

CEDAR CITY

10 NORTH MAIN • CEDAR CITY, UTAH 84720
435-586-2950 • FAX: 435-586-4362
www.cedarcity.org

CITY COUNCIL WORK MEETING SEPTEMBER 4, 2013

Mayor
Joe Burgess

Council Members
Ronald R. Adams
Nina R. Barnes
John Black
Paul Cozzens
Don Marchant

City Manager
Rick B. Holman

The City Council will hold a work meeting on Wednesday, September 4, 2013, immediately following the MBA meeting, in the Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah. The agenda will consist of the following items:

I. Call to Order

II. Business Agenda
Public

1. Consideration and adoption of a Resolution authorizing an annually renewable Lease, a Master Resolution, Security Documents and the issuance and sale by the Authority of its Municipal Building Authority of Cedar City, Iron County, Utah Lease Revenue Bond, Series 2013 to finance the cost of acquiring equipment and accessories appurtenant to the City's public safety facilities and the operation thereof; calling of a public hearing to receive input with respect to the issuance of Lease Revenue Bonds and any impact to the private sector from the construction of the Facility to be funded by the Bonds; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated
2. Consider a Single Event Permit for a horseshoe tournament at the Elks Lodge on September 21st – Candace Howes, Cedar City Elks

Staff

3. Consider a lease with the State of Utah, Division of Child and Family Services for the use of Festival Hall – Jason Clark
4. Consider a land lease agreement with YETI - Paul Bittmenn
5. Consider a property lease agreement with Friends of Festival Country K9's - Paul Bittmenn
6. Consider an Ordinance repealing Chapters 1A, 12, 13, 16 and 28 of the Ordinances of Cedar City, Utah – Rick Holman

Dated this 3rd day of September, 2013.

Renon Savage, CMC
City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 3rd day of September, 2013.

Renon Savage, CMC
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.

Cedar City, Utah

September 4, 2013

The City Council ("Governing Body") of Cedar City, Iron County, Utah (the "City"), met in regular public session on September 4, 2013, at the City Offices, 10 North Main Street, Cedar City, Utah, at 5:30 o'clock p.m., Utah time, due, legal and timely notice of the meeting having been given to all councilmembers as required by law and the rules of the City Council. The meeting was called to order by the Mayor. On roll call, the following Councilmembers, constituting a quorum, were present:

Joe Burgess	Mayor
Ronald Adams	Councilmember
Nina Barnes	Councilmember
John Black	Councilmember
Donald Marchant	Councilmember
Paul Cozzens	Councilmember

Also Present:

Renon Savage	City Recorder
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Absent:

_____	_____
_____	_____

After the minutes of the preceding meeting had been read and approved, the City Recorder presented to the Council an affidavit evidencing the giving of not less than twenty-four (24) hours public notice of the agenda, date, time and place of the September 4, 2013, meeting of the Council in compliance with the requirements of Section 52-4-202(1), Utah Code Annotated 1953, as amended, by (1) posting written notice of the meeting at the principal office of the City Council, and (2) providing notice to at least one newspaper of general circulation within the geographic jurisdiction of Cedar City, Iron County, Utah (the "City") or to a local media correspondent. The affidavit was ordered recorded in the minutes of the meeting and is as follows:

STATE OF UTAH)
 :
COUNTY OF IRON)

I, RENON SAVAGE, the duly qualified and acting City Recorder of Cedar City, Utah, do hereby certify, according to the records of the Council in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 54-4-202(1), Utah Code Annotated 1953, as amended, I gave not less than twenty-four (24) hours' public notice of the agenda, date, time and place of the September 4, 2013 regular public meeting held by the Council by:

(a) causing a Notice of Public Meeting to be posted at the principal office of Cedar City on September 3, 2013, at least twenty-four (24) hours before the convening of the meeting, in the form attached hereto as Exhibit A; said Notice of Public Meeting having continuously remained so posted and available for public inspection during the regular office hours of the City until the convening of the meeting; and

(b) causing a copy of the Notice of Public Meeting in the form attached hereto as Exhibit A to be provided on September 3, 2013, at least twenty-four (24) hours before the convening of the meeting, to the Spectrum, a newspaper of general circulation within the geographic jurisdiction of Cedar City, Utah, and to any other local media correspondent, newspaper, radio station or television station which has requested notification of meetings of the Council.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of Cedar City, Utah, this 4th day of September, 2013.

City Recorder

[SEAL]

EXHIBIT A

[Attach Notice of Public Meeting Here]

**NOTICE AND AGENDA OF MEETING OF THE
MAYOR AND CITY COUNCIL OF CEDAR CITY,
IRON COUNTY, STATE OF UTAH**

PUBLIC NOTICE IS HEREBY GIVEN that the Mayor and City Council of Cedar City, Iron County, State of Utah, will hold a regular meeting at the City Offices at 10 North Main Street, Cedar City, Utah, on Wednesday, the 4th day of September, 2013, at the hour of 5:30 o'clock p.m.

The agenda for the meeting consists, in part and in addition to the matters listed in the regular or any other agenda, of the following:

- (1) Consideration and adoption of a Resolution authorizing an annually renewable Lease, a Master Resolution, Security Documents and the issuance and sale by the Authority of its Municipal Building Authority of Cedar City, Iron County, Utah Lease Revenue Bond, Series 2013 to finance the cost of acquiring fire trucks and related public safety equipment; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated; and
- (2) Any other business that may come before said meeting.

DATED this 3rd day of September, 2013.

CEDAR CITY

By _____
City Recorder

After the conduct of other business, the following resolution was introduced in written form by the Mayor, was read in full and, pursuant to motion made by Councilmember _____ and seconded by Councilmember _____, was adopted by the following vote:

AYE: Ronald Adams
Nina Barnes
John Black
Donald Marchant
Paul Cozzens

Nay: None.

This Resolution was thereupon signed by the Mayor, was attested and countersigned by the City Recorder and was ordered recorded in the official record of the City.

The Resolution is as follows:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF CEDAR CITY, IRON COUNTY, UTAH AUTHORIZING AND APPROVING THE EXECUTION OF AN ANNUALLY RENEWABLE LEASE AGREEMENT BY AND BETWEEN THE CITY AND THE MUNICIPAL BUILDING AUTHORITY OF CEDAR CITY, IRON COUNTY, UTAH (THE "AUTHORITY"); AUTHORIZING THE ISSUANCE AND SALE BY THE AUTHORITY OF ITS LEASE REVENUE BONDS, SERIES 2013; AUTHORIZING THE EXECUTION OF A MASTER RESOLUTION, SECURITY DOCUMENTS, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING THE FINANCING OF THE COST OF ACQUIRING FIRE TRUCKS AND RELATED PUBLIC SAFETY EQUIPMENT; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND RELATED MATTERS.

WHEREAS, Cedar City, Iron County, Utah (the "City") is a political subdivision and politic duly and regularly created, established, organized and existing under and by virtue of the Constitution and laws of the State of Utah; and

WHEREAS, the City has previously authorized and directed the creation of the Municipal Building Authority of Cedar City (the "Authority") pursuant to the provisions of a Resolution adopted on April 1, 1987 (the "Creating Resolution"); and

WHEREAS, pursuant to the direction of the Mayor and City Council contained in the Creating Resolution, the Authority has been duly and regularly created, established, and is

organized and existing as a nonprofit corporation under and by virtue of the provisions of the Constitution and laws of the State of Utah, including, in particular, the provisions of the Utah Revised Nonprofit Corporation Act, Title 16, Chapter 6a, Utah Code Annotated 1953, as amended, and the Utah Local Building Authority Act, Title 17D, Chapter 2, Utah Code Annotated 1953, as amended (collectively, the “Act”); and

WHEREAS, under the Articles of Incorporation of the Authority (the “Articles”), the objects and purposes for which the Authority has been founded and incorporated are to acquire, improve or extend one or more projects and to finance their costs on behalf of the City in accordance with the procedures and subject to the limitations of the Act in order to accomplish the public purpose for which the City exists; and

WHEREAS, the City desires to lease, as lessee on an annually renewable basis, fire trucks and related public safety equipment; and

WHEREAS, the Authority desires to lease the Equipment, as lessor, on an annually renewable basis, to the City as lessee; and

WHEREAS, the Equipment is to be leased to the City, as lessee, on an annually renewable basis by the Authority, as lessor, pursuant to the terms and provisions of that certain Lease Agreement, in substantially the form presented to this meeting and attached hereto as Exhibit “A” (the “Lease”) and herein authorized and approved; and

WHEREAS, the Authority proposes to finance the costs of acquiring the Equipment, by means of the issuance of its Lease Revenue Bonds, Series 2013 in the principal amount of not to exceed \$1,500,000 (the “Bonds”) to be issued pursuant to the terms and provisions of a Master Resolution (the “Master Resolution”), in substantially the form presented to this meeting and attached hereto as Exhibit “B” and herein authorized and approved; and

WHEREAS, the Authority proposes to issue the Bonds pursuant to the Master Resolution, and to secure its payment obligations under the Bonds by executing a Security Agreement and financing statements with respect to the Project in substantially the forms presented to this meeting and attached hereto as Exhibit “C” (the “Security Documents”) for the benefit of the holders of the Bonds; and

WHEREAS, the Bonds shall be payable solely from the rents, revenues and other income derived by the Authority from the leasing of the Equipment to the City on an annually renewable basis, and shall not constitute or give rise to an obligation or liability of the City or constitute a charge against its general credit or taxing power; and

WHEREAS, the City desires to improve and promote the local health and general welfare of the citizens of the City by entering into the Lease; and

WHEREAS, the State of Utah Permanent Community Impact Fund Board (the “Purchaser”) has offered to purchase the Bonds and the Authority desires to sell the Bonds; and

WHEREAS, under the Articles, the Authority may not exercise any of its powers without prior authorization by the governing body of the City and, therefore, it is necessary that the City authorize certain actions by the Authority in connection with the transactions contemplated by the Lease, the Master Resolution, the Bonds and the Security Documents; and

WHEREAS, the Mayor and other officials of the City have presented the Lease, the Master Resolution, and Security Documents to the City Council for the purpose of obtaining the approval of the City Council of the terms and provisions thereof and for the purpose of confirming the execution thereof as the official act of the City Council; and

WHEREAS, in order to allow for flexibility in setting the financial terms of the Bonds once costs of the Project are finally determined and to optimize debt service costs to the Authority, the City Council desires to grant to the President of the Authority, in accordance with state law, the authority to approve the interest rates, principal amounts, terms maturities, redemption features and purchase price at which the Bonds shall be sold and any changes with this Resolution, provided that such terms do not exceed the parameters set forth for such terms in Section 5 of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CEDAR CITY, IRON COUNTY, UTAH AS FOLLOWS:

Section 1. All action heretofore taken (not inconsistent with the provisions of this Resolution or the Creating Resolution) by the City Council and by the officers of the City directed toward the creation and establishment of the Authority and the leasing of the Equipment by the City are hereby ratified, approved and confirmed.

Section 2. The City Council finds and determines, pursuant to the Constitution and laws of the State of Utah, that the leasing of the Equipment under the terms and provisions and for the purposes set forth in the Lease and other documents, instruments and conveyances hereinafter approved and authorized, is necessary, convenient and in furtherance of the governmental and proprietary purposes of the City and is in the best interest of the citizens of the City, the leasing of the Equipment to the City by the Authority in the manner provided in the Lease, and the delivery of the Security Documents.

Section 3. The Lease, in the form presented to this meeting and attached hereto as Exhibit "A", is in all respects approved, authorized and confirmed and the Mayor is authorized to approve the final terms thereof and to execute and deliver the Lease in the form and with substantially the same content as set forth in Exhibit "A" for and on behalf of the City. The appropriate officials of the Authority are authorized to approve the final terms and to execute the Lease on behalf of the Authority in the form and with substantially the same content as set forth in Exhibit "A" for and on behalf of the Authority.

Section 4. The appropriate officials of the Authority are authorized to execute and deliver the Master Resolution in the form and with substantially the same content as set forth in Exhibit "B", for and on behalf of the Authority.

Section 5. The Authority is authorized to issue the Bonds in the aggregate principal amount of not to exceed \$1,500,000. The Bonds shall be dated, shall bear interest, shall be issued as fully registered bonds, and shall mature as provided in the Master Resolution.

The President and Mayor of the Authority is hereby authorized on behalf of the Authority, to award the sale of the Bonds to the Purchaser.

The form, terms and provisions of the Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Master Resolution in the form to be executed by the Authority. The Bonds shall mature prior to the expiration of the estimated useful life of the Equipment. The President of the Authority is hereby authorized to execute the Bonds, to place thereon the seal of the Authority and to deliver the Bonds to the Purchaser. The Secretary of the Governing Board of the Authority is authorized to attest to the signature of the President and affix the seal of the Authority to the Bonds and to authenticate the Bonds. The signatures of the President and the Secretary of the Governing Board of the Authority may be by facsimile or manual execution.

Section 6. The appropriate officers of the Authority are authorized to take all action necessary or reasonably required to carry out, give effect to and consummate the transaction as contemplated hereby, including, without limitation, the execution and delivery of any closing documents required to be delivered in connection with the sale and delivery of the Bonds.

Section 7. Upon their issuance, the Bonds will constitute regular limited obligations of the Authority payable solely from and to the extent of the sources set forth in the Bonds and the Master Resolution. No provision of this resolution, the Lease, the Master Resolution, the Security Documents, the Bonds, or any other instrument, shall be construed as creating a general obligation of the City, or as incurring or creating a charge upon the general credit of the Authority or of creating a general obligation of the City or against its taxing powers. The City shall have no power to pay out of its funds, revenues, or accounts, or otherwise contribute any part of the cost of making any payment in respect of the Bonds, except in connection with the payment of the Base Rentals, Additional Rentals, and Purchase Option Price, pursuant to the Lease (as those terms are defined in the Lease), which may be terminated by the City on any annual renewal date thereof in accordance with the provisions of such Lease.

Section 8. The Mayor is hereby authorized to make any alterations, changes or additions in the Lease herein approved and authorized necessary to correct errors or omissions therein, to remove ambiguities therefrom, or to conform the same to other provisions of such instruments, to the provisions of this Resolution or the provisions of the laws of the State of Utah or the United States.

Section 9. The appropriate officials of the Authority are authorized to make any alterations, changes or additions in the Lease, the Master Resolution and the Security Documents herein authorized and approved which may be necessary which may be necessary to correct errors or omissions therein, to remove ambiguities therefrom, to conform the same to other provisions of said instruments, to the provisions of this Resolution, the City Resolution, the

Creating Resolution or any resolution adopted by the City or the Authority, or the provisions of the laws of the State of Utah or the United States.

Section 10. If any provisions of this Resolution (including the exhibits attached hereto) should be held invalid, the invalidity of such provisions shall not affect any of the other provisions of this Resolution or the exhibits.

Section 11. The City Recorder of the City is hereby authorized to attest to all signatures and acts of any proper official of the City, and to place the seal of the City Recorder on the Lease. The Mayor and other proper officials of the City and each of them, are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized.

Section 12. The Secretary of the Authority is hereby authorized to attest to all signatures and acts of any proper official of the Authority, and to place the seal of the Authority on the Lease, the Master Resolution, the Security Documents, the Bonds, and any other documents authorized, necessary or proper pursuant to this Resolution or any resolution of the Authority. The appropriate officials of the Authority, and each of them, are hereby authorized to execute and deliver for and on behalf of the Authority any and all additional certificates, documents and other papers to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and any resolution of the Authority.

Section 13. All regulations, orders and resolutions of the City or parts thereof inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any regulation, order, resolution or ordinance or part thereof.

Section 14. This Resolution shall become effective immediately upon adoption by the City Council.

PASSED AND APPROVED this 4th day of September, 2013.

CEDAR CITY

By _____
Mayor

ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

After the conduct of other business not pertinent to the foregoing, it was moved and carried that the City Council adjourn.

CEDAR CITY

By _____
Mayor

ATTEST:

By _____
City Recorder

[SEAL]

STATE OF UTAH)
 : ss.
COUNTY OF IRON)

I, RENON SAVAGE, hereby certify that I am the duly appointed, qualified and acting City Recorder of Cedar City, Iron County, Utah;

I further certify that the above and foregoing instrument constitutes a true and correct copy of the minutes of a Regular Meeting of the Governing Body of said City, including a Resolution adopted at said meeting held on September 4, 2013, as said minutes and Resolution are officially of record in my possession, and that a copy of the said Resolution was deposited in my office on September 4, 2013;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Cedar City, Iron County, Utah, this 4th day of September, 2013.

City Recorder

(SEAL)

EXHIBIT "A"

LEASE

[See Transcript Document No. ____]

EXHIBIT "B"

MASTER RESOLUTION

[See Transcript Document No. ____]

EXHIBIT "C"

SECURITY DOCUMENTS

[See Transcript Document No. ____]

CEDAR CITY CORPORATION

SINGLE EVENT PERMIT APPLICATION

APPLICANT: Please spell out the information requested below. A \$50.00 fee is due and payable at the time of submitting the application. (Said fee is refundable if a permit is not granted.)

SECTION I

NAME: Cedar City ELKS Lodge

ADDRESS: 111 E 200 N

PHONE NUMBER: (435) 586-8332 NAME OF ENTITY:

PURPOSE OF ENTITY: Horseshoe Tournament

TYPE OF EVENT:

CASH OR SURETY BOND FOR \$1,000

TIME AND DATE OF EVENT: Sept 21 12:00 - 8:00

NATURE AND PURPOSE OF EVENT: Raise money to buy shoes for children

SECTION II

DESCRIBE THE FLOOR PLAN DESIGNATING:

(A) THE AREA IN WHICH THE APPLICANT PROPOSES THAT BEER BE STORED:

Patio on lodge

(B) THE SITE FROM WHICH THE APPLICANT PROPOSES THAT BEER BE SOLD

OR SERVED: Patio and North East corner of: property

(C) THE AREA IN WHICH THE APPLICANT PROPOSES THAT THE BEER BE ALLOWED TO BE CONSUMED: North East corner of lot.

SECTION III

WE HEREBY CONSENT TO CITY OFFICIALS HAVING THE UNRESTRICTED RIGHT TO ENTER THE PREMISES TO ENTER THE EVENT FOR PURPOSES OF ENFORCEMENT.

DATE: 8/23/2013

SIGNATURE:

Candace Howes
APPLICANT

I HEREBY VERIFY THAT I AM AUTHORIZED TO ACT ON BEHALF OF SAID ASSOCIATION OR ORGANIZATION.

DATED this 23 day of August, 2013.

APPLICANT:

Candace Howes
Its: Bar Manager

THIS SECTION IS TO BE FILLED OUT BY CITY

APPLICATION HAS BEEN REVIEWED BY THE CEDAR CITY POLICE DEPARTMENT, AND ITS RECOMMENDATION IS AS FOLLOWS: Allow with same procedures in place as previous years.

DATE: 27 August 2013

SIGNATURE:

[Signature]

COUNCIL APPROVAL _____

**CEDAR CITY COUNCIL
AGENDA ITEM 3**

INFORMATION SHEET

TO: Mayor and City Council

FROM: Jason Clark, Heritage Theater / Festival Hall

DATE: 9/4/13

SUBJECT: State contract with DCFS

DISCUSSION: The State of Utah has combined the local and regional offices of the Department of Children and Family Services into one location at 106 N. 100 E. A result of this move is the loss of all conference and training rooms. Due to our facilities' convenient location the state has approached the city for use of Festival Hall. To simplify budgeting, booking and billing the state has requested to enter into a contract with the city based upon their projected use and our established rates.

**STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**

LEASE AGREEMENT

Contract No. _____

THIS LEASE AGREEMENT is made and entered into by and between the **CEDAR CITY CORP** whose principal place of business is 10 North Main Street, Cedar City, Utah, hereinafter called "LANDLORD," and the **STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**, hereinafter called "TENANT," whose principal place of business is State Office Building, Suite 4110, Salt Lake City, Utah, for and in behalf of the Department of Human Services, Division of Child and Family Services.

W I T N E S E T H

THAT WHEREAS, TENANT has requested to lease conference rooms from LANDLORD for holding meetings and training in the Heritage Center/Festival Hall.

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1. LEASED PREMISES

1.1 LANDLORD does hereby lease unto TENANT approximately 120 hours per month of conference rooms located in the Heritage Center/Festival Hall, Cedar City, Utah. Rent is based upon four (4) hour "blocks" of time. 120 hours divided by 4 = 30 "blocks" of time. Two thirds (2/3) of the blocks will be in small conference rooms at \$25.00/block x 20 meetings = \$450.00/month and one third (1/3) of the meetings will be in larger conference rooms at \$45.00 to \$65.00 per meeting for an average of \$55.00 per month x 10 meetings = \$550.00 per month. \$450.00 + \$550.00 = \$1,000.00 per month.

1.2 TENANT agrees to pay as additional rent, special equipment rentals and room(s) set up above the normal conference rooms set ups.

SECTION 2. TERM OF LEASE

2.1 The initial term of this Lease Agreement shall be for a period of one year (1) year which term shall commence on September 1, 2013, and shall expire on August 31, 2014. This Lease Agreement may be terminated by either party upon ninety (90) days prior written notice to the other party.

SECTION 3. OPTION TO RENEW

3.1 At the expiration of the initial Lease term, LANDLORD AND TENANT shall review the number of meetings and hours actually used and if mutually agreeable, shall extend the lease for another year under the same terms and conditions, except as to the annual rentals, which rentals shall be determined by the review of the first year's use of the conference rooms and by negotiations between the parties.

SECTION 4. CONSIDERATION

4.1 LANDLORD is hereby leasing the conference room space herein described to TENANT at a cost of \$1,000.00 per month.

SECTION 5. REPRESENTATIONS

5.1 LANDLORD represents that it is the lawful owner or lawful representative of the owners of the Leased Premises and that it has the right to lease the same as herein provided and does hereby guarantee quiet and peaceable enjoyment of the Leased Premises to TENANT.

SECTION 6. TENANT IMPROVEMENTS

6.1 TENANT shall not make improvements, additions or alterations to the Leased Premises without having first obtained written approval from LANDLORD.

SECTION 7. LANDLORD RESPONSIBILITIES

7.1 LANDLORD agrees to pay for all maintenance, utilities, janitorial services, taxes, and insurance during the term hereof and other expenses.

SECTION 8. TENANT RESPONSIBILITIES

8.1 TENANT shall be responsible for the general cleanup of the conference rooms after each use. This does not include the regular janitorial services of cleaning and vacuuming.

8.2 TENANT shall provide the LANDLORD a week before the beginning of each month, a monthly schedule of meetings required in the conference rooms and the size of the room requested. The LANDLORD will respond within two (2) business days of the request with approval or denial of the request if all the conference rooms are booked by other organizations, or in the LANDLORD's sole consideration the proposed use of the conference room would interfere with a prior booking in the building. The LANDLORD will make every effort to accommodate the TENANT's requests for conference rooms and if necessary put the TENANT in conference rooms of a different size than requested.

SECTION 9. TAXES AND INSURANCE

9.1 LANDLORD shall pay and bear all costs of real property taxes, personal property taxes, and all other taxes assessed against the Leased Premises. LANDLORD acknowledges that TENANT (the State Of Utah) is exempt from real and personal property taxes. LANDLORD further agrees to keep all of its improvements on the Leased Premises fully insured to protect the same from loss or damage by fire, vandalism and malicious mischief at all times during the term of this Lease Agreement.

SECTION 10. REPAIR AND MAINTENANCE

10.1 All repairs and maintenance of LANDLORD owned improvements on the Leased Premises shall be made at the sole cost and expense of LANDLORD, except for damages caused by the misuse of the premises by the TENANT.

SECTION 11. USE OF PREMISES

11.1 TENANT shall not, at any time, use or occupy or permit the Leased Premises to be used or occupied in any manner which would in any way violate any Certificate of Occupancy issued for the Leased Premises, and shall not use or permit the Leased Premises to be used or occupied in whole or in part in a manner which may violate the laws, orders, ordinances, rules, regulations, or requirements of any department of federal or state government, or city governments as specifically allowed by State law.

SECTION 12. TENANT'S PERSONAL PROPERTY & FIXTURES

12.1 All personal property and fixtures placed in or upon the Leased Premises by TENANT shall not become part of the Leased Premises and TENANT shall be privileged to remove the same at the termination or expiration of the Lease Agreement. TENANT shall be responsible for its supplies and equipment and shall be responsible for their removal or the securing of those supplies and equipment at the end of each day.

SECTION 13. TENANT'S OPTION TO TERMINATE LEASE FOR NON-FUNDING

13.1 TENANT and LANDLORD both acknowledge that TENANT cannot contract for payment of funds not yet appropriated by the Utah State Legislature and that the space requirements of this Lease Agreement may be altered by a federal act or an act of the Utah State Legislature occurring before the expiration of this Lease Agreement. TENANT, therefore, reserves the right for the above reasons to terminate the Lease Agreement by giving thirty (30) days notice in the manner heretofore stated in this Lease Agreement.

SECTION 14. LANDLORD'S COMPLIANCE TO CODES

14.1 LANDLORD certifies that the Leased Premises is in compliance with all current applicable local, state and federal laws, codes, ordinances and regulations.

SECTION 15. COSTS AND ATTORNEY'S FEES

15.1 In the event of any action, proceeding or litigation in a Court of competent jurisdiction, each party shall be responsible for its own costs and attorney's fees.

SECTION 16. DISPUTE RESOLUTION PROVISIONS

16.1 Any dispute shall be resolved in accordance with the laws of the State of Utah.

SECTION 17. MANNER OF GIVING NOTICE

17.1 Any notice to be given by either party to the other pursuant to the provisions of this Lease or of any law, present or future, shall be in writing and delivered personally to the party to whom notice is to be given, or by certified mail, return receipt requested, addressed to the party for whom notice is intended at the address stated below or such other address as it may have designated in writing. Notice shall be deemed to have been duly given, if delivered personally, upon receipt thereof, and if mailed, upon the third day after mailing thereof.

If to Tenant:

Division of Facilities
Construction and Management
Attention: Real Estate and Debt Manager
State Office Building, Suite 4110
Salt Lake City, Utah 84114

If to Landlord:

Cedar City Corp
Attn: Rick B. Holman
City Manager
10 North Main Street
Cedar City, UT 8472-2635

With a Copy to:

WORK AGENDA ITEM 4
DECISION PAPER

TO: Mayor and City Council
FROM: Paul Bittmenn
DATE: September 3, 2013
SUBJECT: Proposed land lease with YETI

DISCUSSION:

Attached is the proposed land lease with YETI. They were sent a copy yesterday. With the September meeting schedule there are 2 weeks between the work meeting and the action meeting. This should give them ample time to review the agreement prior to a vote.

The lease agreement is for the lease of approximately 39,700 square feet of property located off of the north east corner of the Aquatic Center. The base term of the lease is 1 year. There is an option to renew from year to year if YETI and the City both agree. YETI will lease the property from October through April. This includes set up and tear down of the ice rink.

The lease rate is the greater of \$300 or 3% of what they gross. For this lease rate they will have the land, parking, use of the City's trash dumpster, use of the City's warm water, use of the lobby and restroom facilities in the aquatic center, and access to the property. In addition to this lease rate YETI will be responsible to reimburse the City for their portion of the power bill. The City will provide YETI with access to the last three years of power bills. For each month they are in operation we can find a three year average power bill, whatever is above the average for the month will be the cost YETI will need to pay.

The lease sets YETI up as an independent contractor. To that end we have tried to keep as their business and management functions separate from City operations. They will be required to provide adequate insurance. With the current liability caps in the governmental immunity act they will need to provide at least three million for an aggregate claim. The liability policy will need to cover everything from damage to the City's physical facilities to injury to customers. They will also have to have a workers comp policy to cover their employees. Even with the insurance there is liability to the City. First, the City is likely to be named in any law suits and there will be expense related to defending a claim. Second, part of the lease allows use of City property such as the Aquatic Center and the walking path to the north of the building. There is liability associated with these facilities if they are not properly maintained and the lack of proper maintenance results in injury.

YETI will not be allowed to attach anything to the Aquatic Center. They will be required to erect netting to protect the building from being damaged by flying objects. They will be required to

keep the property free and clear of snow and dispose of the snow they clear within the leased property. They will be required to keep the property clear of trash. They will be allowed to conduct such activities that are associated with running an ice rink. They will not be allowed to use the property for storage of equipment that is not associated with running an ice rink.

One item you will not see in the lease agreement is the City's spending of RAP tax money. The expenditure of RAP tax money was not included to keep the land lease a separate transaction. Also, given some of the moving target of what the City is going to provide through RAP tax money a provision was somewhat elusive to construct.

If there are questions, please ask.

LEASE AGREEMENT

This agreement is entered into on the ___ day of _____, 2013, between Cedar City Corporation, a Utah municipal corporation and political subdivision, hereinafter referred to as CITY; and Youth & Enthusiasts Together for Ice, Inc., a Utah not for profit corporation, hereinafter referred to as YETI.

WHEREAS, CITY owns and operates the Hills Recreational Complex located in the vicinity of Royal Hunte Drive and 1950 West. This complex is situated on approximately 51.53 acres of land upon which CITY has made a substantial investment constructing ball fields, a dual purpose recreational and water distribution lake, an aquatic center, associated parking facilities, restrooms, and associated infrastructure; and

WHEREAS, on the Northeast corner of CITY's aquatic center there is an area of property that has been designed and planned for future expansion of the Aquatic Center. This area has been designed to accommodate an indoor multiple use facility that would house multiple sport courts, walking paths, exercise facilities, and other such facilities as CITY may choose to program into the space. The future facility is known as the MAC center. The currently vacant parcel of property where the MAC center is scheduled to be built consists of approximately thirty nine thousand seven hundred square feet (39,700 sq. ft.); and

WHEREAS, YETI is a local citizen volunteer group with a stated mission to create a safe and fun environment and facility for families and friends to gather while participating in healthy, invigorating, and family oriented activities revolving around ice sports while including public ice skating, figure skating, and hockey; and

WHEREAS, YETI has leased equipment necessary to construct and maintain an ice rink;
and

WHEREAS, YETI has asked CITY to enter into an agreement whereby YETI may, on a temporary and seasonal basis, locate its ice rink facilities on CITY property; and

WHEREAS, CITY has agreed to lease YETI the parcel of property where the MAC center is planned to be located as a temporary and seasonal location for the ice rink.

NOW THEREFORE, CITY and YETI agree that adequate consideration exists to support the formation of this lease agreement. CITY and YETI enter this agreement with the intent of documenting the lease of CITY property and setting forth each party's responsibilities.

ARTICLE I.

LEASED PROPERTY.

1. The property to be leased to YETI pursuant to the terms and conditions of this lease shall consist of: (A) a temporary and seasonal area where YETI will locate the ice rink, cooling equipment, equipment to maintain the ice, rental equipment, and all other material associated with the ice rink; (B) access to the ice rink for delivery of equipment and materials; (C) customer, volunteer, and employee parking and access to the ice rink; and (D) access to the Aquatic Center facilities.
 - A. On a temporary and seasonal basis CITY leases to YETI the area to the Northeast of the Aquatic Center that is intended for the future construction of the MAC center. This area consists of +/- thirty nine thousand seven hundred square feet (39,700 sq. ft.) and is depicted in exhibit "A" which is attached hereto and incorporated herein by this reference. This shall be the area within which YETI

shall construct the ice rink, store and operate such equipment that is necessary to operate the ice rink, and locate such facilities that will be necessary to facilitate equipment rentals and ticket sales. CITY plans on spending a significant amount of money preparing the site for YETI's use. The items CITY will fund are not detailed in this agreement, but will be identified during CITY's RAP tax process.

- B. CITY leases to YETI access to the area where the ice rink will be located. Access for delivery of equipment and supplies necessary to operate the ice rink will be through the existing access road located to the east of the Aquatic Center. This access is not intended to facilitate general parking for customers, volunteers, or employees. This access is not intended for a drop off or pick up access for customers, volunteers, or employees. It is intended to facilitate short term pick up and delivery of equipment and supplies during construction, operation, and removal of the ice rink. This access also facilitates maintenance of the Aquatic Center and delivery of equipment to the Aquatic Center. By entering this lease CITY is not limiting its own use of the access road. YETI's use of the access road is not exclusive and YETI must share use of the road with CITY's operations. Furthermore, there is a road to the east of the access road that provides vehicular access to the lake at the hills. Use of this road to facilitate YETI's operation is not included in this lease and YETI shall use its best efforts to keep employees, volunteers, and customers from parking along or using this road.
- C. Access for customers, spectators, volunteers, and all YETI personnel shall be either through the Aquatic Center or through the walking path to the north of the

Aquatic Center. All customers, spectators, volunteers, and YETI personnel shall be required to use the existing parking facilities located to the west of the Aquatic Center.

- D. YETI and its volunteers, employees, spectators, and customers shall be allowed access to the Aquatic Center through existing public access points in order to access restroom facilities, CITY operated concession stand, and the lobby area as a warming area. This access will be limited to hours when the Aquatic Center is open for business. YETI will not be provided a key to the Aquatic Center.

ARTICLE II.

LEASE AMOUNT.

1. CITY shall lease the space for the rink, the delivery access, the necessary parking, the necessary pedestrian access, and access to the Aquatic Center to YETI for three hundred dollars (\$300.00) or 3% of YETI's gross sales during each month of its operating season, plus the costs for utilities as set forth herein. YETI shall provide the Leisure Services staff an accounting on a monthly basis. The accounting shall include the number of paying customers served by YETI during the month and the gross revenue received. YETI shall pay to CITY the greater of three hundred dollars (\$300.00) or 3% of its gross revenue, whichever is greater, by the tenth (10th) day of the month after the month in which the revenue is received. Any late payments are subject to a 5% late charge per day YETI is late.
2. In addition to the base lease amount YETI will be required to pay CITY the cost of electricity.

A. CITY will disclose to YETI the past three (3) years of bills from its electricity provider. For each month, during any part of which, YETI is operating the ice rink the average of the three years bills will be calculated. This will provide an average cost per month for electricity. CITY shall provide YETI the Aquatic Center's electricity bills for the months, or any portion thereof, that YETI is operating the ice rink. YETI shall pay to CITY the difference between the average cost per month for electricity and the amount of CITY's monthly bills for electricity used during the months, or any portion thereof, that YETI is operating the ice rink. YETI shall pay to CITY the cost for electricity within ten (10) calendar days of receiving the billing information from CITY. If YETI does not make the payment within the time frames set forth herein CITY may impose a 5% late fee for each day YETI is late.

This shall be the method for calculating the electricity costs for the first year of the lease. If the lease is renewed for future years the cost shall be a fixed sum negotiated by the parties.

B. The cost of water, garbage removal, and the utility cost associated with heating the water is included in the base rent and YETI will not receive a separate bill for these utilities.

ARTICLE III.

DURATION.

1. This lease agreement shall last for one (1) year from the time it is signed by both parties. The lease may be renewed by both parties on a year by year basis for as long as both

parties are willing to extend the lease. During the renewal process the parties reserve the right to re-negotiate the terms contained herein.

2. During the term of the lease YETI shall have use of the property mentioned herein for the purposes of constructing, operating, maintaining, and removing the ice rink from the 1st of October through the 30th of April.

ARTICLE IV.

INDEPENDENT CONTRACTOR.

1. YETI, its employees, officers, agents, volunteers, and assigns shall have control over: how they do their work; who provides the necessary tools and equipment for them to conduct their work; the method and manner of payment for their work; methods and manner of compensation for injuries during their work; and general matters related to their business. They are contractors providing a service. They are strictly independent contractors and in no way are they to be considered agents or servants of CITY and CITY is not liable for their actions.
2. YETI shall be required to purchase and display a sign in a conspicuous location so that customers entering the leased property will have an opportunity to read the sign. This sign may state the rules related to the ice rink, but the sign shall clearly identify that the ice rink is owned and operated by YETI and that YETI is an independent contractor and a separate entity from CITY.

ARTICLE V.

LIABILITY AND INSURANCE REQUIREMENTS.

1. YETI shall maintain its own workers compensation insurance policy in accordance with

the laws of the State of Utah. Prior to beginning operation of the ice rink YETI shall provide CITY a copy of an insurance certificate showing YETI has adequate workers compensation insurance to meet Utah's statutory requirements.

2. YETI shall indemnify and hold harmless CITY, its elected and appointed officials, its employees, agents, and assigns from any and all injury to persons or property caused by the negligence in the operation of the ice rink, the access to the ice rink, or any of YETI's facilities located on the leased property. This is intended to include injury to persons and property of third parties as well as injury or damage to CITY's buildings, infrastructure, and surrounding improvements. Prior to beginning operation YETI shall provide CITY with an insurance certificate naming CITY as an additional insured. The insurance certificate shall be in such an amount that its policy limits for individual, aggregate, and property meet or exceed the liability caps contained in the Utah Governmental Immunity Act and the associated Administrative Rules. The liability caps in the Utah Governmental Immunity Act and associated Administrative Rules are required to be adjusted every two (2) years. If this agreement is extended the insurance amounts will be re-evaluated and YETI will be required to purchase such insurance or umbrella coverage so that the coverage meets or exceeds the liability caps for the year in which they will be in operation.

ARTICLE VI.

USE AND ACCESS TO THE AQUATIC CENTER.

1. This lease shall include limited access to the Aquatic Center during hours when the Aquatic Center is open for business. The access shall be controlled by CITY and subject

to CITY opening and closing of the building. YETI will not be provided a separate key to the building. The limited use of the Aquatic Center shall include:

- (A) Access for YETI customers, volunteers, staff, and spectators from the parking lot to the ice rink;
- (B) Access to the Aquatic Center restrooms for YETI customers, volunteers, staff, and spectators, and;
- (C) Access to the Aquatic Center concession stands and lobby areas.

2. This lease agreement shall not include the following uses of the Aquatic Center:

- (A) Use of locker rooms;
- (B) A key to the building;
- (C) Use of the pools, and;
- (D) Without a separate rental agreement, use of the multi purpose rooms, locker rooms, showers, banquet rooms and storage areas.

3. YETI shall make arrangements to collect all of its entrance fees from its patrons at a location on the leased property. CITY will not collect fees from YETI patrons. City will not schedule ice time. As it relates to the ice rink CITY will not coordinate team activities. YETI shall be solely responsible for collecting its own fees and for scheduling all activities related to the ice rink.

4. Nothing in this lease shall be interpreted to allow CITY or YETI to attach anything to the exterior walls of the Aquatic Center.

5. YETI shall be responsible to provide notice that ice skates are prohibited from being worn within the Aquatic Center. YETI shall enforce a policy prohibiting ice skates from

being worn in the Aquatic Center. YETI shall be strictly liable for any damage done to the interior or exterior surfaces of the Aquatic Center resulting from any YETI customer, volunteer, employee, spectator, or invitee using ice skates. The insurance policy YETI is required to secure pursuant to the conditions of this lease agreement shall cover damage caused to any surface of the Aquatic Center by any YETI customer, volunteer, employee, spectator, or invitee using ice skates.

6. YETI shall be required to erect netting around the south and west sides of the ice rink to protect the Aquatic Center from being damaged by flying objects. This includes but is not limited to hockey pucks. The net must be of such a quality and height that is reasonably agreeable to CITY and YETI so that it is designed to protect the Aquatic Center.

ARTICLE VII.

PERMISSIBLE USE OF LEASED PROPERTY.

1. YETI agrees as a condition to this lease and to the use and occupancy of the leased property that YETI shall at all times use the lease property for the purpose of constructing, maintaining, operating, and disassembling an ice rink. It is the purpose of this lease to foster and abet the public private partnership in favor of providing a temporary and seasonal location for an ice rink. Uses of the leased property that are not normally incidental to the operation of an ice rink are prohibited.
2. YETI shall be responsible for the removal of snow and ice within the leased property. This shall include removal of snow and ice from the ice rink as well as pedestrian ways within the leased property. All snow and ice removed by YETI within the leased property

shall be deposited within the leased property. YETI shall be responsible to manage the snow and ice removal and shall also be responsible to keep people, particularly children, from playing on snow piles. YETI shall be liable for injury resulting from people, particularly children, playing on snow piles and said liability shall be covered by the insurance policies required in this lease agreement.

3. Prior to storing or using any hazardous materials on the leased property that are used to support the operation of the ice rink YETI shall tell the Aquatic Center management the type and quantity of hazardous material as well as information contained in the relevant material safety data sheets. CITY reserves the right to disallow the use or storage of any hazardous materials within the leased property. CITY shall not unreasonably withhold its consent to use such materials that are necessary for the operation of the ice rink.
4. Within the leased property YETI will be allowed to store such equipment and facilities as are necessary for the operation of the ice rink. Storage of other equipment, materials, or storage facilities is prohibited. Construction vehicles and equipment necessary to construct and remove the ice rink shall be allowed on the leased property during construction and removal. Construction vehicles and equipment shall be removed immediately when construction and removal activities are finished. Storage of vehicles on the leased property, other than those necessary for maintenance and operation of the ice rink, is prohibited.
5. YETI shall be responsible to monitor the leased property on at least a daily basis for trash and debris removal. YETI shall have access to CITY's garbage dumpster located on the east side of the Aquatic Center. All trash and debris shall be deposited in the CITY's

dumpster. YETI may use onsite garbage cans during operational hours that it supplies, but said cans shall be emptied daily into CITY's garbage dumpster.

6. YETI shall not permit any part of the leased property to be used for any unlawful purpose or for any purpose or use that may constitute a nuisance or fire hazard. YETI shall not allow the leased property or any part thereof to be used or occupied for any purpose in violation of any law, lawful order, rule or regulation concerning the operation of CITY's public parks and grounds.

ARTICLE VIII.

REMEDIES FOR DEFAULT.

1. Failure to abide by the terms and conditions of this agreement shall constitute an act of default. The non-defaulting party shall be required to provide the party alleged to be in default written notice of the default. The written notice shall state the provision of the agreement that it is alleged the defaulting party has violated and the actions of the defaulting party that are alleged to have caused to the default. This notice shall provide the alleged defaulting party 10 days to cure the default. If the party alleged to be in default requires additional time to cure the default, it may ask but it has to provide a reason why they need more time and a date by which the default will be cured. Providing notice of default and an opportunity to cure as required in this paragraph shall in no way be interpreted to restrict or limit CITY's ability to assess late payment fees as set forth in this agreement.
2. If YETI is in default after being given notice and an opportunity to cure as contained herein CITY, in addition to any other remedy available at law or equity, may restrict any

further customer access to the leased property until the default is cured.

3. YETI shall surrender the leased property to CITY in a condition that is free and clear of all of YETI's seasonal improvements no later than April 30th during each year that this agreement is in effect, or upon failure to cure a default where YETI has been given notice of the default and an opportunity to cure. If YETI has failed to remove its equipment by the April 30th deadline, or by the end of its opportunity to cure a default, CITY may charge YETI a storage fee of twenty five dollars (\$25.00) per day, or CITY may remove YETI's property to a different location and charge YETI the labor and material costs for removing the property as well as a daily storage fee. CITY shall give YETI notice of the location where CITY has moved their property and an opportunity to inspect and remove their property.
4. Once the notice and opportunity to cure provisions of this agreement have been complied with, this agreement shall not be interpreted to restrict or prohibit CITY or YETI from exercising any legal or equitable remedies they may have.

ARTICLE IX.

MISCELLANEOUS PROVISIONS.

1. YETI's interest in this lease may not be subordinated, mortgaged, hypothecated or otherwise encumbered without the express prior written consent of CITY.
2. No assignment of YETI's leasehold interest in the leased property will be permitted without the express written consent of CITY. All assignments of YETI's leasehold interest herein shall be subject to and regulated by all of the conditions in this lease agreement.

3. This agreement is between YETI and CITY. It is not intended to create any interest on behalf of any third party. No third party or third party group that may wish to use the ice rink shall have any rights or remedies under this agreement.
4. CITY at its sole option may include material produced by YETI in CITY advertising. This may include pamphlet stands, web sites, Facebook, and other such advertising methods that CITY may have that do not cost CITY additional revenue to include YETI material. This shall only include materials that YETI has published, CITY will not write advertisement material for YETI. This does not include advertisement opportunities that CITY has that CITY normally sells to third parties. CITY reserves the right to reject any advertising material submitted by YETI that CITY deems to be offensive or in poor taste.
5. YETI shall provide CITY with a contact list for its employees and volunteers. This contact list shall include working phone numbers, names, and a title showing what capacity each individual has within the YETI organization. The contact list may also include email addresses.
6. YETI shall adopt an emergency plan designed to protect people and property in the case of an emergency situation arising on the leased property. YETI shall maintain at least one employee or volunteer on the property during all business hours that has a charged and operable cell phone. YETI shall train its employees and volunteers as to what actions they are to take during an emergency.
7. CITY's failure to enforce one or more of the terms herein is not a waiver. No failure by CITY to insist upon the strict performance of any term, condition or covenant of this agreement or to exercise any right or remedy available on a breach of any condition or

covenant of this agreement, and no acceptance of full or partial rent or performance hereunder shall constitute a waiver of any such breach or any such term, condition or covenant. No term, condition or covenant of this agreement required to be performed by YETI, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by CITY. No waiver of any breach shall affect or alter any term, condition, or covenant of this agreement, and such term, condition, or covenant shall continue in full force and effect with respect to any other than existing or subsequent default or breach thereof, and any other or subsequent default or breach may be enforced by CITY as provided in this agreement.

8. CITY shall have the right to enter upon the leased property during reasonable hours (except in an emergency) to examine the leased property and take care of any CITY infrastructure thereon. CITY may access the leased property to abate any nuisances or hazardous conditions on the leased property. If CITY has to abate a nuisance or hazardous condition on the leased property CITY shall have the right to bill YETI for such services and YETI shall have the obligation to pay said bill.
9. YETI represents that it has examined the leased property and accepts the leased property in as is condition without any representation or warranty, express or implied in fact or by law, by CITY as to the title, nature, condition or usability of the property for the purpose set forth herein. CITY warrants to YETI that it has title to the property, and the capacity, both legal and actual, to enter into this lease and to grant the leasehold estate, subject to any applicable terms and conditions of any bonds used in the construction of the Aquatic Center that may be outstanding and that may have an impact on the leasehold estate.

10. YETI shall maintain all appropriate licensing as well as collecting and paying all appropriate sales and use taxes. This includes, but is not limited to, obtaining a CITY business license, obtaining a state tax I.D. number, and paying to the State of Utah all applicable sales and use taxes.
11. CITY shall not be responsible for any washouts, subsidance, avulsion, or settling of the premises, nor for any injury caused thereby to YETI's property or any person occupying the property. CITY shall not be obligated to replace, refill, or improve any part of the leased premises during YETI's occupancy, in the event of such washouts, subsidance, avulsion, or settling of the property.
12. No destruction or damage to any structure or improvement on the leased property, or that affects access to or use of the property, by act of God, acts of terror, civil unrest, military action, by fire, rain, snow, ice, windstorm, earthquake, aircraft accident, or any other casualty or action of the elements shall entitle YETI to surrender possession of the leased property, to terminate this lease, to violate any of its provisions, or to cause any rebate or abatement in rent when due or thereafter.
13. Conditioned upon YETI's paying the rent provided herein and performing and fulfilling all covenants, agreements, terms, duties, responsibilities, and conditions contained in this lease agreement, YETI shall have and may enjoy the leased premises.
14. This agreement shall not be modified, altered, or changed in any way whatsoever unless in writing and signed by CITY and YETI.
15. Any notice required to be given by this agreement shall be deemed to have been sent and received if sent via regular first class mail, postage prepaid, or by email to the following:

Cedar City Corporation
c/o Leisure Services Director
10 North Main Street
Cedar City, Utah 84720
rdan@cedarcity.org

YETI
c/o Kerry Fain
2433 West 5900 North
Cedar City, Utah 84721
kerry@yetiskates.org

If CITY or YETI change the above contact information they shall notify the other party within 30 days of said change.

16. All disputes resulting in legal action shall be governed by the laws of the State of Utah. Jurisdiction shall be vested in the District Courts in and for the State of Utah. Venue is vested in the 5th Judicial District Court in and for Iron County, State of Utah or in any other successor district court of competent jurisdiction.
17. In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision contained herein, provided the invalidity of such covenant, condition or provision does not materially prejudice either CITY or YETI in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this agreement.
18. CITY has agreed to allocate up to \$93,000.00 from CITY's fiscal year 2013 - 2014 recreation, arts, and parks (RAP) tax funds to be used in some manner toward providing necessary earthwork, electricity, fencing, or other miscellaneous improvements that may be deemed necessary to prepare the leased property for the ice rink. The use of the RAP tax funds is at the sole discretion of CITY. Use of future years RAP tax funds is at the sole discretion of CITY in compliance with CITY ordinance and State Statute. In addition to RAP tax funding nothing in this agreement shall be interpreted to prohibit or

require CITY to expend funds or use equipment to support the ice rink.

19. This is an integrated agreement. No prior or subsequent written or oral representations from CITY or YETI shall be deemed to modify this agreement, modifications shall only be allowed as contained herein. This agreement shall be interpreted on the four corners of the agreement.
20. This agreement has been provided to YETI and CITY and both parties have been provided ample opportunity to review and contribute to the agreement. This is a negotiated agreement and it shall not be interpreted against the author due to the fact that the author wrote the agreement.
21. Each person signing this agreement represents that they have done everything necessary to be able to bind each entity to the provisions contained herein.
22. During the term of this lease, and any extension thereof, CITY agrees not to compete with YETI by purchasing, constructing, and operating an ice rink. If CITY determines it is in CITY's best interest to enter the ice rink business CITY will consider purchasing YETI's equipment. Any purchase of YETI's equipment is at the sole discretion of CITY.

CITY's SIGNATURE PAGE.

Dated this ___ day of _____, 2013.

JOE BURGESS
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER

STATE OF UTAH)
 :ss.
COUNTY OF IRON)

This is to certify that on the ___ day of _____, 2012, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Joe Burgess, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that he the said Joe Burgess and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC

YETI's SIGNATURE PAGE.

Dated this _____ day of _____, 2013.

KERRY FAIN
PRESIDENT
YETI

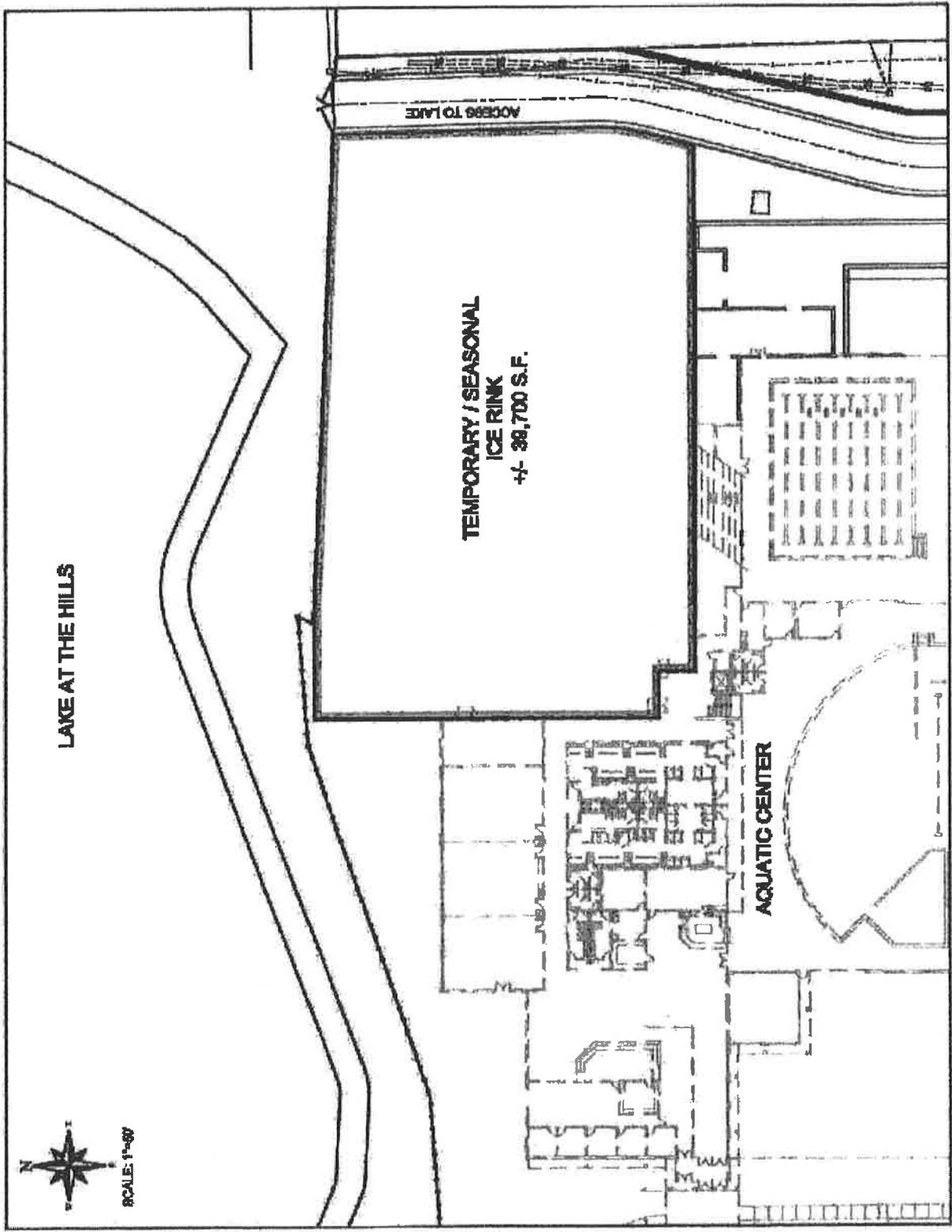
STATE OF UTAH)
 :ss.
COUNTY OF IRON)

On this _____ day of _____, 2013, personally appeared before me KERRY FAIN who duly acknowledged to me that she signed the above and foregoing document.

NOTARY PUBLIC

EXHIBIT “A”

Map showing temporary/seasonal ice rink leased property.



CEDAR CITY COUNCIL
WORK AGENDA ITEM 5
DECISION PAPER

TO: Mayor and City Council

FROM: Paul Bittmenn

DATE: September 3, 2013

SUBJECT: Proposed equipment lease with the Friends of Festival Country K-9's

DISCUSSION:

Attached is a proposed equipment lease with the Friends of Festival Country K-9's (hereinafter referred to as K-9's). With RAP tax funds the City will purchase the equipment specified in the lease. This equipment will be leased out to K-9's for a period of 3 years with a possibility of 2 additional 3 year extensions.

K-9's will be required to keep the equipment in a trailer they purchase. City will have reasonable access to the trailer to inspect the equipment. K-9's will be responsible for damage to the equipment, normal wear and tear excluded. K-9's will be required to carry a general liability policy that meets or exceeds the liability caps in the governmental immunity act. Where these policies are written in million dollar increments they will need to carry a three million dollar policy.

There are some blanks in the agreement that need to be filled in. The first and most important is the lease amount. I did not know a reasonable lease amount. Any help would be appreciated. The next is some contact information. I need K-9's to provide this information. This lease has been sent to K-9's for about a month so they have had time to review.

If you have questions, please ask.

EQUIPMENT LEASE AGREEMENT

This agreement is entered into on this ____ day of _____, 2013, between Cedar City Corporation, a Utah political subdivision and municipal corporation, hereinafter referred to as City; and Friends of Festival Country K9's, a Utah non-profit corporation, hereinafter referred to as K9s.

WHEREAS, City has imposed a RAP tax pursuant to Utah Code Annotated, Title 59, Chapter 12, Section 1401 et. seq., for the purpose of funding recreation, arts, and parks in a manner consistent with State law and the City's adopted ordinances; and

WHEREAS, during the fiscal year 2013 – 2014 application period K9s petitioned the City for \$5,000.00 to purchase standard tournament and agility equipment approved by the American Kennel Club and the North American Flyball Association; and

WHEREAS, K9s proposes to have the City purchase the following equipment: six (6) Flyball mats; one (1) dog agility tunnel; one (1) agility chute; one (1) breakaway PVC tire jump; one (1) A frame painted sand surface; one (1) pause table; one (1) panel jump; one (1) wing jump; one (1) 12' dog walk; one (1) teeter; and one (1) set of weave poles, hereinafter collectively referenced as Equipment or the Equipment; and

WHEREAS, shortfalls between RAP tax funding and the ultimate cost of the Equipment shall be paid through funds raised by K9s; and

WHEREAS, the Equipment would allow K9s to host nationally-sanctioned Flyball events in Cedar City and expand existing training classes for the local community; and

WHEREAS, K9s projects the expansion of existing training classes and expansion of tournament hosting will have a positive impact on City's economy as well as recreational opportunities available to the City's residents; and

WHEREAS, K9s believes other positive future benefits for the purchase of the Equipment may include: the ability to host free public events; increased socialization and obedience class offerings; and possible future ties with law enforcement; and

WHEREAS, the City's governing body has agreed to appropriate the above requested funding for the City to purchase the Equipment; and

WHEREAS, it is in the best interest of City and K9s to enter into this equipment lease agreement to spell out the terms and conditions upon which K9s will lease the Equipment from City.

NOW THEREFORE City and K9s hereby agree that adequate consideration exists to support the formation of this agreement and both agree as follows:

Remainder of page intentionally left blank.

1. Purchase and Ownership of Equipment.

In accordance with City's purchasing policies, City shall purchase the Equipment. During the purchase of the Equipment, City shall coordinate with K9s to ensure that the type of equipment, quality of equipment, and other specifications for the equipment meet K9s needs.

2. Equipment Lease.

City agrees to lease the Equipment to K9s for _____ dollars per year. K9s shall pay the first year's lease payment prior to taking possession of the Equipment and each year thereafter on the anniversary of K9s taking possession of the Equipment. If lease payments are not made on time, then City may charge K9s a 5% late fee and/or terminate the lease. Upon delivery of the Equipment City shall issue to K9s a receipt showing an Equipment inventory and the date of delivery. Any variation between this agreement and the Equipment inventory on delivery shall be resolved in favor of the Equipment inventory. The Equipment inventory shall also serve as the date upon which lease payments shall be made.

This lease shall have an initial term of three (3) years. Upon the mutual agreement of K9s and City the term of the lease may be extended for up to two (2) additional and consecutive three (3) year terms.

3. Equipment Storage.

K9s at its sole expense shall purchase an enclosed weather tight trailer capable of storing and transporting all of the Equipment. K9s shall keep the trailer locked and secure while storing the equipment. K9s shall maintain the trailer off of the public streets and in a location where it is lawful to store a trailer. K9s shall be responsible to reasonably secure all of the Equipment with tie downs, rope, or other suitable material so as to avoid damage during transportation. K9s shall provide City with an address where the trailer will be kept while the Equipment is not being used. If the address changes K9s shall provide City with a new address within a reasonable time. City shall have the right to inspect the Equipment at any time during the length of the Agreement upon providing K9s reasonable notice. K9s shall accommodate City's inspection requests.

4. Equipment Condition, Maintenance, Responsibility for Loss.

K9s is accepting the equipment in new condition. K9s is responsible for all maintenance of the Equipment with the exception of normal wear and tear. K9s is responsible to replace lost or stolen equipment. At the end of the lease K9s shall return Equipment to City in the same condition, less normal wear and tear, that it was presented to them at the beginning

of the lease. K9s shall be responsible to replace broken equipment with equipment of comparable quality and workmanship.

5. Insurance.

K9S shall maintain such insurance naming City as an additional insured. Said insurance shall have limits equal to or in excess of the liability caps contained in the Utah Governmental Immunity Act. The current liability caps can be found in Utah Administrative Rule R37-4-3 and are \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2). These limits are adjusted every two (2) years by the State of Utah Risk Manager in accordance with Statute and Administrative Rules. K9s shall maintain insurance with limits that meet or exceed the adjustments. K9s shall provide City with a certificate of insurance naming City as an additional insured and keep said certificate of insurance current during the life of this agreement. If K9s uses City property to host an event, then K9s shall meet such additional insurance requirements as City may impose.

6. Indemnification and Hold Harmless.

K9s agrees to indemnify, defend, and hold harmless City, its elected and appointed officials, its employees, agents, and assigns from any and all claims, damages, losses, expense, and other liabilities as may be associated with the use and maintenance of the Equipment.

7. Use of Waivers.

In order to limit risk and financial exposure K9s agrees to require participants in events that may be using the Equipment to sign waivers acknowledging the risks associated with such activities and waiving any liability on behalf of K9s and City due to the use of the equipment.

8. Recovery of Property.

City reserves the right and K9s agrees that if City inspects the condition of the Equipment and finds that the Equipment is not being stored properly or is not being reasonably maintained, City may recover the property. City shall give notice of its intent to recover the Equipment to K9s and K9s shall make the Equipment available to City for the recovery effort. If K9s does not agree that the Equipment is not being stored properly or is not being reasonably maintained K9s may appeal the staff decision to the City Manager. The decision of the City Manager is final.

Remainder of page intentionally left blank.

9. Publicity.

K9s agrees to include an acknowledgement on their storage trailer, web page, and banners that the Flyball equipment was purchased with RAP tax money. K9s may use the same style of acknowledgement that is used by the City's Leisure Services Department.

10. Exclusive Use and Ability to Sub-Let.

City agrees that K9s is to have exclusive use of the Equipment during the term of this lease with one exception. City's Police Department shall be allowed to use the Equipment upon providing reasonable notice and without paying a fee for activities where the Equipment will be beneficial in the training of or the demonstration of police K9 officers. If the Police request use of the Equipment, K9s and the Police Department shall work in a cooperative manner to schedule the use of the Equipment. During the time the Police Department is using the Equipment the Police Department shall be liable for damage to the Equipment, less normal wear and tear.

Except as provided above, K9s shall have exclusive use of the Equipment. This shall include the right and ability to sub-let the Equipment to other entities. If K9s does allow another entity to sub-let or use the Equipment K9s shall remain liable to City to store and maintain the Equipment consistent with the provisions of this agreement.

11. Notices.

Notices required to be sent pursuant to the terms and conditions of this agreement shall be deemed to have been sent if they are sent via first class mail, postage pre-paid to the following addresses, or via email to the following email addresses:

Cedar City Corporation
c/o Leisure Services Director
10 North Main Street
Cedar City, Utah 84720
rdan@cedarcity.org

Friends of Festival Country K9s
c/o _____

Cedar City, Utah 84720

In the event the contact information changes, the party changing contact information has the duty to inform the other party. If email is the preferred method of providing notice and the contact information has changed and the party changing the contact information has not updated the other party, then the other party shall have the responsibility to check the web page for the other party to access a correct email address. City's web page address is www.cedarcity.org. K9s web page address is www.festivalcountryk9s.org.

12. Agreement Termination.

Upon termination of this agreement K9s shall immediately return all Equipment to City. This agreement may be terminated by either City or K9s without cause by providing sixty (60) days written notice.

13. Choice of Law, Jurisdiction, and Venue.

This agreement shall be governed by the laws of the State of Utah. Jurisdiction is vested in the Utah District Courts. Venue is vested in the 5th Judicial District Court in and for Iron County, State of Utah.

Remainder of page intentionally left blank.

14. Attorney Fees.

In the case of a dispute where either party believes it is in their best interest to employ the services of an attorney, each party shall pay their own attorney fees and each party shall pay all of their own costs associated with resolving the issue whether the resolution is through various methods of dispute resolution or through litigation.

15. Integration and Modification.

This written agreement and the documentation contemplated by the terms hereof constitutes the entire agreement between City and K9s for the lease of the Equipment. This is an integrated agreement and shall be interpreted without reference to external evidence. No written or oral communications between the parties hereto either prior to the agreement, or subsequent to entering the agreement may be interpreted to alter the terms and conditions of the agreement. The only method available to the parties to modify the terms of the agreement shall be through a mutually agreed to set of amendments that are reduced to writing and duly approved and signed by both City and K9s.

City's signature page.

Dated this ____ day of _____, 2013.

JOE BURGESS
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER
STATE OF UTAH)
 :SS.
COUNTY OF IRON)

This is to certify that on the ____ day of _____, 2010, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Joe Burgess, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that he the said Joe Burgess and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC

K9s signature page.

Dated this ____ day of _____, 2013.

By:
Its:

STATE OF UTAH)
 :SS.
COUNTY OF IRON)

On this _____ day of _____, 2010, personally appeared before me who duly acknowledged to me that ___he signed the above and foregoing document.

NOTARY PUBLIC

CEDAR CITY COUNCIL
WORK AGENDA ITEM 6
DECISION PAPER

TO: Mayor and City Council

FROM: Paul Bittmenn

DATE: September 3, 2013

SUBJECT: Consider an ordinance repealing chapters 1A, 12, 13, 16, and 28 of the ordinances of Cedar City, Utah.

DISCUSSION:

Attached is an ordinance that would repeal the above chapters from the City's ordinances. The review of the City's ordinances was conducted by the Mayor, Council member Cozzens, and Staff. Input was solicited from the Southern Utah Manufactures Association, the Chamber of Commerce, the Home Builders, and the Realtors.

Chapter 1A is the City's version of the State's Government Records Access Management Act. It was adopted in 1994. The state records management act has been updated over the years. The City's records management act has not. They largely deal with the same subject matter, public access to records held by the City.

Chapter 12 allows the City to appoint bail commissioners. This is something municipalities have the authority under State law to do. Locally, bail is set by the judges of the district and/or justice courts that are employed by the State and County respectively. I am not sure the last time the City had or needed a bail commissioner.

Chapter 13 requires all businesses selling bicycles to register each bicycle sold with the police department. Also the ordinance makes it illegal for a citizen to operate an unregistered bicycle. The City does not receive registration of every sold bicycle from local businesses. This ordinance may be obsolete.

Chapter 16 is an electrical code. The City has also adopted the uniform electrical code. To avoid conflicts between the two codes the recommendation is to repeal chapter 16.

Chapter 28 relates to the redevelopment agency. It sets up the RDA and provides for an RDA advisory board and the downtown project area. The advisory board has not been used for at least the past 10 years. The downtown project area has been closed. The RDA's function today is very different than it was 20 plus years ago when this chapter was adopted.

The ordinance is crafted so that any action taken while these chapters were on the books is preserved. Also, it is clear that the RDA is not going away, but it will continue to function as a

separate legal and corporate body exercising all of the powers and duties allowed pursuant to the relevant provisions of State law. All prior actions taken by the RDA will be preserved. All contracts for tax increment financing or otherwise previously entered into by the RDA will continue to be honored. In short, the ordinance is being repealed but the RDA will continue to function and honor its commitments.

Please ask if you have any questions.

CEDAR CITY ORDINANCE NO. _____

AN ORDINANCE OF THE CEDAR CITY COUNCIL REPEALING ALL OF CHAPTERS 1A, 12, 13, 16, AND 28 OF THE ORDINANCES OF CEDAR CITY, UTAH.

WHEREAS, in 2011 Governor Herbert's office directed State departments to make recommendations as to which of the numerous statutes, administrative rules or policies adopted by the State of Utah could be amended or repealed in an effort to reduce unproductive burdens on both businesses and individuals; and

WHEREAS, these efforts lead to proposals for repeal or amendments to over 300 amendments to or repeal of administrative rules and state statutes. Also, out of this process there were recommendations for 32 organizational changes to State government; and

WHEREAS, when the process was completed at the State level the Governor's office extended the challenge to local government to undergo a similar evaluation of local ordinance and rules; and

WHEREAS, Mayor Burgess in conjunction with Council member Cozzens and various staff members reviewed all 46 Chapters of the adopted Ordinance of Cedar City, Utah; and

WHEREAS, a component of this review was providing an opportunity to receive feedback from members of the Southern Utah Manufacturing Association; the Iron County Home Builders Association, the Cedar City Chamber of Commerce; and the Iron County Board of Realtors. Feedback from these groups can be characterized as overall positive and supportive of Cedar City; and

WHEREAS, after the completion of the review process it is recommended that the City Council consider repealing chapters 1a, 12, 13, 16, and 28 of the Ordinances of Cedar City, Utah; and

WHEREAS, the current chapter 1a is Cedar City's records access and management ordinance. The provisions of this ordinance were adopted in 1994, and have not been updated so as to keep up with State record management and access statutes; and

WHEREAS, the current chapter 12 sets forth the powers and duties of appointed City employees as bail commissioners. The same duties are currently handled by District Court and/or Justice Court Judges and there is not a need for City bail commissioners; and

WHEREAS, the current chapter 13 requires Cedar City businesses selling bicycles to register with the City each bicycle that is sold and made it illegal for citizens of Cedar City to operate a bicycle that was not registered with the City. This ordinance was recommended for repeal as it is obsolete; and

WHEREAS, the current chapter 16 sets forth the electrical code. This chapter has not been updated. Also, Cedar City has adopted the Uniform Electrical Code through the provisions of Chapter 36-7 of the Ordinance of Cedar City, Utah, said uniform code is updated on a semi-annual basis. In order to avoid conflicts between the two electrical codes it is recommended that chapter 16 be repealed; and

WHEREAS, chapter 28 sets forth the Cedar City Redevelopment Agency, its advisory committee which has not functioned for over ten years, and references the downtown redevelopment project area that is now closed. It is recommended that this section be repealed in such a manner as to repeal the chapter while at the same time preserving the Cedar City Redevelopment Agency as a viable legal entity.

NOW THEREFORE, be it ordained by the City Council of Cedar City, State of Utah, that chapters 1a, 12, 13, and 16 of the Ordinance of Cedar City, Utah are repealed in full. This repeal shall not affect any act done, any right accrued, and penalty incurred, in any suit, prosecution or proceedings pending; nor shall the repeal of these ordinances hereby have the effect of reviving any ordinance theretofore repealed or suspended.

NOW THEREFORE, be it further ordained by the City Council of Cedar City, State of Utah, that chapter 28 of the Ordinance of Cedar City, Utah is hereby repealed. This repeal shall not affect any act done, any right accrued, and penalty incurred, in any suit, prosecution or proceedings pending, or the tenure of office of any person holding office at the time when they take effect; nor shall repeal of this ordinance hereby have the effect of reviving any ordinance theretofore repealed or suspended. Furthermore, the repeal of chapter 28 shall not affect the existence of the Cedar City Redevelopment Agency pursuant to the provisions of the Utah Neighborhood Development Act, UCA 11-19-1 et. sec., or as subsequently amended; the powers and duties of the Cedar City Redevelopment Agency; the contracts currently entered into by, or as may hereinafter be entered by the Cedar City Redevelopment Agency; the tax increment authority previously exercised or as may hereinafter be exercised by the Cedar City Redevelopment Agency; the legal existence of the Cedar City Redevelopment Agency as a political subdivision of the State of Utah, and; the repeal of chapter 26 shall not in any other way impair the proper and legal functioning of the Cedar City Redevelopment Agency.

NOW THEREFORE, be it further ordained by the City Council of Cedar City, State of Utah, that the Ordinance of Cedar City, Utah, shall include a notation where the repealed chapters previously existed noting that they are repealed and referencing this ordinance by ordinance No. _____.

Remainder of page intentionally left blank.

This Ordinance, Cedar City Ordinance No. _____ shall become effective immediately upon passage by the Cedar City Council and publication pursuant to State Statute.

Dated this _____ day of _____, 2013.

JOE BURGESS
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER

