



## 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, August 27, 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 **Adjourn to Closed Meeting** to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual.

### BUSINESS MEETING

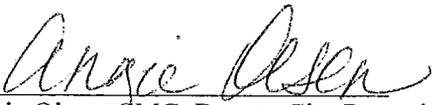
- 7:00 p.m. 1.0 **Call to Order:** Mayor Darrell Smith
- 7:00 p.m. 2.0 **Comment/Prayer and Flag Ceremony:** to be announced
- 7:10 p.m. 3.0 **Presentation:** Community Foundation, Draper Days Report
- 7:20 p.m. 4.0 **Citizen Comments:** *To be considerate of everyone attending the meeting and to more 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.*
- 7:40 p.m. 5.0 **Consent Items:**
- a. **Resolution #13-45**, Amending Section 6060 & 6070 of the Personnel Policy regarding Drug & Alcohol Testing
  - b. **Ordinance #1058**, Amending Section 3-2-130 of Draper City Municipal Code Re: Appeal Board
- 7:35 p.m. 6.0 **Action Item:** Canvass of 2013 Primary Election Results. Staff Presentation by Angie Olsen.

- 7:40 p.m.      7.0      **Action Item:** Approval of **Amendment #2 to Agreement #09-36** with Polaris for Consulting Services extending the contract term through 06/30/2014. Staff Presentation by Joe Bryant.
- 7:45 p.m.      8.0      **Action Item: Agreement #13-113** with David Paul Rosen (DPR) & Associates for an Affordable Housing Needs Study. Staff Presentation by Russ fox.
- 7:50 p.m.      9.0      **Public Hearing: Ordinance #1059**, Adjusting the City Boundaries between Draper City and Lehi City. Staff Presentation by Russ Fox.
- 8:05 p.m.      10.0     **Council/Manager Reports**
- 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 **27<sup>th</sup> day of August, 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: 08/23/2013  
City Seal

  
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 Angie Olsen, CMC, Deputy City Recorder at (801) 576-6539 or [angie.olsen@draper.ut.us](mailto:angie.olsen@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*

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# CONSENT ITEM #A

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Garth Smith</b>
<b>Date:</b>	<b>August 27, 2013</b>
<b>Subject:</b>	<b>Amending Personnel Policies and Procedures Manual Regarding the Controlled Substance and Alcohol Abuse and DOT Drug and Alcohol Testing Policies.</b>
<b>Applicant Presentation:</b>	<b>N/A</b>
<b>Staff Presentation:</b>	<b>Garth Smith, Human Resources &amp; Emergency Srvs. Director</b>
<b>RECOMMENDATION:</b>	
<b>Adopt Resolution No. 13-45, which amends Sections 6060 and 6070 of the Personnel Policies and Procedures Manual regarding the City's requirements related to drug and alcohol testing of employees and prospective employees.</b>	
<b>BACKGROUND AND FINDINGS:</b>	
<b>The changes to the City's drug and alcohol policies are being made to update and clearly explain the purpose of these policies and the expectation of employees. Policies were last updated on November 19, 2002. The City's sections which address controlled substance and alcohol abuse and Department of Transportation (DOT) drug and alcohol testing are 6060 and 6070.</b>	
<b>PREVIOUS LEGISLATIVE ACTION:</b>	
<b>N/A</b>	
<b>FISCAL IMPACT: Finance Review: _____</b>	
<ul style="list-style-type: none"><li>• <b>None</b></li></ul>	
<b>SUPPORTING DOCUMENTS:</b>	
<ul style="list-style-type: none"><li>• <b>Proposed Resolution No. 13-45</b></li></ul>	

**RESOLUTION NUMBER 13-45**

**A RESOLUTION OF THE DRAPER CITY COUNCIL AMENDING SECTION 6060–CONTROLLED SUBSTANCE AND ALCOHOL ABUSE & SECTION 6070-DOT DRUG AND ALCOHOL TESTING OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL**

**WHEREAS**, the City Council from time to time reviews, amends and adopts personnel policies and procedures to assist in the efficient utilization of scarce City resources and the fair and uniform application of requirements regarding City operations and City employees; and

**WHEREAS**, the City Council has reviewed Sections 6060 and 6070 and has determined a need to amend the Controlled Substance and Alcohol Abuse & DOT Drug and Alcohol Testing sections of the Personnel Policies and Procedures Manual; and

**WHEREAS**, the City Council finds the amendments of these sections of the policy in the best interest of Draper City and the employees of Draper City.

**NOW, THEREFORE**, be it resolved by the City Council of Draper City, State of Utah as follows:

**Section 1. Amendment.** The Draper City Council hereby amends and adopts Section 6060 and Section 6070 of the Personnel Policies and Procedures Manual to read as attached hereto as Exhibit “A” and Exhibit “B.”

**Section 2. Severability.** If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

**Section 3. Effective Date.** This resolution shall become effective immediately upon passage by the City Council.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS \_\_\_\_ DAY OF AUGUST, 2013.**

**DRAPER CITY**

BY: \_\_\_\_\_  
Draper City Mayor

**ATTEST:**

\_\_\_\_\_  
Draper City Recorder

# EXHIBIT "A"

## Section 6060 - DRUGS CONTROLLED SUBSTANCE AND ALCOHOL ABUSE

### General Policy Statement:

Draper City has a strong is committed to maintaining a drug-free, healthy, and safe workplace. This Policy regarding substance abuse is consistent with the spirit and intent of this commitment. we have established this policy regarding substance abuse. All employees will be required to comply with the guidelines of this policy as a condition of employment; however, employees in safety sensitive positions that require a Commercial Driver's License (CDL) shall also comply with Section 6070 – DOT Drug and Alcohol Testing. If a conflict exists between Sections 6060 and 6070 for safety sensitive positions that require a CDL, the provisions of Section 6070 shall apply. An employee's failure to comply with these sections will result in corrective action up to and including termination. A copy of our this employee drug and alcohol policy will be distributed to employees and will be available for review by prospective employees and employees. The provisions of this policy are intended to be in accordance with the Title 34, Chapter 41, Utah Local Governmental Entity Drug-Free Workplace Act Policies, as amended.

### Guidelines Policy:

#### 1. Definitions. As used in this policy:

- A) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- B) "Drug" means any substance recognized as a drug in the United States Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, as amended.
- C) "Employee" means any person in the service of the City for compensation of any kind.
- D) "Medical Review Officer" or "MRO" means a licensed medical physician responsible for receiving laboratory results generated by the City's drug and alcohol testing program who has knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the employee's medical history and any other relevant biomedical information.
- E) "Positive Alcohol Test" means a confirmatory test result reading 0.04 or greater breath alcohol or blood alcohol concentration.
- F) "Positive Drug Test" means a confirmatory test or retest result at or above cutoff levels specified by the Department of Health and Human Services (DHHS) in its Mandatory Guidelines for Federal Workplace Drug Testing programs, or the standard cutoff levels set by the laboratory, and which has been reviewed by a MRO who has verified the test result positive.
- G) "Prospective employee" means any person who has made application for employment with the City and to whom the City has offered employment, conditioned upon the results of an alcohol and controlled substance test.
- H) "Reasonable Suspicion" means objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of a controlled substance or alcohol or is using or abusing a controlled substance or alcohol.
- I) "Sample" or "specimen" means urine, blood, breath, saliva, or hair.
- J) "Safety Sensitive Position" means a position involving duties which directly affects the safety of City employees or the general public, or a position having access to controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties. The City hereby designates the following as safety sensitive positions: sworn police officers, building inspectors, code enforcement officers, engineering inspectors, crossing guard supervisors, police evidence technicians, and positions that require the employee to hold a Commercial Driver's License (CDL).

## EXHIBIT "A"

K) "Substance Abuse Professional" or "SAP" means a licensed medical doctor or doctor of osteopathy, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse (CRC), who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

4.2. Workplace Prohibitions. The following acts are strictly prohibited while on City property or work sites, while conducting City business off-premises (regardless of location), or while operating any City vehicle, equipment, or private vehicle on City business, or at any time during work hours:

A) ~~Illegal Drugs, Alcohol, and Controlled Substances~~ City prohibits the, selling, transportation transporting, possession possessing, distribution distributing, storing, consumption consuming, or use of using illegal drugs, alcohol, or controlled substances not required by a physician's prescription by employees, except where required by law, job description or contract approved by the City; and, ~~on City premises, while on City business, or at any time during working hours.~~

B) ~~Use of Alcohol or Non-Prescribed Controlled Substances.~~ The City further prohibits the consumption consuming or use of using alcohol or controlled substances not required by a physician's prescription off City premises or during non-working hours by employees where such use might, in the City's judgment:

(i) impair the employee's work performance;

(ii) Affect the safety and welfare of other City employees on the job; or

(iii) impair the employee's ability to operate a City ~~provided/paid for~~ motor vehicle or equipment.

3. C) ~~Use of Prescription Drugs.~~ Use of Prescribed Controlled Substances. ~~The use of~~ Using controlled substances in accordance with a physician's prescription for the employee ~~will~~ shall not be the basis for corrective action by the City unless, ~~as allowed by law,~~ such use might impairs the individual's work performance or threatens the safety of themselves, other employees or the public.

2.4. Off-the-Job Prohibitions. Off-the-job use, possession, sale, etc. distribution, or consumption of alcohol, illegal drugs, or controlled substances may subject an employee to corrective action if any such actions impacts job performance, ability to perform their job, or workplace safety, ~~as permitted by law.~~

3.5. Testing. The City respects employees' rights of privacy while recognizing ~~our~~ its responsibility to provide a safe work environment for all employees and the public. Therefore, the City reserves the right to conduct ~~drug~~ controlled substance and alcohol tests on any employee, at any time, ~~unless prohibited by law,~~ when reasonable suspicion dictates, or for situations as stated in this policy.

A) Pre-Employment. A prospective (post offer/pre-employment) employee ~~will be required to~~ shall submit to testing for controlled substances as a condition of employment. Prospective employees will be informed of City testing procedures and provided a copy of ~~our~~ the testing policy ~~advance~~, if requested. As a condition of employment, an employee must sign a consent form agreeing to be tested pre-employment testing for ~~drugs~~ controlled substances and alcohol. Failure to comply with this policy will result in the City refusing to hire ~~a~~ the prospective employee or disciplinary action for current employees, ~~up to and including termination.~~ Any prospective employee who refuses to be tested, or knowingly dilutes, substitutes or adulterates a sample used for a controlled substances and alcohol test shall be denied employment. Any prospective employee whose pre-employment test results is a confirmed positive and who does not have a medically sufficient explanation as determined in the sole, but reasonable discretion of the Medical Review Officer, shall not be hired and may not be considered for employment with the City sooner than one year from the date of such test.

B) Current Employees. The City may require, and ~~an~~ current employee ~~must~~ shall submit to, testing for controlled substances and alcohol whenever the City has reason to believe that the employee has violated the policies set forth in Section 4- this policy, ~~or for the following purposes~~ as follows:

(i) ~~Impaired Performance-Reasonable Suspicion.~~ All employees ~~are expected to~~ shall report to work in appropriate good mental and physical condition. The influence of drugs and alcohol can reduce efficiency and productivity and may create a disruptive working environment. If a supervisor has a reasonable suspicion that an employee has violated this

## EXHIBIT "A"

policy, the supervisor shall complete a signed and written record of observations using a "Reasonable Suspicion Form" within 24 hours of the determination. If reasonable suspicion indicators exist, the employee shall be transported, if necessary, to an alcohol or controlled substance testing specimen collection site. Once the test specimen is collected, the City will arrange to have the employee transported home. Employees may be required to undergo immediate evaluations under various circumstances including, but not limited to:

- (a) Investigation of possible individual employee impairment or inability to perform essential job functions;
- (b) Investigation of accidents and injuries in the workplace or incidents of workplace theft;
- (c) Maintenance of safety for employees or the general public;
- (d) Maintenance of productivity, quality of products or services, or security of property or information; or
- (e) Compliance with regulations mandated by federal or state government.

(ii) Random Testing. The City reserves the right to institute may conduct random testing of its employees as allowed by law. It does perform random drug and/or alcohol testing for safety sensitive positions. Safety sensitive positions that do not require a commercial driver's license (CDL) shall be randomly tested in accordance with this policy. Twenty-five percent of such safety sensitive positions shall be random tested for controlled substances each calendar year and ten percent shall be randomly tested for alcohol each calendar year. The selection of employees for random testing shall be made by a scientifically valid method, such as random number table or computer-based random number generator that is matched with the employee's Social Security number, City employee number or other comparable identifying numbers. Under the selection procedure, each employee shall have an equal chance of being tested each time selections are made.

(iii)6. Signed Acknowledgement. All employees will be given copies of the Drug and Alcohol-Controlled Substance and Alcohol Abuse policy and will shall sign forms acknowledging that they have received and read the policy and consent to testing under its terms. The signed acknowledgement will be kept in each employee's personnel-confidential-employment file in the Human Resources Department.

(iv)7. Compensation for Test Time. Any drug controlled substance or alcohol testing shall be deemed "hours worked" for compensation and benefits purposes. Further, the The City will-shall pay all costs associated with testing, except as otherwise stated in Policy 6060.

4- 8. Confidentiality. All information, interviews, reports, statements, memoranda, or test results received by the City through controlled substance and alcohol testing are confidential communications and shall be kept apart from regular personnel records and will be processed through the office Human Resources Department on a "need to know" basis. Such information will only be used in a proceeding related to a corrective action taken by the City or in defense of any action brought against the City.

5- 9. Collection and Testing.

A) Standard Laboratory Procedures. All sample collection and testing for controlled substances or alcohol shall be performed in accordance with standard laboratory operating procedures as mandated by applicable law and in such a manner as to reasonably preclude contamination or adulteration or erroneous identification of test results.

B) Samples. Employees shall submit a split urine sample, a hair sample or other approved sample for drug controlled substance testing or required retesting required herein. The sample shall be divided into two specimens by the collection entity in accordance with the Utah Governmental Entity Drug-Free Workplace Act. Employees shall submit to a breath alcohol test for alcohol testing required herein.

C) Tests Required. Controlled substance testing will shall be by any scientifically accepted testing method the City may determine.

D) Alcohol Testing. The City will may test for alcohol by any scientifically accepted method the City may determine.

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E) Identification Required. To ensure reliability, the City will requires presentation of reliable identification to the person collecting the samples.

F) Employee Information. An employee or prospective employee will be permitted to provide notification of any information which he or she considers deemed relevant to the test, including identification of currently or recently used prescription or non-prescription drugs, or other relevant and medical information.

G) Refusal to Submit to Testing. ~~If any employee refuses to submit to the drug or alcohol screening test or tests, such refusal may result in corrective action up to, and including termination. If any prospective employee refuses to give written consent to a drug and/or alcohol screening test or tests, such refusal will result in the City's withdrawing any conditional offer of employment.~~ Refusing to be tested, or knowingly diluting, substituting or adulterating a sample used for an alcohol or controlled substance test shall be treated as a confirmed positive test. Federal guidelines for shy bladder or shy lung shall apply.

H) Privacy. Testing shall be conducted under secure conditions and with due regard for the privacy of the individual being tested.

I) Second Test Option. If the test results indicate the presence of drugs a controlled substance or their metabolites, the donor of the test specimen shall have ~~seventy-two (72)~~ hours from the time he or she is of being notified of such results to request, at his or her option, to have the split sample tested. The cost of the second test shall be equally divided between the donor and the City, unless the second sample tests negative, in which case the City shall pay for the entire cost of the second test. In addition to the initial test results, the test of the split sample shall be considered at any subsequent disciplinary hearing if the requirements of this policy have been complied with in the collection, handling and testing of the samples.

### 6-10. Corrective Actions.

A) Any violation of this policy, including receipt of a confirmed positive drug or alcohol test result, tampering with evidence, or an employee's or applicant's refusal to provide a test sample, may, at the City's discretion, result in corrective action up to and including termination. an employee whose controlled substance or alcohol test result is a confirmed positive and who does not have a medically sufficient explanation as determined in the sole, but reasonable discretion of the MRO shall be subject to disciplinary action up to and including termination. Any disciplinary action taken by the City for violation of this policy shall be in accordance with the City's Corrective Action – Performance Improvement Policy (Section 5030).

B) Possible corrective and rehabilitation actions include, but are not limited to:

~~A) (i) W~~withdrawal of a job offer to a prospective employee;

~~B) (ii) S~~suspension with or without pay;

~~C) (iii) T~~termination;

D) (iv) Requirement of employee enrollment, (at his or her the employee's own expense), and successful completion of a City-approved rehabilitation, treatment or counseling program;

E) (v) Additional and ongoing drug controlled substance and alcohol testing as advised by a MRO or SAP as a condition of employment; and

~~F) (vi) O~~ther corrective actions in accordance with City policies and procedures.

7 11. Searches. All employee searches of an employee or the worksite will shall be conducted by at least two City representatives and must shall be approved in advance by the Department Head. Any illegal substance confiscated will be turned over to the appropriate legal authorities for further investigation. Authorized personnel may conduct searches and surveillance of:

A) City Property. Employees may shall have no expectation of privacy on City property. City property includes, but is not limited to City grounds, facilities, equipment, furniture, storage areas, and vehicles, etc.

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B) Employee's Person and Personal Property. Personal property includes any employee belongings, (including vehicles), located on City premises. An employee who fails to cooperate in a search investigation will shall be subject to corrective action.

### 8 12. Department Head Responsibility.

#### A) Reporting.

~~(i) Suspicious Behavior.~~ Department Heads ~~must~~ shall report all suspected drug or alcohol activity to the City Manager or his/her designee.

~~(ii) Reporting Suspected Drug or Alcohol Activity.~~ Department Heads ~~must~~ shall also immediately report any other suspected drug or alcohol related activity in the workplace to the City Manager or his or her their designee.

B) Documentation, Not Investigation. Department Heads should not discuss their suspicions with other employees and should shall not conduct their own investigations. The Department Head's role is to document job performance and not to determine underlying causes.

C) Evaluation. The City Manager and the Department Head ~~will~~ shall conduct a confidential and professional investigation and decide whether an employee should be:

(i) ~~R~~removed from service;

(ii) ~~R~~required to undergo a medical exam; and/or

(iii) ~~S~~creened tested for drugs and alcohol usage.

~~9-13.~~Employee Responsibility. Any employee who has a reasonable suspicion of a violation of this policy or observes prohibited substance use/or abuse by another employee should contact his or her their Department Head, the Human Resources Director or the ~~Personnel Administrator~~ City Manager immediately. The suspicion should not be discussed with any other employee and the investigation will be undertaken at the discretion of the City.

~~10 14.~~Use of Prescribed Drugs. As permitted by law, working under the influence of any legal drug that impairs judgment, job performance, behavior, or which endangers employees or others will not be allowed. ~~A) Inferred Supervisor.~~ As allowed by law, ~~o~~Employees who must use prescribed or over-the-counter drugs during work which may impair their performance or pose a danger should notify their supervisor and provide documentation of the need for the medication. ~~B) Accommodations.~~ The Department Head and Supervisor will determine whether temporary restrictions of job responsibilities, reassignment, or special accommodation should be made.

~~14-15.~~Counseling and Treatment. Employees with alcohol or drug-related problems are encouraged and may be required to participate in counseling and treatment. ~~A) Confidentiality.~~ Counseling for dependency or other drug related problems is considered confidential. ~~B) Counseling Will Not Prevent Appropriate Corrective Action.~~ Employees will not be penalized for seeking counseling. However, counseling and treatment do not shield employees from the consequences of poor performance. Participation in counseling or rehabilitation programs will not:

~~(i) A) P~~rotect an employee from appropriate corrective action, or

~~(ii) B) R~~elieve an employee of the responsibility to perform assigned duties safely, efficiently, and to meet established performance standards required of all employees.

~~12- 16.~~Test Results. Test results ~~will~~ shall be retained in an employee's confidential employment files in accordance with Federal Regulation 49CFR382.401, as amended. The City's Program Administrator (DER) is the City's designated official to receive testing results from the Medical Review Officer and Breath Alcohol Technicians conducting tests under this policy. The City Program Administrator shall maintain copies of all training materials, policies, applicable Federal Regulations, and will be available to answer questions regarding these materials from anyone required to comply with this policy. The Human

## EXHIBIT "A"

Resources Director, Human Resource Officer or the Assistant to the City Manager/HR Officer are the City's Program Administrators.

17. Use of Alcohol for Business-Related Events. The use or presence of alcoholic beverages on City premises property, or in City vehicles or City buildings is strictly prohibited, except where otherwise allowed by law.
18. Report Drug or Alcohol Convictions. Employees shall, as a condition of employment, abide by the terms of this policy and report any conviction under a criminal drug or alcohol statute. A report of a conviction, guilty plea or plea of no contest, shall be made within five days after conviction.
19. The City shall provide training for supervisors to help them recognize the conduct and behavior that give rise to a reasonable suspicion of controlled substances or alcohol use and the proper application of the procedures to follow.
20. In accordance with Title 34, Chapter 41, Section 106 of the Utah Code Annotated, as amended, an employee or prospective employee whose alcohol or controlled substances test results are verified or confirmed as positive may not, by virtue of those results alone, be defined as a person with a disability.

# EXHIBIT "B"

## Section 6070 - DOT DRUG AND ALCOHOL TESTING

### General Policy Statement:

~~It is the purpose of this policy to provide guidelines for the implementation and management of a Drugs and Alcohol testing program for City employees who are subject to the Commercial Drivers License Drugs and Alcohol testing requirements under the federal Omnibus Transportation Employee Testing Act of 1991 and the Department of Transportation Regulations promulgated there under. The provisions of this policy are intended and shall be interpreted in accordance with the Omnibus Transportation Act and the Department of Transportation Regulations as defined herein. This policy applies to all employees of the City required to hold and maintain a Commercial Drivers License (CDL) as a condition of employment. Drug and alcohol testing of such employees shall be in accordance with Title 49 CFR Part 382, et seq., Federal Motor Carrier Safety Administration (FMCSA) Regulations on Controlled Substances and Alcohol Use and Testing, and Title 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Should there be conflicts between federal regulations and this policy attributed in part to revisions to the law or changes in interpretations, the federal law shall prevail.~~

### Guidelines Policy:

1. ~~Applicability.~~ This policy applies to all City employees who operate a commercial motor vehicle in commerce and who are subject to the Commercial Drivers License requirements of the Department of Transportation (DOT), hereinafter referred to as "CDL Employees." ~~All other employees shall comply with the Drugs and Alcohol policy set forth in Section 6060 rather than the provisions set forth herein. All City CDL employees shall be subject to the testing requirements of this policy and the Drug Controlled Substance and Alcohol Abuse Policy, subject to the following limitation. When the provisions of this policy are applicable to a certain situation, this policy shall be complied with and no other testing requirements may be imposed. However, when provisions of this policy do not apply to a situation which is otherwise covered by the City's Drugs Controlled Substance and Alcohol Abuse Policy, CDL employees shall be subject to testing under the City's Drugs Controlled Substance and Alcohol Abuse Policy, as set forth in Section 6060. In any case, If there is any conflict between this policy and any other policy or regulation of the City, the requirements of this policy shall control and no other testing requirements shall be imposed which would conflict or hinder compliance with this policy.~~
2. ~~Policy.~~ Substance Abuse, Employee Privacy, Report of Conviction. Alcohol and controlled substance abuse in the workplace is a threat to the safety, health and job performance of employees and it is the policy of the City to employ a work force and create a work place free from such adverse ~~effects~~ effects of alcohol and controlled substance abuse. It is ~~further~~ also the policy of the City to balance the employee's privacy interest with the City's need to comply with the DOT Regulations and testing requirements. ~~for employees subject to the Commercial Driver's License requirements. CDL employees shall, as a condition of employment, abide by the terms of this policy and report any conviction under a criminal drug or alcohol statute. A report of a conviction, guilty plea or plea of no contest, must be made within five days after conviction.~~
3. ~~Definitions.~~ As used in this policy: ~~the following words shall have the following meanings:~~
  - A) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
  - B) "Consortium" means an entity that provides alcohol or controlled substances testing as required by the Department of Transportation's ~~rules and~~ regulations and that acts on behalf of the City for conducting such tests.
  - C) "Controlled Substances" means marijuana (THC), cocaine, opiates, amphetamines including methamphetamines, phencyclidine (PCP), their metabolites, and any other controlled substance or its metabolite designated for required testing by the DOT Regulations. ~~Specimens collected under this policy may only be used to test for controlled substances and their metabolites as defined herein and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT Regulations.~~
  - D) "DOT Regulations" means the rules and regulations promulgated by the U.S. Department of Transportation for alcohol and controlled substance testing requirements for employees subject to the Commercial Driver's License requirements pursuant to the Omnibus Transportation Act of 1991, including, but not limited to §§ 49 C.F.R. 40 and 49 C.F.R. 382, as amended.

## EXHIBIT "B"

E) "Employee" or "CDL employee" means any person in the service of the City who is required as part of his or her their job duties to operate a commercial motor vehicle in commerce and is subject to the Commercial Driver's License requirements of § 49 C.F.R. 383, as amended.

F) "FHWA" means the Federal Highway Administration.

G) "Medical Review Officer" or "MRO" means a licensed medical physician responsible for receiving laboratory results generated by the City's drug and alcohol testing program who has knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the employee's medical history and any other relevant biomedical information.

H) "Positive Alcohol Test" means a confirmatory test result reading 0.04 or greater breath alcohol or blood alcohol concentration.

I) "Positive Drug Test" means a confirmatory test or retest result at or above cutoff levels specified by the Department of Health and Human Services (DHHS) in DOT Regulations, and has been verified by the MRO to be a positive test.

J) "Reasonable Suspicion" means objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of a controlled substance or alcohol or is using or abusing a controlled substance or alcohol.

K) "Refusal to Submit" to a test means that the employee: (1) fails to provide adequate breath for alcohol testing as required by the DOT Regulations without a valid medical explanation after he or she has received notice of the requirement for breath testing; (2) fails to provide an adequate urine sample for controlled substances testing as required by the DOT Regulations without a genuine inability to provide a specimen after he or she has received notice of the requirement for urine testing; or (3) engages in conduct that clearly obstructs the testing process.

L) "Safety-Sensitive Functions" means any duties requiring a Commercial Driver's License or other duties deemed safety-sensitive under the DOT Regulations. An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. means the period for which a driver begins work or is required to be in readiness to work until the time the employee is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include: a) all time at a City facility or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City; b) all time inspecting equipment as required by § 49 C.F.R. Parts 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; c) all time spent at the driving controls of a commercial motor vehicle in operation; d) all time, other than driving time, in or upon any commercial motor vehicle; e) all time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending the vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and f) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. A driver is considered to be performing safety-sensitive functions during any period in which the employee is actually performing, ready to perform, or immediately available to perform safety-sensitive functions.

M) "Sample" or "specimen" means urine, blood, breath, saliva, or hair.

N) "Substance Abuse Professional" or "SAP" means a licensed physician or licensed or certified psychologist, social worker, employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders as defined in the DOT Regulations. means a licensed physician Medical Doctor or Doctor of Osteopathy, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse (CRC), who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. A SAP evaluates employees who have violated a DOT Regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

## EXHIBIT "B"

### 4. Prohibitions.

A) Alcohol Concentration. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

B) On-Duty Alcohol Use. No employee shall use alcohol while performing safety-sensitive functions.

C) Pre-Duty Alcohol Use. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol. When an employee has used alcohol within four hours prior to providing safety-sensitive duty, the employee shall be expected to acknowledge such use at the time called. Failure to acknowledge the use of alcohol shall result in corrective action up to and including termination. If it is not possible for the supervisor to delay the requested start time the employee shall not report to work. If an employee is in an on-call paid status with the City and acknowledges the use of alcohol within four hours of being called by their supervisor, thus making that employee unavailable for duty, the City may take appropriate corrective action at the sole discretion of the City.

D) Post-Accident Use. No employee may use alcohol for eight (8) hours following an accident in which the employee is required to take a post-accident test, or until he or she the employee undergoes the post-accident test, whichever comes first.

E) Controlled Substance Use. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver employee uses any controlled substances, as shown by the presence of drugs or their metabolites in the employee's system, except when the use is pursuant to the appropriate and reasonable instructions of a SAP physician as set forth herein.

F) Controlled Substance Testing. No employee shall report for duty, remain on duty or perform a safety-sensitive function if the driver-employee tests positive for controlled substances or their metabolites in the employee's system.

G) Refusal to Submit to Testing. No employee refuse to undergo a required alcohol or controlled substance test. Refusing to be tested, or knowingly diluting, substituting or adulterating a urine sample or other sample used for an alcohol or controlled substance test shall be treated as a confirmed positive test. Federal guidelines for shy bladder or shy lung shall apply.

5. Testing Required. All employees subject to this policy are required to shall abide by this policy and the testing requirements set forth herein as a condition of employment. Employees shall be subject to pre-employment testing, random testing, reasonable suspicion testing, post-accident testing, return-to-duty testing, and follow-up testing as set forth herein. Prior to submitting to testing required herein, employees shall sign a Consent Form authorizing the test and permitting release of the test results to appropriate personnel.

6. Pre-Employment Drug-Controlled Substance Testing. Prior to the first time an employee performs a safety-sensitive function for the City, the employee shall undergo testing for controlled substances. The City shall not allow an employee to perform a safety-sensitive function unless the employee test has been administered and the City has received a controlled substance test result from a Medical Review Officer MRO indicating a verified negative test result. A controlled substance test may not be required if the employee has participated in a drug testing program that meets the DOT Regulations within the previous thirty (30) days and all other exception requirements as set forth in the DOT Regulations are satisfied.

### 7. Random Testing.

A) Required Alcohol Testing. Except as otherwise provided by the DOT Regulations, at least twenty-five percent (25%) ten percent of the number of City CDL employees shall be randomly tested for alcohol each year. in accordance with the DOT Regulations. The actual percentage of employees to be tested each year will be determined annually by the Federal Motor Carriers Safety Administration (FMCSA) as published in the Federal Register.

B) Required Controlled Substance Testing. Except as otherwise provided by the DOT Regulations, at least fifty percent (50%) of the number of City CDL employees shall be randomly tested for controlled substances each year. in accordance with the current DOT Regulations. The actual percentage of employees to be tested each year will be determined annually by the Federal Motor Carriers Safety Administration (FMCSA) as published in the Federal Register.

## EXHIBIT "B"

- C) Selection Technique. The selection of employees for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table or computer-based random number generator that is matched with the employee's Social Security number, City employee number or other comparable identifying numbers. Under the selection procedure, each employee shall have an equal chance of being tested each time selections are made.
- D) Unannounced Tests. Random alcohol and controlled substances tests ~~conducted hereunder~~ shall be unannounced and the dates for administering the tests ~~should be spread reasonably throughout the calendar year~~. An employee notified of selection for random alcohol or controlled substances testing shall immediately proceed to the designated testing site. ~~immediately.~~
- E) Time for Alcohol Testing. Employees shall be randomly tested for alcohol only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ~~ceased performing~~ performed such functions.
- F) Consortium. The City may contract with a consortium to administer and manage its random ~~Drugs and Alcohol~~ testing requirements.
8. Reasonable Suspicion Testing.
- A) Testing Required. Employees shall submit to an alcohol ~~and/or~~ controlled substances test when a trained ~~and approved~~ supervisor has reasonable suspicion to believe that the employee has violated the prohibitions of this policy.
- B) Reasonable Suspicion. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol ~~and/or~~ controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion observations for use of controlled substances in violation of this policy may include indications of the chronic and withdrawal effects of controlled substances. If reasonable suspicion indicators exist, the employee shall be transported, if necessary, to specimen collection site. Once the test specimen is collected, the City will arrange to have the employee transported home.
- C) Suspicion Form. The supervisor shall complete a signed and written record of ~~his or her~~ observations leading to a controlled substance or alcohol test ~~under reasonable suspicion~~ using a "Reasonable Suspicion Form" prepared by the City within ~~twenty-four (24)~~ hours of the determination or before the results of the test are announced, whichever is earlier.
- D) Alcohol Testing Requirements. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the ~~alcohol~~ test of the employee. Alcohol testing under reasonable suspicion must be made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this policy.
- E) Time Limit for Alcohol Test. If a reasonable suspicion test ~~required by this Section~~ is not administered within two (2) hours following the determination of reasonable suspicion, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this Section sub-section is not administered within eight (8) hours following the determination, the City shall cease attempts to administer an alcohol test and shall prepare and maintain a record regarding the same.
- F) Records. Records required to be maintained under this ~~Section~~ sub-section shall be submitted to the FHWA in accordance with ~~the~~ DOT Regulations.
- G) Performance. Notwithstanding the absence of a reasonable suspicion alcohol or controlled substance test under this Section, no employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol or controlled substances as shown by the behavioral, speech, and performance indicators of alcohol or controlled substance misuse, nor shall the City permit the employee to perform or continue to perform such functions until an alcohol or controlled substance test is administered. ~~and the~~ An employee's alcohol concentration shall ~~measures less than 0.02, or twenty-four (24) hours shall have elapsed following the~~ determination of reasonable suspicion, or the controlled substance test results shall be negative before the employee may return to work.

## EXHIBIT "B"

H) Action. The City shall not take any corrective action under this Section against an employee based solely on the employee's behavior and appearance, with respect to alcohol or controlled substance use, until an alcohol and/or controlled substance test for reasonable suspicion has been conducted and confirmed. ~~in accordance with this policy.~~

### 9. Post-Accident Testing.

A) Testing. As soon as practicable following an accident involving a commercial motor vehicle, the City shall test for alcohol and controlled substances of each surviving ~~driver~~ CDL employee who:

(i) ~~Was~~ was performing a safety-sensitive function with respect to the vehicle and the accident involved loss of human life; or

(ii) ~~Receives~~ received a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

~~(iii)-(a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or~~

~~(iv)-(b) One or more motor vehicles incurring disabling damage as a result of the accident, as defined by the DOT Regulations, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle; or~~

(c) employee's actions contributed to a serious work-related accident that resulted in damage to a vehicle or property in excess of \$1,000, as estimated at the time of the accident.

B) Available for Testing. An employee subject to post-accident testing shall remain readily available for such testing or ~~may~~ shall be deemed by the City to have refused to submit to the testing. Nothing in this Section sub-section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care. In the event an employee is so seriously injured that the employee cannot provide a sample at the time of the accident, the employee shall provide necessary authorization for the City to obtain hospital records or other documents that would indicate whether controlled substances or alcohol were present, and the resulting levels in the driver's body at the time of the accident. Refusal to sign such a release will be grounds for corrective action up to and including termination of employment.

C) Time Limit for Alcohol Test. If a test required by this Section sub-section is not administered within two ~~(2)~~ hours following the accident, the City or its agent shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this Section sub-section is not administered within eight ~~(8)~~ hours following the accident, the City shall cease attempts to administer an alcohol test and shall prepare and maintain a record regarding the same.

D) Time Limit for Controlled Substance Test. If a controlled substance test required by this Section sub-section is not administered within ~~thirty-two (32)~~ thirty-two (32) hours following the accident, the ~~employer~~ City shall cease attempts to administer a ~~controlled substances~~ the test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. ~~as set forth in Subsection (3).~~

E) Records. Records required to be maintained under this Section sub-section shall be submitted to the FHWA in accordance with the DOT Regulations.

### 10. Return to Duty Testing.

A) Alcohol Testing Required. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by ~~Subsection 4~~ this policy concerning alcohol, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

## EXHIBIT "B"

B) Controlled Substance Testing. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by ~~Subsection 4~~ this policy concerning controlled substances, the employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

### 11. Follow-Up Testing.

A) Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or controlled substances, ~~in accordance with provisions set forth herein,~~ the employee shall be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a ~~Substance Abuse Professional~~ consisting of at least six (6) tests in the first ~~twelve (12)~~ months following the employee's return to duty and in accordance with the DOT Regulations. Follow-up testing may be continued for up to 60 months.

B) Time for Testing. Follow-up testing shall be conducted only when the ~~driver~~ employee is performing safety-sensitive functions, just before the ~~driver~~ employee is to perform safety-sensitive functions, or just after the ~~driver~~ employee has ceased performing safety-sensitive functions.

12. Testing Procedures. All testing conducted under this policy shall comply with the alcohol or controlled substance testing procedures set forth in the DOT Regulations, including but not limited to § 49 C.F.R. 40, as amended. All procedures used for testing shall be conducted in a manner which protects the employee and the integrity of the testing processes, safeguards the validity of the test results, and ensures that the results are attributed to the correct employee. Employees shall be notified of any positive alcohol or controlled substance test results. ~~in accordance with the DOT Regulations.~~

13. Confirmation Tests. Alcohol tests with a results of 0.02 or greater shall be confirmed by a second test that provides quantitative data of the alcohol concentration. Controlled substances tests with a positive result shall be confirmed by a second analytical procedure to identify the presences of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle accepted under DOT Regulations but different from the screen test ~~in order to ensure reliability and accuracy.~~

14. Results. No employee shall be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employee has engaged in conduct prohibited by this policy until having complied with the procedures ~~set forth herein are complied with~~ of this policy. Any employee found to have violated the prohibitions ~~set forth in Subsection 4~~ this policy shall be removed immediately from safety-sensitive functions and shall be required to undergo evaluation and treatment ~~set forth in herein.~~ Any employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, shall not be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than ~~twenty-four (24)~~ hours following administration of the test. No other action shall be taken against the employee for test results showing an alcohol concentration of less than 0.04, unless otherwise authorized by law or City policy.

15. Referral. Each employee who has engaged in prohibited conduct under ~~Subsection 4~~ of this ~~p~~Policy shall be advised by the City of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of ~~Substance Abuse Professionals~~ and counseling and treatment programs.

16. Evaluation. Each ~~driver~~ employee who engages in conduct prohibited by ~~Subsection 4~~ of this ~~p~~Policy shall be evaluated by a ~~Substance Abuse Professional~~ who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. The employee shall comply with the written recommendations of the Substance Abuse Professional and the employee shall provide the City with the written recommendations before the employee may return to work.

17. ~~Treatment~~ Follow-up. Each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be evaluated by a ~~Substance Abuse Professional~~ to determine that whether the employee has properly followed any rehabilitation program and shall be subject to unannounced follow-up alcohol and

## EXHIBIT "B"

controlled substance tests in accordance with this policy. Evaluation and follow-up testing required herein shall be at the expense of the employee.

18. ~~Action Refusal or Tampering by Prospective CDL Employee. The City may use confirmed positive test results, or any refusal of a prospective or current employee to take the test, as a basis for disciplinary action up to and including termination of current employees and refusal to hire prospective employees. Any disciplinary action taken by the City for violation of this policy shall be in accordance with the City disciplinary procedures. Such procedures shall include any required pre-disciplinary hearing and proper appeal proceedings.~~ Any prospective CDL employee who refuses to be tested, or who knowingly dilutes, substitutes or adulterates a sample used for an alcohol and/or controlled substance test shall be denied employment. Any prospective employee whose pre-employment test results is a confirmed positive and who does not have a medically sufficient explanation, as determined in the sole, but reasonable discretion of the Medical Review Officer, shall not be hired and may not be considered for employment with the City sooner than one year from the date of such test.
19. Refusal or Tampering by CDL Employee. A CDL employee who refuses to be tested, or knowingly dilutes, substitutes or adulterates a sample used for an alcohol or controlled substance test shall be regarded as having a confirmed positive test. An employee whose controlled substance or alcohol test result is a confirmed positive and who does not have a medically sufficient explanation, as determined in the sole, but reasonable discretion of the Medical Review Officer, shall be subject to disciplinary action up to and including termination. Any disciplinary action taken by the City for violation of this policy shall be in accordance with the City's Corrective Action – Performance Improvement Policy, Section 5030.
- ~~19-20.~~ Policy Distribution. Educational materials, including this policy, shall be provided and distributed to all City employees. ~~subject to the requirements set forth herein.~~ Each employee shall be responsible for reading this pPolicy and shall file an Employee Acknowledgment Form with the City certifying that he or she has received a copy of receipt and having read this pPolicy. Any employee questions regarding this pPolicy or the DOT Regulations may be addressed to the Human Resources Director, City Manager or Human Resource staff.
- ~~20-21.~~ Records and Confidentiality. The City shall maintain records of its alcohol misuse and controlled substances use program in accordance with the DOT Regulations and for the time periods required therein. The records shall be considered confidential and shall be maintained in a secure location, separate from other personnel records, with controlled access. Confidential records will be shared on a need to know basis only, provided that the employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including any records pertaining to his or her the employee's alcohol or controlled substances tests.
- ~~21-22.~~ Prescribed Drug Use. CDL Eemployees taking prescribed medications may not report to duty unless the employee advises the physician of the employee's occupation and job duties and the physician is of the opinion that the employee can safely perform such job duties while taking the prescribed drug. If the licensed physician is of the opinion that the employee cannot safely work or perform the employee's job duties while taking the prescribed drug, the employee shall report the prescribed drug use and the physician's opinion regarding its use in writing to the employee's supervisor Department Head and the Department Head shall review said information with the Human Resources Director and City Attorney or the City Manager prior to allowing the employee to performing any work for the City.
- ~~22-23.~~ Background Checks. The City shall follow the requirements for background checks for employees with past substance abuse violations in accordance with the DOT Regulations. Prospective employees shall complete and sign a Release Form to allow the City to review previous test results. ~~in accordance with the DOT Regulations.~~ The City shall not use allow an employee to perform safety-sensitive functions if the City obtains information on the employee's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the employee, without obtaining information on a subsequent sSubstance aAbuse pProfessional evaluation and/or determination and compliance with the DOT Regulations for return-to-duty testing.
24. Drug and Alcohol Program Administrator. The City's Program Administrator is the City's designated official to receive drug and alcohol testing results from the Medical Review Officer and breath alcohol technicians conducting tests under this policy. The Human Resources Director, Human Resource Officer or the Assistant to the City Manager/HR Officer are the City's Program Administrator.

## EXHIBIT "B"

25. In accordance with Federal (DOT) controlled substance and alcohol testing requirements, Draper City has a designated Program Administrator, Medical Review Officer, Substance Abuse Professional, drug and alcohol consortium and third party administrator, and a laboratory that meets the testing requirements of both the Department of Health and Human Services and the Substance Abuse and Mental Health Services Administration. The individuals, corporations, organization or other entities providing these functions and services for Draper City are identified by administrative policy adopted by the City Manager, which is on file with the City Recorder and available in the Human Resources Department.

Return to Agenda

# CONSENT ITEM #B

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Garth Smith</b>
<b>Date:</b>	<b>August 27, 2013</b>
<b>Subject:</b>	<b>Amend Section 3-2-130 (Appeal Board) of the Draper City Municipal Code</b>
<b>Applicant Presentation:</b>	<b>N/A</b>
<b>Staff Presentation:</b>	<b>Garth Smith, Human Resources &amp; Emergency Svcs. Director</b>
<b>RECOMMENDATION:</b>	
Adopt Ordinance No. 1058, which amends Section 3-2-130 (Appeal Board) of the Draper City Municipal Code.	
<b>BACKGROUND AND FINDINGS:</b>	
The proposed changes to Section 3-2-130 clarify that days called out in the municipal code are calendar days, removing any ambiguity concerning how days are counted between the municipal code and the Utah Code, as amended and to clarify timelines.	
<b>PREVIOUS LEGISLATIVE ACTION:</b>	
N/A	
<b>FISCAL IMPACT: Finance Review:</b> _____	
<ul style="list-style-type: none"><li>• None</li></ul>	
<b>SUPPORTING DOCUMENTS:</b>	
<ul style="list-style-type: none"><li>• Proposed Ordinance No. 1058.</li><li>• Section 10-3-1105 Utah Code, as amended</li><li>• Section 10-3-1106 Utah Code, as amended</li></ul>	

**ORDINANCE NO. 1058**

**A DRAPER CITY ORDINANCE AMENDING DRAPER CITY MUNICIPAL CODE SECTION 3-2-130, APPEAL BOARD TO CLARIFY TIMELINES AND THAT DAYS ARE CALENDAR DAYS.**

**WHEREAS**, the City Council deems it necessary and appropriate to amend sections to the Draper City Municipal Code to clearly reflect the processes outlined in the Utah Code, as amended; and

**WHEREAS**, the City Council finds it is in the best interest of Draper City and the general health, safety and welfare of the public that these changes to Section 3-2-130 of the Municipal Code should be made;

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

**SECTION I. Amendment.** Draper City Municipal Code Section 3-2-130 is hereby amended to read:

**Section 3-2-130 Appeal Board.**

(a) Board Created. There is hereby created an Appeal Board pursuant to Utah Code Ann. 10-3-1106 as amended, to hear appeals of employees not listed in Draper City Municipal Code 3-2-120(b) who have been discharged, suspended without pay for more than two days, or involuntarily transferred from one position to another with less remuneration for any reason.

(b) Members. The Appeal Board shall consist of five members, two of whom shall be chosen by and from the appointed officers and employees of the City and three of whom shall be members of the City Council.

(c) Selection of Members and Alternates:

(1) Council Members and Alternates. During the annual review of City Council member assignments, the City Council shall designate three of its members to serve on the Appeal Board, hereinafter referred to as the "Council Members," and two of its members to serve as alternate Council Members.

(2) Officer and Employee Members and Alternates. The appointed officers and employees of the City shall elect two of its members to serve on the Appeal Board, hereinafter referred to as "Employee Members", and three of its members to serve as alternate Employee Members in the following manner:

(i) Nomination. The City Manager shall send written notice to all appointed officers and employees of the City that they may make written nominations for candidates to serve on the Appeal Board and the closing date for filing such nominations with the City Recorder. Nominations received by the City Recorder after the closing date will not be considered.

(ii) Voting. Upon the closing of nominations, an election shall be held by all appointed officers and employees of the City to elect two Employee Members of the Board and three Alternate Employee Members. The election shall be by secret ballot. The two individuals receiving the highest number of votes shall be deemed elected as Employee Members, and the next three individuals receiving the highest number of votes shall be deemed elected as Alternate Employee Members.

(iii) Eligibility. All full-time Draper City employees who have successfully completed their probationary period are eligible to serve on the Appeal Board with the exception of the City Manager, City Attorney, and Assistant City Attorney.

(d) Limitation on Members. No person may sit on the Appeal Board who also sat on a predisciplinary hearing of the appealing employee or whose employment with the City has terminated.

(e) Term. Elected Members shall serve a one year term from the date of their appointment and Employee Members shall serve for a term of two years from the date of their election. Members may serve additional terms in accordance with the election and appointment procedures set forth herein.

(f) Vacancies. Any vacancy in an Employee Member position shall be first filled by an Alternate Employee Member by drawing lots; and if no Alternate Employee Member is available, by no election as provided herein at the time such vacancy occurs. Any vacancy in Council Member position shall be filled first by an Alternate Council Member by drawing lots; and if no Alternate Council Member is available, by appointment provided herein at the time such vacancy occurs.

(g) Appeal Procedure and Standard of Evidence.

(1) Each appeal shall be taken by filing written notice of the appeal with the city recorder within ten *calendar* days after the discharge, suspension, or transfer of which the employee complains. ***If the tenth calendar day falls on a Saturday, Sunday or recognized city holiday, the deadline to file the written notice of appeal with the city recorder is the following Monday or the next business day after the holiday.***

(2) Upon the filing of an appeal, the city recorder shall forthwith refer a copy of the appeal to the Appeal Board.

(3) On receipt of the appeal from the city recorder, the Appeal Board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the matter which relates to the cause for the discharge, suspension, or transfer.

(4) An employee who is the subject of the discharge, suspension, or transfer may:

- (i) appear in person and be represented by counsel;
- (ii) have a public hearing;
- (iii) confront the witness whose testimony is to be considered; and
- (iv) examine the evidence to be considered by the Appeal Board.

(5) The proceedings before the Appeal Board shall be recorded.

(6) In reaching its decision the Appeal Board shall determine, based upon substantial evidence:

- (i) whether the facts presented to the Appeal Board support the charges that resulted in the discharge, suspension, or transfer; and
- (ii) whether those facts warrant the discipline imposed, taking into consideration the employee's overall work history, including without limitation prior incidents of workplace misconduct or failure of job performance, the seriousness of the alleged conduct at issue, prior verbal warnings, written reprimands or other discipline given to the employee, and whether the discipline imposed is consistent with the City's past practice in similar circumstances, if any.

(7) Substantial evidence means that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. ((Lucas v. Murray Civil Serv. Comm'n, 949 P.2d 746, 758) (Utah Ct. App. 1997; Thomas v. Draper City, 2006 UT App 287.)).

(8) Each decision of the Appeal Board shall be by secret ballot, and shall be certified to the city recorder ~~within no later than 15 calendar days from the date the matter is referred to it~~ **after the day on which the hearing is held**, unless for good cause, ~~the and with the consent of the employee and the city,~~ the Appeal Board extends the ~~period beyond 15 days~~ **period to a maximum of 60 calendar days, if the employee and city both consent**. In no case shall the period be extended beyond 60 **calendar** days. At the time it renders its decision, the Appeal Board shall submit to the city recorder written findings of fact on which the Board relied in reaching its decision.

(9) In consultation with the City Manager, the Appeal Board may employ legal counsel to assist in conducting any investigation or hearing and in drafting any required findings of fact.

(10) If the Appeal Board finds in favor of the employee, the board shall provide that the employee shall receive:

- (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay; or
- (ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

(11) A final action or order of the Appeal Board may be reviewed by the Court of Appeals by filing with that court a petition for review. Each petition under shall be filed within 30 days after the issuance of the final action or order of the Appeal Board. Per Utah Code Ann. 10-3-1106(6)(c), the Court of Appeals' review shall be on the record of the Appeal Board and for the purpose of determining if the Appeal Board abused its discretion or exceeded its authority.

**SECTION II. General Repealer.** Ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION III. Effective Date.** This Ordinance shall become effective upon recording by the City Recorder, and 20 days after publication or posting or 30 days after final passage by the City Council, whichever is sooner.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

**ATTEST:**

**DRAPER CITY**

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Darrell H. Smith, Mayor**

# Utah Code, as amended

## **10-3-1105. Municipal employees -- Duration and termination of employment -- Exceptions.**

(1) (a) Except as provided in Subsection (1)(b) or (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in Section 10-3-1106.

(b) Subsection (1)(a) does not apply to an employee who is discharged or involuntarily transferred to a position with less remuneration if the discharge or involuntary transfer is the result of a layoff or reorganization.

(2) Subsection (1)(a) does not apply to:

(a) subject to Subsection (3), a person appointed by the mayor, city manager, or other person or body with the power to appoint in the municipality if:

(i) the appointment is made in writing;

(ii) the person's written job description identifies the person's position as exempt from the protections described in Subsection (1)(a); and

(iii) the position is described in an ordinance as exempt from the protections described in Subsection (1)(a);

(b) a member of the municipality's police department or fire department who is a member of the classified civil service in a first or second class city;

(c) a person who holds a position described in Subsections (2)(c)(i) through (xii) or an equivalent position designated in a municipal ordinance or personnel policy:

(i) a police chief of the municipality;

(ii) a deputy or assistant police chief of the municipality;

(iii) a fire chief of the municipality;

(iv) a deputy or assistant fire chief of the municipality;

(v) a head of a municipal department or division;

(vi) a deputy of a head of a municipal department or division;

(vii) a superintendent;

(viii) a probationary employee of the municipality;

(ix) a part-time employee of the municipality, including paid call firefighters;

(x) a seasonal or temporary employee of the municipality;

(xi) a person who works in the office of an elected official; or

(xii) a secretarial or administrative assistant support position that is specifically designated as a position to assist an elected official or the head or deputy head of a municipal department;

(d) an individual appointed to a position under Part 9, Appointed Officials and Their Duties, including:

(i) the city engineer;

(ii) the city recorder;

(iii) the city treasurer; or

(iv) the city attorney; or

(e) an employee who has:

(i) acknowledged in writing that the employee's employment status is appointed or at-will; or

(ii) voluntarily waived the procedures required by Section 10-3-1106.

(3) In addition to the persons described in Subsections (2)(b) through (e), a

# Utah Code, as amended

municipality may appoint up to 5% of the municipality's workforce in accordance with Subsection (2)(a).

(4) Nothing in this section or Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an employee termination or reduction in force.

Amended by Chapter 321, 2012 General Session

# Utah Code, as amended

## **10-3-1106. Discharge, suspension without pay, or involuntary transfer -- Appeals -- Board -- Procedure.**

(1) An employee to which Section 10-3-1105 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

(a) because of the employee's politics or religious belief; or

(b) incident to, or through changes, either in the elective officers, governing body, or heads of departments.

(2) (a) If an employee other than an employee described in Subsection 10-3-1105(2) is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any disciplinary reason, the employee may, subject to Subsection (2)(b), appeal the final decision to discharge, suspend without pay, or involuntarily transfer to an appeal board or hearing officer established under Subsection (7).

(b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the appeal board or hearing officer.

(3) (a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder in accordance with procedures established by a municipality within 10 calendar days after:

(i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure; or

(ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.

(b) (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder shall refer a copy of a properly filed appeal to the appeal board or hearing officer described in Subsection (7).

(ii) Upon receipt of the referral from the municipal recorder, the appeal board or hearing officer shall schedule a hearing to take and receive evidence and fully hear and determine the matter which relates to the reason for the discharge, suspension, or transfer.

(4) (a) An employee who is the subject of the discharge, suspension, or transfer may:

(i) appear in person and be represented by counsel;

(ii) have a hearing open to the public;

(iii) confront the witness whose testimony is to be considered; and

(iv) examine the evidence to be considered by the appeal board.

(b) An employee or the municipality may request the hearing described in Subsection (4)(a)(ii).

(5) (a) (i) A decision of the appeal board shall be by secret ballot.

(ii) The appeal board or the hearing officer shall certify a decision by the appeal board or hearing officer, respectively, with the recorder no later than 15 days after the day on which the hearing is held, except as provided in Subsection (5)(a)(iii).

(iii) For good cause, the appeal board or hearing officer may extend the 15-day period under Subsection (5)(a)(ii) to a maximum of 60 calendar days, if the employee and municipality both consent.

# Utah Code, as amended

(b) If the appeal board or hearing officer finds in favor of the employee, the appeal board or hearing officer shall provide that the employee shall receive:

(i) the employee's salary for the period of time during which the employee is discharged or suspended without pay less any amounts the employee earned from other employment during this period of time; or

(ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

(6) (a) A final action or order of the appeal board or hearing officer may be reviewed by the Court of Appeals by filing with that court a petition for review.

(b) A petition under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board or hearing officer.

(c) The Court of Appeals' review shall be:

(i) on the record of the appeal board or hearing officer; and

(ii) for the purpose of determining if the appeal board or hearing officer abused its discretion or exceeded its authority.

(7) (a) The method and manner of choosing a hearing officer or the members of the appeal board, the number of members, the designation of a hearing officer's or appeal board member's term of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance.

(b) For a municipality operating under a form of government other than a council-mayor form under Chapter 3b, Part 2, Council-mayor Form of Municipal Government, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.

(8) This section does not apply to an employee:

(a) described in Subsection 10-3-1105(2); or

(b) discharged or transferred to a position with less remuneration if the discharge or transfer is the result of a layoff, reorganization, or other non-disciplinary reason.

Amended by Chapter 321, 2012 General Session

Return to Agenda

# ITEM #6

**RESOLUTION NO. 13-48**

**A RESOLUTION OF THE DRAPER CITY COUNCIL CERTIFYING THE  
CANVASS OF THE 2013 MUNICIPAL PRIMARY ELECTION**

**WHEREAS**, Draper City held a Primary Election on August 13, 2013 for the Mayor and City Council positions; and

**WHEREAS**, Utah Code Title 20A-4-301(2)(A) requires that the board of canvassers shall declare as “nominated” those persons who had the highest number of votes and shall certify the results of the election.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:**

**Section 1.** The election results as shown in Exhibit A are accepted and declared to be the official canvass results for the August 13, 2013 primary election for Draper City.

**Section 2.** The following candidates, having qualified by the highest number of votes, are hereby declared as “nominated” and their names shall appear on the Municipal Election ballot for 2013:

**Mayor**  
Troy K. Walker  
Phillip B. Shell

**Draper City Council at Large**  
William E. Rappleye  
Jeffrey D. Stenquist  
Caroyln Hunsaker  
Michele Weeks

**Section 3. Effective Date.** This Resolution shall become effective immediately upon its passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY,  
STATE OF UTAH, THIS 27<sup>th</sup> DAY OF AUGUST, 2013.**

**ATTEST:**

**DRAPER CITY**

\_\_\_\_\_  
**Deputy City Recorder**

By: \_\_\_\_\_  
**Mayor**

**EXHIBIT A**

TO BE PROVIDED BY SALT LAKE COUNTY ON OR BEFORE AUGUST 27, 2013.

Return to Agenda

# ITEM #7

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Joe Bryant</b>
<b>Date:</b>	<b>August 23, 2013</b>
<b>Subject:</b>	<b>Polaris Government Relations Contract # 09-36/ 12-94 Amendment #1- Federal Governmental Lobbying &amp; Appropriation Application Services</b>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	<b>Joe Bryant</b>
<b>RECOMMENDATION:</b> Recommendation to extend term through June 30, 2014 for services not to exceed \$51,800	
<b>BACKGROUND AND FINDINGS:</b> The City entered into an agreement dated March 3, 2009 for Federal Governmental Lobbying and Appropriation Application Services. This second amendment is to extend term through June 30, 2014 monthly compensation remains \$4,166.00 per month with a fixed not to exceed amount of \$150.00 per month for out-of-pocket expenses.	
<b>PREVIOUS LEGISLATIVE ACTION:</b>	
<b>FISCAL IMPACT: Finance Review:</b> 	
<ul style="list-style-type: none"><li>• Not to exceed \$51,800 through renewal term. Funding provided Consulting Services GL # 11-40-2402</li></ul>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Contract 09-36 / 12-94 Amendment #2</li></ul>	

**AGREEMENT FOR CONSULTING SERVICES**

**For Federal Governmental Lobbying and Appropriation Application Services**

**AMENDMENT No. 2**

To the DRAPER CITY Agreement 09-36 for Federal Governmental Lobbying and Appropriation Application Services. This Amendment No. 1 is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between DRAPER CITY and POLARIS GOVERNMENT RELATIONS, LLC. City and Consultant may be referred to jointly as “the parties”.

**RECITALS:**

- A. The parties entered into an agreement for services (“Agreement”) dated the 3<sup>rd</sup> day of March, 2009; and
- B. The parties desire to amend the Agreement.

THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Amendment, the parties covenant and agree as follows:

1. **COMPENSATION**

City shall pay Consultant a monthly amount not-to-exceed \$4,166.00 for services defined in Duties and Responsibilities. The City shall reimburse consultant monthly, at cost, for ordinary and out-of-pocket expenses, including items such as telecommunications services, printing, photocopying, local transportation and other incidental expenses not-to-exceed \$150.00. Consultant shall also be reimbursed, at cost, for all non-local transportation, meals and activities as authorized by City in advance by written amendment. The total compensation to be paid to the Consultant under this Amendment No. 2 shall not exceed \$51,800 annually for all services and reimbursable

4. EFFECT OF AMENDMENT

All Parts, Paragraphs, Attachments, Terms and other provisions of the Agreement and any prior amendments thereof not specifically modified by the amendment shall be the same and remain in full force and effect.

If this Amendment is executed more recently than the expiration of the period of performance stated in the underlying agreement, then this Amendment shall relate back to and be effective from the last day of the previous period of performance. The parties acknowledge that substantial time may have elapsed since the expiration of the period of performance and hereby intend this Amendment to relate back as stated in the previous sentence.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

**“CITY”**

**DRAPER CITY**

ATTEST:

\_\_\_\_\_  
City Recorder

By:

\_\_\_\_\_  
Darrell H. Smith, Mayor

**“POLARIS”**



A handwritten signature in black ink, appearing to read 'Bryan Cunningham', written over a horizontal line.

Bryan Cunningham, Co-Founder &  
Principal

Return to Agenda

# ITEM #8

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Joe Bryant</b>
<b>Date:</b>	<b>August 21, 2013</b>
<b>Subject:</b>	<b>Affordable Housing Needs Study Agreement with David Paul Rosen &amp; Associates (DRA)</b>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	<b>Joe Bryant</b>

## RECOMMENDATION:

Recommendation to award agreement for the creation of an Affordable Housing Needs Study. Term of this agreement shall end on or before December 31, 2013.

## BACKGROUND AND FINDINGS:

Compliant to Draper City Municipal Code Section 3-3-080: Request for Proposals was solicited through a competitive bid process for a Affordable Housing Needs Study. Four proposals were received from companies who indicated that they could create such a plan. DRA was selected as the highest qualified firm. The total cost of this agreement is \$24,500.00

Members of the committee included Russell Fox, Keith Morey and Joe Bryant.

## PREVIOUS LEGISLATIVE ACTION: N/A

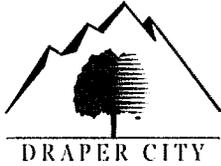
## FISCAL IMPACT: Finance Review: RW

Currently there is no funding allocated for this specific project as the total cost for this plan upon plan delivery and final invoicing will be reimbursed by the Salt Lake County CDBG Agreement # 11-75.

A budget amendment to Community Development Professional & Technical Services 11-70-2401 will need to be approved for an amount not to exceed \$24,500.00 by the Mayor and Council so that progressive milestone payments can be made to DRA. Funds received from the County will be deposited back into the General Fund.

## SUPPORTING DOCUMENTS:

- Agreement 13-113
- Affordable Housing Needs Study Request for Proposal
- Proposal submitted by David Paul Rosen & Associates
- Award Tabulation Sheet
- Salt Lake County CDBG Agreement # 11-75
- Amendment #1 to Salt Lake County CDBG Agreement # 11-75



Project Name: RFP# 13-113 Affordable Housing Needs Study

**AN AGREEMENT FOR an Affordable Housing Needs Study  
BETWEEN DRAPER CITY AND DAVID PAUL ROSEN & ASSOCIATES.**

THIS AGREEMENT made and entered into this \_\_\_\_\_ 2013, by and between DRAPER CITY, a municipal corporation (hereinafter referred to as "City", and David Paul Rosen & Associates, a California sole proprietorship (hereinafter referred to as "Consultant"), (collectively hereinafter referred to as "the Parties").

The 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**

The services to be performed by Consultant are as detailed in Exhibit A to this Agreement, Scope of Services.

Consultant has the right to decline to perform any services or extra services requested by the 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 this 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 and paid according to the following payment schedule:



Payment 1:	\$ 5,000.00	Upon completion of initial Site Visit;
Payment 2:	\$12,500.00	Upon submission of Draft Report;
Payment 3:	\$ 5,750.00	Upon submission of Final Report; and
Payment 4:	\$ 1,250.00	Upon City Council or staff presentation by DRA Principal of Final Report.

Total payment for the scope of services detailed in Exhibit A will not exceed twenty four thousand five hundred dollars and no cents (\$24,500.00), unless 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 the City with an invoice for each Payment shown above, and should describe the work performed. The City agrees to pay a finance charge of 1 1/2% per month on past due accounts, or the maximum allowed by law if such maximum is less than 1 1/2% per month.

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. Unless the City and Consultant have agreed 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 at the hourly rates as described in Exhibit B as the agreed-upon services.

5. **SERVICES BY THE 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 discreet tasks to be performed within a reasonable period of time after receiving a request from the City and subsequent agreement. Consultant shall promptly notify the City of expected time to complete the task and shall not to exceed a date later than 11/29/2013. Consultant shall then work diligently to complete the task in the expected time frame.

It is understood that time is of the essence in the performance of requested tasks by both of the Parties.



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 the 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:

- Mr. David Paul Rosen, Principal I
- Ms. Nora Lake-Brown, Principal I
- Mr. David Saltzman, Principal II

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 the City finds the replacement unacceptable the 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 the City harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Consultant's negligent acts, errors or omissions in the performance of professional services under this agreement.

The City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the City's sole negligent acts, errors or omissions and for anyone for whom the City is legally liable, arising from the professional services under this agreement.

The Consultant is not obligated to indemnify the City in any manner whatsoever for the 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. **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.

11. **TERMINATION**

The 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.

12. **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 the 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 the 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 the City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.



13. **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.

14. **ATTORNEYS FEES**

Should either party to this Agreement bring suit to enforce this Agreement, it is agreed that the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney's fees. A prevailing party is a party that shall have obtained a final judgment or order no longer subject to appeal. In the event of a settlement before final adjudication, both parties shall bear their own respective costs, expenses and reasonable attorney's fees, unless otherwise agreed. Any obligation set forth in this Agreement requiring one party to defend, indemnify and hold the other party harmless shall include payment by the indemnifying party of the indemnitee's reasonable attorneys fees when and as incurred. Notwithstanding anything to the contrary, the City shall be fully liable for all collection fees or expenses incurred by the Consultant to collect any outstanding invoices.

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 August 28, 2013, and shall run for TERM ending December 31, 2013.

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: David Dobbins, City Manager  
1020 East Pioneer Road  
Draper, Utah 84020

TO CONSULTANT: David Paul Rosen & Associates, Inc.  
Attn: David Rosen  
1330 Broadway Suite 937  
Oakland, CA, 94612



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 H. Smith, Mayor or designee

ATTEST:

\_\_\_\_\_  
City Recorder

CONSULTANT

By: \_\_\_\_\_  
*David Rosen*

Its: Principal (David Rosen)

CONSULTANT ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_ )

On the \_\_\_th day of \_\_\_\_\_, 2013, personally appeared before me \_\_\_\_\_ who being by me duly sworn did say that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, Inc., an \_\_\_\_\_ corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Residing at:

\_\_\_\_\_  
Exhibit A: Scope of Services



# Affordable Housing Needs Study - RFP #13-113

## Exhibit A:

### Scope of Services

DRA's affordable housing needs assessment research effort will meet the requirements of Section 10-9-307 of Utah code, and will assist the City in prioritizing local affordable housing needs and targeting public resources and development efforts most effectively. A review of residential zoning will be completed in order to evaluate how current zoning may influence or impede affordable housing. Also, the options for current programs to encourage an appropriate mix of housing are presented with recommendations for future policies needed to meet the requirements of the statute.

#### **1. DRA's scope of services includes the following:**

##### 1.1. Definition and Relevance of Affordable Housing

DRA will describe the issue of affordable housing and its relevance to Draper City, including the need to plan for residents of all income levels within the City, as required by Section 10-9-307, and to assist low and moderate income residents to secure housing within the City.

DRA will report current Department of Housing and Urban Development (HUD) income limits and maximum affordable housing costs for renters and owners by household size and income level for Salt Lake County, based on federal and state legal standards and private market underwriting standards.

##### 1.2. Demographic Trends and Projections

DRA will review any existing data and reports compiled regarding housing needs and costs in order to ensure that our work is informed by existing baseline information about Draper. We will gather and analyze demographic data for Salt Lake County, selected comparable cities in the County (selected in conjunction with City staff) and Draper City. This analysis will include the following:

- Historical trends in population and household characteristics, compared with other cities in the region and Salt Lake County as a whole;

- Housing tenure (renters and owners);
- Household income distribution; and
- Projected growth in population, households and employment over the next five and 10-year periods.

### 1.3. Affordable Housing Market Analysis

DRA will examine housing market conditions in Salt Lake County, with a separate breakout for the City of Draper, with a focus on the need for, and availability of, affordable housing. The analysis will include:

- Housing inventory characteristics, including the number of single-family and multifamily units;
- Age of the housing stock;
- Housing stock conditions, including estimates of substandard units in need of rehabilitation;
- Housing rents and sales prices, including recent trends and current conditions;
- Inventory of existing affordable housing, both market-rate and rent-restricted, if any;
- Rental and owner-occupied housing vacancy rates;
- Current housing needs, including overpayment and overcrowding; and
- Available projections of new employment by wage levels.

DRA will estimate the availability of housing units affordable to households earning less than Area Median Income, current demand for those units, and projections of future affordable housing needs based on demographic projections.

### 1.4. Existing Housing Agencies

DRA will comprise a list and description of local agencies and organizations providing assistance for affordable housing in Draper and Salt Lake County.

### 1.5. Affordable Housing Opportunities and Barriers

DRA will identify and discuss opportunities and barriers to affordable housing in Draper City, in particular the availability of appropriately zoned sites, regulatory barriers, and other factors that influence and impede the development of affordable housing.

### 1.6. CDBG Program Opportunities

DRA will identify opportunities for the City's use of CDBG funded programs. We will identify eligible activities and requirements for CDBG assisted activities that serve an identified geographic area, such as parks or neighborhood facilities. Generally, geographic-based activities meet the low and moderate income principal benefit if 51 percent of the residents in the activity's area (e.g., Census Tract or Block Group) are low and moderate income. However, in communities that have no areas that meet this definition, an activity may be considered to principally benefit low and moderate income persons if the area is within the highest quartile of all areas in the jurisdiction in terms of the degree of concentration of persons of low and moderate income.

Based on the results of the housing needs assessment, DRA will recommend potential eligible CDBG activities for Draper City that best meet the needs of the community.

## **2. Deliverables**

DRA will submit to the City one hard copy and one electronic copy of a Draft report incorporating all of the above tasks. DRA will confer with City staff by phone and email to review the Draft report, incorporate one round of written comments from City staff and will submit one hard copy and one electronic copy of the Final report. In order to comply with the schedule, staff will get DRA their comments in written form, track change form, or via phone conference within seven calendar days of receipt of the Draft report.

## **3. Meetings**

DRA will attend up to three teleconference or in-person meetings with City staff and policymakers, including:

1. An initial in person scoping and kick off meeting with a DRA Principal and staff;
2. A telephone conference with DRA and staff to review the data, analysis, and initial recommendations in the Draft report; and
3. An in-person meeting to present the Final report to City officials.

These meetings are included in the proposed budget.

#### **4. Budget**

DRA will prepare the above scope of work for a not-to-exceed fee of \$24,500. This budget includes completion of each of the tasks listed above, preparation and submittal of the Draft and Final reports, and participation in the three identified teleconferences and meetings with City staff and/or policymakers.

Attendance at additional meetings, if requested by City staff in writing, will be billed on a time and expense basis using DRA's 2013-14 Professional Fee and Reimbursement Schedule for preparation, travel and on-site time.

#### **5. Schedule**

DRA proposes to complete the study according to the following schedule, which may be adjusted somewhat to accommodate staff review of the Final Report to the City:

<b>Activity</b>	<b>Date</b>
Notice to Proceed	Sept. 4, 2013
Kick-Off Meeting with Staff	Week of Sept. 9 to Sept. 13, 2013
Submit Draft Report to City	Oct. 21, 2013
Confer with City Staff to Review Draft Report	Week of Oct. 28 to Nov. 1, 2013
Submit Final Report to City	Nov. 11, 2013
Presentation of Final Report to City	Between Nov. 18 and Nov. 29, 2013

This schedule assumes that City staff will submit written comments on the Draft report within seven calendar days of submittal.

Exhibit B: 2013-14 DRA Professional Fee and Expense Reimbursement Schedule



## Affordable Housing Needs Study - RFP #13-113

### Exhibit B: 2013-14 DRA Professional Fee and Expense Reimbursement Schedule

The following fee schedule represents fees per hour and reimbursable expenses for year 2013-14:

	<b>2013-14</b>
Principal I	\$335
Principal II	\$305
Senior Associate	\$285
Associate	\$255
Research Associate I	\$225
Research Associate II	\$210
Data Entry, Word Processing, Administrative Assistance and Accounting	\$105

The following costs are reimbursable expenses with supporting receipts:

- mileage at the equivalent of the then current federal mileage reimbursement rate; tolls
- round-trip coach airfare, as mutually agreed by client and consultant
- ground expenses: rental cars, parking, cabs and other
- meals and lodging
- long-distance telephone charges, facsimile charges and expedited courier service
- copying and production charges
- data service charges
- supplies, as required for deliverables.

A 1.5% per month surcharge will be added to any invoice that is unpaid 30 days after the original date of the invoice. DRA will increase its Professional Fees on July 1, 2014, and will notify its clients in writing of this change.



**DRAPER CITY CORPORATION  
PURCHASING DEPARTMENT  
1020 EAST PIONEER ROAD  
DRAPER, UTAH 84020**

TELEPHONE: (801) 576-6514

FACSIMILE: (801) 576-6389

[www.draper.ut.us](http://www.draper.ut.us)

## REQUEST FOR PROPOSALS

Draper City

### **Affordable Housing Needs Study**

RFP #13-113

Date of Issue: July 11, 2013

**DUE DATE: AUGUST 7, 2013 @ 2:00 p.m.**

**QUESTIONS DUE: JULY 31, 2013 1p.m.**

## MEMORANDUM

TO: Selection Committee Members  
FROM: Joe Bryant, Treasurer / Purchasing Agent  
SUBJECT: Affordable Housing Needs Study

Attached you will find \_\_\_\_ proposals and score sheets. Please review and score the proposals prior to the committee meeting. Please complete and submit it at the committee meeting.

There will be a committee meeting on **Monday August 14<sup>th</sup> @ 1 pm**, in the Finance Conference room. It should last about an hour. The purpose of the meeting is to review each committee member's evaluations to resolve differences and to ensure that the Committee shares the same understanding of each proposal.

The interviews (if needed) will be scheduled after our committee meeting.

If you have any questions please call.

*Joe Bryant C.P.M.*

City Treasurer / Purchasing Agent

Phone: (801) 576-6514

Cell: (801) 558-3644

TYT- 7-1-1

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## **I. PURPOSE**

The Draper City is seeking proposals from qualified consultants to conduct an affordable housing needs study within Draper City and prepare a plan. The objective of this plan is to assist the City in accomplishing the following: 1) define its housing policies, 2) strengthen City efforts to help low- to moderate-income households secure housing within the city, 3) identify programs and areas in Draper City that can utilize Community Development Block Grant funds, and 4) prepare an Affordable Housing Plan consistent with requirements of the Utah Code.

## **II. SCOPE OF WORK**

A. The outcome of the Affordable Housing Plan will focus on:

- Analysis of market conditions;
- Housing demand for both rental and owner-occupied housing;
- Inventory and analysis;
- Future needs and alternatives;
- Goals, objectives and policies.

B. The Affordable Housing Plan must include the following specific elements:

- Address the issue of affordable housing and its relevance to Draper City.
- Overview of the demographics, employment, and income levels within Draper City.
- Market analysis of the housing needs of families with incomes below the area median income, and the nature of the housing available or likely to be available. The proposed updated plan should include data on both the rental and owner-occupied housing markets for Salt Lake County, with a separate breakout of data for Draper City.
- Outline local agencies and organizations providing assistance for affordable housing.
- Outline opportunities and barriers to affordable housing in Draper City.
- Define programs and areas where Draper City can utilize Community Development Block Grant programs.

C. The City expects the consultant's proposal to include a minimum of three meetings with City staff as part of the proposal:

1. An initial scoping meeting;
2. A meeting to review the gathered data and trends;
3. A meeting to present the final plan product to City officials.

- D. Provide the Affordable Housing Plan in report format and in an electronic format acceptable to the Draper City.

### III. PROPOSAL REQUIREMENTS

- A. Completed proposals should include the following:
  - 1. Description of how the Affordable Housing Plan will be prepared.
  - 2. Description of the intended components of the report.
  - 3. Summary of qualifications and experience, in similar work, of each person to be involved in the production of the plan.
  - 4. Contact information for three references that your organization has worked with in the past.
  - 5. Firm fixed costs that shall not exceed **\$ 24,665.00.**
  - 6. Timeline of project implementation, meetings with City staff and project completion on or before **November 29, 2013.**
  
- B. Evaluation of Proposals. The City may award a contract based on initial proposals received without discussion of such proposals with consultants. Accordingly, each initial proposal should be submitted with the most favorable price and service available. Proposals will be reviewed and approved by a committee of City officials. The City reserves the right to reject any and/or all proposals or to cancel request at anytime on or before the due date. Evaluation of proposals will be based upon the following criteria:
  - 1. Responsiveness of the proposal to the objectives identified in the RFP's "Purpose" and "Project Scope."
  - 2. The feasibility and timeliness of the proposal.
  - 3. Consultant's demonstrated capacity to implement and complete the proposal as submitted.
  - 4. Consultant qualifications.
  - 5. Reasonable and competitive cost of the proposal.
  
- C. Oral Presentations. The City may require an oral presentation from up to three (3) consultant(s) to supplement their written proposal. These presentations will be by invitation only if required after the proposals have been received and prior to the award of the Contract.
  
- D. Indemnification. The Consultant shall hold harmless, defend and indemnify the City and its officers, employees, and agents from and against any and all claims, losses, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of (a) performance or breach of this contract by Consultant, or (b) Consultant's use of City premises, or (c) any act, error, or omission on the part of the

Consultant, or its agents, employees, invitees, participants, or subcontractors except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Draper City, its officers, employees or agents.

#### IV. PROPOSAL SUBMISSION REQUIREMENTS

- A. Please provide Four (4) hard copies + 1 electronic CD copy in Word (doc.) or Adobe (pdf.) format of your sealed proposal will be accepted until **Wednesday, August 7, 2013 at 2:00 pm**, at Draper City Hall- Finance Department, 1020 East Pioneer Road, Draper UT 84020. **No responses will be accepted after that date and time.**
- B. The sealed transmittal is to have "**Affordable Housing 13-113**" clearly marked on the outside of the package. All copies should be put into **one** sealed envelope or box. Do not put each proposal copy in a separate sealed envelope.
- C. The proposal shall have a cover letter indicating the consultant's willingness to enter into an agreement with Draper City. An officer of the company who has the authority to commit the consultant to the proposed project must sign this letter. Proposals will include the full name, legal status (corporation, state of incorporation, partnership, proprietorship, etc.), business address of the Proposer, and telephone number.
- E. All proposals submitted for evaluation must include, but are not limited to, the following information. This information should be submitted in **15 pages or less. Each page should be numbered and any pages over 15 will be removed from the proposal before giving to the Committee Member to score.** Failure to follow the prescribed format may result in rejection of the proposal. (Resumes and attachments as provided in the RFP will not count towards page count.)
- F. Proposals will be evaluated and ranked by a selection committee. Exhibit B is a sample of the score sheet each committee member will fill out on each proposal received. Up to three (3) Consultants may, if it is in the best interest of the City, be invited for an interview. The City reserves the right to request a best and final offer. A recommendation will then be presented to the Council for consideration and approval.

#### V. PROJECTED SCHEDULE FOR THE RFP PROCESS

Draper City reserves the right to modify the following schedule at their discretion:

<u>Activity</u>	<u>Date</u>
Final day to submit questions	July 31, 2013
Proposal Due Date	August 7, 2013
Committee Meeting	August 14 2013
Proposer Interviews	TBD.
Anticipated Notice to Proceed	September 4, 2013

## **VI. EVALUATION AND SCORING CRITERIA**

Proposals will be evaluated, scored, and ranked by a Selection Committee. Attachment B is a sample score sheet, which each Committee member will complete for each proposal. The Selection Committee may invite up to the top three (3) ranked proposals for an interview/demonstration. The purpose of the interview/demonstration is clarification and verification of the written proposal. The Selection Committee may re-score the proposal after the interview/demonstration, but may not re-score pricing/costs/fees, unless the Committee requests a best and final offer. A recommendation will then be presented to the City Council for consideration and approval. Proposals will be evaluated, scored, and ranked on the following criteria:

### **30% Project Team**

Provide an organizational chart showing the level of organizational responsibility of all major participants of the Consultant's proposed project team. Include resumes of the proposed team.

The City reserves the right to request a substitution of personnel.

### **50% Relevant Experience and Qualifications.**

The Consultant shall identify past work and performance of similar studies. The personnel identified as this team will be the ones allowed to participate in the event the team is invited to an interview. Experience with other Utah local governments should also be included along with experience making presentations to the public, Councils and governing bodies.

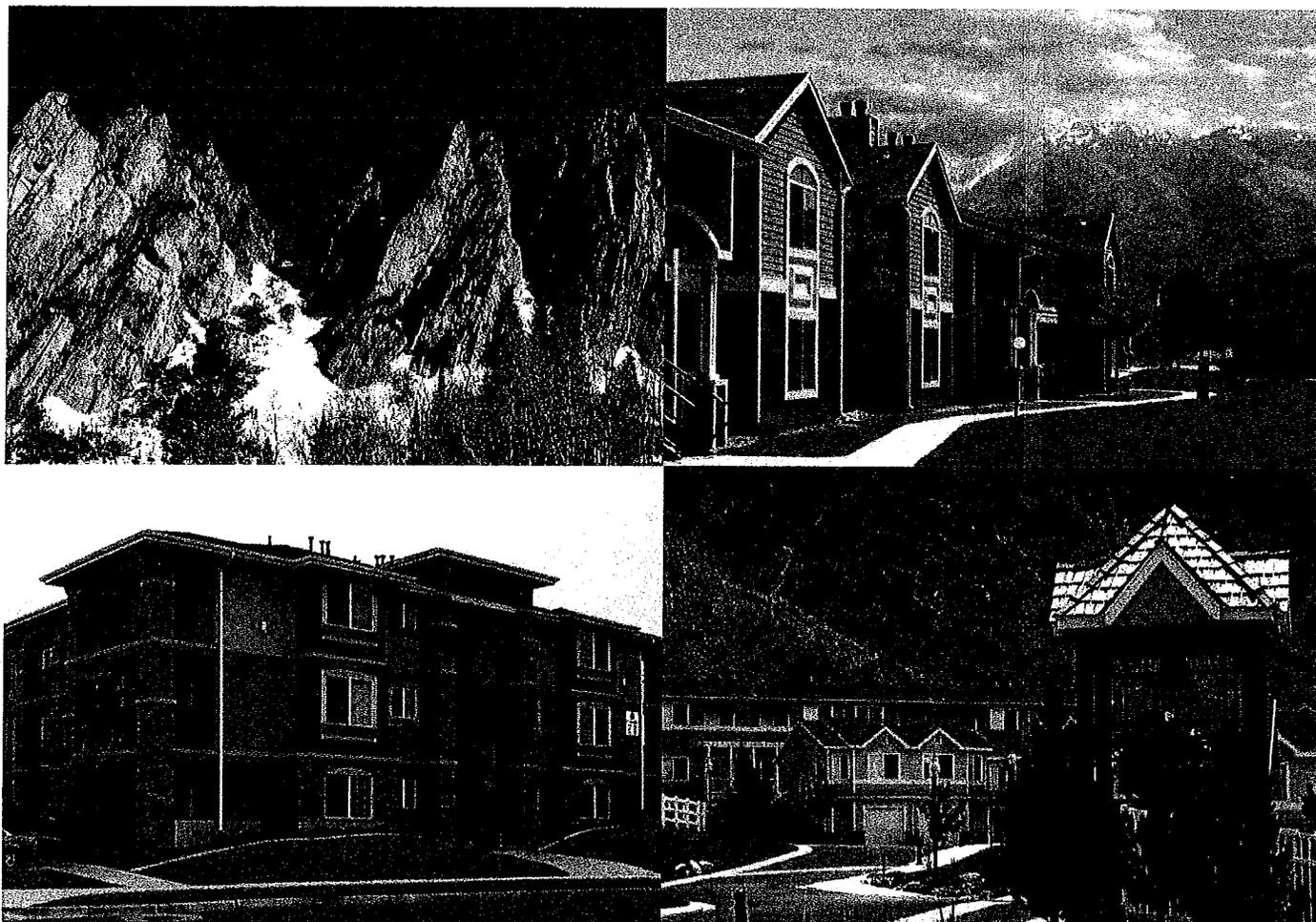
### **20% Project Schedule**

The Consultant has the availability project timeline stated in Section III (6)

## **VII. TERM OF AGREEMENT**

- A. It is the intent of the City to enter into a contract with the successful Consultant through November 29, 2013. The City reserves the option to engage the awarded consultant for any additional study or studies needed that will compliment or add value to this study or future affordable housing needs.

# Affordable Housing Needs Study



Draper City, Utah

August 5, 2013

**DRA**

DAVID PAUL ROSEN & ASSOCIATES  
DEVELOPMENT, FINANCE AND POLICY ADVISORS



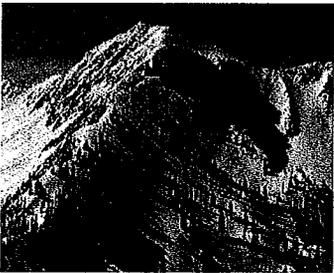
DAVID PAUL ROSEN & ASSOCIATES  
DEVELOPMENT, FINANCE AND POLICY ADVISORS

---



## Affordable Housing Needs Study

Submitted to:



**Draper City Corporation**  
Purchasing Department  
1020 East Pioneer Road  
Draper, UT 84020  
801.576.6514

Submitted by:



**David Paul Rosen & Associates**  
1330 Broadway Suite 937  
Oakland CA, 94612  
510-451-2552

3941 Hendrix Street  
Irvine, CA 92614  
949-559-5650

david@draconsultants.com  
www.draconsultants.com





DAVID PAUL ROSEN & ASSOCIATES  
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Oakland, California 94612-2509  
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fax: 510.451.2554  
admin@draconsultants.com  
www.draconsultants.com

August 5, 2013  
Via FedEx

Joe Bryant, C.P.M.  
City Treasurer / Purchasing Agent  
Draper City Corporation  
Purchasing Department  
1020 East Pioneer Road  
Draper, UT 84020

Re: Request for Proposals, RFP #13-113

Dear Mr. Bryant:

David Paul Rosen & Associates (DRA) is pleased to present our proposal to prepare a housing needs assessment for Draper City. DRA is nationally recognized as a leading firm in economic and market analysis, policy and program design for affordable housing.

Over its 33-year history, DRA has advised clients in 41 states and more than 200 jurisdictions on affordable housing analysis, development, policy, underwriting, origination, asset management, program design, strategic planning and best practices. DRA Principals have advised on more than \$9 billion of affordable housing development portfolios and transactions. DRA provides comprehensive economic, development and financial consulting services to cities, states, federal agencies, housing authorities, nonprofit and for-profit developers engaged in affordable housing, mixed income and mixed use development.

DRA has prepared five- and ten-year comprehensive affordable housing strategies for scores of our local public sector clients, addressing affordable housing needs, market conditions, land use, revenue, program design, policy, targeting, leveraging of non-city affordable housing resources, all in compliance with state and federal law. These strategies have included 10-year capital plans for up to \$1 billion in local housing funds and leveraged investment. Affordable housing needs and market assessments are a fundamental building block for these strategies, and for most of DRA's affordable housing policy and transactional practice.



DAVID PAUL ROSEN & ASSOCIATES  
DEVELOPMENT, FINANCE AND POLICY ADVISORS

Joe Bryant C.P.M.  
August 5, 2013  
Page 2

DRA is a sole proprietorship, registered in California with offices in Oakland and Irvine.

We very much look forward to the opportunity of serving you and your colleagues on your important affordable housing efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Rosen', with a long horizontal flourish extending to the right.

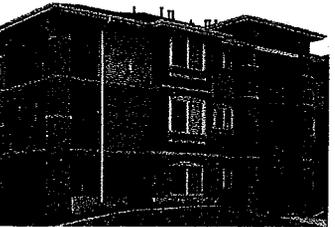
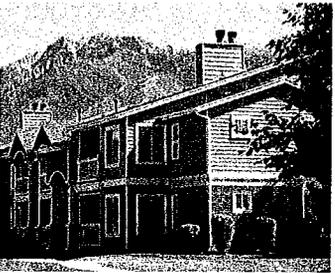
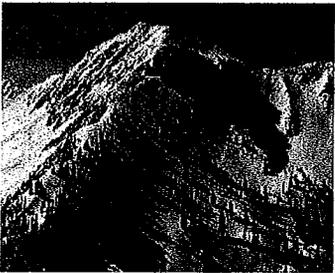
David Rosen, PhD  
Principal

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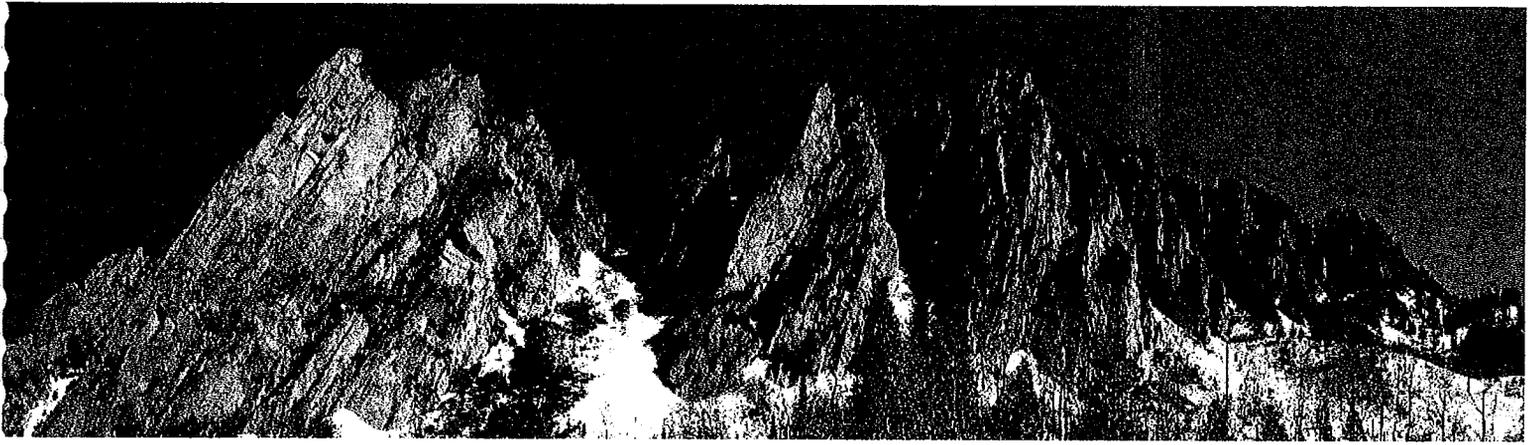
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**Attachment C: Work Sample . . . . . A-3**



## 1. Firm Qualifications

Founded in 1980, David Paul Rosen & Associates (DRA) is a nationally recognized public interest consulting firm with offices in Oakland and Irvine, California. DRA specializes in capital formation strategies for affordable housing and community economic development. DRA has a track record of success and innovation in program design, finance, and project development in all aspects of affordable housing. We have pioneered finance and public policy initiatives in affordable housing, small business, economic development, banking, asset management, insurance and urban planning.

DRA's expertise is grounded in the fundamentals of real estate economics, housing development, and finance. DRA Principals have advised on more than \$9 billion in low income housing finance and project development representing more than 100,000 units. Our clients include federal, state and local government agencies, nonprofit and for-profit developers, corporations, institutional investors, foundations, professional associations and research organizations. We have served in more than 41 states and 200 jurisdictions.

DRA has a national reputation for distinguished achievement in policy and financial advisory services for public, private and nonprofit sectors. This expertise is complemented by DRA's transactional finance practice for affordable housing development. Our transactional practice enables us to bring our clients state-of-the-art, private sector standards for credit, collateral, underwriting and pricing of affordable housing, mixed income housing, and mixed use development financing. DRA's work is characterized by strategic insight, innovation, and sophisticated analysis of market, economic and financial factors. We apply our interdisciplinary skills to determine the best solutions to the complex problems our clients face.

DRA has provided policy, economic and legal research to numerous state and local agencies, which has helped them establish affordable housing goals and programs. We have successfully facilitated discussion between competing interests, enabling them to reach consensus on land use, program design and revenue for affordable housing strategies. Our work in this area helped lay the foundation for the Comprehensive Housing Affordability Strategy (CHAS), and the Consolidated Plan.

In 1982, DRA created the concept of state housing trust funds, now in place in 36 states. DRA played an instrumental role in establishing dozens of state and local housing trust funds nationwide. State housing trust funds alone have aggregated more than \$1 billion to date in new capital for affordable housing subsidies. Funding sources for these trust funds include commercial development linkage fees, inclusionary housing in-lieu fees, and a wide range of other taxes and fees.

DRA is expert at developing and staffing a public review process that results in consensus among competitive stakeholder interests. Many of our housing studies involve public review processes, ranging



from a series of meetings with a formal Task Force comprised of representatives from a variety of stakeholder interests, to focus group meetings with developers and advocates, to one-on-one interviews with key participants. DRA is highly skilled in presenting complex analyses in easily understandable formats for laymen and policymakers in public hearings before planning commissions and city councils. We excel in public (and private) workshops and presentations, and provide clear, valuable, and unbiased guidance to elected officials and senior staff.

DRA helps its clients ensure a thorough and fair public review and comment process on the research and findings of our economic analysis. DRA will prepare agenda materials and PowerPoint presentations, in collaboration with local staff, and present these materials to the stakeholders. We regularly recommend that our public agency clients post draft housing studies on the city website and invite public comment.

## 2. Background

As part of the General Plan, the Housing Element specifically addresses affordable housing needs in Draper City. The Element addresses statutory requirements as well as overall community interests in this critical issue. The Element addresses the range of housing options that are needed or should be available in the community including:

- Price ranges (affordable, moderate, and upper income);
- Product types (apartments, condominiums, single-family, etc.);
- Special needs housing (homeless, housing for the disabled, elderly housing, etc.); and
- Neighborhood issues (such as zoning and associated density).

The State of Utah recognizes in Section 10-9-307 of Utah Code that the availability of moderate income housing is a statewide concern, and it requires municipalities to propose a plan for moderate income housing as part of a general plan. "Moderate income housing" is defined as housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80 percent of the median gross income of the metropolitan statistical area (MSA) for households of the same size. In the Salt Lake City HUD Metro Fair Market Rent Area (HMFA), which is a portion of the Salt Lake City MSA, the 2013 median income for a household of four is \$70,300. Moderate income housing, then, applies to a household of four with an annual income of \$56,240 or less.

The spirit of the statute is to ensure that people who desire to live in the City of Draper should not be unable to do so simply because they earn a moderate level of income. Rather, people should expect the City to offer a reasonable opportunity to live in a variety of housing located throughout the community. With such an opportunity, people with moderate incomes are allowed to benefit from and to fully participate in all aspects of neighborhood and community life. In DRA's proposed needs assessment analysis, "reasonable opportunity to a variety of housing" will be assessed using three criteria: in comparison to like-sized communities; in comparison to Salt Lake County as a whole; and through an analysis of the current supply and demand in the City.



The Element is intended to broadly address current conditions of the housing stock and the housing market in Draper and meet specific requirements for moderate income housing planning included in state law. Section 10-9-307 does not define the total scope of housing planning efforts needed by Draper, or any other city. A community must address the needs of all of its residents, including those of low and moderate income. The proposed needs assessment will provide information about these residents, what housing stock is available to them, and what their future needs are expected to be.

### 3. Scope of Services

DRA has provided policy, economic and legal research, and facilitation to several hundred state and local agencies in setting affordable housing goals, and in reaching consensus among competing interests to support comprehensive affordable housing strategies. DRA's affordable housing needs assessment research effort will meet the requirements of Section 10-9-307 of Utah code, and will assist the City in prioritizing local affordable housing needs and targeting public resources and development efforts most effectively. Specifically, compliance with Section 10-9-307 requires the City to plan for moderate income housing with an estimate of current supply and future need for moderate income housing in the next five years. A review of residential zoning will be completed in order to evaluate how current zoning may influence or impede affordable housing. Also, the options for current programs to encourage an appropriate mix of housing are presented with recommendations for future policies needed to meet the requirements of the statute.

#### 3.1. DRA's proposed scope of services includes the following:

##### 1. Definition and Relevance of Affordable Housing

DRA will describe the issue of affordable housing and its relevance to Draper City, including the need to plan for residents of all income levels within the City, as required by Section 10-9-307, and to assist low and moderate income residents to secure housing within the City.

DRA will report current Department of Housing and Urban Development (HUD) income limits and maximum affordable housing costs for renters and owners by household size and income level for Salt Lake County, based on federal and state legal standards and private market underwriting standards.

##### 2. Demographic Trends and Projections

DRA will review any existing data and reports compiled regarding housing needs and costs in order to ensure that our work is informed by existing baseline information about Draper. We will gather and analyze demographic data for Salt Lake County, selected comparable cities in the County (selected in conjunction with City staff) and Draper City. This analysis will include the following:



- Historical trends in population and household characteristics, compared with other cities in the region and Salt Lake County as a whole;
- Housing tenure (renters and owners);
- Household income distribution; and
- Projected growth in population, households and employment over the next five and 10 year periods.

### **3. Affordable Housing Market Analysis**

DRA will examine housing market conditions in Salt Lake County, with a separate breakout for the City of Draper, with a focus on the need for, and availability of, affordable housing. The analysis will include:

- Housing inventory characteristics, including the number of single-family and multifamily units;
- Age of the housing stock;
- Housing stock conditions, including estimates of substandard units in need of rehabilitation;
- Housing rents and sales prices, including recent trends and current conditions;
- Inventory of existing affordable housing, both market-rate and rent-restricted, if any;
- Rental and owner-occupied housing vacancy rates;
- Current housing needs, including overpayment and overcrowding; and
- Available projections of new employment by wage levels.

DRA will estimate the availability of housing units affordable to households earning less than Area Median Income, current demand for those units, and projections of future affordable housing needs based on demographic projections.

### **4. Existing Housing Agencies**

DRA will comprise a list and description of local agencies and organizations providing assistance for affordable housing in Draper and Salt Lake County.

### **5. Affordable Housing Opportunities and Barriers**

DRA will identify and discuss opportunities and barriers to affordable housing in Draper City, in particular the availability of appropriately zoned sites, regulatory barriers, and other factors that influence and impede the development of affordable housing.



## **6. CDBG Program Opportunities**

DRA will identify opportunities for the City's use of CDBG funded programs. We will identify eligible activities and requirements for CDBG assisted activities that serve an identified geographic area, such as parks or neighborhood facilities. Generally, geographic-based activities meet the low and moderate income principal benefit if 51 percent of the residents in the activity's area (e.g., Census Tract or Block Group) are low and moderate income. However, in communities that have no areas that meet this definition, an activity may be considered to principally benefit low and moderate income persons if the area is within the highest quartile of all areas in the jurisdiction in terms of the degree of concentration of persons of low and moderate income.

Based on the results of the housing needs assessment, DRA will recommend potential eligible CDBG activities for Draper City that best meet the needs of the community.

## **3.2. Deliverables**

DRA will submit to the City one hard copy and one electronic copy of a Draft report incorporating all of the above tasks. DRA will meet with City staff to review the Draft report, incorporate one round of written comments from City staff and will submit one hard copy and one electronic copy of the Final report.

## **3.3. Meetings**

DRA will attend up to three teleconference or in-person meetings with City staff and policymakers, including:

1. An initial scoping teleconference with staff;
2. An in-person meeting to review the data, analysis, and initial recommendations in the Draft report; and
3. An in-person meeting to present the final product to City officials.

These meetings are included in the proposed budget.

## **3.4. Budget**

DRA will prepare the above scope of work for a not-to-exceed fee of \$24,500. This budget includes completion of each of the tasks listed above, preparation and submittal of the draft and final reports, and participation in the three identified teleconferences and meetings with City staff and/or policymakers.

Attendance at additional meetings will be billed on a time and expense basis using DRA's 2013 Professional Fee and Reimbursement Schedule.



## David Paul Rosen & Associates

### Professional Fee and Expense Reimbursement Schedule

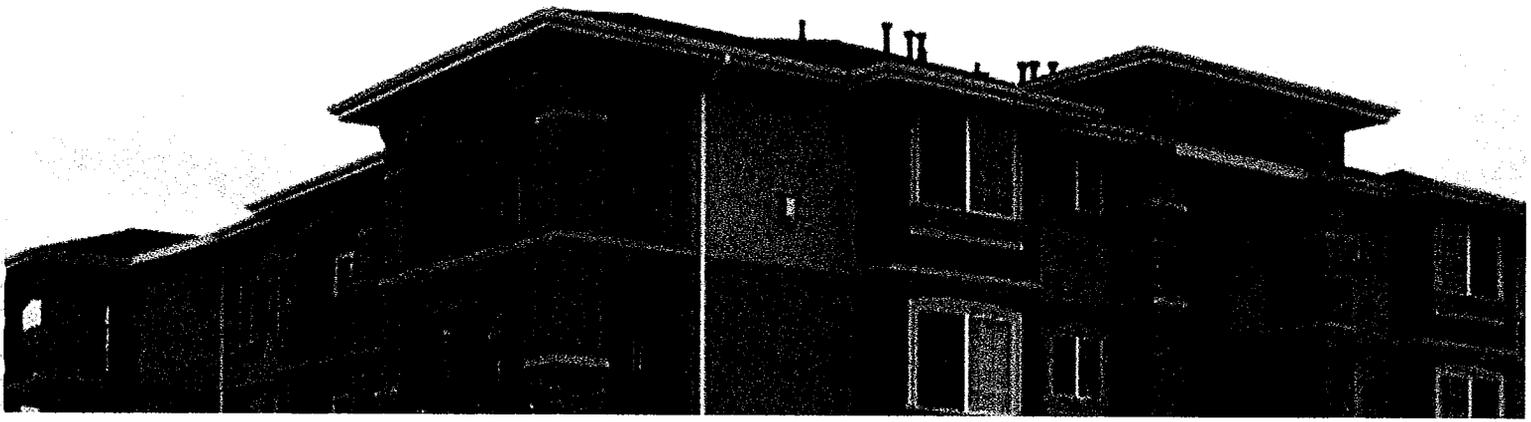
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Research Associate I	\$225
Research Associate II	\$210
Data Entry, Word Processing, Administrative Assistance and Accounting	\$105

The following costs are reimbursable expenses with supporting receipts:

- Mileage at the equivalent of the then current federal mileage reimbursement rate, tolls;
- Round-trip coach airfare, as mutually agreed by client and consultant;
- Ground expenses: rental cars, parking, cabs and other;
- Meals and lodging;
- Long-distance telephone charges, facsimile charges and expedited courier service;
- Copying and production charges;
- Data service charges; and
- Supplies, as required for deliverables.

A 1.75% per month surcharge will be added to any invoice that is unpaid 30 days after the original date of the invoice. DRA will increase its Professional Fees on January 1, and will notify its clients in writing of this change.



### 3.5. Schedule

DRA proposes to complete the study according to the following schedule, which may be adjusted somewhat to accommodate staff review of the Final Report to the City:

<b>Activity</b>	<b>Date</b>
Notice to Proceed	September 4, 2013
Kick-Off Meeting with Staff	Week of September 9 to September 13, 2013
Submit Draft Report to City	October 21, 2013
Meet with City Staff to Review Draft Report	Week of October 28 to November 1, 2013
Submit Final Report to City	November 11, 2013
Presentation of Final Report to City	Between November 18 and November 29, 2013

This schedule assumes that City staff will submit written comments on the Draft report within seven calendar days of submittal.



## 4. Firm Experience & Representative Projects

DRA has provided affordable housing economic, policy and legal research to more than 200 jurisdictions in 41 states, helping them to establish affordable housing goals and programs. DRA has prepared five- and ten-year comprehensive affordable housing strategies for these jurisdictions, addressing affordable housing needs, market conditions, land use, revenue, program design, policy, targeting, leveraging of non-city affordable housing resources, all in compliance with State and federal law. These strategies have included 10-year capital plans for up to \$100 million in local housing funds and leveraged investment of four times this amount. Affordable housing needs and market assessments are a fundamental building block for these strategies, and for most of DRA's affordable housing policy and transactional practice.

### 4.1. City of Palm Springs, California Comprehensive Affordable Housing Strategy

DRA was retained by the City of Palm Springs to develop a Comprehensive Housing Strategy to make maximum use of the City's resources. The Strategy incorporated an affordable housing market analysis and needs assessment, an affordability gap analysis, review of local and non-local resources for housing, development of affordable housing policies and programs, and a five-year capital plan.

DRA's market analysis for affordable housing included a review of:

- Regulatory requirements for affordable housing;
- The supply of existing affordable housing stock by type, location, geographic concentration, occupancy, price/rent and condition; and
- The demand for affordable housing based on current demographics, historical growth rates in the community, and projected trends over the next five years.

### 4.2. City of Phoenix, Arizona, Workforce Housing Plan

The Maricopa County Regional Workforce Housing Task Force was convened to develop a Plan to address comprehensively, through 2020, the housing affordability needs of working households in Maricopa County earning approximately 35% to 75% of area median income, adjusted by household size. The Task Force retained DRA to provide economic, finance, policy, program, capital planning, best practices, legal and other guidance and research upon which to base the Plan.

The Task Force met over the course of a year to consider demographic, market, legal, economic, land use, financial and public policy factors contributing to the crisis in housing affordable for working families in Maricopa County. The Task Force carefully considered a wide range of best practices in land use policy and practice, a long list of potential revenue sources to capitalize workforce housing assistance programs, the capacity that exists to produce the required number of workforce housing units on an annual basis, and the political will that exists in the region.



DRA assessed current and projected housing needs and conditions within Maricopa County and its local jurisdictions. The needs assessment analyzed the availability of housing at different price levels and compared it to the number of households at alternative income levels. Other measures of unmet housing needs, including cost-burdened households, overcrowding, poor housing conditions, were also assessed. In addition, DRA analyzed population and household growth projections, trends in household size, income, tenure (renter and owner), and the age of the housing stock. We analyzed market trends and conditions, including home sales prices, rents, and vacancy rates.

Based on a thorough review of best practices nationwide, and exhaustive research on the legal, fiscal and political constraints facing land use and revenue proposals in Maricopa and Arizona, the Task Force crafted a set of recommendations considered the most viable proposals to increase the production of workforce housing in the area.

### **4.3. City of Oceanside, Comprehensive Affordable Housing Strategy**

DRA prepared a comprehensive affordable housing strategy for the City of Oceanside. We prepared a housing needs assessment, affordability gap analysis, and inclusionary housing economic analysis to provide the basis for developing an informed housing strategy. DRA worked with a Task Force of local stakeholders to develop policies, programs, a five-year capital plan and implementation priorities appropriate for Oceanside's affordable housing activities. DRA continued to serve as financial and development advisor to the City on implementation of its housing programs and its \$75 million pipeline of affordable housing developments.

### **4.4. Town of Taos, New Mexico, Affordable Housing Development Plan**

DRA was recently retained by the Town of Taos, New Mexico to prepare an affordable housing development program and financing plan for a proposed affordable multifamily rental housing development on a Town-owned site. DRA advised the Town on competitive factors necessary to secure an allocation of 9% Low Income Housing Tax Credits from the New Mexico Mortgage Finance Authority (MFA), including bedroom count distribution, income targeting, and tenant population. DRA prepared a pro forma financing plan for the proposed project, including projected rents, operating costs, reserve deposits, hard and soft construction costs, financing and other soft costs, tax credit equity projections, and projected cash flow analysis. DRA also prepared a Request for Qualifications to solicit a developer for the tax credit project, and will assist the Town in assessing the submittals.

### **4.5. City of Roseville, California Housing Needs Assessment and Comprehensive Affordable Housing Strategy**

The City of Roseville retained DRA to prepare a Comprehensive Affordable Housing Strategy to guide the City's affordable housing activities and make maximum use of its local housing resources, including CDBG and HOME funds among others, to meet local affordable housing needs. DRA analyzed current



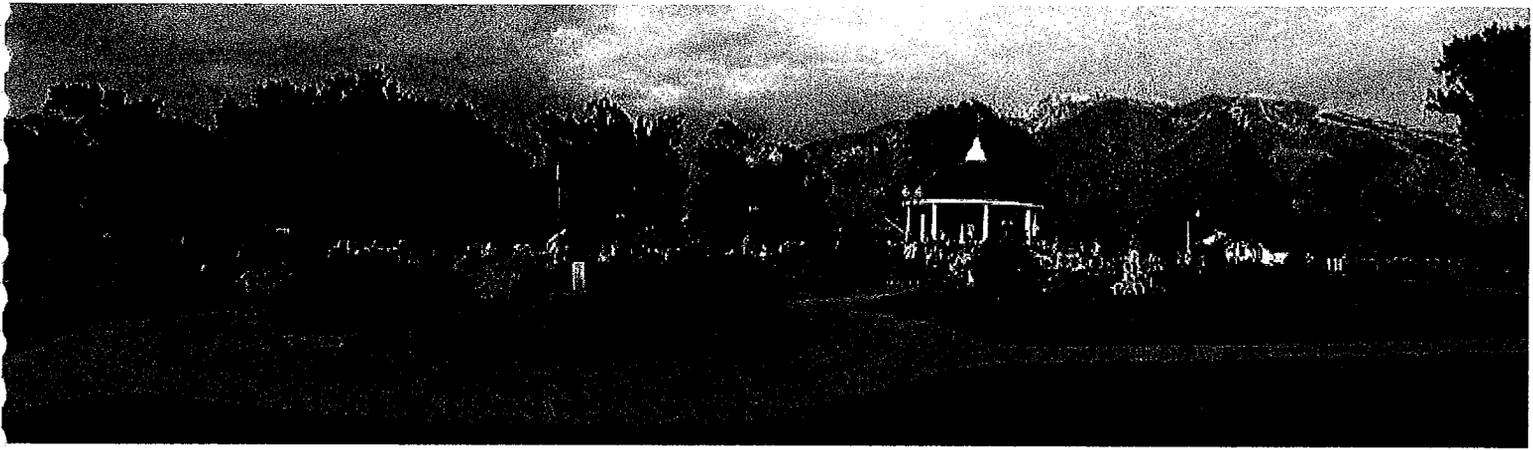
and projected affordable housing needs and conditions within the City of Roseville. A demographic profile of the City's population, housing, and income characteristics established the foundation for evaluating current housing needs. Comparisons of current conditions with historical data provided an indication of recent and potential future trends, while comparisons with the Placer County provided insight into the City's relative position in the region. DRA worked with a Task Force comprised of local stakeholders to develop affordable housing policies for the Affordable Housing Strategy, and for incorporation into the City's Housing Element. Based on the priorities developed by the Task Force, DRA prepared budgets for expenditure of local City housing resources, for the five-year Strategy period.

#### **4.6. City of Tustin, California Comprehensive Affordable Housing Strategy**

The City of Tustin retained DRA to prepare a Comprehensive Affordable Housing Strategy to direct the City's affordable housing activities based on the City's housing needs, affordability gap analysis, site assessment, and available local and non-local financial resources as analyzed by DRA. The Strategy addressed a range of household incomes representing families earning 30 percent to 120 percent of area median income. The housing needs assessment provided a demographic and economic profile of the community. It assessed trends and projections in population, households, and population age distribution, affordable rents and home prices, market-rate rents and home prices, housing overpayment, overcrowding, and substandard housing conditions and special needs populations. An affordability gap analysis was completed to determine the capital subsidy required to develop housing affordable to families at a variety of income levels. DRA also identified vacant and underutilized land suitable for residential development in Tustin. Finally, DRA prepared a six-year capital plan for the assistance of affordable housing in the City.

#### **4.7. City of Rancho Cucamonga, California Comprehensive Affordable Housing Strategy**

DRA developed a comprehensive ten-year strategic plan for use of \$75 million in local housing funds. DRA prepared a detailed housing needs assessment and market analysis, which identified priorities for the City's housing Strategy, including: development of new affordable multifamily rental housing for large families, rehabilitation of existing housing in older neighborhoods, and infill development of new affordable ownership housing on scattered site vacant lots. The Strategy was developed in collaboration with a citizen's housing task force, resulting in a unanimous consensus. It was designed to comply with a settlement agreement between the City and the Western Center for Law and Poverty. DRA assisted with the City's implementation of this Strategy over more than a ten year period.



## 5. Key Personnel Experience

### 5.1. David Paul Rosen, Principal I

David Paul Rosen, Ph.D., is founder and Principal of David Paul Rosen & Associates, a 33-year old financial and development consulting firm with expertise in capital formation strategies for affordable housing and community economic development. DRA's clients include federal agencies, the United States Congress, state and local agencies and legislative bodies, corporations, non-profit organizations and foundations. Dr. Rosen is one of the nation's leading experts on affordable housing finance, policy, land use, analysis, negotiation, lending and investment strategic planning. He has personally advised on more than \$3.0 billion in development finance.

Dr. Rosen is responsible for some of the more important innovations in affordable housing development policy. He originated the concept of state housing trust funds as permanently dedicated annually renewable source of capital for the production and preservation of affordable housing. He helped lead the efforts in the mid-1980s in California to negotiate with major money center banks to make multi-billion dollar commitments to affordable housing development lending and investment. Dr. Rosen served as the inaugural Chairman of the California Organized Investment Network Investment Advisory Board, a first of its kind statewide effort to secure insurance industry capital investments in affordable housing and neighborhood revitalization.

Dr. Rosen served as Chairman of the Advisory Board of the California Organized Investment Network (COIN) and the California Department of Insurance. Dr. Rosen led the development of COIN's investment policy, which seeks to increase capital from insurance companies in housing and economic development investments benefiting low income neighborhoods.

Dr. Rosen has advised California jurisdictions on the adoption, economic analysis and design of inclusionary housing land use policies, programs and innovations.

Dr. Rosen was the lead consultant to the City of Oakland creating the Community Alliance for Syndicated Housing, now Merritt Community Capital, and has also served as a lead consultant to the Federal Home Loan Bank of Atlanta (Bank), to FHA, Ginnie Mae and Freddie Mac. He advised the Bank's Chief Executive Officer and the Board of Directors on a wide range of community economic development and affordable housing initiatives throughout the nine state region of the Bank.

Dr. Rosen served as lead faculty to the California Redevelopment Association (CRA) Housing Institutes. DRA was selected by CRA as the sole faculty for its Basic and Advanced Affordable Housing Institutes



statewide for the next three years. Additionally, Dr. Rosen was selected to lead the CRA Institute on RFP/RFQ Developer Negotiations in northern California for 2006 through 2008.

Dr. Rosen serves as financial, economic and development advisor to numerous cities and state agencies on long-term assignments. These include San Diego, the City of Los Angeles, Los Angeles County, Sacramento, Oakland, Oceanside, Vallejo, Pittsburg, Fremont, Rancho Cucamonga and Tustin, California; Phoenix and Maricopa County, Arizona; Taos, New Mexico; Washington State; the Federal Home Loan Bank of Atlanta, and many others. Assignments have included military base reuse, brownfield restoration, industrial park development, mixed use and affordable housing development, tax increment financing, asset management, community development loan securitization, small business lending, and extensive developer selection, negotiation, pricing, terms and conditions analysis for debt and equity investments in excess of \$1 billion. He is an acknowledged national expert in all forms of affordable housing finance for both renter and owner housing.

Dr. Rosen is a widely published author and nationally recognized speaker on affordable housing finance, development, land use and asset management.

### **Education**

Bachelor of Arts, Political Science, Columbia University, 1972

Doctor of Philosophy, Public Policy, Union Institute, 1983

## **5.2. Nora Lake-Brown, Principal I**

Ms. Lake-Brown, Principal of DRA's Irvine office, has over 30 years experience in the real estate market, economic, and financial feasibility analysis, fiscal impact assessment, and finance for local California government agencies and private developers. She has worked for more than 75 government agencies and 25 private developers statewide. She has served as financial consultant on more than \$3.5 billion of affordable and market-rate housing, commercial, industrial and mixed-use real estate transactions and financings.

Ms. Lake-Brown specializes in land value recapture, using residual land value analysis to quantify the land value increment associated with government action, such as rezoning, land use changes, and the provision of development incentives, so that a portion of the value can be recaptured for public benefit. She recently analyzed the effects of federal finance and tax policies on the feasibility of real estate development projects exhibiting key smart growth attributes.

Ms. Lake-Brown has assisted a number of cities with the preparation of residential market analysis, affordable housing needs assessments, affordability gap analyses and comprehensive housing strategies. She has analyzed inclusionary housing programs for local government, identifying mitigations that can partially offset the costs of compliance. Ms. Lake-Brown has created computerized financial models to quantify the affordability cost of inclusionary housing requirements and the economic value of potential



offsets and non-cash incentive measures.

Ms. Lake-Brown is acknowledged as one of the leading real estate economists dedicated to affordable housing development, transactions, finance and public policy working today. Ms. Lake-Brown's technical excellence, clear insight, and extensive track record in real estate and affordable housing development finance provide concise and expert analysis in an easily understandable format.

Ms. Lake-Brown served as a leading faculty of the California Redevelopment Association Affordable Housing and Developer Negotiation Institutes for six years. She's a frequent speaker at statewide conferences on redevelopment, land use planning, and affordable housing.

Ms. Lake-Brown has helped lead low income neighborhood revitalization efforts of nonprofit development corporations involving affordable housing for renters, owners, child care facilities and community centers alike.

Ms. Lake-Brown provides asset management, portfolio overview and analysis, and strategic, business and financial planning expertise to nonprofit enterprise organizations and public agencies active in the affordable housing development and finance enterprise. Ms. Lake-Brown served as the principal investigator on major California city inclusionary housing analyses, including Los Angeles, San Diego, San Jose and Long Beach. Ms. Lake-Brown directed the largest urban analysis of inclusionary housing analysis conducted to date in the United States for the City of Los Angeles.

## **Education**

B.A., Economics, With Honors, University of California, Santa Cruz, 1981

B.A., Environmental Studies, University of California, Santa Cruz, 1981

M.A., City and Regional Planning, Kennedy School of Government, Harvard University, 1983

## **5.3. David Saltzman, Principal II**

Mr. Saltzman, Principal II at DRA, has over 20 years of experience in the financing and development of market rate and low income multifamily rental housing and urban in-fill for-sale housing. He has worked as a housing developer for both for-profit and nonprofit development organizations; served as Deputy Commissioner of Housing for the City of Chicago, where he oversaw a variety of multifamily and single family housing finance programs; and, most recently, served as a senior executive at Alliant Capital, one of the nation's largest tax credit syndication firms.

His career has been characterized by a combination of extensive hands-on transactional experience as well as a track record in government program implementation and housing policy development. Over his career, Mr. Saltzman has participated in the financing and development of approximately 70 affordable multifamily developments with a combined total development cost in excess of \$1 billion.



Mr. Saltzman specializes in affordable housing transactions that employ complex, multilayered public and private financing. As Deputy Commissioner of the Chicago Department of Housing, he oversaw a variety of multifamily financing programs, including HOME, CDBG, tax increment financing, and multifamily mortgage revenue bonds. He also managed the Low Income Housing Tax Credit program on behalf the City, and oversaw Chicago's participation in the Mark-to-Market program. Mr. Saltzman oversaw Chicago's use of the CDBG and HOME programs for affordable housing.

Through his administration of these multifamily financing programs, he played a central role in the Chicago Housing Authority's ("CHA") public housing revitalization efforts. Mr. Saltzman helped craft the Capital Plan for CHA's 25,000 unit Plan for Transformation.

Mr. Saltzman's primary role was to structure customized financing approaches—reflecting the development issues facing each development—that maximized CHA financial leverage. Mr. Saltzman brings a highly sophisticated approach to development finance structure, negotiation, analysis, capital raising, execution and asset management. He was also responsible for negotiating loan documents, bond documents, partnership agreements, Regulatory and Operating Agreements, and other documents critical to the financial partners of the respective transactions.

Mr. Saltzman has gained extensive Low Income Housing Tax Credit experience by virtue of his role as a manager of the division of the Chicago Department of Housing that was responsible for allocating Low Income Housing Tax Credits, and in his role as Vice President of Alliant Capital, where he managed the lower and upper tier closings on approximately 35 transactions. Mr. Saltzman has also closed first mortgage loans using Alliant's Fannie Mae DUS loan program.

While at Alliant, Mr. Saltzman continued to participate in equity financing. He oversaw investments involving partners across the country, including the housing authorities of Dallas, Joliet, Port Arthur, Lake Charles, Houston, and Chicago.

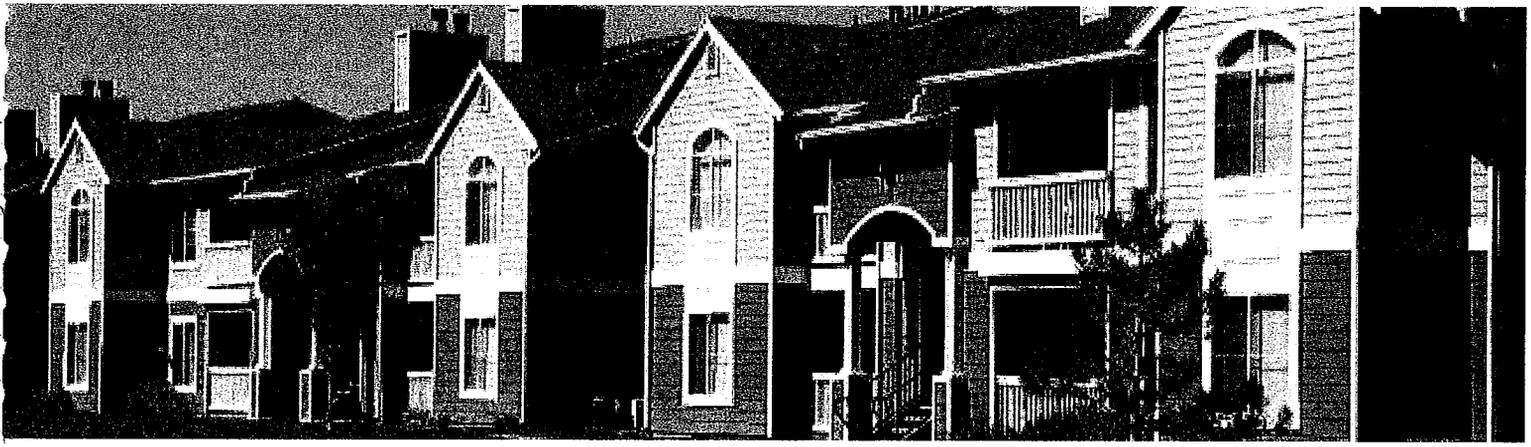
Mr. Saltzman played a critical role in DRA's policy research and analysis, reviewing \$7 trillion of federal finance programs for real estate investment and sustainable development, including tax, subsidy, loan guarantee and credit enhancement, grant and other forms of capital regulation. Mr. Saltzman is also expert in NSP, bank regulation for community reinvestment and development capital benefiting neighborhood revitalization.

Mr. Saltzman has played an integral role in DRA's federal finance policy project and on numerous energy efficiency and renewable energy (EERE) finance and development program assignments.

## **Education**

Bachelor of Arts, Public Policy, Duke University, 1982.

Masters of Management, Economic Development and Finance, J.L. Kellogg Graduate School of Management, Northwestern University, 1988.



## 6. References

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### **City of Oceanside, California, Housing and Neighborhood Services**

Needs assessment; comprehensive affordable housing strategy; financial advisory; development advisory; business, strategic and financial planning

Margery Pierce

Director

321 N. Nevada St

Oceanside, CA 92054

760-435-3377

mpierce@ci.oceanside.ca.us

### **Town of Taos, New Mexico**

Financial advisory; development advisory; policy analysis

Oscar Rodriguez

Town Manager

400 Camino de la Placita

Taos NM 87571

575-751-2002

orodriguez@taosgov.com

### **Town of Windsor, California**

Financial advisory; development advisory; business, strategic and financial planning; asset management; policy analysis; capital planning

Kevin Thompson

Associate Planner

9291 Old Redwood Hwy

Bldg 400

Windsor, CA 95492s

707-838-5339

kthompson@townofwindsor.com

**Draper City**  
**RFP TABULATION**  
 1020 E. Pioneer Road, Draper UT 84020  
 Phone (801) 576-6500

PROJECT NAME: Affordable Housing Needs Study

DATE OF OPENING:  
 TIME OF OPENING:

August 7, 2013  
 2:00 PM

No. *JB*

Proposer	ADDENDUM ACKNOWLEDGE	PROPOSAL RECEIVED
<i>Lewis, Young, Robertson &amp; Birmingham</i>	N/A	<i>4</i>
	N/A	
<i>Community Strategies Institute</i>	N/A	<i>4</i>
	N/A	
<i>Zions Public Finance</i>	N/A	<i>4</i>
	N/A	
<i>David Paul Rosen &amp; Assoc.</i>	N/A	<i>4</i>
	N/A	

Award Tabulation: David Paul Rosen & Associates.

Standard Form Authorization  
District Attorney No. 12-7145  
Reviewed 4/26/12

SALT LAKE COUNTY  
Contract No. BV03752C

**AMENDMENT NUMBER ONE**  
**ENDORSEMENT**

To Salt Lake County Contract #BV03752C for DRAPER CITY, extension of Period of Performance. The above request to extend the Period of Performance of the above contract is hereby granted and approved as requested, through December 31, 2013.

All Parts, Paragraphs, Attachments and other provisions of the Agreement and any prior amendments thereof not specifically modified by this amendment shall be the same and remain in full force and effect. If this Amendment is executed more recently than the expiration of the period of performance stated in the underlying agreement, then this Amendment shall relate back to and be effective from the last day of the previous period of performance. The parties acknowledge that substantial time may have elapsed since the expiration of the period of performance and hereby intend this Amendment to relate back as stated in the previous sentence.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be approved by its governing body or board and to be duly executed on the following dates:

SALT LAKE COUNTY: Dated this 7 day of July, 2013.

SALT LAKE COUNTY

SUBRECIPIENT:  
DRAPER CITY

By [Signature]  
Mayor or Designee

By \_\_\_\_\_  
\_\_\_\_\_  
(Printed name of signer)  
\_\_\_\_\_  
(Title)

Administrative Approval:  
Community Resources and  
Development Division

By: [Signature]  
Michael R. Gallegos, Director  
Date 7/2/13

Standard Form Authorization  
District Attorney No. 12-7145  
Reviewed 4/26/12

SALT LAKE COUNTY  
Contract No. BV03752C

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SALT LAKE COUNTY: Dated this 7<sup>th</sup> day of July, 2013.

SALT LAKE COUNTY

SUBRECIPIENT:  
DRAPER CITY

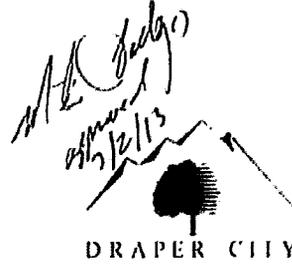
By \_\_\_\_\_  
Mayor or Designee

By [Signature]  
Samuel Deffen  
(Printed name of signer)  
City Manager  
(Title)

Administrative Approval:  
Community Resources and  
Development Division

By: [Signature]  
Michael R. Gallegos, Director  
Date 7/2/13

Darrell Smith, *Mayor*  
William Colbert, *Council Member*  
William Rappleye, *Council Member*  
Jeff Stenquist, *Council Member*  
Alan Summerhays, *Council Member*  
Troy Walker, *Council Member*



1020 East Pioneer Road Draper, Utah 84020  
Phone: (801) 576-6514 Fax: (801) 576-6389  
TTY 7-1-1

E-mail: [joe.bryant@draper.ut.us](mailto:joe.bryant@draper.ut.us) Website: [www.draper.ut.us](http://www.draper.ut.us)

*Mr. Mike Gallegos*  
*Community Development Director*  
*Salt Lake County Government*  
*Community Resources & Development Division*  
*2001 South State Street, Suite S2100*  
*PO Box 14575*  
*Salt Lake City, UT 84114-4575*

*Subject: BV03752C -Contract Extension Request for Affordable Housing Study*

*Dear Mike,*

*Draper City is requesting an extension of the CDBG contract that currently expires on June 30, 2013. Due to several administrative changes and a reduction in staff the City has not had the resources to go through a complete bid and award process. With the start of a new fiscal year the City will have the resources needed to go through a bid process, award and project completions of an Affordable Housing Study Plan by December 1, 2013. Therefore, the City is requesting an extension through December 31, 2013.*

*Thank you for your consideration on this matter. If approved, please forward contract amendment to my office for City approval and signature.*

*Thank You,*

A handwritten signature in black ink that reads "Joe Bryant". Below the signature, the name "Joe Bryant C.P.M." is printed in a smaller, sans-serif font.

City Treasurer / Purchasing Agent

CDFA # 14.218  
Standard Form Authorization  
District Attorney No. 11-5157  
Reviewed 5/4/11

SALT LAKE COUNTY  
Contract No. BV03752C

**GOVERNMENTAL/PUBLIC ENTITIES  
SUBRECIPIENT AGREEMENT FOR THE CONDUCT OF A  
COMMUNITY DEVELOPMENT PROJECT (OR PROJECTS)**

between  
**SALT LAKE COUNTY  
and  
DRAPER CITY**

**GENERAL PROVISIONS**

THIS SUBRECIPIENT AGREEMENT is entered into and shall be effective as of the 1<sup>st</sup> day of July, 2011, by and between Salt Lake County, a body corporate and politic of the State of Utah, (the "COUNTY"), and DRAPER CITY, a municipal corporation and politic of the State of Utah, 1020 East Pioneer Road, Draper, Utah, 84020, (the "SUBRECIPIENT"), DUNS Number: 158834507.

**RECITALS:**

A. Salt Lake County has entered into a grant agreement with the United States Department of Housing and Urban Development ("HUD") for financial assistance to conduct a Community Development Block Grant Program (the "CDBG Program") pursuant to Title I of the Housing and Community Development Act of 1974 (the "Act"), as amended, and the Rules and Regulations promulgated by HUD governing the conduct of Community Development Block Grant ("CDBG") programs, 24 Code of Federal Regulations ("CFR") Part 570, as amended, (the "Rules and Regulations");

B. As provided in the Rules and Regulations, the COUNTY is authorized to contract by subgrant agreement with public entities or private non-profit entities for qualified activities and projects; and

C. Under this subgrant agreement the SUBRECIPIENT will be a subrecipient of CDBG program funds from the COUNTY under the County's Urban-County CDBG Program.

THEREFORE, in consideration of the mutual promises, payments and other provisions hereof, the COUNTY and the SUBRECIPIENT agree as follows:

1. **Content of this Agreement.** This agreement consists of this Part "General Provisions," and the following listed Agreement Parts and Exhibits that are appended hereto:

- Attachment I - Statement of Work
- Attachment II - Budget

2. **Project Responsibility.** The COUNTY's Division of Community Resources and Development ("CRD") is hereby designated as the representative of the COUNTY regarding all CDBG Program matters and shall be responsible for the overall administration and management of that program and the manner in which the activities or projects described herein are conducted. The COUNTY will monitor the performance of the SUBRECIPIENT against goals and performance standards required in Attachment I - Statement of Work. Substandard performance as determined by the COUNTY will constitute non-compliance with the agreement. If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period of time after being notified by the COUNTY, suspension or termination procedures will be initiated which may result in withdrawal or termination of funding.
  
3. **Project(s) or Activities.** The activities or projects to be conducted hereunder are listed in the COUNTY's "Consolidated Plan" as submitted to HUD for CDBG Program Year 37 (2011-12), and are generally described as follows and referred to hereinafter as the "Project":

<u>PROJECT NUMBER</u>	<u>PROJECT TITLE</u>	<u>PROJECT TOTAL COSTS (\$)</u>
20.01DRPR37	AFFORDABLE HOUSING STUDY	\$24,665.00

The following activities will be administered by Salt Lake County on behalf of Draper City. Funds for these activities are not included in the total funding amount specified in Paragraph 7(A) and the work statements are detailed in the respective contracts.

01.02CNTY37	ASSIST, INC.	\$5,000.00
09.20CNTY37	THE ROAD HOME-Community Shelter	\$924.00
09.20CNTY37	THE ROAD HOME-Winter Shelter	\$1,092.00
09.25CNTY37	FAMILY SUPPORT CENTER	\$420.00
09.27CNTY37	SOUTH VALLEY SANCTUARY OPERATIONS	\$840.00
09.30CNTY37	LEGAL AID SOCIETY	\$2,004.00
09.54CNTY37	BIG BROTHERS BIG SISTERS	\$630.00
20.03CNTY37	COUNCIL OF GOVERNMENTS	\$3,825.00

4. **Statement of Work.** The SUBRECIPIENT shall perform or cause to be performed all work required for the Project(s) described generally in Paragraph 3 above and, in that performance, SUBRECIPIENT shall provide all personnel staffing and contracting, and provide all services and furnish all related real and personal property required. The Project(s) shall be performed in a manner satisfactory to CRD and in accordance with the provisions of this paragraph and with Attachment I appended to this agreement. Attachment I contains a more detailed statement of the work that is to be done on the Project(s) but it is not intended to strictly limit the scope of that work (see Attachment I and any Sub-attachments thereto). The SUBRECIPIENT certifies that the activities carried out with funds provided under this agreement will meet one of the CDBG

IN WITNESS WHEREOF, each of the parties has caused this agreement to be approved by its governing body or board and to be duly executed on the following dates:

SALT LAKE COUNTY: Dated this 20 day of Oct, 2011.

SALT LAKE COUNTY

By *Peter Corroon*  
Mayor Peter Corroon or Designee

STATE OF UTAH )  
 )  
 ) :SS  
COUNTY OF SALT LAKE )

On this 20 day of October, 2011, personally appeared before me *Linda Hamilton*, who being duly sworn, did say that (s)he is the *Chief Administrative Officer* of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

[SEAL]



*Karen R. Lowe*  
NOTARY PUBLIC  
Residing in Salt Lake County

ADMINISTRATIVE APPROVAL:  
Community Resources and Development

By *Michael R. Gallegos*  
Michael R. Gallegos, Director  
Date *2/19/11*

SUBRECIPIENT: Dated this 27<sup>th</sup> day of September, 2011.

SUBRECIPIENT:  
DRAPER CITY

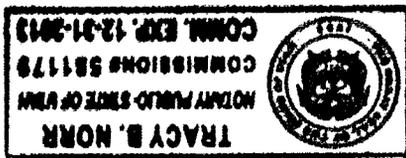
By *Darrell W. Smith*

Darrell W. Smith  
(Printed name of signer)

Mayor  
(Title)

STATE OF UTAH            )  
  :SS  
SALT LAKE COUNTY        )

On the 27<sup>th</sup> day of September, 2011 personally appeared before me  
Darrell W. Smith being duly sworn, did say that she/he is the  
Mayor of Draper City and that the within and foregoing  
instrument was signed for and in behalf of such entity.



*Tracy B. Norr*  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah



**ATTACHMENT I**  
to  
Salt Lake County Contract Number **BV03752C**

SUBRECIPIENT: DRAPER CITY  
PROJECT: AFFORDABLE HOUSING STUDY  
PROJECT NO.: 20.01DRPR37

**PROJECT STATEMENT OF WORK**

This attachment is a supplement to the general work statement contained in Paragraph 4 of this agreement. Therefore, in addition to the general work required to be done under that paragraph, which applies to all projects to be conducted under this agreement, the particular work to be performed for this Project is as follows:

**Eligibility and Reference:** 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities

**National Objective and Reference:** 570.208 (d)(4)

**IDIS Matrix Code:** 20 – Planning

**CPD Outcome Performance Measurement Information**

Objective: Suitable Living Environment

Outcome: Availability/Accessibility

**Activity Program:** CM15 – CDBG General Planning

**NATURE AND SCOPE OF PROJECT**

One of the issues facing Draper City is that the city does not have any identified census tract blocks which meet the Salt Lake County definition of low/mod income. Draper City is aware that, even though there are no census tracts that can have CDBG funds allocated, there still is a need in the community. The Affordable Housing Study will identify housing needs and programs, as well as provide Draper City with economic and demographic data for low/mod income families and individuals. The Affordable Housing Study will be utilized to develop programs and identify services to fully utilize CDBG allocations within Draper City.

**TIMETABLE:** Plan will be completed during the term of the contract.

**ATTACHMENT II**  
to  
Salt Lake County Contract Number **BV03752C**

SUBRECIPIENT: DRAPER CITY  
PROJECT: AFFORDABLE HOUSING STUDY  
PROJECT NO.: 20.01DRPR37

**PROJECT BUDGET**

I. Estimated Total Project Cost ..... \$24,665.00  
II. Budgeted CDBG Expenditures:  
    a. Affordable Housing Study and related expenses .....\$24,665.00  
  
**TOTAL CDBG EXPENDITURES: .....\$24,665.00**

In no case will reimbursement exceed subgrantee's actual costs. Subgrantee will maintain records necessary for justification and verification of such costs.

FINAL BILLINGS ARE DUE TO CRD WITHIN 30 DAYS OF THE COMPLETION OF THE PROJECT OR WITHIN 90 DAYS AFTER THE END OF THE PERIOD OF PERFORMANCE WHICHEVER IS EARLIER.

Return to Agenda

# ITEM #9

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Russell Fox</b>
<b>Date:</b>	<b>August 27, 2013</b>
<b>Subject:</b>	<b>Approve Ordinance 1059 adjusting the mutual city boundaries between Draper City and Lehi City.</b>
<b>Applicant Presentation:</b>	<b>n/a</b>
<b>Staff Presentation:</b>	<b>Russell Fox, Assistant City Manager</b>

## RECOMMENDATION:

Staff recommends the City Council approve Ordinance 1059 adjusting the mutual city boundaries between Draper City and Lehi City.

## BACKGROUND AND FINDINGS:

Micron has requested that Draper and Lehi consider adjusting their mutual boundaries to allow all of their property to be developed in Lehi. In addition, Dave Mast owns the "hatchet parcel" which would also need to be included in the boundary adjustment since the adjustment would create an island which is not permitted under the State Code. He has also requested the boundary adjustment. On July 16, 2013, the City Council adopted resolution 13-38 which was the first step in the process. The public hearing and adopting the ordinance are the final steps in the process. All noticing process outlined in Section 10-2-419 of the State Code have been met.

Lehi City will also be holding their public hearing at a later date to be determined.

## PREVIOUS LEGISLATIVE ACTION:

The City Council adopted Resolution 13-38 on July 16, 2013

## FISCAL IMPACT: Finance Review: \_\_\_\_\_

None

## SUPPORTING DOCUMENTS:

- Ordinance 1059
- Exhibit A, Map
- Exhibit B, Legal Descriptions
- Adopted Resolution 13-38

**ORDINANCE NO. 1059**

**AN ORDINANCE OF DRAPER CITY, UTAH ADJUSTING ITS RESPECTIVE COMMON BOUNDARIES BETWEEN DRAPER CITY AND LEHI CITY, UTAH.**

**WHEREAS**, Utah Code §10-2-419 establishes the procedure for adjustment of the common boundaries between adjacent municipalities; and

**WHEREAS** the City of Draper, Utah shares certain common boundaries with Lehi City, Utah; and

**WHEREAS**, the City of Draper and Lehi City have determined that it is in the best interest of both municipalities to adjust their common boundary to provide greater efficiency in municipal services and to accommodate the requests of Micron and other adjacent property owners to have their property completely located within Lehi City's boundaries; and

**WHEREAS**, the City of Draper and Lehi City desire to adjust their municipal boundaries as provided by State law by adding certain parcels to the municipal boundaries of Lehi City; and

**WHEREAS**, a Boundary Line Adjustment property descriptions that more fully describes the parcels has been prepared, which plat is attached as Exhibit A.

**NOW THEREFORE, BE IT RESOLVED BY THE DRAPER CITY COUNCIL THAT:**

**Section 1. Boundary Adjustment Enacted.** The City Council, in accordance with the terms of Utah Code § 10-2-419, finds that a boundary adjustment to its common boundaries with the City of Lehi is in the best interests of the residents of Draper City and is hereby approved and adopted as shown on the attached Exhibit A. The legal description of each parcel of land being transferred from the municipal jurisdiction of Draper City to the City of Lehi is attached as Exhibit B. The exhibits are hereby adopted by this reference and a part hereof.

**Section 2. Effective Date.** This Ordinance shall take effect immediately upon its passage.

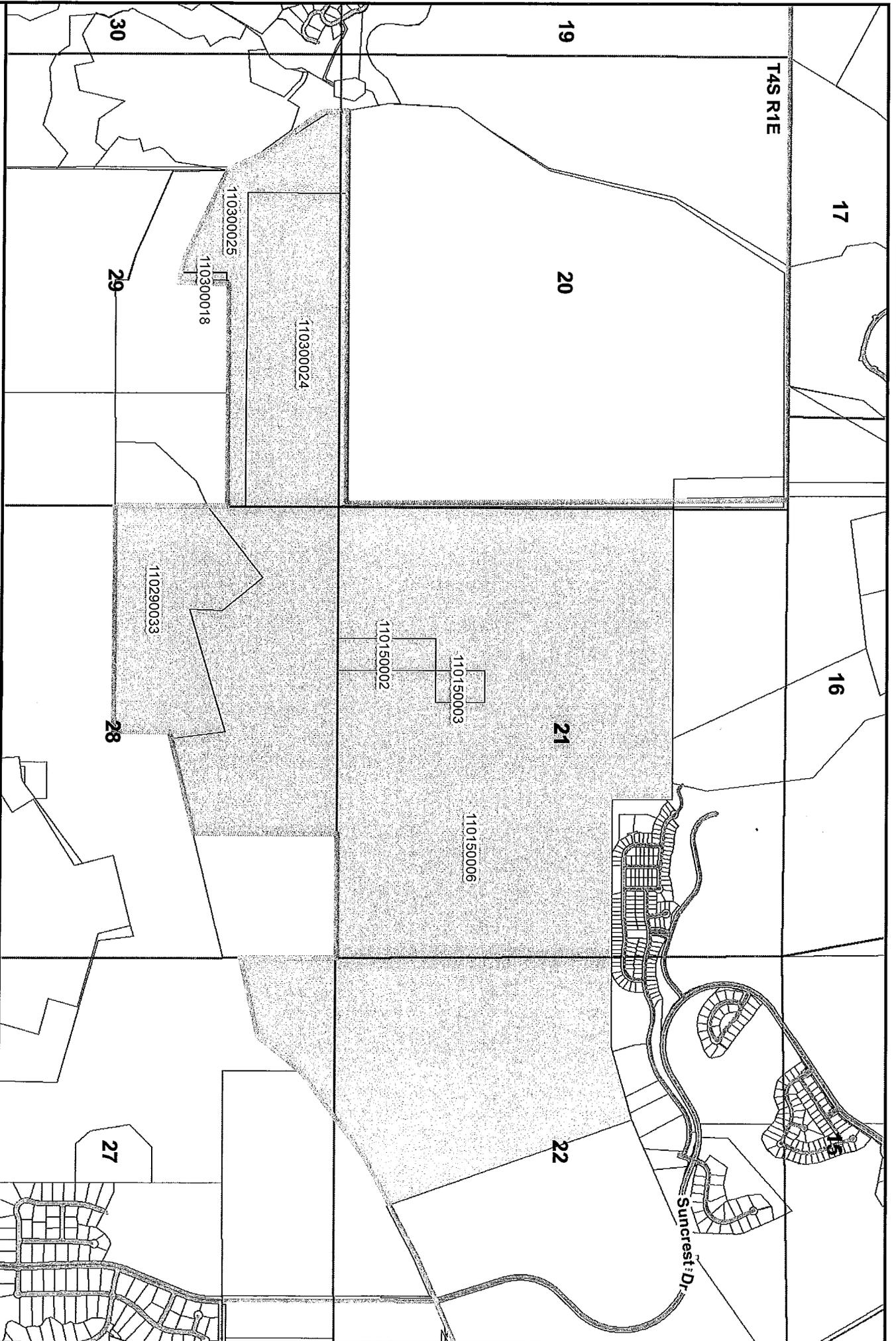
**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 27<sup>th</sup> DAY OF AUGUST, 2013.**

**ATTEST:**

**DRAPER CITY**

\_\_\_\_\_  
**Angie Olsen, CMC**  
**Deputy City Recorder**

\_\_\_\_\_  
**Darrell Smith**  
**Mayor**



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110150006

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Suncrest Dr

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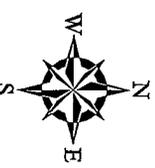
Draper City Boundary Prior to August 2013

Transferred to Lehi City per Ordinance 1059

Date: 8/20/2013

**Draper City and Lehi City Boundary Adjustment**

**Exhibit A**



**EXHIBIT B**  
**LEGAL DESCRIPTIONS**  
**FOR**  
**DRAPER/LEHI BOUNDARY LINE ADJUSTMENT**  
**MICRON TECHNOLOGY, INC.**

**PARCEL 1:**

COMMENCING AT A POINT 3015 FEET WEST AND 1170 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 585 FEET; THENCE WEST 375 FEET; THENCE SOUTH 585 FEET; THENCE EAST 375 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 5.036 ACRES

TAX PARCEL ID. NO. 110150003

**PARCEL 3:**

A PARCEL OF LAND LOCATED IN UTAH COUNTY, UTAH IN SECTIONS 21, 22, 27 AND 28, OF TOWNSHIP 4 SOUTH, RANGE 1 EAST, OF THE SALT LAKE BASE AND MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED ACCORDING TO THE FOLLOWING COURSES AND DISTANCES, TO WIT:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 89°51'24" WEST 1462.02 FEET ALONG THE SOUTH LINE OF SECTION 21; THENCE SOUTH 00°01'55" EAST 1697.38 FEET; THENCE SOUTH 76°05'04" WEST 1149.30 FEET; THENCE NORTH 07°25'48" WEST 648.21 FEET; THENCE SOUTH 73°37'22" WEST 1501.45 FEET; THENCE NORTH 02°49'01" EAST 378.35 FEET; THENCE NORTH 38°55'22" WEST 622.92 FEET; THENCE SOUTH 51°34'21" WEST 1034.94 FEET; THENCE SOUTH 64°16'59" WEST 35.44 FEET TO THE WEST LINE OF SECTION 28; THENCE NORTH 00°04'20" WEST 1560.11 FEET ALONG SAID WEST LINE OF SECTION 28; THENCE NORTH 01°19'21" WEST 3982.85 FEET ALONG THE WEST LINE OF SECTION 21; THENCE EAST 3540.31 FEET; THENCE SOUTH 715.98 FEET; THENCE EAST 2900.00 FEET; THENCE NORTH 73°57'00" EAST 899.58 FEET; THENCE SOUTH 19°19'47" EAST 3046.64 FEET; THENCE SOUTH 61°41'09" WEST 642.58 FEET; THENCE SOUTH 52°59'59" WEST 571.97 FEET TO A POINT ON THE SOUTH LINE OF SECTION 22; THENCE SOUTH 53°02'15" WEST 696.69 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27; THENCE SOUTH 38°15'13" WEST 646.00 FEET; THENCE SOUTH 77°12'44" WEST 946.52 FEET TO A POINT ON THE WEST LINE OF SECTION 27; THENCE NORTH 00°02'16" WEST 1131.78 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM SAID PARCEL 3 THE FOLLOWING DESCRIBED TWO PARCELS:

BEGINNING AT A POINT LOCATED NORTH 89°51'24" WEST 3765.00 FEET ALONG THE SOUTH LINE OF SECTION 21 FROM THE SECTION CORNER COMMON TO SECTIONS 21,22,27

AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 00°08'36" EAST 1170.00 FEET; THENCE SOUTH 89°51'24" EAST 375.00 FEET; THENCE SOUTH 00°08'36" WEST 1170.00 FEET TO THE SOUTH LINE OF SAID SECTION 21; THENCE NORTH 89°51'24" WEST 375.00 FEET ALONG SAID SOUTH LINE OF SECTION 21 TO THE POINT OF BEGINNING.

BEGINNING AT A POINT LOCATED NORTH 89°51'24" WEST 3387.07 FEET ALONG THE SOUTH LINE OF SECTION 21 AND NORTH 1170.00 FEET FROM THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89°51'24" EAST 375.00 FEET; THENCE NORTH 00°08'36" EAST 585.00 FEET; THENCE NORTH 89°51'24" WEST 375.00 FEET; THENCE SOUTH 00°08'36" WEST 585.00 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 795.875 ACRES

TAX PARCEL ID. NO. 110150006

**PARCEL 7:**

A PARCEL OF LAND LOCATED IN UTAH COUNTY, UTAH, AND BEING MORE PARTICULARLY DESCRIBED ACCORDING TO THE FOLLOWING COURSES AND DISTANCES, TO WIT:

COMENCING AT THE WEST 1/4 CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; NORTH 0°10'54" EAST 1103.89 FEET; NORTH 64°16'59" EAST 30.02 FEET; NORTH 51°34'21" EAST 1034.94 FEET; SOUTH 38°55'22" EAST 622.92 FEET; SOUTH 2°49'1" WEST 378.35 FEET; NORTH 73°37'22" EAST 1501.45 FEET; SOUTH 7°25'48" EAST 648.21 FEET; SOUTH 76°5'4" WEST 83.07 FEET; SOUTH 0°1'37" EAST 665.58 FEET; NORTH 89°50'30" WEST 2658.12 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 78.280 ACRES

TAX PARCEL ID. NO. 110290033

**ZIONS FIRST NATIONAL BANK PARCEL**

BEGINNING AT THE NORTHEAST CORNER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 0° 04' 20" EAST 1333.46 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE ALONG THE 1/16<sup>TH</sup> SECTION LINE SOUTH 89° 51' 57" WEST 2653.19 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29; THENCE SOUTH 00° 19' 35" EAST 592.11 FEET (SOUTH 572.88 FEET BY DEED); THENCE NORTH 72° 05' 00" WEST 316.80 FEET; THENCE NORTH 64° 12' 00" WEST 1094.28 FEET; THENCE NORTH 70° 40' 31" WEST 46.14 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29 (SAID POINT ALSO BEING DESCRIBED AS 59.12 CHAINS WEST OF THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE NORTH 25° 00' 00" WEST 452.10 FEET;

THENCE NORTH 33° 45' 00" WEST 520.08 FEET; THENCE NORTH 32° 15' 00" WEST 374.88 FEET; THENCE NORTH 01° 39' 16" E 252.91 FEET (NORTH 9° 15' WEST 262.68 FEET BY DEED) TO A POINT WHICH IS DESCRIBED AS 9.90 CHAINS EAST AND 1.14 CHAINS NORTH FROM THE SOUTHWEST CORNER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE EAST 4649.46 FEET (70.10 CHAINS BY DEED) TO THE APPARENT EAST LINE OF SECTION 20; THENCE SOUTH 01° 19' 02" EAST 69.26 FEET ALONG SAID APPARENT SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL:  
BEGINNING AT A POINT EAST 35.106 FEET FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE SOUTH 572.88 FEET; THENCE NORTH 72° 05' 00" WEST 99.73 FEET; THENCE NORTH 542.20 FEET; THENCE EAST 94.89 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THE FOLLOWING DESCRIBED AS FOLLOWS:  
COMMENCING EAST 35.106 FEET FROM THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE EAST 1284.894 FEET; THENCE SOUTH 8.68 CHAINS; THENCE NORTH 72° 05' WEST 4.80 CHAINS; THENCE NORTH 64° 12' WEST 1092.343 FEET TO BEGINNING. LESS THE WEST 1190 FEET.

TAX PARCEL IDS: 110300024 CONTAINING APPROX. 99.94 ACRES & 110300025 CONTAINING APPROX. 49.25 ACRES.

#### **C-LECT INVESTMENTS PROPERTY DESCRIPTION**

COMMENCING WEST 3765 FEET FROM THE SOUTHEAST CORNER OF SECTION 21, T4S, R1E, SLB&M.; THENCE NORTH 1170 FEET; THENCE EAST 375 FEET; THENCE SOUTH 1170 FEET; THENCE WEST 375 FEET TO THE POINT OF BEGINNING. AREA 10.072 AC.

TAX PARCEL ID: 110150002

#### **KAUFER PROPERTY DESCRIPTION**

COM N 3395.84 FT & W 2654.57 FT FR SE COR. SEC. 29, T4S, R1E, SLB&M.; N 72 DEG 5' 0" W 96.48 FT; N 0 DEG 19' 35" W 543.2 FT; S 89 DEG 59' 59" E 91.63 FT; S 0 DEG 19' 35" E 572.88 FT TO BEG. AREA 1.174 AC.

TAX PARCEL ID: 110300018

**RESOLUTION NO. 13-38**

**A RESOLUTION OF THE DRAPER CITY COUNCIL EXPRESSING THE INTENT TO ADJUST ITS COMMON BOUNDARIES WITH LEHI, UTAH; AUTHORIZING A PUBLIC HEARING THERETO; PROVIDING FOR NOTICE OF SAID HEARING; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Utah Code §10-2-419 establishes the procedure for adjustment of the common boundaries between adjacent municipalities; and

WHEREAS the City of Draper, Utah shares certain common boundaries with Lehi City, Utah; and

WHEREAS, the City of Draper and Lehi City have determined that it is in the best interest of both municipalities to adjust their common boundary to provide greater efficiency in municipal services and to accommodate the requests of Micron and other adjacent property owners to have their property completely located within Lehi City's boundaries; and

WHEREAS, the City of Draper and Lehi City desire to adjust their municipal boundaries as provided by State law by adding certain parcels to the municipal boundaries of Lehi City; and

WHEREAS, a Boundary Line Adjustment property descriptions that more fully describes the parcels has been prepared, which plat is attached as Exhibit A.

NOW THEREFORE, BE IT RESOLVED BY THE DRAPER CITY COUNCIL THAT:

1. The City Council, in accordance with the terms of Utah Code § 10-2-419, finds that a boundary adjustment to its common boundaries with the City of Lehi is in the best interests of the residents of Draper City. A map showing the location of the proposed adjustment area is attached as Exhibit A to this resolution. The legal description of the parcel of land to be transferred from the municipal jurisdiction of Draper City to the City of Lehi is attached as Exhibit B.
2. This resolution is passed indicating that the City Council desires and intends to adjust the common municipal boundaries with the City of Draper in the locations set forth in Exhibit A.
3. The City staff is directed to publish notice of the proposed boundary adjustment once a week for three successive weeks in a newspaper of general circulation within the City.
4. The notice shall state the date, time, and location of the public hearing, which is August 6, 2013, at approximately 7:00 p.m. at the City Council Chambers at 1020 East Pioneer Road, Draper, Utah.

5. The notice shall state that the City Council will adjust the boundaries unless, at or before the public hearing, written protests to the adjustment are filed by the owners of the private real property that:

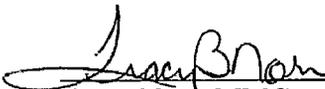
- A. Is located within the area proposed for adjustment; and
- B. Covers at least 25% of the private land area within the area proposed for adjustment; and
- C. Is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment.

6. The first publication of the notice shall be within 14 days of the City Council's adoption of this resolution.

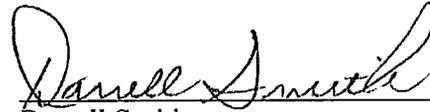
7. The provisions of this Resolution shall take effect immediately upon its passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 16<sup>th</sup> DAY OF JULY, 2013.**

ATTEST:

  
\_\_\_\_\_  
Tracy Norri, MMC  
City Recorder

DRAPER CITY

  
\_\_\_\_\_  
Darrell Smith  
Mayor



**EXHIBIT A**

**MICRON TECHNOLOGY, INC.**

**LEGAL DESCRIPTIONS**  
**FOR**  
**DRAPER/LEHI BOUNDARY LINE ADJUSTMENT**

**PARCEL 1:**

COMMENCING AT A POINT 3015 FEET WEST AND 1170 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 585 FEET; THENCE WEST 375 FEET; THENCE SOUTH 585 FEET; THENCE EAST 375 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 5.036 ACRES

TAX PARCEL ID. NO. 110150003

**PARCEL 3:**

A PARCEL OF LAND LOCATED IN UTAH COUNTY, UTAH IN SECTIONS 21, 22, 27 AND 28, OF TOWNSHIP 4 SOUTH, RANGE 1 EAST, OF THE SALT LAKE BASE AND MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED ACCORDING TO THE FOLLOWING COURSES AND DISTANCES, TO WIT:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 89°51'24" WEST 1462.02 FEET ALONG THE SOUTH LINE OF SECTION 21; THENCE SOUTH 00°01'55" EAST 1697.38 FEET; THENCE SOUTH 76°05'04" WEST 1149.30 FEET; THENCE NORTH 07°25'48" WEST 648.21 FEET; THENCE SOUTH 73°37'22" WEST 1501.45 FEET; THENCE NORTH 02°49'01" EAST 378.35 FEET; THENCE NORTH 38°55'22" WEST 622.92 FEET; THENCE SOUTH 51°34'21" WEST 1034.94 FEET; THENCE SOUTH 64°16'59" WEST 35.44 FEET TO THE WEST LINE OF SECTION 28; THENCE NORTH 00°04'20" WEST 1560.11 FEET ALONG SAID WEST LINE OF SECTION 28; THENCE NORTH 01°19'21" WEST 3982.85 FEET ALONG THE WEST LINE OF SECTION 21; THENCE EAST 3540.31 FEET; THENCE SOUTH 715.98 FEET; THENCE EAST 2900.00 FEET; THENCE NORTH 73°57'00" EAST 899.58 FEET; THENCE SOUTH 19°19'47" EAST 3046.64 FEET; THENCE SOUTH 61°41'09" WEST 642.58 FEET; THENCE SOUTH 52°59'59" WEST 571.97 FEET TO A POINT ON THE SOUTH LINE OF SECTION 22; THENCE SOUTH 53°02'15" WEST 696.69 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27; THENCE SOUTH 38°15'13" WEST 646.00 FEET; THENCE SOUTH 77°12'44" WEST 946.52 FEET TO A POINT ON THE WEST LINE OF SECTION 27; THENCE NORTH 00°02'16" WEST 1131.78 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM SAID PARCEL 3 THE FOLLOWING DESCRIBED TWO PARCELS:

BEGINNING AT A POINT LOCATED NORTH 89°51'24" WEST 3765.00 FEET ALONG THE SOUTH LINE OF SECTION 21 FROM THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND

RUNNING THENCE NORTH 00°08'36" EAST 1170.00 FEET; THENCE SOUTH 89°51'24" EAST 375.00 FEET; THENCE SOUTH 00°08'36" WEST 1170.00 FEET TO THE SOUTH LINE OF SAID SECTION 21; THENCE NORTH 89°51'24" WEST 375.00 FEET ALONG SAID SOUTH LINE OF SECTION 21 TO THE POINT OF BEGINNING.

BEGINNING AT A POINT LOCATED NORTH 89°51'24" WEST 3387.07 FEET ALONG THE SOUTH LINE OF SECTION 21 AND NORTH 1170.00 FEET FROM THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89°51'24" EAST 375.00 FEET; THENCE NORTH 00°08'36" EAST 585.00 FEET; THENCE NORTH 89°51'24" WEST 375.00 FEET; THENCE SOUTH 00°08'36" WEST 585.00 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 795.875 ACRES

TAX PARCEL ID. NO. 110150006

**PARCEL 7:**

A PARCEL OF LAND LOCATED IN UTAH COUNTY, UTAH, AND BEING MORE PARTICULARLY DESCRIBED ACCORDING TO THE FOLLOWING COURSES AND DISTANCES, TO WIT:

COMENCING AT THE WEST 1/4 CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; NORTH 0°10'54" EAST 1103.89 FEET; NORTH 64°16'59" EAST 30.02 FEET; NORTH 51°34'21" EAST 1034.94 FEET; SOUTH 38°55'22" EAST 622.92 FEET; SOUTH 2°49'1" WEST 378.35 FEET; NORTH 73°37'22" EAST 1501.45 FEET; SOUTH 7°25'48" EAST 648.21 FEET; SOUTH 76°5'4" WEST 83.07 FEET; SOUTH 0°1'37" EAST 665.58 FEET; NORTH 89°50'30" WEST 2658.12 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 78.280 ACRES

TAX PARCEL ID. NO. 110290033

**ZIONS FIRST NATIONAL BANK PARCEL**

BEGINNING AT THE NORTHEAST CORNER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 0° 04' 20" EAST 1333.46 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE ALONG THE 1/16<sup>TH</sup> SECTION LINE SOUTH 89° 51' 57" WEST 2653.19 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29; THENCE SOUTH 00° 19' 35" EAST 592.11 FEET (SOUTH 572.88 FEET BY DEED); THENCE NORTH 72° 05' 00" WEST 316.80 FEET; THENCE NORTH 64° 12' 00" WEST 1094.28 FEET; THENCE NORTH 70° 40' 31" WEST 46.14 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29 (SAID POINT ALSO BEING DESCRIBED AS 59.12 CHAINS WEST OF THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE NORTH 25° 00' 00" WEST 452.10 FEET;

THENCE NORTH 33° 45' 00" WEST 520.08 FEET; THENCE NORTH 32° 15' 00" WEST 374.88 FEET; THENCE NORTH 01° 39' 16" E 252.91 FEET (NORTH 9° 15' WEST 262.68 FEET BY DEED) TO A POINT WHICH IS DESCRIBED AS 9.90 CHAINS EAST AND 1.14 CHAINS NORTH FROM THE SOUTHWEST CORNER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE EAST 4649.46 FEET (70.10 CHAINS BY DEED) TO THE APPARENT EAST LINE OF SECTION 20; THENCE SOUTH 01° 19' 02" EAST 69.26 FEET ALONG SAID APPARENT SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL:  
BEGINNING AT A POINT EAST 35.106 FEET FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE SOUTH 572.88 FEET; THENCE NORTH 72° 05' 00" WEST 99.73 FEET; THENCE NORTH 542.20 FEET; THENCE EAST 94.89 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THE FOLLOWING DESCRIBED AS FOLLOWS:  
COMMENCING EAST 35.106 FEET FROM THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE EAST 1284.894 FEET; THENCE SOUTH 8.68 CHAINS; THENCE NORTH 72° 05' WEST 4.80 CHAINS; THENCE NORTH 64° 12' WEST 1092.343 FEET TO BEGINNING. LESS THE WEST 1190 FEET.

TAX PARCEL IDS: 110300024 & 110300025

#### **C-LECT INVESTMENTS PROPERTY DESCRIPTION**

COMMENCING WEST 3765 FEET FROM THE SOUTHEAST CORNER OF SECTION 21, T4S, R1E, SLB&M.; THENCE NORTH 1170 FEET; THENCE EAST 375 FEET; THENCE SOUTH 1170 FEET; THENCE WEST 375 FEET TO THE POINT OF BEGINNING. AREA 10.072 AC.

TAX PARCEL ID: 110150002