be considered an officer, agent, servant or employee of City. The Consultant shall be solely responsible for any workers compensation, withholding taxes, unemployment insurance and any other employer obligations associated with the described work.

### 12. **TERMINATION**

City, by notifying Consultant in writing, may upon ten (10) calendar days notice, terminate any portion, or all of the services agreed to be performed under this Agreement. In the event of such termination, Consultant shall have the right and obligation to assemble, in a reasonable time, work in progress for the purpose of winding up the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within thirty (30) calendar days following submission of final statement by Consultant.

The Consultant, by notifying City in writing, may upon ten (10) calendar days notice, terminate any portion, or all of the services agreed to be performed under this Agreement. In the event of such termination, Consultant shall have the right and obligation to assemble, in a reasonable time, work in progress for the purpose of winding up the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within thirty (30) calendar days following submission of final statement by Consultant.

### 13. **ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release to City from all claims and liabilities for compensation to Consultant for anything done, finished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within thirty (30) calendar days of the receipt of that check.

However, approval or payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and



consultants.

14. **WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

15. **CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this Agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

16. **MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

17. **GOVERNING LAW**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of Utah.

18. **CAPTIONS**

The captions or headings in the Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

19. **AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint ventures, insurance carriers and any others who may claim through it to this Agreement.



20. **ENTIRE AGREEMENT BETWEEN PARTIES**

Except for Consultant's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

21. **PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

22. **TERM OF AGREEMENT**

Unless sooner terminated as provided for herein, this agreement shall be effective from May 29, 2013 and ending December 31, 2014.

23. **NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in this United States mail, postage prepaid, and addressed as follows:

TO CITY: DRAPER CITY  
Attn: Robert Markle, P.E.  
1020 East Pioneer Road  
Draper, Utah 84020

TO CONSULTANT: Hansen, Allen and Luce, INC.  
Attn: Greg Poole, P.E.  
6771 South 900 East  
Midvale, Utah 84047  
P: (801) 566-5599 F: (801) 566-5581

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

**DRAPER CITY**

\_\_\_\_\_  
Darrell Smith, Draper City Mayor

**CONSULTANT**

\_\_\_\_\_  
Hansen, Allen and Luce, Inc.



**SUNCREST REGIONAL DETENTION BASIN  
ENGINEERING WORK PLAN  
May 15, 2013 draft**

**PROJECT UNDERSTANDING**

Draper City has entered into a memorandum of understanding (MOU) with DJ Investments Group to allow the design and construction of a regional storm water detention basin in Hogg Hollow (April 16, 2013). The City desires to complete the design of the regional detention basin, the access roads, the regional storm drain trunk system and the Suncrest Overflow and prepare documents for bidding in early 2014. The design concepts are included in the MOU (see copy of Exhibit A from the MOU attached).and our understanding of the components is as follows.

- Regional Detention Basin located in Hog Hollow on the City parcel.
  - 19 Acre-feet of total detention storage
  - The projected inundated area includes a portion of the DJ Investment property on the north side (see Exhibit A). This will be described in a flood easement.
  - Maintenance access roads are needed to both upstream and downstream of the dam.
  - A fifteen foot dam top width will be used for the current proposed construction. The design will need to accommodate widening to a 56-foot Mountain Local Road in the future.
- A 36-foot top width maintenance access road is to be designed and constructed from Suncrest Drive to the regional detention basin.
  - A design along the same alignment is needed assuming construction of a 56-foot Mountain Local Road in the future.
  - The existing road dedication plat (August 8, 2002) will be amended to include the new road with the extension all the way through the DJ Investment Property to tie into the existing Upper Corner Canyon Road alignment following the alignment as generally depicted on the MOU Exhibit C.
- Storm drain trunk line from Suncrest Drive to the regional detention basin.
  - Design to convey 100-year (1% chance of being equaled or exceeded in any given year) storm runoff flow rate tributary to the sag in Suncrest Drive.
  - With design survey, investigate alternative routes. It is desired to route the storm drain so as not to split the Civic Parcel if this can be done and accommodate future maintenance and replacement.
- Suncrest Overflow Structure located at the sag in Suncrest Drive.
  - Design for 100-year storm runoff flow assuming that the storm drain system is plugged.
  - Flow from the overflow structure will be directed to discharge onto the DJI property at about the location of the current storm drain outlet from Pond 7A.
  - A temporary drainage easement will be provided following Hog Hollow through the DJI property to the regional detention basin (see MOU for "hold each other harmless" provision).

**SCOPE OF SERVICES**

The task descriptions are organized by the input, activities, and output format. The input section describes information to be provided by others or from previous work. The activities' section describes the work to be performed by Hansen, Allen and Luce, Inc. The output section describes the work products to be delivered to Draper City.

## **TASK 100 - Project Initiation, geotechnical investigation and surveying**

**Objective:** Complete geotechnical investigation and design survey.

### **Input:**

- MOU
- Agreement with Zions Bank
- Scope of Work
- Previous work products for 7A

### **Activities:**

1. Perform field reconnaissance with geotechnical consultant – confirm that wetlands are not involved.
2. Review hydrology and complete Probable Maximum Flood analysis.
3. Meet with Dave Marble (Utah State Dam Safety) to review geotech investigation plan, hydrology, and conceptual plan and design criteria.
4. Landscape Architect review of Parks, Recreation, and Trails Master Plan for subject area.
5. Prepare design criteria.
6. Coordinate for geotechnical investigation.
7. Complete design surveying and update base mapping including creation of Civil 3D existing ground surface.

### **Output:**

- Geotechnical Investigation (by others)
- Criteria for design of the dam

## **TASK 200 - Preliminary Design**

**Objective:** Investigate alternative dam cross sections. Prepare preliminary plan and profile sheets for review by Draper City and preliminary estimate of probable construction cost. The previous preliminary plans will be updated as needed based on the design survey and geotechnical investigation results.

### **Input:**

- Geotechnical report
- Design Criteria
- Design Survey

### **Activities:**

1. Request utility mapping from utility companies (except Rocky Mountain Power). Coordinate for potholing as needed and provide follow up surveying of blue stakes. Research aqueduct easement. Add utilities to base map.
2. Work with the geotechnical engineer to define alternative dam materials and cross

- sections. Prepare alternative preliminary dam cross sections and comparative cost estimates.
3. Develop a Preliminary Park Conceptual Plan for the site showing the locations of trail heads and trails, and other facilities planned for immediate implementation and for the future.
  4. Investigate alternative storm drain trunk alignments (in particular investigate not splitting the Civic Parcel).
  5. Meet with City representatives to review the alternative dam materials and cross sections and select the cross section for design.
  6. Develop sketches and drawings addressing visual impacts of dam construction.
  7. Meet with Parks, Recreation and Trails Committee to review concept and receive input.
  8. Prepare preliminary design drawings using the design survey data and the geotechnical findings. Following is an estimate of the sheets needed to present the preliminary design.
    - a. Cover Sheet
    - b. Sheet Index
    - c. Plan and profile drawings of the "Mountain Local Road" with the 36 foot detention basin access road (three 1"=40' 11x17").
    - d. Detention basin plan (1"=60' 11x17")
    - e. Dam plan (1"=40' 11x17")
    - f. Dam cross section and profile
    - g. Primary Outlet Profile
    - h. Plan and Profile of access roads to upstream and downstream of dam (two sheets) .
    - i. SunCrest storm drain improvements plan
    - j. SunCrest overflow structure plan and profile
    - k. SunCrest overflow structure outlet plan
    - l. Storm drain system plan and profile
    - m. Preliminary Landscape Revegetation Drawings and Specifications.
  9. Prepare updated project cost estimate
  10. Meet with City representatives.
  11. Meet with City and DJI representatives to review proposed plans (10% level of design).

**Output:**

- Updated Preliminary Design Drawings.
- Updated preliminary construction cost estimate.

**TASK 300 - Final Design**

**Input:**

- Preliminary plans
- City and DJI preliminary plan review comments

**Activities:**

1. Prepare Final Park Concept.
2. Prepare final design drawings. Following is our estimate of the needed drawings.

- a. Cover Sheet
- b. General Notes, Index of Drawings.

#### ACCESS ROAD

- c. Plan and profile drawings of the "Mountain Local Road" with the 36 foot detention basin access road (three 1"=40' 11x17").
- d. Typical road section (showing the proposed access road with the future road dashed)
- e. Access Road Cross Sections (four sheets with 4 cross sections per sheet)

#### REGIONAL DETENTION BASIN

- f. Detention basin plan (1"=60' 11x17")
- g. Dam plan (1"=40' 11x17")
- h. Dam cross section and profile
- i. Dam Sections
- j. Primary Outlet Profile
- k. Primary Outlet Structure Plan and Sections
- l. Detention Overflow Structure Details
- m. Emergency Spillway Details
- n. Outlet Structure Plan
- o. Outlet Structure sections
- p. Grating Details
- q. Plan and Profile of access roads to upstream and downstream of dam (two sheets).
- r. Landscape Revegetation Drawings.

#### SUNCREST DRIVE DRAINAGE

- s. SunCrest storm drain improvements plan
  - t. SunCrest overflow structure (baffled chute) plan and profile
  - u. Baffled chute cross sections
  - v. Baffled chute baffle details
  - w. SunCrest overflow structure outlet conveyance plan and profile
  - x. Outlet Structure Plan (temporary outlet to DJI Property)
  - y. Storm drain system plan and profile
  - z. Miscellaneous Details (2 sheets)
3. Prepare final engineering design calculations and prepare design report.
  4. Prepare road dedication plat (include access, slope and road easements).
    - a. Assist with property exchange
  5. Prepare tech specs and bid documents
    - a. Bid Schedule shall include approximately the same line items as listed in Cost Estimate in the MOU appendix
  6. Prepare Engineers estimate of construction cost
  7. Prepare easement descriptions
  8. Prepare application and report for submission to State Office of Dam Safety.
  9. Prepare stream alteration permit application
  10. Conduct review meeting with City representatives at 20%, 50%, and 90% design.
  11. Meet with DJI and City representatives at the 50% and 90% level design.
  12. Make final revisions to Bidding Documents, Specifications, and Design Drawings and produce documents.

**Output:**

- Final Design Drawings
- Bidding Documents and Specifications.
- Construction Cost Estimate.

**TASK 400 - Bidding Services**

**Input:**

- Task 300 – Final Design

**Activities:**

1. Assist with bidding advertisement.
2. Respond to contractor requests for information during bidding.
3. Attend and assist with pre-bid meeting and walk through.
4. Attend bid opening, review bids and prepare recommendation for award.
5. Assist Draper City with contract negotiations.

**Output:**

- Recommendation for award.
- Construction contract price.

**TASK 500 - Services during Construction**

**Objective:** Assist Draper City during construction of the project to encourage quality, encourage consistency with the design drawings, minimize change orders, and resolve problems during construction.

**Input:**

- Bid Documents
- Contractor selected.
- Permits

**Activities:**

1. Prepare contract documents (3 originals) with Notice of Award.
2. Review payment bond, performance bond, and insurance certificates. Prepare notice to proceed.
3. Conduct pre-construction meeting and provide meeting notes to attendees.
4. Provide construction observation services (resident project representative, RPR) as requested by Draper City.
5. Review shop drawings and submittals.
6. Conduct construction progress meetings and provide meeting notes to attendees.
7. Provide survey control and provide construction offset stakes for centerline changes in direction and structure corners.
8. Respond to contractor's requests for information during construction.

9. Review and process contractor change orders.
10. Review and process contractor pay requests.
11. Conduct a final walk through with Draper City staff and Contractor representative.  
Prepare and distribute a punch list as appropriate.
12. Prepare final pay estimate and recommendation.
13. Prepare record drawings.

**Output:**

- Construction Observation Reports
- Record Drawings

**ASSUMPTIONS**

- An incremental damage analysis, emergency action plan, and standard operating plan are not included in the scope. Should these be required, we will modify the scope and budget accordingly.
- The budget does not include re-design of final design drawings at the request of a review agency.
- Assume a 4 month construction period with construction observation time as shown on the budget spreadsheet.

HAL PROPOSAL SPREADSHEET



CLIENT: DRAPER CITY  
 PROJECT: SUNCREST REGIONAL DETENTION BASIN 15-May-13

Pha	Task #	Task Activity	Hours													Total Hours	Labor Cost	Expense Cost	Total HAL Cost with Contingency & Rate Inc.	Outside Expense	COMMENT			
			Principal GJP/MEA	Prof II GLJ	Prof I TGA	Sr Prof I Brad	GPS Survey	AGEC S. Prof	AGEC Field Tech	LDI Principal Jan	LDI Sr. LA Hugh	LDI STAFF	Sr. Designer	Design/Field Tech	CAD							Secretary		
<b>I TASK 100 - Project Initiation, geotechnical investigation and surveying</b>																								
	100	Project initiation and communications	12	8	4			2		4	6							36	\$4,554.00	\$144.00	\$5,167.80		Includes LDI mtgs with City and Team mtgs	
	101	Field recon	6	6	6			6		6								36	\$4,518.00	\$134.00	\$5,117.20			
	102	Review hydrology and complete PMF analysis	2	8														10	\$1,158.00	\$60.00	\$1,339.80			
	103	Meet with State Dam Safety representative	6					6										12	\$2,004.00	\$55.50	\$2,265.45			
	104	Review of parks, Rec and Trails master plan																0	\$0.00	\$0.00	\$0.00			
	105	Prepare design criteria	4					4		1	1	4						14	\$1,861.00	\$24.00	\$2,073.50			
	106	Coordinate for geotech investigation	1	4														5	\$579.00	\$49.50	\$691.35	\$49,958.00		AGEC (see attached cost worksheet)
	107	Complete design survey and update base map_ create surface	1	2	16	8	18				1	4						50	\$5,979.00	\$302.50	\$6,909.65			
	199	QA/QC	4															4	\$636.00	\$24.00	\$726.00			
	SUBTOTAL HOURS/UNITS:		36	28	26	8	18	18	0	11	14	8	0	0	0	0	0	167						
	SUBTOTAL:		\$5,724.00	\$2,940.00	\$2,314.00	\$924.00	\$2,862.00	\$3,150.00	\$0.00	\$1,375.00	\$1,400.00	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$21,289.00	\$793.50	\$24,290.75	\$54,953.80	Subconsultant Costs w/Sub Contingency	
<b>II TASK 200 - Preliminary Design</b>																								
	200	Coord meetings and communications							6	12	6							24	\$0.00	\$0.00	\$0.00		Includes existing utility easement research	
	201	Request utility information and coordinate potholing as needed	1		4	8								8				21	\$2,015.00	\$145.50	\$2,376.55			
	202	Alternative dam materials and cross sections	8		16		16											40	\$5,496.00	\$144.00	\$6,204.00			
	203	Prepare preliminary park concept plan							2	8	8							18	\$1,650.00	\$0.00	\$1,815.00			
	204	Alternative storm drain alignments	2	4	12													18	\$1,806.00	\$108.00	\$2,105.40			
	205	Meet with City representatives	4				4											8	\$1,336.00	\$43.50	\$1,517.45			
	206	Develop sketches and dwgs - visual of dam	4				4		2	2	16							28	\$2,986.00	\$43.50	\$3,332.45			
	207	Meet with Parks, Rec, & Trails committee	4				4		3	3								14	\$2,011.00	\$43.50	\$2,259.95			
	208	Prepare preliminary design drawings	11.5	15	46				7	13	20	2			43			157.5	\$14,470.50	\$705.00	\$16,693.05			
	209	Prepare updated project cost estimate	2	4	12													18	\$1,806.00	\$108.00	\$2,105.40			
	210	Meet with City representatives	4		4													8	\$992.00	\$67.50	\$1,165.45			
	211	Meet with City and DJI representatives	4															4	\$636.00	\$43.50	\$747.45			
	299	Quality Control (QC) / Quality Assurance (QA)	8															8	\$1,272.00	\$48.00	\$1,452.00			
	SUBTOTAL HOURS/UNITS:		52.5	23	94	8	0	28	0	20	38	50	2	0	51	0		366.5						
	SUBTOTAL:		\$8,347.50	\$2,415.00	\$8,366.00	\$924.00	\$0.00	\$4,900.00	\$0.00	\$2,500.00	\$3,800.00	\$3,750.00	\$202.00	\$0.00	\$3,672.00	\$0.00			\$36,476.50	\$1,500.00	\$41,774.15	\$0.00	Subconsultant Costs w/Sub Contingency	
<b>III TASK 300 - Final Design</b>																								
	301	Prepare Final Park Concept Plan								1	4							5	\$0.00	\$30.00	\$33.00		\$1,500.00 DL Webb Structural	
	302	Prepare final design drawings	43.5	57	116				2	13	8	44			218			501.5	\$45,515.50	\$2,871.00	\$53,225.15			
	303	Prepare final engineering design calcs and design report	8	24	8	4		4										44	\$5,204.00	\$240.00	\$5,988.40			
	304	Prepare road dedication plat and easements													12			16	\$1,326.00	\$96.00	\$1,564.20			
	305	Prepare tech specs and bid documents	8		24			6										38	\$4,458.00	\$192.00	\$5,115.00			
	306	Prepare engineers estimate	2		12													19	\$1,786.00	\$84.00	\$2,057.00			
	307	Prepare easement descriptions				15				1	4							27	\$2,596.50	\$162.00	\$3,034.35			
	308	Prepare application and report for submission to State	4	12				4										20	\$2,596.00	\$96.00	\$2,961.20			
	309	Prepare stream alteration permit application	1	4											12			17	\$1,443.00	\$102.00	\$1,699.50			
	310	Conduct review meetings 20%, 50%, and 90%	9	9														18	\$2,376.00	\$166.50	\$2,796.75			
	311	Meet with DJI and City reps at 50% and 90%	8															8	\$1,272.00	\$87.00	\$1,494.90			
	312	Make final revisions	8	8	12										20			48	\$4,620.00	\$288.00	\$5,398.80			
	399	Quality Control (QC) / Quality Assurance (QA)	8															8	\$1,272.00	\$48.00	\$1,452.00			
	SUBTOTAL HOURS/UNITS:		99.5	114	172	19	0	14	0	2	15	16	44	0	274	0		769.5						
	SUBTOTAL:		\$15,820.50	\$11,970.00	\$15,308.00	\$2,194.50	\$0.00	\$2,450.00	\$0.00	\$250.00	\$1,500.00	\$1,200.00	\$4,444.00	\$0.00	\$19,728.00	\$0.00			\$74,465.00	\$4,462.50	\$86,820.25	\$1,650.00	Subconsultant Costs w/Sub Contingency	
<b>IV TASK 400 - Bidding Services</b>																								
	401	Assist with bidding advertisement		2														2	\$210.00	\$12.00	\$244.20			
	402	Respond to contractor requests for info during bid	2	6			4		1	6								19	\$2,373.00	\$48.00	\$2,663.10			
	403	Attend and assist with pre-bid meeting	6							3								9	\$1,254.00	\$55.50	\$1,440.45			
	404	Attend bid opening, review bids and prepare recommendation	6															6	\$954.00	\$55.50	\$1,110.45			
	405	Assist Draper City with contract negotiations	4															4	\$636.00	\$43.50	\$747.45			
	499	Quality Control (QC) / Quality Assurance (QA)	2															2	\$318.00	\$12.00	\$363.00			
	SUBTOTAL HOURS/UNITS:		20	8	0	0	0	4	0	1	9	0	0	0	0	0		42						
	SUBTOTAL:		\$3,180.00	\$840.00	\$0.00	\$0.00	\$0.00	\$700.00	\$0.00	\$125.00	\$900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			\$5,745.00	\$226.50	\$6,568.65	\$0.00	Subconsultant Costs w/Sub Contingency	

CLIENT: DRAPER CITY  
 PROJECT: SUNCREST REGIONAL DETENTION BASIN

15-May-13



Pha #	Task #	Task Activity	Hours													Total Hours	Labor Cost	Expense Cost	Total HAL Cost with Contingency & Rate Inc.	Outside Expense	COMMENT					
			Principal GJP/MEA	Prof II GLJ	Prof I TGA	Sr Prof I Brad	GPS Survey	AGEC S. Prof	AGEC Field Tech	LDI Principal Jan	LDI Sr. LA Hugh	LDI STAFF	Sr. Designer	Design/Field Tech	CAD							Secretary				
V TASK 500 - Services During Construction																										
501		Prepare contract docs (3 originals)	2																3	5	\$477.00	\$30.00	\$557.70			
502		Review payment bond, performance bond, and insurance	2																	2	\$318.00	\$12.00	\$363.00			
503		Conduct pre-con meeting	5									3							3	15	\$1,627.00	\$73.50	\$1,870.55			
504		Provide construction observation services (RPR)	24																							
505		Review shop drawings and submittals	6					16		860	3		9							1084	\$74,627.00	\$5,626.00	\$88,278.30		Assume 4 months full time observation	
506		Conduct construction progress meetings and provide meeting notes to attendees	51					4			2	6								18	\$2,504.00	\$36.00	\$2,794.00			
507		Provide survey control and provide construction offset stakes	2				4													51	\$8,109.00	\$637.50	\$9,621.15		Assume 17 progress meetings	
508		Respond to Contractor RFIs	4	8																68	\$10,638.00	\$564.00	\$12,322.20			
509		Review and process change orders	4	10				16												28	\$4,276.00	\$72.00	\$4,782.80			
510		Review and process contractor pay requests	8																	26	\$2,550.00	\$156.00	\$2,976.60			
511		Conduct a final walk through & punch list	8																	8	\$1,272.00	\$48.00	\$1,452.00			
512		Prepare final pay estimate and recommendation	4																	8	\$1,272.00	\$67.50	\$1,473.45			
513		Prepare record drawings.	4	8																4	\$636.00	\$24.00	\$726.00			
599		Quality Control (QC) / Quality Assurance (QA)	4																	52	\$4,356.00	\$312.00	\$5,134.80			
		SUBTOTAL HOURS/UNITS:	128	26	0	4	62	36	863	5	18	0	0	176	52	3				1373						
		SUBTOTAL:	\$20,352.00	\$2,730.00	\$0.00	\$462.00	\$9,858.00	\$6,300.00	\$51,780.00	\$625.00	\$1,800.00	\$0.00	\$0.00	\$15,488.00	\$3,744.00	\$159.00						\$113,298.00	\$7,682.50	\$133,078.55	\$0.00	Subconsultant Costs w/Sub Contingency

PHASE	TASK	Labor	Direct Exp	Subtotal	Subconsultant	SubTotal
		Costs	Cost	w/Contingency	Costs	
I	Investigation and surveying	\$21,289.00	\$793.50	\$24,290.75	\$54,953.80	\$79,244.55
II	TASK 200 - Preliminary Design	\$36,476.50	\$1,500.00	\$41,774.15	\$0.00	\$41,774.15
III	TASK 300 - Final Design	\$74,465.00	\$4,462.50	\$86,820.25	\$1,650.00	\$88,470.25
IV	TASK 400 - Bidding Services	\$5,745.00	\$226.50	\$6,568.65	\$0.00	\$6,568.65
V	TASK 500 - Services During Construction	\$113,298.00	\$7,682.50	\$133,078.55	\$0.00	\$133,078.55
	TOTAL:	\$251,273.50			\$56,603.80	\$349,136.15

Regional Detention\ENGLManagement\Suncrest Regional Detention BUDGET.xls>Data

Recommended Budget \$349,000

**MEMORANDUM OF UNDERSTANDING REGARDING STORM WATER DRAINAGE  
IMPROVEMENTS, ROAD ALIGNMENT AND RELATED ISSUES**

This Memorandum of Understanding Regarding Storm Water Drainage Improvements, Road Alignment and Related Issues (the "MOU") is made and entered into as of this 16<sup>th</sup> day of April, 2013, by and between **DJ Investment Group, L.L.C.**, a Utah limited liability company, (hereinafter referred to as "DJI") and **Draper City**, a municipal corporation of the State of Utah (hereinafter referred to as the "City") (together referred to as the "Parties").

**RECITALS:**

- A. WHEREAS, on December 21, 2011 Zions First National Bank, a national banking association (hereinafter referred to as "Zions"), and the City entered into that certain Settlement Agreement (the "Draper-Zions Settlement Agreement"), and on October 12, 2012, entered into that certain Real Estate Purchase Agreement with Addendum of even date and with further Amendment dated November 5, 2012, whereby, among other things, Zions agreed to construct a new storm water drainage system for a master planned development in the City known as the SunCrest Project; and
- B. WHEREAS, DJI owns certain real property adjacent to that portion of the SunCrest Project ("DJI Property") which is or has been affected by the storm water drainage system constructed by Zions' predecessor in interest, including Detention Basin 7A; and
- C. WHEREAS, as a result of negotiations by and between Zions, DJI and the City, engineers retained by the City, Hansen Allen and Luce ("HAL") have prepared a Basic Preliminary Design and Cost Estimate (the "Estimate") for a new SunCrest Storm Water Drainage System (the "Project"), which is generally acceptable to the Parties (true and correct copies of the Estimate are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by this reference); and
- D. WHEREAS, the PSOMAS engineers retained by DJI have prepared an Access and Grading Investigation (a true and correct copy of the PSOMAS Access and Grading Investigation is attached hereto as Exhibit "C" and incorporated herein by this reference) in which they have identified the approximate location of a realignment of the right of way for Upper Corner Canyon Road and related improvements favored by DJI which the City has agreed to consider as part of the final design process as more fully set forth below; and
- E. WHEREAS, Zions and DJI have already, or are about to enter into a Settlement Agreement (the "Zions-DJI Settlement Agreement") between them whereby Zions has agreed to pay all of the costs of the construction of the improvements of the SunCrest Storm Water Drainage System as set forth in Table 1 of the Estimate; and
- F. WHEREAS, Zions and the City have agreed that Zions will immediately advance the City the funds described by the Estimate necessary to prepare the final design and construct

the Project and are about to enter into that certain Funding Agreement Relating To SunCrest Storm Water Drainage System Improvements in furtherance of that arrangement; and

G. WHEREAS, there are remaining issues that DJI and the City must address as part of this Agreement in order to facilitate the completion of the final design and construction of the Project;

NOW, THEREFORE, for and in consideration of the mutual covenants and understandings as set forth herein it is hereby understood and agreed by the Parties as follows:

1. City Approval of Basic Preliminary Designs and Cost Estimate. The City hereby accepts the Estimate and will enter into the Funding Agreement with Zions to receive the amount of \$1,962,000 as set forth in Exhibit "B" and will authorize HAL to proceed with the final design process in preparation for awarding a construction contract for the Project. The City has reviewed the Zions-DJI Settlement Agreement, consents to those provisions of paragraph 1 therein regarding the allocation of costs and logistics of funding for the Project, and acknowledges that this MOU will be referenced therein and an exhibit thereto. The Parties agree that Zions' actual funding of the Project is a condition precedent to this MOU.

2. Temporary Drainage Easement Through Hog Hollow. The Estimate contemplates a permanent overflow storm drainage structure that will be built at the location of the SunCrest Drive embankment, which overflow storm drainage system will, in the event of an overflow occurrence, drain via the existing rip-rap culvert up to the point of DJI's property. DJI shall provide a temporary or interim drainage easement at no cost to the City, including access for maintenance, within ten (10) working days of the approval of the final design for the Project by Draper City and shall allow the overflow storm drainage to enter DJI's property and drain through DJI's property to the point of Hog Hollow at the easterly edge of DJI's Property. The temporary interim easement shall include a provision that DJI and the City shall hold each other harmless for any claims arising from the use of the overflow drainage to the point of the regional detention basin where the City will maintain a controlled storm discharge that will drain via Hog Hollow. The parties acknowledge that a permanent storm drainage solution within DJI's Property for conveyance of SunCrest Drive overflow drainage and other tributary basin drainage down Hog Hollow that complies with the City's applicable land use regulations shall be engineered, designed, built and paid for by DJI or its successors as a condition of any future development approval for the DJI Property and at the time DJI or its successors develop DJI's Property.

3. Drainage Easement For New Regional Detention Basin. DJI and the City agree that, if required by the final design for the Project, DJI shall provide an additional drainage easement of approximately 0.375 acres at no additional cost to the City for any expanded footprint of the new regional detention facility to be constructed as part of the Project that exceeds the boundaries of the City's ten-acre open space parcel as generally depicted on Exhibit "A" within ten (10) working days of the approval of the final design for the Project by Draper City. It is anticipated that the process of amending the Upper Corner Canyon Road dedication

plat as more fully described in paragraph 4 below will “true up” boundaries on final alignments throughout this area.

4. Amendment of Road Dedication Plat. DJI and the City agree that in order to facilitate construction of certain aspects of the Project it will be necessary to complete the statutory process required to vacate and amend the Upper Corner Canyon Road dedication plat previously dedicated to the City by DJI and recorded on August 8, 2002. The City shall cause to be prepared an Amended Road Dedication Plat which will include a right of way beginning at the approximate location of the existing SunCrest Drive and current Civic Uses Parcel and extending all the way through the DJI Property to its northern edge property line to tie into the existing Upper Corner Canyon Road alignment following the alignment as generally depicted on Exhibit C, which will have sufficient width to meet the requirement for a fifty six foot (56') Mountain Local Road (as defined in the City's Transportation Master Plan) and slope easements to accommodate the potential for future full build out and construction of a Mountain Local Road to provide access for any future development of the DJI Property, either by DJI or its successors in interest. The City hereby waives any application or fees for the application to vacate and amend the current existing dedication for Upper Corner Canyon Road. Such dedication shall guarantee an adequate width for the top of the future local road, with the understanding that such dedication will immediately serve as a partially built road for purposes of the installation of the storm drainage piping and access as generally depicted on Exhibit A for the Project. However, neither DJI nor its successor is obligated to finish completing the partially built Upper Corner Canyon Road at the location noted on Exhibit “A” (as modified by the elements of Exhibit “C” related to the Upper Corner Canyon Road alignment) which will be partially built by the City to facilitate the Project. DJI and/or its successors are not obligated in any particular time frame to complete the partially built Upper Corner Canyon Road until after the time DJI or its successor receives final approval from City for site development in accordance with the applicable City land use regulations. The Parties understand and acknowledge that the statutory process providing for the amendment of such a road dedication plat requires a public hearing before the City Council with at least ten days prior notice and certain findings by the Council in support of the proposed amendment. The City Staff and legal counsel will promptly initiate the amendment process and recommend the approval of the proposal to the City Council, who will review and act upon the amendment as provided by statute and City ordinance.

5. Property Exchange. The Parties agree that as a result of the anticipated realignment of that portion of Upper Corner Canyon Road traversing the entire length of DJI's Property and other aspects of this MOU, subject to compliance with the applicable statutory provisions, including notice and opportunity for public comment, the parties will exchange certain parcels of property as generally depicted in the drawing attached as Exhibit “D” at no cost to either party. The exchange will occur only after final Project drainage improvement plans establishing all necessary property acquisitions including access easements, slope easements and road alignment dedications have been prepared and finalized.. The property exchange documents will then be approved by both DJI and the City. The City shall then make requests for contractor bidding and shall initiate construction. Final design acceptance by the City and property acquisition documents shall be approved, signed and recorded prior to the City putting the

contracted work for the Project out for bid. The property exchange between DJI and the City will occur within ten (10) working days after Draper City's Council approves the amended Upper Corner Canyon Road dedication plat, which amended dedication plat shall include reciprocal access easements, slope easements and road alignment dedications that will be prepared and finalized hereafter. DJI and the City agree that due to the short construction season available to the property, the awarded contractor shall be afforded a full construction season and access to DJI's property to complete the subject work.

6. DJI Preliminary Approval of the Estimate and Input in Final Design. As part of the negotiations between the City, DJI and Zions, DJI caused an Access and Grading Investigation to be prepared by PSOMAS Engineers which is attached hereto as Exhibit "C" and incorporated by this reference. Exhibit "C" shows the future alignment and placement of roads and related improvements favored by DJI. However, DJI is concerned about the proposed alignment of the new storm drain pipe being placed in a location other than the Right-turn Acceleration Lane referred to in Exhibit "C" that will interfere with the potential development of the portion of land that currently is the City's Civic Uses Parcel, and which Civic Uses Parcel will be exchanged with DJI. The Parties understand and acknowledge that the City is the approval authority for final design and construction of the Project (subject to the agreements expressed in this MOU, including the general alignment of Upper Corner Canyon Road depicted on Exhibit C as expressed in paragraph 4 above) and that Zion's payment obligations will not be increased. The Parties further agree that DJI and its engineers may provide input to Draper City staff and to HAL during the final design process on any aspects of the Project that affect the DJI Property.

7. Scope of Memorandum of Understanding. This MOU contains all of the terms and conditions agreed to by the parties with respect to the issues resolved herein. The terms of this MOU supersede all prior negotiations, representations, promises, inducements or previous agreements between the Parties with respect to the issues resolved herein. Any amendments must be in writing and signed by the respective parties hereto. However, nothing herein shall be construed to diminish in any way DJI's existing claims against the City or the City's existing claims against DJI, whether or not asserted in any pending proceeding; and no release of claims in whole or in part is intended. The parties acknowledge nonetheless the new responsibilities and obligations created by and set forth in this MOU.

8. No Third-Party Rights. The understandings of the parties set forth in this MOU shall not create any rights in or obligations to any persons or parties other than to DJI, the City and Zions to the extent referenced, and to their successors and assigns.

9. Time of Essence. The Parties acknowledge that time is of the essence to the understandings described herein.

10. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended or may be by certified mail, return receipt requested, postage prepaid to such party at its address shown below:

To DJI:

DJ Investment Group, LLC  
Attn: David K. Mast  
P.O. Box One  
Draper, UT 84020

with a copy to:

Stephen K. Christiansen, Esq.  
Van Cott, Bagley, Cornwall & McCarthy  
36 South State Street, Suite 1900  
Salt Lake City, Utah 84111

To the City:

Draper City Manager  
1020 East Pioneer Road  
Draper, Utah 84020

with a copy to:

Draper City Attorney  
1020 East Pioneer Road  
Draper, Utah 84020

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this Section.

**DJ INVESTMENT GROUP, L.L.C.**, a  
Utah limited liability company

By David K. Mast  
Its member/manager  
4/17/13

**DRAPER CITY**

By Darrel H. Smith  
Darrel H. Smith, its Mayor

Attest:

*Angie Olsen*

~~Tracy Norr~~, Draper City Recorder, Deputy

*Angie Olsen*

4815-0162-6386, v. 3



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**ACKNOWLEDGEMENT AND CONSENT**

**Dan Simons** and **Arden Bodell**, as holders of an ownership interest in a portion of the DJI Property as that term is defined in Recital B of the Memorandum of Understanding Regarding Storm Drainage Improvements, Road Alignment and Related Issues between DJ Investment Group, L.L.C. and Draper City (the "MOU"), hereby acknowledge and consent to the terms of the MOU, a copy of which has been provided to them for review.

DATED and EXECUTED this 18 day of April, 2013.

  
\_\_\_\_\_  
Dan Simons

DATED and EXECUTED this 18<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Arden J. Bodell, individually and as trustee  
of the Arden J. Bodell Revocable Trust  
dated December 23, 2009



# EXHIBIT B

REGIONAL DETENTION - SOUTH ROAD ALTERNATIVE (after PSOMAS layout)  
TABLE 1. PROJECT COST ESTIMATE WITH 38-FOOT MAINTENANCE ROAD  
December 6, 2012

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT COST	TOTAL AMOUNT	ZIONS BANK	DJ INVESTMENTS	EIDELWEISS
1	Mobilization / Demobilization	1	LS	\$74,800	\$74,800	\$82,300	\$9,500	\$2,900
2	Storm Water Conveyance and Maintenance Road							
3	Suncrest Drive Improvements	1	LS	\$74,000	\$74,000	\$74,000	\$0	\$0
4*	36" Dia. Storm Drain Pipe (RCP Class III)	1574	LF	\$110	\$173,140	\$173,140	\$0	\$0
5	48" Dia. Storm Drain Pipe (RCP Class III)	902	LS	\$177	\$159,854	\$159,854	\$0	\$0
6	Suncrest Drive Overflow (bellied chute and channel to Hollow)	1	LS	\$210,000	\$210,000	\$210,000	\$0	\$0
7	Clearing & Grubbing (access road)	2.3	AC	\$5,000	\$11,706	\$11,706	\$0	\$0
8	Fill (import) and Grading	8,592	CY	\$22.00	\$211,026	\$211,026	\$0	\$0
9	Cut	11,360	CY	\$8	\$90,881	\$90,881	\$0	\$0
10	Road Base for Access Road	7673	SY	\$10	\$76,733	\$76,733	\$0	\$0
11	Rock Ex for Pipe Trench	450	CY	\$25	\$11,255	\$11,255	\$0	\$0
12	Manhole w/ Inlets	19	EA	\$3,500	\$66,500	\$66,500	\$0	\$0
13	Clearing & Grubbing	1	AC	\$5,000	\$4,321	\$1,704	\$2,005	\$812
14	Striping, Stockpiling, and Spreading Topsoil	2436	SY	\$1.20	\$2,923	\$1,152	\$1,356	\$414
15	Diam Fill (import) and Grading	10981	CY	\$22	\$241,577	\$95,253	\$112,100	\$34,223
16	Seeding & Seed Bed Preparation	2438	SY	\$0.80	\$1,948	\$788	\$904	\$276
17	Erosion Control Blanket	2438	SY	\$5	\$12,178	\$4,802	\$5,651	\$1,725
18	Structures (Inlet, Primary Outlet, Overflow, & Emergency Spillway)	1	LS	\$52,000	\$52,000	\$20,504	\$24,130	\$7,367
19	Outflow Piping Through Dam	188	LF	\$310	\$58,280	\$22,980	\$27,044	\$8,256
20	Access Road into Detention Basin	1533	SY	\$20	\$30,667	\$12,092	\$14,230	\$4,344
21	6" Road Base Across Top of Dam	423	SY	\$10	\$6,800	\$2,721	\$3,202	\$978
	Engineering & Contingency (30%)				\$471,147	\$392,751	\$60,037	\$18,329
	TOTAL (rounded to nearest thousand)				\$2,042,000	\$1,702,000	\$260,000	\$79,000

Estimates are based on 2011 RSMears Heavy Construction Cost Data and experience with similar projects  
Note: Actual depth to bedrock is unknown and may be highly variable. Bedrock was assumed to be at a depth of 10 ft which was applied uniformly along proposed road and pipe profile.  
\*Item #4 - Material Cost only (Approximately \$72 per foot = \$65,000)

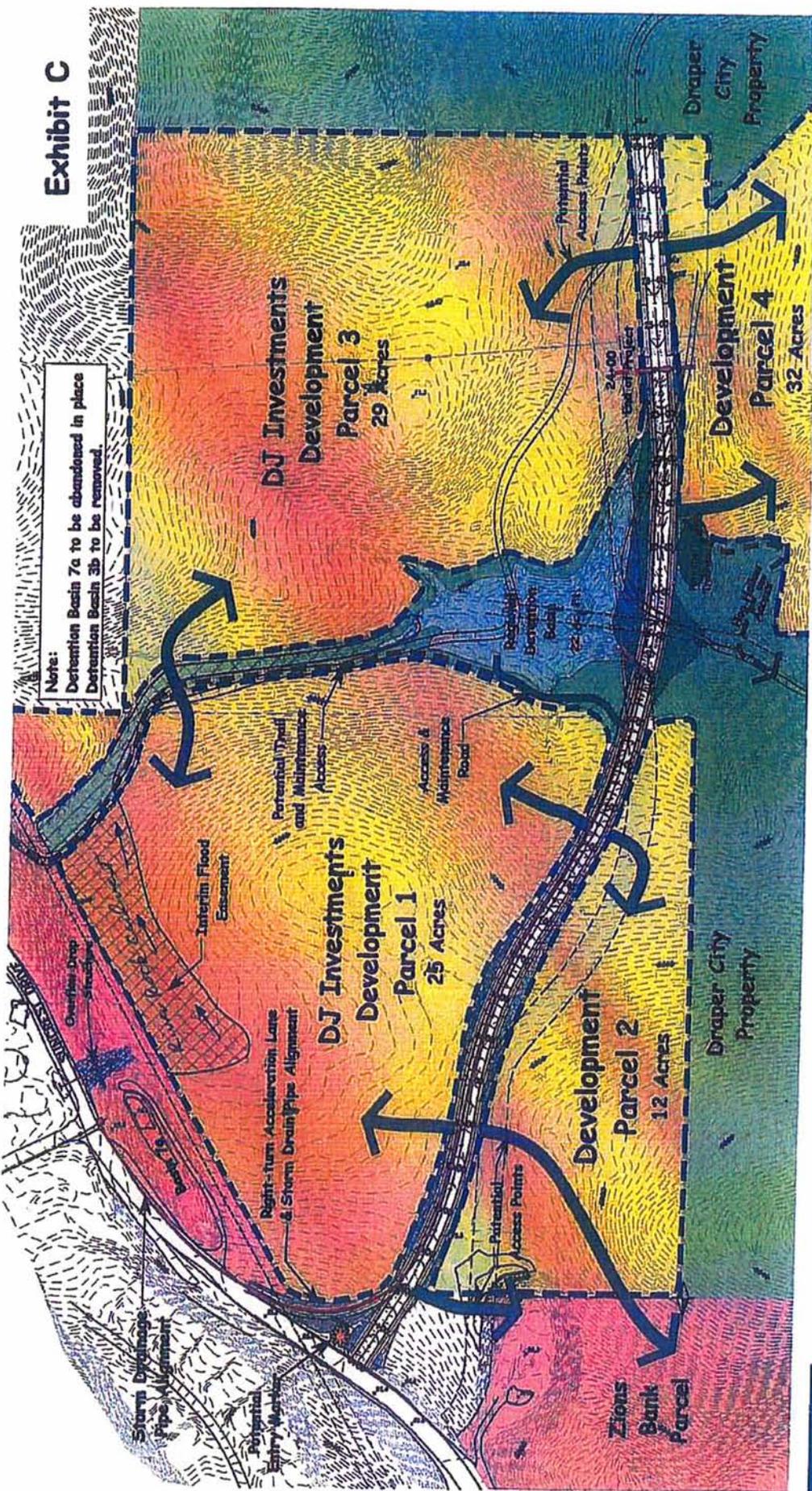
REGIONAL DETENTION BASIN  
TABLE 2. COST SHARE ESTIMATE BASED ON STORM WATER VOLUME

OWNER	VOLUME IN ACRE-FEET		TOTAL	VOLUME SHARE %
	100 YR	2 YR		
ZIONS BANK - 7A	6.42	2.57	8.99	35.4%
DJ INVESTMENTS	7.40	3.18	10.58	46.4%
EIDELWEISS	2.23	1.00	3.23	14.2%
TOTAL	16.05	6.75	22.80	100.0%

Note: Zions Bank 7A hydrology is based on existing and future buildout conditions (church and Stoneleigh Heights). DJ Investments and Eidelweiss hydrology is based on impervious area percentages of 35% and 28% of developable area, respectively, which is in agreement with the densities shown in the latest submitted plans for each development.

**Exhibit C**

Note:  
Detention Basin 7a to be abandoned in place  
Detention Basin 3b to be removed.



**Access and Grading Investigation**  
**DJ Investment Properties**

Draper, Utah



