



# CEDAR CITY

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

Mayor  
Joe Burgess

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

City Manager  
Rick B. Holman

## CITY COUNCIL WORK MEETING OCTOBER 16, 2013

The City Council will hold a work meeting on Wednesday, October 16, 2013, at 5:30 p.m., 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. Agenda Order Approval

III. Administration Agenda

- Mayor and Council Business
- Staff Comment

IV. Public Agenda

- Public Comments

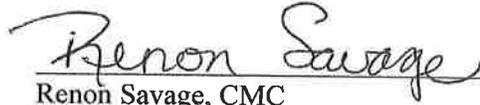
Business Agenda

Public

1. Consider appointing Georgia Beth Thompson to the Cedar City Housing Authority – Heidi Miller
  2. Consider a no parking zone at 1045 North and Countryside Terrace Dr. – Countryside Terrace Homeowners Association
  3. Public Hearing to consider a subdivision lot modification on property located in the vicinity of 344 West and South Harding Ave – Bob Platt/Paul Bittmenn
  4. Consider a road dedication on property located in the vicinity of 175 West 2160 North – Platt & Platt Engineering
  5. Public Hearing to consider granting a conditional use permit to Safari Property Management to locate an office building at 1125 North Hovi Hills Drive – Safari Property Management/Paul Bittmenn
  6. Public Hearing to consider a resolution amending the general land use plan from low density residential to medium density residential on property located in the vicinity of 275 South Cross Hollows Road – Tim Watson/Paul Bittmenn
  7. Public Hearing to consider an ordinance changing the zone from Central Commercial (CC) to Residential-2, single unit, on property located in the vicinity of 275 South Cross Hollows Road – Tim Watson/Paul Bittmenn
  8. Review quotations on lighting for the YETI Ice Skating Rink – YETI/Kit Wareham
- Staff
9. Consider signing an interlocal agreement between the Utah Local Governments Trust and Cedar City – Natasha Hirschi
  10. Presentation of Cedar City website upgrade – Brennan Wood & Danny Stewart
  11. Discussion of Cedar City Style Guide – Brennan Wood & Danny Stewart

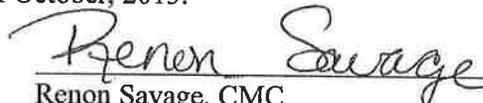
12. Consider special award conditions from the U.S. Department of Commerce, Economic Development Administration for a financial assistance award of \$935,900 for the construction of street frontage improvements along Aviation Way and the Construction of a taxi lane on the airport to connect MSC's through the fence access - Brennan Wood
13. Consider a Resolution amending the Personnel Policy
14. Review South Interchange landscaping plans – Kit Wareham
15. Consider appointment of a Mayor Pro Tem

Dated this 14<sup>th</sup> day of October, 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 14<sup>th</sup> day of October, 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 COUNCIL  
WORK AGENDA ITEMS IV 3  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** October 10, 2013

**SUBJECT:** Subdivision lot modification on property located in the vicinity of 344 West South Harding Ave.

**DISCUSSION:**

The proposed land use transaction is to adjust the boundaries of an existing parcel and create 2 parcels. The existing lot is on the Northwest corner of Harding Ave and 300 West and contains approximately 18,153 square feet. After the modification there will be 2 parcels. One containing 6,782 square feet and one containing 11,371 square feet. Each parcel will be of such a size and have frontage sufficient to comply with the requirements of the City's zoning ordinance. The property is in a R-3 zone.

Attached are the minutes from the planning commission. This item requires an up or down vote from the City Council.

If you have any questions please ask.

**CEDAR CITY PLANNING COMMISSION**

**MINUTES**

September 17, 2013

The Cedar City Planning Commission held a Meeting on Tuesday, September 17, 2013, at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: Rich Gillette, Ron Adams, Mike Mitchell, Jill Peterson, Kent Peterson

Members absent: Kristie McMullin- excused, Vance Smith- excused,

Staff in attendance: Kit Wareham, Larry Palmer, Paul Bittmenn, and Michal Adams

Others in attendance: Dave Clarke, Tim Watson and Ty Bulloch

The meeting was called to order at 5:

**Jill made the motion to appoint Rich Gillette as the chair pro-tem, seconded by Kent and the vote was unanimous.**

**ITEM/  
REQUESTED MOTION**

**LOCATION/PROJECT**

**APPLICANT/  
PRESENTER**

**I. Regular Items**

**1- Approval of Minutes (August 20, 2013)**

**(Approval)**

**Kent moved to approve the minutes of August 20, 2013, seconded by Ron and the vote was unanimous.**

**2- Lot Line Adjustment  
(Recommendation)**

**344 W Harding Ave**

**Ashdown/Bob Platt**

\* Dave Clarke of Platt and Platt presented. He pointed out the two lots on the map and showed how they plan to move the lot line over a few feet in order to give the existing home some footage beyond the house. The remaining lot would be 6,082 square feet. The minimum lot size for this zone is 6,000 square feet. The frontage would be 74' and the minimum is 60'. The lot that is left will still be within the parameters of a legal lot for the zone.

**Jill moved to give the City Council a positive recommendation for this lot line adjustment, seconded by Kent and the vote was unanimous.**

**3- Conditional Use Permit  
(Recommendation)**

**377 E Hovi Hills Dr.**

**Safari Property/  
Tim Watson**

Tim Watson of Watson Engineering presented. He said that a couple of months ago this property came thru for a zone change to R-3 single family. The owners want to make it into offices, so in order to do this; they need a Conditional Use Permit (CUP). They are working with Larry to bring the building up to code for the new use. They are doing additional outside paving, parking stalls, and access to the structure. Tim said that he put in the packet the list of CUP questions and their response. There are two existing homeowners as neighbors to this

CEDAR CITY COUNCIL  
WORK AGENDA ITEMS IV 4  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** October 11, 2013

**SUBJECT:** consider accepting a road dedication in the vicinity of 175 West and 2760 North.

**DISCUSSION:**

This is the dedication of a road that is approximately 91' long by 50' wide. The planning commission reviewed and recommended acceptance of this section of road in January, 2013. In most cases the developer would then seek Council approval and bond for the road so the City could make sure we received a road that is up to the City's specifications. In this case the contractor did not want to bond so he chose to put the road in and have it inspected prior to seeking City Council approval. The engineering department has been out and inspected the road and it is acceptable.

The developer sent a title report in August to verify ownership. They are sending a letter updating the ownership. As of writing this decision paper I have not received the letter.

Please consider the road dedication during the work meeting. If there is something wrong with the title work between now and the action meeting I will make sure to update you.

Please call if you have any questions.

Below are the relevant sections of the planning commission minutes.

**4- Road Dedication 25 W 2775 N RJ Smith/ Platt & Platt  
(Recommendation)**

Dave Clarke with Platt & Platt presented; he said that parcel #7 of the minor lot needs to have the street dedicated on the west side. They are going to dedicate 90 feet as the parcel on the west would be that wide. They are just dedicating this portion of the road and they understand that the minor lot will be held until the road dedication is approved by Council. Some members of the PC pointed out that a few months ago there was a road dedication in this same general area. They wondered if these roads would match up. Dave said that the Old Farm subdivision went thru an RPA Master Plan process with the City and when they improved phase 1 they also made provisions to go east, but the road to the south will not connect. All the property to the south is CC and they are an area of R-1. They don't want a road to go through. They are about 200 feet away from that street. They do not want the commercial traffic coming

through their subdivision. They are proposing to keep that Master Plan in place and to develop the area according to that Master plan. Kit pointed out that there is a different side; there was action by the PC since that the road dedication from the south was done showing it would go through. When that was dedicated, it was to the Old Farm southern property line. They were approved on the basis that it would go through, and they put in a temporary cul-de-sac that is encumbering one lot. They will argue over this, if that does not go thru, and if they have to keep 1 lot for that cul-de-sac. There are apartments on the property to the south now.

Rich wondered if the PC members had any further questions.

Dave said they are only dedicating the 91' of road now, and before they get the minor lot done, they know they have to bond for the improvements to this road being dedicated.

**Marlo moved to recommend to City Council the road dedication as discussed. Seconded by Vance and the vote was unanimous.**

Marlow moved to adjourn and the meeting adjourned at 6:05 p.m.

Michal Adams, Administrative Assistant

CEDAR CITY COUNCIL  
WORK AGENDA ITEMS IV 5  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** October 10, 2013

**SUBJECT:** consider a conditional use permit for property located in the vicinity of 377 East Hovi Hills Drive.

**DISCUSSION:**

The City's zoning ordinance allows for some commercial uses in some residential zones. When these commercial uses are allowed the proponent of the use has to apply for and be granted a conditional use permit. This permitting process provides the City with the opportunity require reasonable measures by the applicant to mitigate the impact of locating a business in a residential zone.

According to the City's zoning ordinance an administrative or professional office with no on site retail sales is an allowed conditional use in an R-3 zone. Safari Property Management, LC., has purchased a property in a R-3 (single family) zone and has applied for a conditional use permit to operate their professional offices with no on site retail sales from this property.

Attached is a copy of the draft conditional use permit. The conditions the Planning Commission recommended are to shield any future parking lot lighting to minimize impact on the neighbors and if they build outbuildings they need to have the exterior be of similar construction as the existing structure. Also attached are a copy of the Planning Commission minutes.

If there are any questions please ask.



## CONDITIONAL USE PERMIT

**WHEREAS**, Safari Property Management, Inc., and South Bluff, LC., have petitioned for a Conditional Use Permit governing property located in the vicinity of 377 East Hovi Hills Drive, Cedar City, Iron County, State of Utah; and

**WHEREAS**, said Petition requests the following: use of lot and structures located in a R-3 Single Family Zone for administrative and professional offices with no on-site sales and limited to indoor storage; and

**WHEREAS**, pursuant to Chapter 26, Article XIII, Cedar City Code, this petition was considered by the Cedar City Planning Commission and recommended for approval; and

**WHEREAS**, the Cedar City Council held a public hearing, having provided notice pursuant to City Code, on the 16<sup>th</sup> day of October, 2013, and having found the following:

- (1) that the proposed use of the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood and the community; and
- (2) that the proposed use will comply with regulations and conditions specified in the Code for such use; and
- (3) that the proposed use will conform to the intent of the Cedar City General Plan; and
- (4) that such use will not under the circumstances of the particular case and the conditions imposed, be detrimental to the health, safety and welfare of persons, nor injurious to property and improvements in the community, but will be compatible with and complimentary to the existing surrounding uses, buildings and structures within said zone; and
- (5) all other criteria specified for said zone within Sections Chapter 26 of the Ordinance of Cedar City have been satisfied;

**NOW THEREFORE, IT IS HEREBY GRANTED** by the Cedar City Council of Cedar City, State of Utah, that the above referenced Conditional Use be permitted subject to the following terms and restrictions: (1) that any future parking lot lighting needs to be sufficiently shielded so that it does not interfere with the neighboring property owners use of their property; and (2) that future structures constructed on the property shall be finished in materials that are similar to the structures existing on the property as of the date this permit is issued.

*Remainder of page intentionally left blank.*

DATED this \_\_\_\_ day of October, 2013.

---

MAYOR PRO TEM

[SEAL]  
ATTEST:

---

RENON SAVAGE  
RECORDER

**CEDAR CITY PLANNING COMMISSION**  
**MINUTES**

September 17, 2013

The Cedar City Planning Commission held a Meeting on Tuesday, September 17, 2013, at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: Rich Gillette, Ron Adams, Mike Mitchell, Jill Peterson, Kent Peterson  
Members absent: Kristie McMullin- excused, Vance Smith- excused,  
Staff in attendance: Kit Wareham, Larry Palmer, Paul Bittmenn, and Michal Adams  
Others in attendance: Dave Clarke, Tim Watson and Ty Bulloch

The meeting was called to order at 5:15 p.m.

**Jill made the motion to appoint Rich Gillette as the chair pro-tem, seconded by Kent and the vote was unanimous.**

**ITEM/**  
**REQUESTED MOTION**

**LOCATION/PROJECT**

**APPLICANT/**  
**PRESENTER**

**I. Regular Items**

**1- Approval of Minutes (August 20, 2013)**  
**(Approval)**

**Kent moved to approve the minutes of August 20, 2013, seconded by Ron and the vote was unanimous.**

**2- Lot Line Adjustment**  
**(Recommendation)**

**344 W Harding Ave**

**Ashdown/Bob Platt**

Dave Clarke of Platt and Platt presented. He pointed out the two lots on the map and showed how they plan to move the lot line over a few feet in order to give the existing home some footage beyond the house. The remaining lot would be 6,082 square feet. The minimum lot size for this zone is 6,000 square feet. The frontage would be 74' and the minimum is 60'. The lot that is left will still be within the parameters of a legal lot for the zone.

**Jill moved to give the City Council a positive recommendation for this lot line adjustment, seconded by Kent and the vote was unanimous.**

**3- Conditional Use Permit**  
**(Recommendation)**

**377 E Hovi Hills Dr.**

**Safari Property/  
Tim Watson**

Tim Watson of Watson Engineering presented. He said that a couple of months ago this property came thru for a zone change to R-3 single family. The owners want to make it into offices, so in order to do this; they need a Conditional Use Permit (CUP). They are working with Larry to bring the building up to code for the new use. They are doing additional outside paving, parking stalls, and access to the structure. Tim said that he put in the packet the list of CUP questions and their response. There are two existing homeowners as neighbors to this

property. The undedicated portion of Hovi Hills Drive has been chip sealed. Part of this road is owned by the Lambeth's, and the other half by the City.

Kit said this property has an access easement they got thru the Board of Adjustments along the undedicated road so they can access the property. Paul indicated that the Board of Adjustments cannot grant easements, but they probably gave them a variance and allowed them to have the building on the parcel without fronting a dedicated City street.

There was a discussion regarding fencing around this parcel. Tim pointed out that there was a little hill separating the two land owners so no lighting would disrupt that neighbor. Tim pointed out the fencing that was on the property. It did not go around the perimeter. Tim also pointed out that they plan to build a storage building in the northwest corner of the property in the future. He feels that there would be little to disturb any neighbors, as there would be no one at the building after office hours.

Kit wondered if there were any notices to neighbors required for this CUP. It was determined that when it went to City Council they may require some notification.

Paul said as this was the first CUP that most of this Planning Commission has had to approve, he wanted to let them know the process. As the City normally does not put commercial uses in a residential zone, that is where the CUP comes in. The purpose should not be to deny them or to not allow them to use their building, but this is a chance to see if there are conditions that should be placed upon the business in a residential area. They can list anything they want in order to not let any business have an adverse effect on the neighbors. Things like; should there be limitations on any late hours, any fencing to separate them from the other residences, should they have to maintain their parking, should they be limited to not having any semi-trucks delivering to this building, etc. Now would be the time to make any recommendations they see fit regarding noise, traffic, parking, extra lighting, etc.

Mike wondered if once the CUP was granted, was it permanent? Paul said once given the CUP, if they do something different, that can be revoked. As long as they stay in compliance with the conditions, the CUP would remain in place.

Rich went thru those 8 questions, and Tim gave the owner's response to each (see attachment #1).

Question #1- detrimental traffic: Tim said that there would be two entities that he knows of that would occupy offices in this building; that of Safari Property Management and South Bluff, LLC. It was asked if they were construction companies and would have equipment parked there. Tim felt they would only be doing the paper work end of each business here. They have their office set up on 200 West now, and don't have any equipment parked there.

Question #2- overloading of the street capacity- Tim said no, there would only be the office staff, and they have no customers visit this location.

Question #3- internal traffic affects the neighboring residential properties? Tim said they would

have very light traffic.

Question #4 – would parking facilities affect other properties. Tim said that all the parking is in accordance with the parking ordinance, and he pointed out all the parking stalls on the property.

Question #5- would parking be screened from adjacent properties. Tim pointed out the natural hill between this building and the neighbor to the west. He was asked about any parking or outdoor lighting of any kind like security lighting. Tim said they did not have plans for any parking lighting or any other outdoor lighting that he was aware of. Paul pointed out that any type of lighting that would shine over that berm would need to be channeled to shine only on their lot. This was further discussed.

Question #6- would parking and structure be complimentary to the area? Tim pointed out that the building and the parking would all be complimentary. Paul questioned the future storage building and if that would be of the same materials as the existing structure. Tim was not sure what they had in mind for that structure. The house is all rock veneer and he just assumes that the detached building would be similar. Paul pointed out that they could recommend that the building be similar to the house if they want, but that does not have to be that way. Paul said as he will be the one writing this permit, he needs to have any conditions spelled out as to what they want to see. The building department would ultimately be responsible to see if it were of similar materials as the existing structure. It should at least be complimentary to what is already there.

Question #7 – Would any sign be adverse to the aesthetics of the general area. Tim said he thought they would only have one small sign that would be back on their property so only those approaching the office building would see it. He felt there was not room enough on the drive area to place a sign. Ron wondered what was meant by “Modest size” or if there were an identifiable size to this or a maximum? Larry said the minimum on any commercial site is 100 square feet. Some commercial signs can be up to 200 square feet. Paul pointed out that this saying a modest size pre-dates the sign ordinance. The frontage of a lot is now taken into consideration for the size a sign can be. This parcel does not have frontage on a City street so that would be questionable. They could certainly put restrictions on the size and placement of any sign as part of these conditions.

Question #8 – would landscaping enhance the aesthetics of the area. Tim said yes, they have the same landscaping as all the neighbors in the area. Sagebrush with a little grass. They have preserved as much of the natural landscaping as they could.

Paul said they need to remember when making a motion on this CUP to point out any and all things that they want to see. Light shielded from the neighbors, they can even address the future building and say it needs to be similar to the existing structure. Most everyone felt that any signage would be handled with the sign ordinance.

Ron asked if the interior of this house was all finished. Larry said parts of it are. Part of the

basement area is unfinished at this time, and they are remodeling the main floor to meet their office needs. Ron also asked if there were any changes to any utilities. Larry indicated they had not changed any of those. They will have 6 offices on the main floor when they are done.

**Kent moved to give a positive recommendation of the CUP noting that any future parking lot lighting needs to be sufficiently shielded from any neighbors and the future building needs to be similar in appearance to the existing structure. Seconded by Jill and the vote was unanimous.**

**4- General Land Use Amend 275 S Cross Hollow Rd  
Low Density to Medium Density  
(Recommendation)**

**Jeff & Jim Burgess/  
Tim Watson**

Tim Watson of Watson Engineering presented. He pointed out the area of Sunset Canyon and across the street was the Armbrust Property with the Cross Hollow events center further north. This is all currently zoned CC and the general land use shows it as low density. In order to do what they plan, which is the second phase of the Villas at Sunset Canyon PUD, they need to change this to medium density and then the next item is to change the zone from the CC to the R-2 single family. It was asked if his client would be concerned if they only have single-family and cannot do duplexes? Tim pointed out that all of the Villas PUD is single family housing, just on a little smaller lots. They will do the similar thing in this phase, similar home styles; the property size is a little bigger as to the changes in the ordinance. Everything to the east of this is R-1 single family homes. Kit brought up the zone map and showed the area. The commercial strip on the other side of Cross Hollow Road is much deeper.

**Mike moved to give a positive recommendation to Council for the General Land Use change from Low Density to Medium Density housing for this area. Seconded by Ron and the vote was unanimous.**

**5- Zone Change 275 S Cross Hollow Rd  
CC to R-2-1 (Single-Family Unit)  
(Recommendation)**

**Jeff & Jim Burgess/  
Tim Watson**

Tim Watson of Watson Engineering presented. He said this will be the zone change that goes along with the previous item. Mr. Bulloch who lives in the area was not sure he has any comments; he was just present to oppose anyone who would oppose this item, as the neighborhood would like to see the single-family homes in this area. He was in favor of the idea. Tim said he has had only 1 enquiry about this zone change, and they were not negative. Larry also had 1 call from someone who did not want any commercial in the area.

**Mike moved to give a positive recommendation to Council for this zone change, seconded by Kent and the vote was unanimous.**

The meeting adjourned at 5:55 p.m.

---

Michal Adams, Administrative Assistant

CEDAR CITY COUNCIL  
WORK AGENDA ITEMS IV 6 & 7  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** October 11, 2013

**SUBJECT:** (1) consider a resolution amending the general land use plan from low density residential to medium density residential on property located in the vicinity of 275 South Cross Hollows Road; and (2) consider an ordinance amending the zone from Central Commercial (CC) to Residential - 2 single family (R-2-1) on property located in the vicinity of 275 South Cross Hollows Road.

**DISCUSSION:**

Both of the resolution and the ordinance relate to the same property and the same project. Some years ago the developer of this property developed the Villas at Sunset Canyon PUD which was a development of smaller lot single family homes. At the time the Villas was developed the City's Central Commercial zone had a greater allowance for residential uses. After the Villas were subdivided the City changed the Central Commercial ordinance as it relates to residential use. Now the Central Commercial zone only allows residential use on the second floor of a commercial building or up to 50% of the area in a mixed commercial/residential land use. Also the City's general plan for the area has changed since the Villas were developed.

The developer would like to extend the Villas to the South with the same style of housing. The proposed amendments to the general plan and zoning ordinance would facilitate the expansion of the Villas.

Attached are a map showing the proposed location impacted by these amendments, the planning commission minutes, and the necessary resolution and ordinance.



SOUTH BLUFF, LC  
REZONING  
300 SOUTH CROSS HOLLOW ROAD  
CEDAR CITY, UTAH  
VICINITY MAP

**WATSON**

ENGINEERING COMPANY, INC.

ALL STRUCTURAL SURVEYS GEOTECHNICAL ENGINEERING

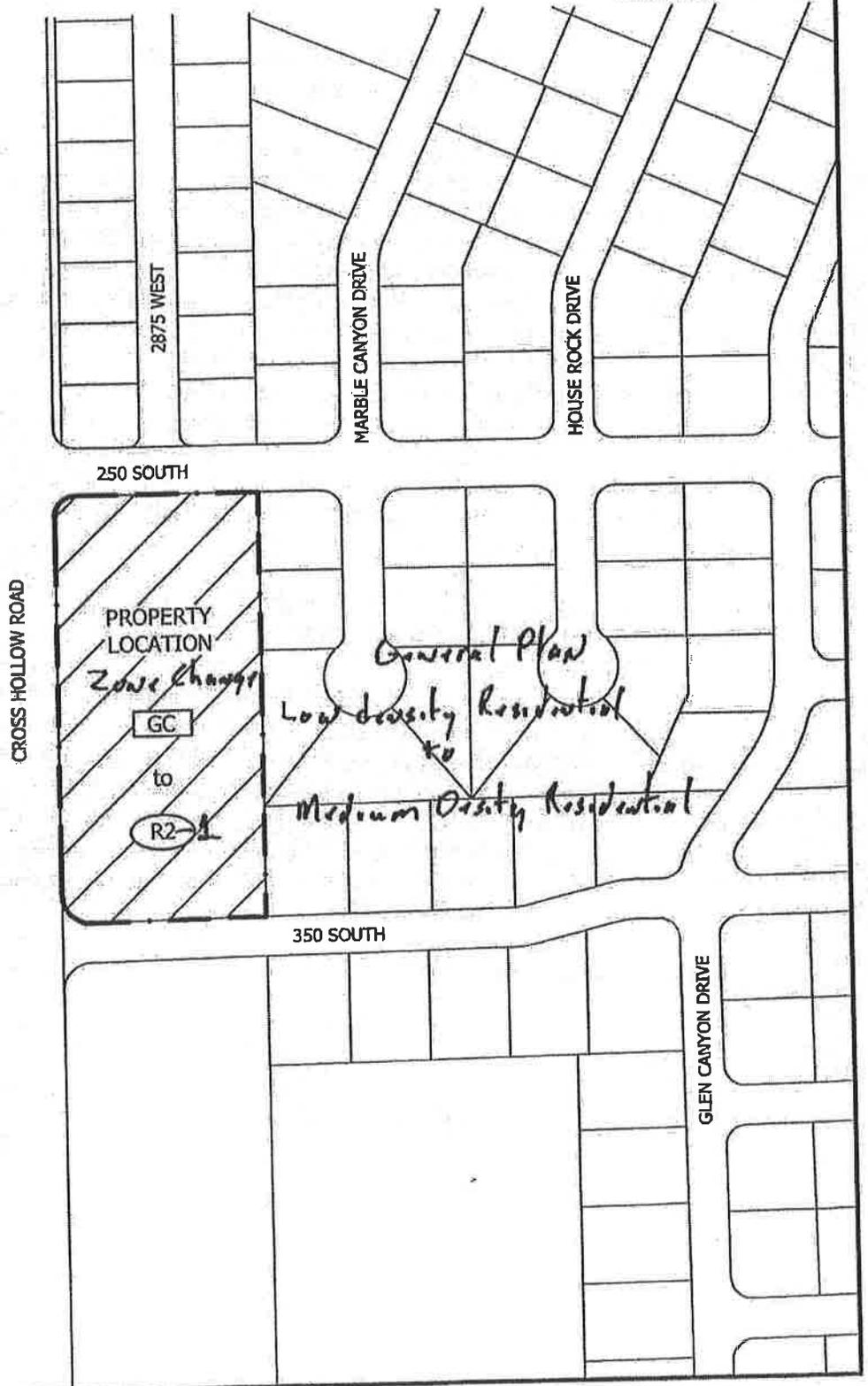
580 NORTH MAIN STREET  
CEDAR CITY, UTAH 84721

TEL. (435) 586-3004 FAX (435) 586-7480

www.wecinc.com



0 200  
Scale: 1" = 200'



basement area is unfinished at this time, and they are remodeling the main floor to meet their office needs. Ron also asked if there were any changes to any utilities. Larry indicated they had not changed any of those. They will have 6 offices on the main floor when they are done.

**Kent moved to give a positive recommendation of the CUP noting that any future parking lot lighting needs to be sufficiently shielded from any neighbors and the future building needs to be similar in appearance to the existing structure. Seconded by Jill and the vote was unanimous.**

**4- General Land Use Amend 275 S Cross Hollow Rd  
Low Density to Medium Density  
(Recommendation)**

**Jeff & Jim Burgess/  
Tim Watson**

Tim Watson of Watson Engineering presented. He pointed out the area of Sunset Canyon and across the street was the Armbrust Property with the Cross Hollow events center further north. This is all currently zoned CC and the general land use shows it as low density. In order to do what they plan, which is the second phase of the Villas at Sunset Canyon PUD, they need to change this to medium density and then the next item is to change the zone from the CC to the R-2 single family. It was asked if his client would be concerned if they only have single-family and cannot do duplexes? Tim pointed out that all of the Villas PUD is single family housing, just on a little smaller lots. They will do the similar thing in this phase, similar home styles; the property size is a little bigger as to the changes in the ordinance. Everything to the east of this is R-1 single family homes. Kit brought up the zone map and showed the area. The commercial strip on the other side of Cross Hollow Road is much deeper.

**Mike moved to give a positive recommendation to Council for the General Land Use change from Low Density to Medium Density housing for this area. Seconded by Ron and the vote was unanimous.**

**5- Zone Change 275 S Cross Hollow Rd  
CC to R-2-1 (Single-Family Unit)  
(Recommendation)**

**Jeff & Jim Burgess/  
Tim Watson**

Tim Watson of Watson Engineering presented. He said this will be the zone change that goes along with the previous item. Mr. Bulloch who lives in the area was not sure he has any comments; he was just present to oppose anyone who would oppose this item, as the neighborhood would like to see the single-family homes in this area. He was in favor of the idea. Tim said he has had only 1 enquiry about this zone change, and they were not negative. Larry also had 1 call from someone who did not want any commercial in the area.

**Mike moved to give a positive recommendation to Council for this zone change, seconded by Kent and the vote was unanimous.**

The meeting adjourned at 5:55 p.m.

---

Michal Adams, Administrative Assistant

CEDAR CITY RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AMENDING THE CITY'S GENERAL LAND USE PLAN FOR PROPERTY LOCATED IN THE VICINITY OF 275 SOUTH CROSS HOLLOW ROAD.

**WHEREAS**, in December of 2009 the City Council formally adopted resolution number 09-1216 which enacted a new general land use plan; and

**WHEREAS**, the City received a proposal to amend the City's general land use plan from Low Density Residential to Medium Density Residential for property located in the vicinity of 275 South Cross Hollows Road and more particularly described as:

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF CROSS HOLLOW ROAD WHICH IS SITUATED N00°05'17"W 466.41 FEET ALONG THE WEST SECTION LINE AND N89°54'43"E 50.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 16, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE ALONG SAID RIGHT-OF-WAY N00°05'17"W 474.77 FEET TO A POINT ON A CURVE TO THE RIGHT, SAID POINT IS ALSO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 250 SOUTH STREET; THENCE ALONG THE SAID RIGHT-OF-WAY AND ALONG THE ARC OF SAID CURVE 39.33 FEET WITH A RADIUS OF 25.00 FEET AND CENTRAL ANGLE OF 90°07'52"; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S89°57'25"E 224.94 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SUNSET CANYON ESTATES, PHASE 1; THENCE ALONG THE SAID WESTERLY BOUNDARY S00°05'17"E 392.68 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SUNSET CANYON ESTATES, PHASE 4; THENCE ALONG THE SAID WESTERLY BOUNDARY S00°05'17"E 138.52 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 350 SOUTH STREET; THENCE ALONG THE SAID RIGHT-OF-WAY LINE S89°05'42"W 214.52 FEET TO A CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE 55.48 FEET WITH A RADIUS OF 35.00 FEET AND CENTRAL ANGLE OF 90°49'01" TO THE POINT OF BEGINNING AND CONTAINS 3.051 ACRES

**WHEREAS**, the amendments to the general land use plan have been presented to the planning commission during a public meeting, and the Planning Commission has recommended to the City Council that they adopt said changes; and

**WHEREAS**, the City Council held a public hearing on October 16, 2013, to consider the recommended changes; and

**WHEREAS**, the City Council finds that the proposed changes to the City's general land use plan are in the best interests of the City.

**NOW THEREFORE**, be it resolved by the City Council of Cedar City, State of Utah that the City's general land use plan for the above described property is hereby amended from low density residential to medium density residential.

This resolution, Cedar City Resolution No. \_\_\_\_\_, was passed upon the following vote:

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

MAYOR PRO TEM

[SEAL]  
ATTEST:

---

RENON SAVAGE  
RECORDER

**CEDAR CITY  
COUNCIL AGENDA ITEM 8  
STAFF INFORMATION SHEET**

**TO:** Mayor and Council  
**FROM:** Kit Wareham  
**DATE:** October 16, 2013  
**SUBJECT:** Review Quotes for the Lights on the YETI Ice Rink

**DISCUSSION:**

Quotes for the YETI Ice Rink were received last Friday. We received quotes from two companies. Codale Electric's quote for the lighting system was \$15,400 for 32-1000 watt lights that have a 12,000 hour rated bulb life. They also provided an alternate quote for 24-1500 watt lights for \$12,000 that only have a 3000 hour rated bulb life. Musco Lighting provided one quote for the lighting system for \$20,380 for 16-1000 watt lights that have a 12,000 hour rated bulb life. Beside just the cost for the lights the vendors were required to provide the following submittals with the quotes:

- 1- A light distribution diagram showing that their proposed lights would provide the required lighting (46 average foot candles) on the ice rink surface;
- 2- Specification sheets for their proposed fixtures and mounting devices.
- 3- Specific aiming instruction for the fixtures in order to provide the required lighting on the ice rink surface ;
- 4- A firm delivery date for the lights and brackets;
- 5- A description of the manufacture's warrantee for their proposed lighting system.

The vendor with the lowest quote, Codale Electric, did not provide any submittals for items 3 and 5. All the required submittals were provided by Musco Lighting.

According to the City's Purchasing policy we would not be required to bring a quotation that is less than \$50,000 to the City Council for approval if we were recommending accepting the lowest quote. However, with this quotation staff feels there is justification to award the purchase to the vendor that did not provide the lowest price, Musco Lighting. Therefore the purchasing policy requires City Council approval of the award.

The following are staff's reasons to award the purchase to Musco Lighting for \$20,380 rather than Codale Electric for \$15,400.

Because the initial costs savings in purchasing the 1500 watt lights is less than the costs to change out the 1500 watt bulbs just one time, let alone the 4 times you

would need to replace them before having to replace the 1000 watt bulb once, the 1500 watt alternative will not be considered. In just considering 1000 watt bulbs the City would save just under \$5,000 by using the Codale Electric lights rather than the Musco lights. Below are the reasons we feel would offset the \$5000 savings and justify awarding the purchase to Musco Lighting. If applicable, an associated financial benefit to the City for selection the Musco Lighting system is shown with each reason.

Reason #1- Lack of required Submittals. Codale Electric did not provide all the required submittals therefore their quote could be considered non-responsive (Annual Financial Benefit- N/A);

Reason #2- Operation cost reduction. The lighting system from Codale Electric has 32-1000 watt fixtures. The Musco Lighting system only has 16- 1000 watts fixtures. Assuming the rink will be lite for 4 hour a day for 5 nights a week for 5 months a year, there will be energy saving to YETI or the City, whoever is paying the power cost. (Estimated Annual Financial Benefit- \$512 );

Reason #3- Warrantee. Codale Electric provided no warrantee information therefore I will assume a normal one year parts only warrantee for them, not including the bulb. The Musco Lighting system has a 2 year full parts, bulb, and labor warranty and a 10 year parts only warrantee, not including the bulb. Assuming having to replace 2 fixtures and bulbs for the first two years and a fixture every other year for the next 8 years and the materials, equipment and labor costs would be significant. (Estimated Annual Financial Benefit- \$540);

Reason #4- Light Pollution. This is probably the most significant reason the select the Musco Lighting system. Codale Electric provides nothing with their system to prevent the two types of light pollution which are lighting spilling onto the immediate surrounding properties or the negative visual affects to the night sky for the immediate and distant surrounding properties. The City spent in excess of \$75,000 to make the residential neighbors to the east of the Aquatic Center satisfied with the having the reservoir access road next to their property. The approximate \$5,000 difference in bid price would be a minor expense compared to the potential cost in legal, staff and Council time and other mitigation expenses to resolve the light pollution issues the east neighbors will have with the lighting materials proposed by Codale Electric. The nearest light on the rink will be 140 feet from the back property line of the neighbors to the east. Attached is a sheet showing the light spillage for the Musco lights as a 150 feet distance for the nearest lift to be an undetectable 0.03 foot candles. (Estimated Financial Benefit- \$5000+);

Reason #5- Light Aiming. The Musco Lighting system is all pre-aimed in the factory and requires no aiming of the fixtures on site. The fixture assembly is mounted to the poles and the poles are then turned to the exact location as directed by a laser mounted at the factory on the assembly. The light system from

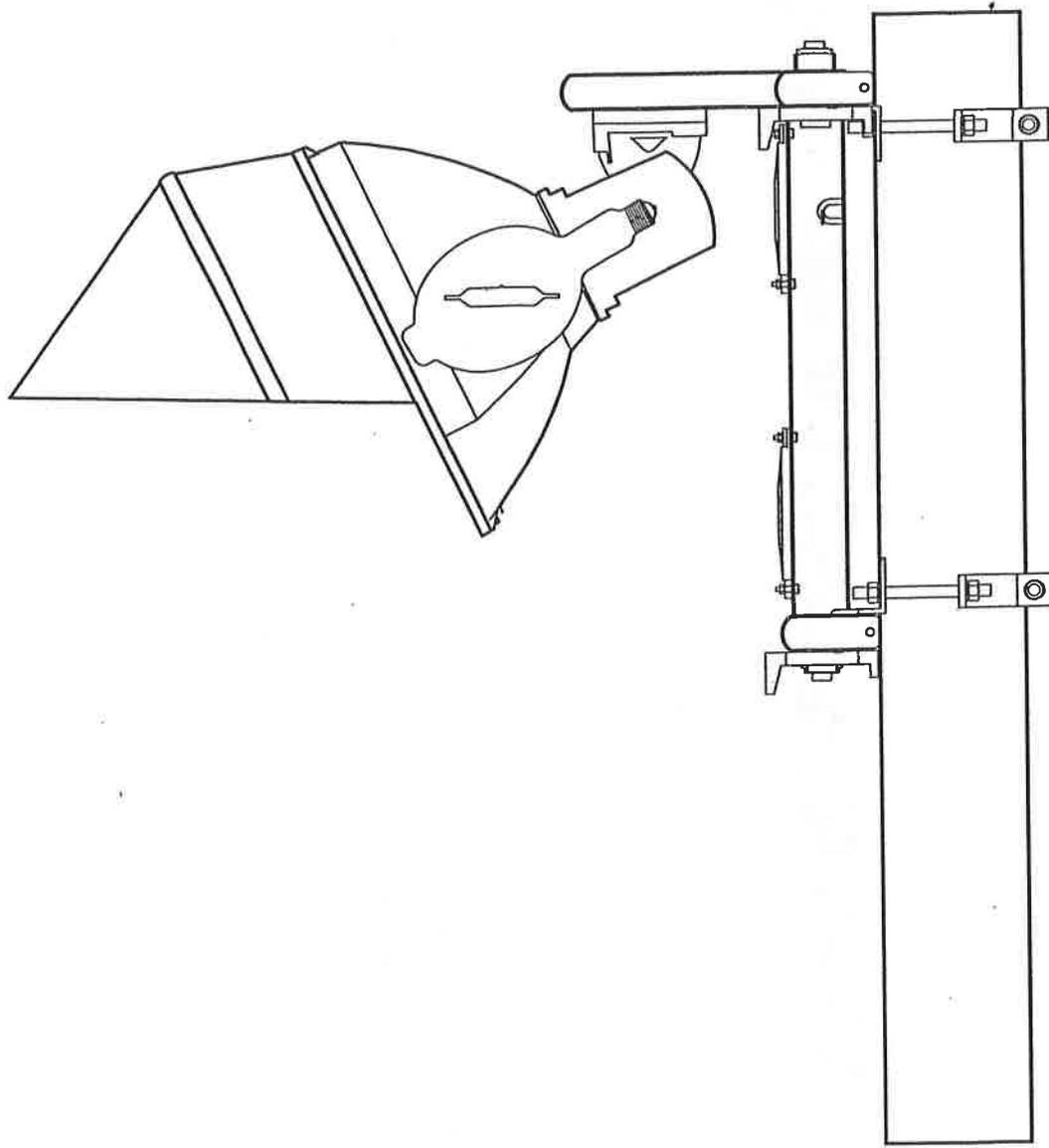
lowest quote requires the aiming of each fixture in the field by qualified people (Estimated Financial Benefit- \$750).

**Attached are drawings of both the Musco Light and the Codale Light. A Musco light fixture will also be brought to the meeting for you to look at. Also attached is a financial status sheet for the project showing the projected City costs for the project are within budget if the Musco System is selected.**

lowest quote requires the aiming of each fixture in the field by qualified people (Estimated Financial Benefit- \$750).

**Attached are drawings of both the Musco Light and the Codale Light. A Musco light fixture will also be brought to the meeting for you to look at. Also attached is a financial status sheet for the project showing the projected City costs for the project are within budget if the Musco System is selected and a sheet describing some other advantages of the MUSCO light system.**

**Electrical Components Enclosure  
(with optional subpanel and disconnect switch)**



**Poletop Luminaire Assembly  
(side view)**

MUSCO light





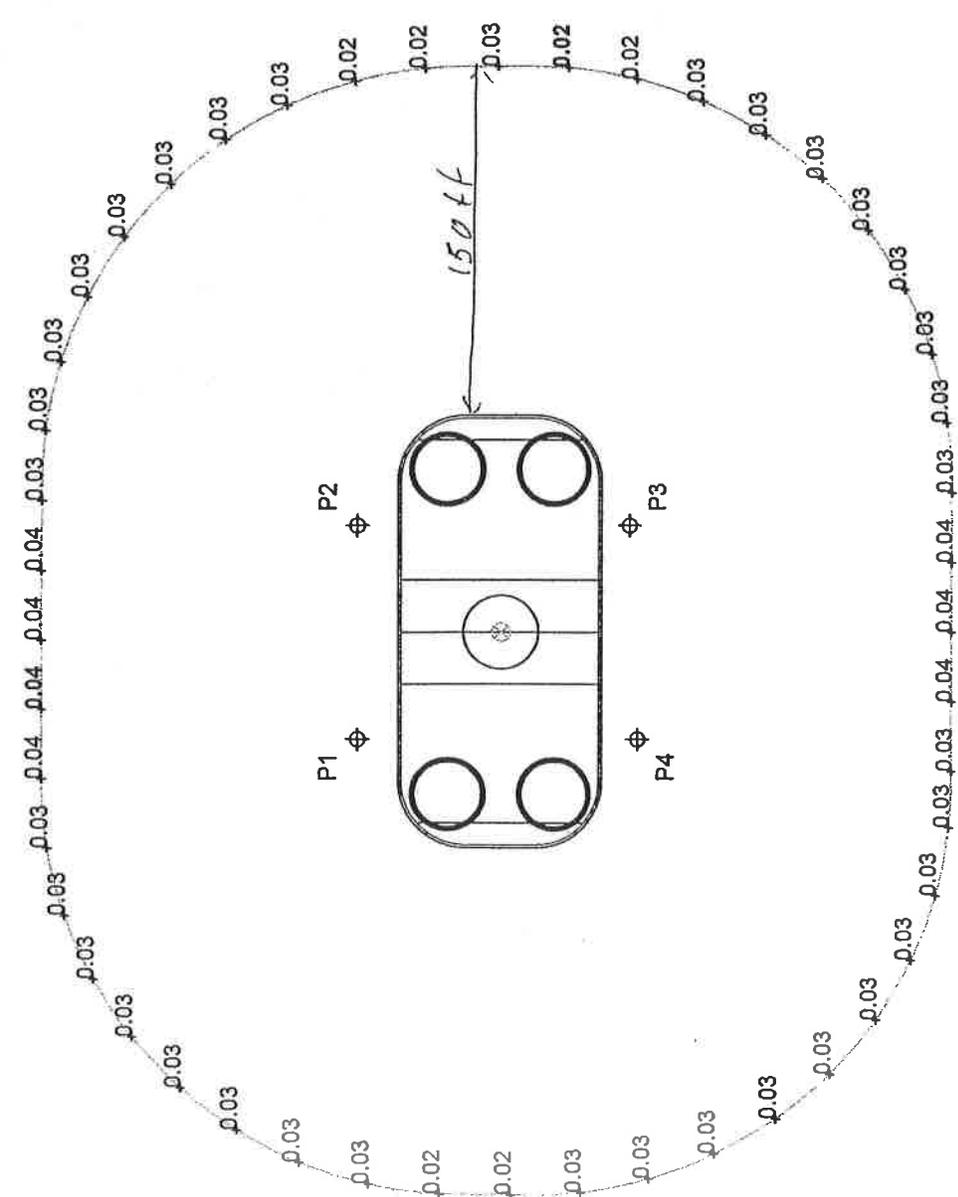
**EQUIPMENT LIST FOR AREAS SHOWN**

QTY	LOCATION	SIZE	GRADE ELEVATION	MOUNTING HEIGHT	Luminaires			
					LAMP TYPE	QTY / POLE	THIS GRID / OTHER GRIDS	
4	P1-P4	50"		50'	1000W MZ	4	4	0
4	TOTALS					16	16	0

**MY PROJECT**  
 Name: YETI Ice Rink  
 Location: Cedar City, UT

**GRID SUMMARY**  
 Name: 150' Spill  
 Spacing: 30.0'  
 Height: 3.0' above grade

**CONSTANT ILLUMINATION SUMMARY**  
 Entire Grid  
 Scan Average:  
 Maximum: 0.02  
 Minimum: 0.02  
 No. of Points: 48  
 LUMINAIRE INFORMATION  
 Luminaire Type: Green Generation  
 Rated Lamp Life: 12,000 hours  
 Avg Lumens / Lamp: 88,000  
 Avg Lamp Tilt Factor: 1.000  
 No. of Luminaires: 16  
 Avg KW: 17.92 (20.8 max)



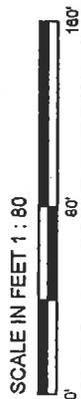
**Guaranteed Performance:** The CONSTANT ILLUMINATION described above is guaranteed for the rated life of the lamp.

**Field Measurements:** Illumination measured in accordance with IESNA LM-5-04 and CIBSE LG4. Individual values may vary. See the Warranty document for details.

**Electrical System Requirements:** Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

**Installation Requirements:** Results assume +/- 3% nominal voltage at line side of the ballast and structures located within 3 feet (1m) of design locations.

*Light Spill Diagram*



Pole location(s) Ⓢ dimensions are relative to 0,0 reference point(s) ⊗

**ENGINEERED DESIGN**  
 By: Eric Svenby  
 File # / Date: 165943A

09-Oct-13

Not to be reproduced in whole or part without the written consent of Musco Sports Lighting, LLC. ©1981, 2013 Musco Sports Lighting, LLC.

**ILLUMINATION SUMMARY**

**YETI Ice Rink  
Financial Status Sheet**

**Project Revenues-**

Source	Amount
RAP Tax	\$93,815
<b>Total Revenues</b>	<b>\$93,815</b>

**Project Expenses-**

Item	Materials	Labor	Amount	Source
Grading	Incl.	\$18,395	\$18,395	Bid
Lights	\$20,380	\$3,000	\$23,380	Bid/Est.
Light Electrical	\$5,000	\$3,500	\$8,500	Estimate
Light Poles	\$4,000	\$8,000	\$12,000	Bid/Est.
Electrical Feed	\$8,000	\$2,500	\$10,500	Bid/Est.
Fencing	Incl.	\$11,000	\$11,000	Estimate
Miscellaneous	\$2,000		\$2,000	Estimate
		Sub-Total	\$85,775	
		Engineering/Adminstration	\$4,289	
		Contigency/Misc.	\$2,251.59	
		<b>Total Expenses</b>	<b>\$92,315.34</b>	
<b>Project Fund Balance</b>			<b>\$1,500</b>	

## Why Musco's SportsCluster Green System Is Superior And Will Save Cedar City Money

1. **Quality of Components.** People really need to see and feel the differences because there are many, but here are just a couple of examples. Musco's reflector is made of die cast aluminum (not spun aluminum) so that it will not dent and mess up the photometrics when hit by hail, etc. Musco's 1,000 watt metal halide lamps have been independently tested to provide at least 12,000 hours of lamp life. Many other examples could be given.
2. **10/2 Warranty.** Musco's 10/2 warranty includes replacement parts for 10 years, with the first two years including lamps and labor.
3. **Energy Savings.** Because Musco can light your ice arena with fewer fixtures, this should result in energy cost savings of many thousands of dollars over the life of the system.
4. **Remote Ballasts.** Musco's ballasts and electrical components are located in the electrical components enclosure approximately 10 to 15 feet above the ground which can be easily accessed by a step ladder. No need to pay for an expensive lift to get to the top of the pole.
5. **Spill & Glare Control.** Musco's system has the best spill & glare control in the industry which allows us to meet strict City guidelines, and makes for much happier neighbors.
6. **Delivery Of System In 4 Weeks.** Because Musco manufactures our own system, we can deliver the entire system in 4 weeks from receiving an order and all of the necessary information needed to properly build the system.
7. **Installation Savings In Time & Money.** As a result of Musco's pre-aimed fixtures, Musco's system is fast and trouble free to install.
8. **Lights Are Pre-Aimed In The Factory.** Musco's lights are pre-aimed in the factory, so along with a laser light on one fixture on each pole, it allows for easy and correct aiming of the lights during installation.
9. **Designed As A System.** Musco's system is designed and manufactured as a complete system for reliable and proven results year after year.
10. **Contactor Cabinet & Contactors Included.** Musco's contactor cabinet and contactors have been included as part of Musco's system.
11. **Over 35 Years Of Musco Research & Development & Service.** With Musco, you get over 35 years of technology improvements, along with our well known service.



#9

AMENDED AND RESTATED INTERLOCAL AGREEMENT CREATING THE  
UTAH LOCAL GOVERNMENTS TRUST

ARTICLE I  
NAME

1.1. The name of the governmental entity created pursuant to this Interlocal Agreement is the Utah Local Governments Trust (hereinafter "the Trust").

ARTICLE II  
PURPOSES

2.1. The purposes of this Agreement and the entity created pursuant thereto are:

2.1.1. **PERSONAL BENEFITS.** To enable Utah cities, towns, counties, and other special districts of local governments to form a governmental entity to provide a comprehensive and complete program of hospital, medical, dental, disability, life, and other personal benefit plans and programs for units of local governments within the State of Utah.

2.1.2. **CASUALTY-PROPERTY.** To enable units of local governments to provide a comprehensive and complete program of casualty, property, marine, liability, and other insurance plans or programs required or desirable to protect local governments' property and assets and elected and appointed officials and employees from personal liability.

2.1.3. **FUNDS.** To create funds from revenues, premiums, and monies which funds shall at all times belong to the participating units of local governments to pay claims of the local units of government according to any plan, program, or contract between the Trust and the participating unit of local government or to purchase the insurance requested by the participating unit of local government.

2.1.4. **GENERAL POWERS.** To administer, insure, reinsure, fund or self fund, indemnify, or perform any other act necessary to provide or administer any plan or program necessary or desirable to give effect to this Agreement.

2.1.5. **SINGLE ENTITY.** To enable local governments to act as a single entity to provide personal, casualty, property, marine, liability, or other insurance to participating units of local government.

2.1.6. **ADVISOR TO LOCAL GOVERNMENTS.** To act as an advisor and counsel to units of local government regarding their insurance needs, obligations, risks, and benefit plans.

2.2. **TRUST NOT REQUIRED TO PROVIDE COVERAGES.** Nothing in this Agreement shall require the Trust to offer or provide any or all of the plans or programs authorized by this Agreement.

2.3. AUTHORITY. The Trust hereby is granted and authorized to perform and do all acts necessary or convenient and to render all services contemplated and engage in such governmental and proprietary functions, as are authorized or contemplated by Sections 11-13-101 et seq., 10-3-1103, and 63-30d-801 et seq., Utah Code Annotated 1953, to carry out the purposes and intent of this Agreement.

### ARTICLE III DEFINITIONS

3.1. As used in this Interlocal Cooperation Agreement:

3.1.1. LOCAL GOVERNMENTS. "Local governments" means public agency as used in the Interlocal Cooperation Act and includes any county, city, town, special district, or combination thereof; it specifically includes any agency or entity created pursuant to the Utah Interlocal Cooperation Act, Section 11-13-101 et seq., Utah Code Annotated 1953, as amended.

3.1.2. PROPERTY INSURANCE. The definition of "property insurance" set forth in Section 31A-1-301, Utah Code Annotated 1953, is hereby incorporated by reference.

3.1.3. BOND. "Bond" means a faithful performance bond or indemnification bond or any other bond required by any Utah law.

3.1.4. INLAND MARINE. The definition of "inland marine" insurance set forth in Section 31A-1-301, Utah Code Annotated 1953, is hereby incorporated by reference.

3.1.5. WORKERS' COMPENSATION. "Workers' compensation" means any form of workers' compensation permitted or required by the laws of the State of Utah or the laws of the United States.

3.1.6. UNEMPLOYMENT COMPENSATION. "Unemployment compensation" means any form of unemployment compensation permitted or required by the laws of the State of Utah or the laws of the United States.

3.1.7. VEHICLE LIABILITY INSURANCE. The definition of "vehicle liability insurance" set forth in Section 31A-1-301, Utah Code Annotated 1953, is hereby incorporated by reference.

3.1.8. SURETY INSURANCE. The definition of "surety insurance" set forth in Section 31A-1-301, Utah Code Annotated 1953 is hereby incorporated by reference.

3.1.9. ADMINISTRATIVE BOARD. "Administrative board" means the administering body created by this Agreement to operate and administer the Trust and the insurance programs offered by the Trust.

3.1.10. MEMBER. "Member" means any city, county, town, or other unit of local government that participates in one or more plans or programs offered by the Trust. A unit of

local government need not have executed this Interlocal Agreement or Resolution to be a member. Any unit of local government that stops participating in the plans or programs offered by the Trust, shall not be a member.

3.1.11. CASUALTY INSURANCE. The definition of “casualty insurance” (liability insurance) set forth in Section 31A-1-301, Utah Code Annotated 1953, is hereby incorporated by reference.

3.1.12. UNIT OF LOCAL GOVERNMENT. “Unit of local government” means any city, county, town, special district, or any other entity which is a political subdivision of the State of Utah.

3.1.13. PERSONAL INSURANCE OR PERSONAL BENEFITS. “Personal insurance” or “personal benefits” means life, disability, hospital, medical and dental insurance or benefits, unemployment or workers’ compensation.

3.1.14. PERSON. “Person” means any individual, company, partnership, corporation, municipal corporation, or any business entity.

3.1.15 INSURANCE. “Insurance” means casualty liability and personal insurance.

#### ARTICLE IV DURATION

4.1. EXTENSION. This Agreement shall be for a period of 50 years, but may be extended by the members.

4.2. WITHDRAWAL. Nothing in this Article shall prevent any local government from withdrawing from the Trust.

4.3. TERMINATION IF VOID. This Agreement shall terminate if it is found to exist entirely in violation of the law.

#### ARTICLE V TRUST FUNDS

5.1. FUNDS PROPERTY OF UNITS OF GOVERNMENTS. All premiums, payments, and funds received, held, or administered by the Trust as herein provided shall be and remain the property and assets of the units of local government which create or participate in the Trust program or programs according to the terms of this Agreement, except that the funds of the Trust shall become the property of the person to whom the funds are paid when paid according to this Agreement, benefit or insurance plans, and programs authorized by the administrative board.

5.2. INTERNAL REVENUE CODE COMPLIANCE. In accordance with Section 115 of the Internal Revenue Code of 1954, as amended, any income derived from the investments or operations of the Trust shall accrue to the units of local government participating

in the Trust. None of the assets, property, funds, or revenues held by the Trust shall ever be deemed to or become the property of the Trust.

5.3. UNRESTRICTED RIGHT TO PROPORTIONATE SHARE OF INCOME. Each unit of local government participating in the Trust shall have the unrestricted right to withdraw its proportionate share (as defined in Section 12.3.) of the income derived from the investments or operations of the Trust. However, to the extent the income so derived is needed to provide reserves for potential claims against programs that the Trust has elected to reinsure or self-insure (under authority of Article VI), participating units of local governments agree to defer the withdrawal of that portion of the income so needed until such time as the administrative board determines using actuarially sound insurance accounting principles that such withdrawal will not jeopardize the financial stability of Trust programs.

5.4. FUNDS TO BE USED TO PURCHASE OR PROVIDE COVERAGE. The local governments hereby authorize and direct the administrative board to do all things necessary and proper and to use the payments or contributions received by the Trust to purchase and maintain in force such policy or policies of insurance as they in their sole discretion shall determine to be in the best interest of the members and the employees of the members; or on an actuarially sound basis, to use such funds to establish a program or programs of self-insurance, reinsurance, or co-insurance.

ARTICLE VI  
MANAGEMENT AND ALLOCATION OF FUNDS,  
PURCHASE OF INSURANCE, BONDS, REINSURANCE, SELF-FUNDING

6.1. LICENSED CARRIER REQUIRED. If casualty insurance or personal insurance policies are purchased, it shall be from a licensed insurance carrier. Policies may be purchased for one or more of the casualty insurance or personal insurance programs offered by the Trust from one or several carriers; or the Trust may reinsure or self-insure one or more of the programs and purchase the casualty insurance or personal insurance from a carrier for the remaining programs. Where the Trust purchases insurance or personal insurance from a carrier, the Trust shall be the policyholder. The amount of casualty insurance, personal insurance, and benefits shall be such as the administrative board may determine subject to securing a policy or policies from one or more carriers or bond companies able to provide the benefits from the premium paid.

6.2. TRUST TO ACT AS POLICYHOLDER. The administrative board may apply for such insurance policies or group insurance or personal insurance or group personal insurance in its name as policyholder or in the names of the participating members and may use the fund to pay for and accept and hold as part of the fund the policy or policies insured to the Trust in its name as policyholder.

6.3. TERMS OF POLICY. The administrative board may agree with an insurer of any policy or policies issued for the purposes of this Agreement on waiting period, definitions of full-time employment and all other necessary or desirable provisions, including the eligibility of

employees; or, in the case of self-insurance, the local government and administrative board may provide specifically such terms and conditions.

6.4. SEPARATE ACCOUNT REQUIRED. The Trust Board shall create separate funds and accounts for each of the following:

- A. Hospital, medical, and dental;
- B. Disability;
- C. Life (except where part of the hospital and medical plan) whether or not dental is included;
- D. Fidelity and fiduciary;
- E. Casualty, marine, property, and liability.

The assets of each fund shall not be co-mingled with those of another fund, nor shall it be subject to attachment, claims, or payment of damages in any other fund. Where a participating unit of local government elects to participate in Groups A, B, and C, or any combination of these groups, the Trust may treat the account as participating in the fund for which a majority of the premium is paid. One fund may make loans to another.

6.5. FUND MANAGEMENT. With respect to each fund, the administrative board shall use and apply each fund:

6.5.1. GENERAL ADMINISTRATION. To pay or provide for the payment of all reasonable and necessary expenses of collecting the local governments' contributions and administering the affairs of each fund, including, but without limitation, all expenses which may be incurred in connection with each fund, the employment of such administrative, legal, expert, and clerical assistance, the leasing of such premises and the purchase or lease of such materials, supplies, and equipment as the administrative board, in its discretion, finds necessary or appropriate in the performance of its duties.

6.5.2. PAYMENT OF PREMIUMS. To pay or provide for the payment of premiums due from local governments on the policy or policies, when such premiums shall become due; but the administrative board shall not use the fund to maintain in force any insurance for the account of any local government that is in default of payment of contributions to the fund.

6.5.3. RESERVES. To establish and accumulate as part of the fund an adequate reserve which the administrative board shall deem advisable to carry out the purposes of this Agreement.

6.5.4. REFUNDS. To refund premiums, payments, or contributions from local governments for which insurance may not be purchased for any reason, but if a unit of local

government withdraws from the Trust for any reason, the Trust shall be under no obligation to refund any premium, payment, or contribution of the local government if insurance has been purchased for the local government.

6.6. GENERAL OPERATING ACCOUNT. The administrative board may establish a general operating account or fund and may transfer to that account or fund a specified percentage of revenues received in each separate fund for the purpose of establishing a general operating fund or account to administer the general provision of the Agreement.

6.7. DEPOSITORIES-INVESTMENTS. All premiums, contributions, and monies received by the Trust hereunder as part of the fund or funds shall be deposited by it in such bank or banks as the administrative board may designate for that purpose, and all withdrawals of monies from such bank or banks shall be made only by check signed by a person or persons authorized by the administrative board to sign and countersign but no bank shall be elected as a depository of the funds of the Trust that is not a member of the Federal Deposit Insurance Corporation or is not supervised and insured by an instrumentality of the United States Government.

6.8. BOND REQUIRED. All officers and employees of the Trust who are authorized to sign or countersign checks or who otherwise may handle monies or other property of the Trust shall be bonded.

6.9. DIVIDENDS, EXPERIENCE RATING. Anything contained in this Agreement to the contrary notwithstanding, the administrative board may agree with the insurer or insurers for the combination of financial experiences, for dividend purposes, of policies issued to the administrative board pursuant to this Agreement and of policies not so issued with insured employees of local governments that are insured under this Agreement. The administrative board may agree with the insurers and to provide for a centralized administration of all policies or may administer the programs themselves in any manner deemed advisable by the administrative board.

## ARTICLE VII LOCAL GOVERNMENT CONTRIBUTIONS TO THE TRUST

7.1. PERSONAL INSURANCE OR BENEFITS. On application and acceptance by the administrative board or the Executive Director, each local government shall pay to the Trust a sum determined by the administrative board to participate in any personal insurance or self-funded benefit program offered by the Trust. Each local government shall pay to the Trust on such day of each month as determined by the administrative board for all the local governments, such member's contributions for personal insurance when and as the administrative board shall deem necessary to pay the premium due, together with that member's fair share of expenses on account of the personal insurance purchased for such local governments but all local government payments shall be credited against premiums and shares of expenses due from local governments.

7.2. CASUALTY AND LIABILITY INSURANCE. On application and acceptance by the administrative board or the Executive Director, each local government shall pay to the Trust a sum determined by the administrative board to participate in any casualty or liability insurance or self-funded casualty or liability program offered by the Trust. Each local government shall pay to the Trust on such day of each month as determined by the administrative board for the local governments, such member's contributions for insurance when and as the administrative board shall deem necessary to pay the premium due, together with that member's fair share of expenses on account of the insurance purchased for such local governments but all local government payments shall be credited against premiums and shares of expenses due from local governments.

ARTICLE VIII  
PARTICIPATION OF LOCAL GOVERNMENTS  
IN THE ASSOCIATION

8.1. PERSONAL INSURANCE. The employees of a unit of local government that make application to the administrative board shall, on approval of the application and payment of the premium established by the administrative board, become insured by the Trust under the policy or policies of the Trust and shall participate in the Trust for such personal insurance, provided the employee satisfies the requirements for participation in such personal insurance as may be established by the personal insurance carrier or carriers of the policy or policies under which such insurance is offered; or, under such requirements as the administrative board may establish for participation in any self-funded personal benefit plan or program. A local government's participation in the Trust personal insurance program shall commence on the date set by the Board. The personal insurance carrier of the policy or policies, if any, shall at all times be kept informed by the administrative board of the local governments that participate in the Trust personal insurance, as well as the names of their employees. A local government may participate in the personal insurance program on approval of the application and payment of the premium. The local government need not execute this Agreement to participate, but must subscribe to the personal insurance or benefits to be provided pursuant to this Agreement by resolution, ordinance, or contract.

8.2. CASUALTY AND LIABILITY INSURANCE. A unit of local government that makes application to the administrative board shall, on approval of the application and payment of the premium established by the administrative board, become insured by the Trust under the policy or policies of the Trust and shall participate in the Trust for such insurance, provided the unit of local government satisfies the requirements for participation in such casualty insurance as may be established by the insurance carrier or carriers of the policy of policies under which such insurance is offered; or, under such requirements as the administrative board may establish for participation in any self-funded casualty program. A local government's participation in the Trust insurance program shall commence on the date set by the administrative board. The insurance carrier of the policy or policies, if any, shall at all times be kept informed by the administrative board of the local governments that participate in the Trust insurance. A local government may participate in the casualty or liability insurance program on approval of the application and payment of the premium. The local government need not

execute this Agreement to participate, but must subscribe to the insurance or benefits to be provided pursuant to this Agreement by resolution, ordinance, or contract.

8.3. TERMINATION OF QUALIFICATIONS. A local government shall cease to qualify for participation in the Trust for any insurance or benefit plan when it fails to make its contribution as provided in Article VII for the insurance on the date when due or within the period of time allowed by the administrative board for the payment thereof; or if a local government shall cease to qualify under or by reason of any state or federal law; or when the local government fails to comply with the rules and regulations made by the administrative board from time to time with respect to the administration of the insurance Trust fund or funds; including, but without limiting the generality of the foregoing, the method and accuracy of local government's reports, the effective date of insurance of its employees, the discontinuance of insurance of its employees, premiums due, or any and all other facts which the administrative board deems advisable to assure a sound administration of the insurance programs offered by the Trust.

8.4. TERMINATION OF PARTICIPATION. When in accordance with the provisions of this Article VIII, a local government ceases to qualify for participation in the Trust for the insurance provided under the policy or policies, the administrative board shall, if insured by a carrier, forthwith give notice thereof to the insurance carrier of the policy or policies under which such insurance is provided, and such policy or policies and participation of the local government in the Trust shall terminate to such extent and at such time as the insurance terminates. In such event the Trust shall have no further liability to local government or its employees whose participation and insurance have terminated.

ARTICLE IX  
RETURN OF MONIES RECEIVED FROM PERSONS  
NOT QUALIFYING AS A LOCAL GOVERNMENT AS  
DEFINED IN THIS AGREEMENT

9.1. Should any monies be received by the Trust for the purpose specified in Article II of this Agreement from any local government failing to satisfy the requirements for participation in the Trust, or from any local government whose employees do not become insured under the policy or policies, such monies shall be returned, and there shall be no further obligations whatsoever in connection therewith.

ARTICLE X  
ADMINISTRATION OF THE TRUST

10.1. ADMINISTRATIVE BOARD. The Trust shall be governed and administered by an administrative board composed of at least seven officials representing participating Members. The administrative board may from time to time, on a two-thirds vote of the administrative board, increase the number of members on the administrative board without amending this Agreement, but the number shall not exceed 15.

10.1.1. CITIES AND TOWNS. Up to four members of the administrative board shall be elected officials from participating cities and towns unless the number of participating cities and towns is less than four, in which case the minimum number of elected officials from cities and towns on the administrative board shall be reduced to the number of participating cities and towns. The terms of the municipal administrative board members shall be four years, but the terms shall be staggered so that one position is filled each year. If a municipal member of the administrative board ceases to be an elected official, the remaining municipal members shall appoint a person to serve until the next election. At the next election a municipal elected official shall be elected to fill the remainder of the term.

10.1.2. COUNTIES. Up to three members of the administrative board shall be elected officials from participating counties unless the number of participating counties is less than three, in which case the minimum number of elected officials from counties on the administrative board shall be reduced to the number of participating counties. The terms of the county administrative board members shall be four years, but the terms shall be staggered so that one position is filled each year. If a county member of the administrative board ceases to be an elected official, the remaining county members shall appoint a person to serve until the next election. At the next election a county elected official shall be elected to fill the remainder of the term.

10.1.3. SPECIAL DISTRICTS. Up to three members of the administrative board shall be elected or appointed officials from participating special districts unless the number of participating special district is less than three, in which case the minimum number of officials from special districts on the administrative board shall be reduced to the number of participating special districts. The terms of the special district administrative board members shall be four years, but the terms shall be staggered so that one position is filled each year. If a special district member of the administrative board ceases to be an official of a district, the remaining special district members shall appoint a person to serve until the next election. At the next election a special district elected or appointed official shall be elected to fill the remainder of the term.

10.1.4 APPOINTED OFFICIALS. The elected officials of the administrative board may appoint additional members to serve on the board, but the number of appointed board members shall not exceed one third of the total board membership. Any vacancy in the appointed member positions shall be filled by the remaining board members. Terms may be staggered as the board deems appropriate.

10.2. RESIGNATION. A member of the administrative board may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving 30 days notice in writing to the remaining members, or such shorter notice as the remaining members may accept as sufficient, in which notice there shall be stated a date and such resignation shall take effect on the date specified in the notice, unless a successor member shall effect immediately upon the appointment of such successor member.

ARTICLE XI  
POWERS OF ADMINISTRATIVE BOARD

11.1. AS POLICYHOLDER. The administrative board may exercise all rights or privileges granted to it as policyholder by provisions of each policy or allowed by the insurance carrier of such policy, and may agree with such insurance carrier to any alteration, modification, or amendment of such policy, and may take any action respecting such policy or the insurance provided thereunder which may be necessary or advisable, and such insurance carrier shall not be required to inquire into the authority of the administrative board with regard to any dealings in connection with such policy.

11.2. CONSTRUE THIS AGREEMENT. The administrative board shall have power to construe the provisions of this Agreement and the terms used herein, and any reasonable construction adopted by the administrative board in good faith shall be binding upon the local governments and employees.

11.3. LIABILITY OF MEMBER. Notwithstanding anything contained herein to the contrary, each local government shall be liable to The Utah Local Governments Trust for the premium for its insurance and the insurance of its employees under the policy or policies for any period during which such insurance is in force and the administrative board shall enforce such liability for such premiums to the extent necessary to pay premiums due under any such policy or policies. In the event any such policy or policies are terminated and premium due thereunder is not paid by the administrative board to the insurance carrier issuing the policy or to the Trust on the date the premium is due thereunder, such insurance carrier, if it shall so elect, shall immediately be subrogated to the right of the Trust to enforce the liability of any local government under this Agreement and may apply any sums collected first toward its expense of suit including costs and counsel fees and then toward the discharge of the premium obligation under the policy or policies. Any such election by the insurer may be exercised at any time and shall not constitute a waiver of its right to collect any deficiencies in premium from the Trust.

11.4. ADMINISTRATIVE BOARD - GENERAL MANAGEMENT MEETINGS. The administrative board shall have the general management, control, and direction of all the business activities and affairs of the Trust, with full power to transact all its business, including the making of deposits in and disbursements from the funds. The administrative board shall meet at least bi-annually.

11.5. COMPENSATION. The members of the administrative board shall receive compensation for their duties and shall be reimbursed for all reasonable and necessary expenses which they may incur in the performance of their duties. Provision may be made to compensate one or more members of the administrative board for special executive or administrative services performed in connection with the direction, administration, or operation of the Trust.

11.6. RULES AND REGULATIONS. The administrative board may promulgate such rules and regulations as may, in its discretion, be proper or necessary for the sound and efficient administration of the Trust; but such rules shall not take effect until a copy or copies

thereof have been mailed to the carrier of such policy or policies which may be affected by such rules and regulations.

11.7. GENERAL ADMINISTRATION. The administrative board may delegate its administrative and ministerial powers and duties to an Executive Director. The Trust may employ such persons as it deems necessary on such terms and conditions as the administrative board shall deem appropriate.

11.8. RECORDS - AUDITS - REPORTS. The Trust shall keep true and accurate books of account and records of all its transactions, which shall be audited annually or more often by a public accountant and furnish to participating local governments from time to time reports respecting the status of the Trust and the status of each fund and the status of the bond, policy or policies, and the benefits paid thereunder, but the administrative board shall not be required to furnish such reports more often than annually.

11.9. MEETINGS. Any action by the administrative board pursuant to this Agreement may be taken either at a meeting, a meeting at which all or several members participate by electronic means, or in writing without a meeting. A meeting may be called at any time by the chairman or any two members, giving at least five days written notice to the other members. Notice of any meeting may be dispensed with if all the members in writing waive the notice. Notice shall be deemed waived by any member that appears at a meeting, unless such appearance is solely for the purpose of objecting to the failure to give the notice required by this section.

11.10. MAJORITY REQUIRED. Any action taken by the administrative board pursuant to this Agreement, except as otherwise provided, shall be by at least a majority of a quorum of the members. A quorum is a majority of the total number of the members of the administrative board.

11.11. NO LIABILITY OF BOARD. The administrative board shall not have any liability with respect to the nonpayment of local government contributions. All suits and proceedings to enforce or protect any other right, demand, or claim on behalf of the administrative board or Trust, may be instituted and prosecuted on behalf of the Trust and the administrative board.

11.12. NO LIABILITY - EXCEPTIONS. The members of the administrative board personally and individually, whether severally or jointly, shall not be liable in any matter or transaction or for any omission relating to the conduct of the business of the Trust nor their respective activities and performance of their duties with respect thereto. No member shall be liable for errors in judgment of himself or of the other members nor for any act, judgment, or exercise of discretion of the administrative board's agents or employees, in the conduct of the Trust and each shall be liable only for his own willful misconduct or wrongdoing in respect thereto.

11.13. FULL FAITH AND CREDIT. The administrative board shall honor and be bound by all agreements made by their predecessors, successors, assigns, or assignors.

ARTICLE XII  
TERMINATION-DISTRIBUTION OF ASSETS

12.1. PROCEDURE. This Agreement may be terminated:

12.1.1. BY MEMBERS. On a two-thirds majority vote of all members at a meeting called for that purpose after written notice of such meeting stating the time, purpose, and place of the meeting is given to all members at least 30 days prior to this meeting.

12.1.2. BY ADMINISTRATIVE BOARD. By a two-thirds majority vote of all of the members of the administrative board at a meeting called for that purpose after written notice of such meeting stating the time, purpose, and place of the meeting is given to all members of the board and of the Trust at least 30 days prior to the meeting. The Trust board may not terminate this Agreement if more than 25 percent of the members appear at the meeting to object to terminating this Agreement.

12.2. PAYMENT OF OBLIGATIONS. On termination of this Agreement, the entity and administrative board shall continue in existence for the purpose of winding down the affairs of the Trust. The Trust shall make provision, so far as reasonably possible, for the orderly transfer of all policies held in the name of the Trust and to protect members and their employees. The Trust shall, to the extent it has revenues, pay all obligations of the Trust from each fund for which the fund is obligated.

12.3. DISTRIBUTION OF ASSETS. After paying or making provision for paying all claims, whether reported or unreported, the Trust shall pay to the member participants, including those that may have ceased to be members, their proportionate share of the assets from each fund according to the member's ratio of contribution to the fund to the total contribution of all members divided by the unencumbered assets of the fund. Notwithstanding the foregoing, the decision of the Trust board as to the distribution of the assets of the Trust within each fund to participating members and former members shall be final and binding unless the distribution is arbitrary, unreasonable, and capricious under the construction given by the administrative board.

ARTICLE XIII  
AMENDMENTS

13.1. BY MEMBER. The members of the Trust may amend the provisions of this Agreement except Sections 5.1., 5.3 12.3., and 13.5. on a two-thirds vote of those attending any meeting called for that purpose by at least ten members or by the administrative board, on giving at least 30 days written notice of the time, purpose, and place of the meeting. The written notice must include the specific language of the proposed amendment.

13.2. BY BOARD. The administrative board may amend the provisions of the Agreement, except Sections 5.1., 5.3 12.3., and 13.5. by a two-thirds vote, at any meeting called for that purpose if at least 30 days written notice of the time, purpose, and place of the meeting is provided to all members and members of the board. The written notice must include the specific language of the proposed amendment and advise the members about their right to object to the

proposed amendment and the method by which such right may be exercised. The amendment shall not be effective if more than 50 percent of the members appear personally or provide written objection to the proposed amendment prior to the time of the meeting.

13.3. RESTRICTIONS ON RIGHT TO AMEND. Sections 5.1, 5.3., 12.3., and 13.5. shall not be amended except with the unanimous concurrence of all members and local governments entitled to the funds of or refunds or payments from the Trust.

13.4. NOTICE OF AMENDMENT. After an amendment has been approved by the members or Trust board, notice shall be given to all members of the amendment together with a statement of the effective date of the amendment which shall be at least 30 days after the date of the meeting at which the amendment was approved.

13.5. MEMBERS SUBJECT TO CONTINGENT ASSESSMENT. (Reserved.)

13.6. CONSENT REQUIRED FOR OTHER ASSESSMENT. (Reserved.)

#### ARTICLE XIV MISCELLANEOUS PROVISIONS

14.1. RECORDS OF LOCAL GOVERNMENT TO BE FURNISHED. Local governments shall furnish to the administrative board such records and any other information as the administrative board or the insurance carrier of the policy or policies may require in connection with the administration of the Trust. The insurance carrier shall have the right to audit all records of the Trust or local governments pertaining to the insurance provided by the carrier.

14.2. THIRD PARTY CLAIMS AGAINST TRUST FUNDS. Unless otherwise specifically provided in a written agreement between a unit of local government and the Trust, no local government nor any other person claiming by or through such employee by reason of having been named a beneficiary in a certificate or otherwise, shall have any claim against the monies or properties of the Trust, and the interests of such employees, beneficiaries, and other persons claiming through them shall be limited to those specified in the policy or policies.

14.3. SPECIAL PROVISIONS RELATING TO WORKERS' COMPENSATION COVERAGE. For each member that chooses to participate in the Workers' Compensation insurance program through the Trust, the Trust shall pay any workers' compensation liabilities incurred during the period of participation and membership. The member's bankruptcy insolvency or withdrawal from the Trust shall not relieve the Trust of such workers' compensation liability, nor shall bankruptcy, insolvency or cessation of the Trust relieve the member of its ultimate liability to pay the worker's compensation claims of the member's employees.

14.4. SUPERSEDES PRIOR AGREEMENT. This Agreement supersedes and replaces all previous Interlocal Agreements creating or establishing the Utah Local Governments Trust.

DATED as of and made effective \_\_\_\_\_, 20\_\_.

UTAH LOCAL GOVERNMENTS TRUST



\_\_\_\_\_  
President & CEO of Utah Local Governments Trust

\_\_\_\_\_  
Name of Public Agency

\_\_\_\_\_  
Signature of Person Authorized to Bind This Agreement

\_\_\_\_\_  
Date

Approved as to form

\_\_\_\_\_  
Attorney

RESOLUTION

A RESOLUTION APPROVING AND ENTERING INTO AN AMENDED AND RESTATED AGREEMENT CREATING THE UTAH LOCAL GOVERNMENTS TRUST.

WHEREAS, \_\_\_\_\_ and other Utah cities, towns, counties, and other governmental entities created and established a political subdivisions and entity known as the Utah Local Governments Trust; and

WHEREAS, \_\_\_\_\_ desired to participate in creating and establishing an entity to provide assistance, advice, counsel, and casualty, property and liability insurance, and benefits related to the purposes of the Utah Local Governments Trust; and

WHEREAS, \_\_\_\_\_ has appointed \_\_\_\_\_ as its attorney to review and approve the form of the amended and restated agreement.

NOW THEREFORE, the attached Interlocal Agreement Amending and Restating the Interlocal Agreement creating Utah Local Governments Trust is hereby entered into, approved, ratified, accepted, and made effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

PUBLIC AGENCY

\_\_\_\_\_

By \_\_\_\_\_

ATTEST

\_\_\_\_\_

\_\_\_\_\_ Date



# 12

# Memorandum

---

**To:** Cedar City/Iron County Economic Development Director  
**From:** Cedar City Attorney PAB  
**Date:** October 2, 2013  
**Subject:** EDA grant

This memorandum is intended to address my review of the following documents:

1. Special Award Conditions, U.S. Department of Commerce
2. U.S. Department of Commerce Financial Assistance Award
3. U.S. Department of Commerce standard terms and conditions for construction projects.

All of the above documentation is related to the \$935,900.00 grant from the U.S. Department of Commerce to Cedar City for the construction of street frontage improvements along Aviation way (in front of Metal Craft) and the construction of a taxi lane on the airport to connect Syber Jet's through the fence access with the rest of the airport.

## U.S. Department of Commerce Financial Assistance Award.

This document is in triplicate. It sets out the broad outline of the financial contribution by the U.S. Department of Commerce as well as the City's cost share obligation. It is the document the Mayor will need to sign. It incorporates the other documents that contain more of the substance of the grant requirements.

## Special Award Conditions.

This document supplements the standard terms and conditions. It is more tailored to our project than the standard terms and conditions. Below are my comments:

1. On page #1 item #2 Daniel Stewart is listed as the City's contact person. If this changes then the standard terms and conditions require us to notify our grants officer.

2. On page #2 item #7 there is a date to start construction of September 25, 2015. I am not sure if this date fits the time schedule both Cedar City and Syber Jet have in mind. In reading the standard terms and conditions it may be possible to move up the start date, but it looks like we have to get prior approval from the Economic Development Administration.
3. On page #3 item #8 there is a good discussion of the financial reporting requirements. Please read through these requirements and become familiar with the forms they reference. Also, please take a look at page #4 item #9 where it outlines the amounts approved for each phase of the project. The financial reporting the City will be required to complete will have to match the budget provided in section #9.
4. On page #6 item #14 there is a section related to goals for women and minorities in construction. The goal for women in construction is 6.9% and the goals for minorities is 12.6%. These are goals specific to Iron County and are included in the grant. When the City gets ready to build the project the City will need to work closely with the grants officer to figure out how to meet or exceed these goals.
5. Page #6 item #15 requires all procurement to be in accordance with Department of Commerce Regulations (15 C.F.R. § 24.36). Please work with the grants administrators to figure out what the federal procurement codes require. Also, please make sure you talk to the federal grant administrators about how the City is going to incorporate provisions of our local purchasing policy when we procure goods and services for this project. Specifically the City's local vendor preference.
6. On page #7 item #19 requires the City to attest that the project funded by this EDA grant is not going to induce the relocation of existing jobs from one region to another region. I am worried about the jobs that may possibly relocate here from Texas as a result of Syber Jet's expansion. Please work through this issue with the grant administrators.
7. On page #7 item #20 talks about performance measures. The City will be required to submit reports at three years, six years, and nine years. In addition there will be frequent performance reporting during construction as well as financial reporting during construction. Please work with the grant administrator to figure out the proper reporting forms and procedures.
8. Page #8 items #22 and #23 start talking about environmental issues. These types of issues are also addressed in the general terms and

conditions. It looks like in order to receive the grant the City will have to be willing and able to do a lot of environmental work. The special conditions require aviation permits and pollutant discharge permits as well as mitigation of damage to prairie dogs. I think going in we should be careful and talk with the grant administrators about any other environmental impact studies they may require. The general conditions talk about mitigating impacts on foul, wildlife, air, water, etc..... if these studies are going to be required and are not disclosed up front they will delay the project until the studies are complete. So it is better to talk to the grant administrators up front and get them what they need.

9. Pages #9 and #10 list specific environmental mitigation measures. There is language that will need to be inserted into every agreement related to the Utah prairie dog, how to take out the trash, vehicle maintenance, requiring a qualified biologist on the construction site to watch out for damage to the prairie dogs, prohibition on domestic dogs on the site, no firearms, and even a provision requiring the contractors to wash their equipment prior to entering the work site to avoid spread of noxious weeds. All of these items need to be in the contracts and requests for proposals prior to construction.

U.S. Department of Commerce standard terms and conditions for construction projects.

This document contains all of the strings attached to the grant. If you do nothing else please realize that with the size of this grant the City will most likely be audited, the Economic Development Administration will retain jurisdiction over the project for 10 years after it is done and the first, last, and best way to protect the City is to document, document, and document all compliance efforts. Also please keep the documentation for 11 years.

Here are my comments to more specific sections.

1. The last paragraph on page #7 states that all of the rules and regulations related to the grant award are subject to change and we will need to keep up with any changes and comply.
2. On the bottom of page #8 and the top of page #9 there is a statement that the City's compliance with the grant obligations will last for the useful life of the project. In the special award conditions the useful life of the project is set at 20 years. So the City will have to comply with the grant requirements for at least 20 years. Later in the documents it spells out the penalties for not complying with the grant requirements and basically these

- include not receiving any more grants, stopping payment under this grant, and/or having to repay grant money previously received under this grant.
3. Page #11, paragraph 3(d) requires the City to demonstrate that the City's matching funds are committed and available as needed. So at some point we will need to show the City has \$401,001 budgeted, in the bank, and ready to spend. The alternative is in section 3(b) where there is allowance for in-kind contribution from the City. I think it is a good idea to get the in-kind match cleared in writing by the grant administrators prior to counting on being able to use it. You can put me down for about 10 hours of in-kind review of document time.
  4. Page #17 starts to flesh out what types of performance reporting will be required. It specifies the forms to use and where on the internet you can find most forms. The grant administrator should be able to help locate the appropriate forms. Under this reporting section on page 18 there is a statement that reporting may be required for up to 10 years following project close out.
  5. Page #19 starts to get into the penalties for violating the grant conditions. Basically these include no more money under this grant, no more future grants, and the chance to pay back the present grant proceeds already received.
  6. Page #21 item #14(b) allows for early start of project construction but the City needs to make a written request and it needs to be approved. The special conditions have construction commencing sometime in September, 2015, so this paragraph will be useful if we want to start construction early.
  7. Page #21 item #14(c) requires that on site we put up a sign of EDA's design basically stating that this project is funded by the EDA.
  8. Page #22 item #16. Please spend some time here and please seek guidance from the grant administrators. This is the conflict of interest section. Not only does it prohibit direct financial conflict of interests but it also prohibits the perception of a benefit to ones reputation. I am not sure what type of policies the City will need to look at to avoid the perception of reputational conflicts.
  9. Page #22 item #17 requires records be kept for 3 years after project close out. I would recommend keeping for 11 years. The EDA holds

jurisdiction for 10 years after project closeout so we need to protect ourselves with the documentation as long as they have jurisdiction.

10. Page #26 item #20 basically tells the grant applicant that all materials sent to EDA are open records and will be disclosed. If the City as the grant applicant can identify information in the grant documentation that needs to be kept private we need to tell EDA and give them an opportunity to classify the material.
11. Pages #26 through #29 list the strings attached to the grant. Some will be applicable to the Cedar City grant and some will not so if in doubt please contact the grant administrator. Some of the strings are: Davis-Bacon wages, work hours, safety standards, historic preservation, historic / archeological data preservation, architectural barriers (ADA), uniform relocation assistance and real property acquisition policies, energy conservation, non-discrimination (race, color, national origin, sex, disability, accessibility, age, religion, others), and accessibility to those with limited English proficiency. Later on in the document there are other strings including drug free work place, wear your seat belt, prohibition on human trafficking, homeland security requirements, fly America act, truthful in dealings with EDA, noise control, lead paint, farmland, fish and wildlife, endangered species, etc....

So there are a lot of strings attached and I think we need to be very careful to work with the grant administrators and document everything.

12. On page #30 it starts to talk about the project auditing requirements. I think with the guidelines in this document Cedar City will be audited on this project so documentation is going to have to be a key to making sure we can pass an audit.
13. On page #34 there are lobbying restrictions. Basically we can't use federal funds to lobby.
14. On page #34 paragraph K(1) it states, "... recipient (Cedar City) must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain in the administration of this award". I am not sure what they have in mind, but maybe the administrator can give some guidance.
15. On page #36 section #4 there is some language that must be included in the RFP. My suggestion is that the party that writes the RFP be provided a

copy of all of these grant restrictions and be able to include this language as well as any other requirements such as the language related to mitigating the impact on the prairie dogs.

16. Similar to the previous item, on page #37 item #7 requires the City to use "EDA contracting provisions for construction projects". I tried to look the document up today but the web page is down. I guess it is part of the government shut down.
17. Beginning on page #38 and running onto page #39 there is a lot of language related to the EDA's interest in the project. Basically they want to retain an interest for the life of the project. I think these provisions will require us to disclose the through the fence lease to MTI.
18. Page #40 item #4 requires us to include a bid bond, performance bond, and payment bond in the contract documents.
19. Page #42 requires compliance with the National Environmental Policy Act and the National Historic Preservation Act. I am not sure what else we will need to do to comply with the environmental policy act. I don't know if we will need to do a full environmental impact study, but it would be a good idea to find out early in the project so we don't run into a delay.
20. Page #58 talks about what to do in case of a funding hiatus or government shutdown. Basically we proceed at our own risk.

I can't see a legal reason not to enter the agreements. The challenges come in the form of compliance with all of the attached strings and documenting everything so we can pass an eventual audit.

Please let me know if there is anything else I can do.



UNITED STATES DEPARTMENT OF COMMERCE  
Economic Development Administration  
DENVER REGIONAL OFFICE  
410 17<sup>th</sup> Street  
Suite 250  
Denver, CO 80202

September 25, 2013

In reply refer to:  
Project No. 05-79-05480

The Honorable Joe Burgess, Mayor  
Cedar City Corporation  
10 North Main Street  
Cedar City, UT 84720-2635

Dear Mayor Burgess:

The Economic Development Administration is pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$935,900 EDA investment for the construction of the Cedar City Regional Airport taxi lane and Aviation Way frontage improvements.

Enclosed are three signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. Two of the executed copies should be returned to Janét Miller, Project Officer, Economic Development Administration, 410 17<sup>th</sup> Street, Suite 250, Denver, CO 80202. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship and regional development.

EDA shares your expectations regarding the impact of this investment and looks forward to working with you to meet the economic development needs of your community.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Olson".

Robert E. Olson  
Regional Director

Enclosures



GRANT  COOPERATIVE AGREEMENT

## FINANCIAL ASSISTANCE AWARD

AWARD PERIOD

Sept. 25, 2013 - Sept. 25, 2018

RECIPIENT NAME

**Cedar City Corporation**

AWARD NUMBER

**05-79-05480**

STREET ADDRESS

**10 North Main Street**

FEDERAL SHARE OF COST

\$ **935,900**

CITY, STATE, ZIP CODE

**Cedar City, Utah 84720-2635**

RECIPIENT SHARE OF COST

\$ **401,100**

AUTHORITY

**Public Works and Economic Development Act of 1965, as amended**

TOTAL ESTIMATED COST

\$ **1,337,000**

CFDA NO. AND PROJECT TITLE

**11.307, Economic Adjustment Assistance, Airport Taxi Lane and Aviation Way Frontage Road**

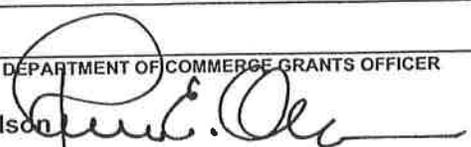
BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
20	40	13	00	05	41-10-00-00

This Award approved by the Grants Officer is issued in triplicate and constitutes an obligation of Federal funding. By signing the three documents, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and the third document shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Award.

- Department of Commerce Financial Assistance Standard Terms and Conditions (January 2013)
- Special Award Conditions
- Line Item Budget
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures
- OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations
- Other(s): Economic Development Administration Standard Terms and Conditions for Construction Projects

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

Robert E. Olson



TITLE

Regional Director

DATE

09/25/13

TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Joe Burgess

TITLE

Mayor

DATE



SPECIAL AWARD CONDITIONS  
U.S. DEPARTMENT OF COMMERCE  
Economic Development Administration (EDA)

**CONSTRUCTION PROJECTS:** Economic Adjustment Assistance under Section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq. PWEDA)

Economic Adjustment Assistance Programs

<b>Project Title: Airport Taxi Lane &amp; Aviation Way Frontage Road</b>	
<b>Recipient Name: Cedar City Corporation</b>	<b>Project Number: 05-79-05480</b>

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of Form CD-451.

The *Authorized Scope of Work* for this project includes:

- A taxi lane on the Cedar City Regional Airport. The taxi lane will be 50 feet wide and 784 feet long. It will connect an existing Cedar City Regional Airport taxiway to private property east of the Airport. This will provide access to the airport for local aircraft manufacturing companies planning to build facilities adjacent to the airport. The proposed taxi lane will pass over a new 120 foot long box culvert.
- Improvements to Aviation Way. Approximately 1,200 linear feet of new sidewalk, curb and gutter will be constructed on Aviation Way. The existing street is currently paved with curb and gutter on the east side of an existing road.

2. The Recipient Contact's name, title, address, and telephone number are:

Daniel Stewart Cedar City Corporation Phone: 435-586-2770 Email: dans@cedarcity.org	Economic Development Assistant 10 North Main Street Cedar City, UT 84720-2635
----------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Robert E. Olson Regional Director Fax: 303-844-3968	Economic Development Administration 410 17 <sup>th</sup> Street Suite 250 Denver, CO 80202
-----------------------------------------------------------	-----------------------------------------------------------------------------------------------------

4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

<p>Mari Sutton          Denver Regional Office          Phone: 303-844-4403          FAX: 303-844-3968          Email: msutton@eda.gov</p>	<p>Economic Development Administration          410 17<sup>th</sup> Street          Suite 250          Denver, CO 80202</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------

5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

<p>Trisha Korbas          Phone: 303-844-4092          FAX: 303-844-3968          Email: tkorbas@eda.gov</p>	<p>Economic Development Administration          410 17<sup>th</sup> Street          Suite 250          Denver, CO 80202</p>
--------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------

6. **ADDITIONAL INCLUDED DOCUMENTS:**

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- Recipient's completed Application including subsequently submitted documentation.

Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control.

7. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Return of Executed Financial Assistance Award.....30 calendar days after receipt of Form CD-450/CD-451

Authorized Award Start Date.....September 25, 2013

Start of Construction.....September 25, 2015 (24 mos. from grant award start date)

Construction Completed.....September 25, 2018 (60 mos. From grant award start date)

Authorized Award End Date.....September 25, 2018

Submission of Final Financial Documents (SF-425) ...No later than 90 calendar days from Award End Date

Project Closeout – All Project closeout documents, including final financial reports (Form SF-425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 15 C.F.R. § 14.62 or 15 C.F.R. § 24.43, as applicable.

## 8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

- A. **AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, in accord with the procedures outlined during the grant kick-off meeting.

The “*Request for Reimbursement*” (Form SF-271) is used to request a disbursement, which shall be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, Recipients must complete the attached Form SF-3881, “*ACH Vendor/Miscellaneous Payment Enrollment Form*” and submit it to NOAA's Accounting Office by FAX to 301-528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

### B. REPORTS:

- a. *Project Progress Reports*: The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending **March 31, June 30, September 30, and December 31**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted in accordance with the format required by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.
- b. *Financial Reports*: The Recipient shall submit a “*Federal Financial Report*” (Form SF-425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof. Reports are due no later than 1 month following the end of the semi-annual reporting period. Form SF-425 (and instructions for completing this form) is available at: [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays

for the entire project period, and that all matching and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Form SF-425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including the applicable *Cost Principles* and *Uniform Administrative Requirements*, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award (see 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable costs incurred by the Recipient in connection with the project. The Federal share in the allowable costs shall be based upon the Investment Rate (see 15 C.F.R. § 14.2(s)). In the event of an under run in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any.

**Line Item Budget:**

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	\$935,900
Non-Federal Matching Share	\$401,100
Total Project Cost	\$1,337,000

- B. Under the terms of this Award, the total approved line item budget is:

<b>COST CLASSIFICATION</b>	<b>Proposed</b>	<b>Approved</b>
Administrative and legal expenses	\$0	\$1,000
Land, structures, rights-of-way, etc.	\$0	\$1,000
Relocation expenses and payments	\$0	\$1,000
Architectural and engineering fees	\$140,000	\$140,000
Other architectural and engineering fees	\$0	\$0
Project inspection fees	\$92,000	\$92,000
Site work	\$0	\$0
Demolition and removal	\$0	\$0
Construction	\$1,003,000	\$1,003,000
Equipment	\$0	\$0
Contingencies	\$102,000	\$99,000
<b>Total Project Costs</b>	<b>\$1,337,000</b>	<b>\$1,337,000</b>

10. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expense. (See 13 C.F.R. § 300.3) The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.
11. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:
- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
  - ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office, AOD, EDA Grants  
20020 Century Boulevard, Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
  - EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.
12. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by

this date and the Grants Officer determines, after consultation with the Grant Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five year project period are exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 7 above.

13. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years.
14. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 41 C.F.R. § 60-4 establishes goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

The goal for minority participation for each new trade for Iron County, Utah is:

12.6 percent

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "*Standard Federal Equal Employment Opportunity Construction Contract Specifications*" (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

15. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with Department of Commerce Regulations at 15 C.F.R § 24.36 (State and Local Governments) or 15 C.F.R. § 14.44 (Higher Education, Hospitals, other Non-Profits), as applicable.
16. **ARCHITECT/ENGINEER AGREEMENT:** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 15 C.F.R. Part 24 or 15 C.F.R. Part 14, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

17. **EVIDENCE OF GOOD TITLE:** Prior to the advertisement of bids, the Recipient shall provide opinion of counsel, satisfactory to the Government, that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. § 314.
18. **PROPERTY VALUE AGREEMENT:** The Recipient and the Cedar Building Associates, a private landowner, have entered into a Property Value Agreement agreeing that for a reasonable length of time the private owner will sell the land at the appraised fair market value existing prior to its improvement by the Project. In accordance with the Property Value Agreement, the Recipient shall be responsible for monitoring any sales or leases and obtaining sufficient details of any sales or leases to permit monitoring of the agreement. Such information shall also be disclosed to EDA.
19. **NONRELOCATION:** In signing this award of financial assistance, the Recipient(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. (See 13 C.F.R. § 300.3) In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a "primary beneficiary" if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

20. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure adequate and sufficient records are kept to support the methodology for

computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

21. **STATE HISTORIC PRESERVATION OFFICER:** If during construction of the project, historical and archeological resources, including burial grounds and artifacts, are discovered the Recipient shall immediately stop construction in the area, contact the State Historic Preservation Officer (SHPO) and EDA and follow the SHPO's instructions for preservation of the resources.
  
22. **U.S. FISH AND WILDLIFE SERVICE MITIGATION MEASURES:** The Utah prairie dog, which occurs within the Project area, is federally listed as a threatened species under the Endangered Species Act. Based on the Programmatic Biological Opinion from the U.S. Fish and Wildlife Service (USFWS) to the Federal Aviation Administration dated March 29, 2010, to mitigate take to the species and its habitat, the Recipient shall take the following actions:
  - a. The Recipient shall include in the bid documents the mitigation measures listed in Attachment 1, attached hereto.
  - b. Prior to final disbursement, the Recipient shall submit to EDA's Regional Environmental Officer a copy of the post-construction report that is to be submitted to the USFWS within one month of project completion.
  
23. **ENVIRONMENTAL PERMITS:** Prior to EDA's approval of bid documents, the Recipient shall provide documentation satisfactory to EDA that the permits listed below has been obtained, or that the bid documents include language requiring the contractor to obtain such permits prior to the start of construction. If the contractor obtains the permits, then prior to initial disbursement of any construction costs, the Recipient shall provide EDA with satisfactory documentation that such permits have been obtained.
  - Federal Aviation Administration (FAA) Notice of Proposed Construction or Alteration (Form 7460) permit
  - State of Utah National Pollutant Discharge Elimination System (NPDES) Permit

---

## Attachment 1 - U.S. Fish and Wildlife Service Mitigation

The following language will need to be included in all construction documents:

- All project employees, especially contractors, brought onsite for the duration of the project will be informed of the occurrence of Utah prairie dogs in the project area and of the threatened status of the species. All project employees shall be advised as to the definition of “take” and the potential penalties (up to \$200,000 in fines and one year in prison) for taking a species listed under the Act. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct; may include significant habitat modification or degradation if it kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding or sheltering. Any education to be conducted by a person that is not a qualified biologist will be coordinated with the U.S. Fish and Wildlife Service (USFWS) to ensure that the correct information is being presented.
- A trash abatement program shall be initiated during all phases of the project and shall continue through the duration of the project. All construction refuse, including, but not limited to, fencing materials, twine, buckets, metal or plastic containers and boxes shall be disposed of properly and not left uncontained onsite overnight.
- Vehicle and equipment maintenance will not be conducted within any Utah prairie dog habitat.
- Construction work within occupied Utah prairie dog habitat will only occur during daylight hours and while a qualified biologist<sup>1</sup> is onsite and while the Utah prairie dog can actively avoid bodily harm. Major construction within Utah prairie dog habitat will occur during the active season when possible (June 1-August 31) when juveniles have emerged. In cases where this is not possible to delay construction entirely within the active season, construction will not occur before April or after October so as to avoid disruption of normal breeding behavior and hibernation.
- When development occurs within occupied Utah prairie dog habitat a qualified biologist<sup>1</sup> approved by the USFWS will be on-site during the construction work. The biologist will have the authority to halt activities which may be in violation of the terms and conditions set forth by the USFWS, ensure that all construction activity is closely monitored and in compliance and will ensure that all project employees onsite are informed about the Utah prairie dog. The biologist will monitor and document incidental take and suspected incidental take of Utah prairie dog and will provide the airport manager and the USFWS with a post-construction compliance report containing information concerning construction (ie., daily construction times), compliance with the terms and conditions. The biologist will also provide information on how many Utah prairie dog individuals were incidentally taken

---

<sup>1</sup> A qualified biologist with a bachelor’s degree or graduate degree in biology, ecology, wildlife, mammalogy, or related fields. He/she must have demonstrated prior field experience using accepted resource agency techniques to survey for Utah prairie dogs. A minimum of 20 hours of documented field experience surveying and monitoring Utah prairie dogs and prairie dog sign is required and/or completion of the official Utah Prairie Dog training every four years.

or suspected of being incidentally taken, along with their locations and times. The report will be submitted to the airport sponsor and the USFWS within one month of completion.

- Before commencement of any future development, construction within 350 feet of occupied Utah prairie dog habitat, the construction area will be delineated with temporary prairie dog-proof fencing. Fencing will be installed as feasible and appropriate to deter Utah prairie dogs from entering the project area and not entrap Utah prairie dogs within the limits of construction. The fencing will have a minimum height of two feet from the ground surface.
- Construction vehicles will be operated in a manner to minimize impacts on occupied Utah prairie dog habitat. All construction related equipment, machinery, and activities will be stored in designated locations away from occupied Utah prairie dog habitat. Vehicles used to access the project site or equipment used on the project will not be driven or parked within any occupied Utah prairie dog habitat outside of general maintenance areas or the proposed project limits. All project employees shall be instructed to operate vehicles within the area of Utah prairie dogs only when necessary for construction and to remove the vehicles from the area as quickly as possible when construction/maintenance through the area is completed.
- Precautions shall be taken to ensure that contamination of maintenance sites by fuels, motor oils, grease, etc. does not occur and that these materials are contained and properly disposed of off-site. Inadvertent spills of petroleum-based or other toxic materials shall be cleaned up and removed immediately.
- Prior to construction, each project's construction area will be surveyed by a qualified biologist for Utah prairie dogs. This is to ensure that prairie dogs have not occupied new areas not previously considered.
- Any temporary construction impacts (i.e. staging areas, access roads) will be limited to areas not occupied by Utah prairie dogs.
- No domestic dogs or firearms will be allowed onsite.
- To avoid the spread of noxious weeds, construction equipment must be washed prior to entering the work site.

**U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS  
FOR CONSTRUCTION PROJECTS**

**Title II  
Public Works and Economic Development Facilities  
and  
Economic Adjustment Assistance Construction Components**



March 12, 2013

D. Additional Requirements Relating to Construction Projects. ....	26
1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3144, 3146, 3147; 42 U.S.C. § 3212).....	26
2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701 – 3708) ....	26
3. The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.), and the Advisory Council on Historic Preservation Guidelines .....	26
4. The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 et seq.) .....	26
5. Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.), .....	27
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.).....	27
7. The Energy Conservation and Production Act (42 U.S.C. § 6834 et seq.).....	27
8. Requirements for New Construction.....	27
E. Non-Discrimination Requirements.....	27
1. Statutory Provisions. ....	27
2. Other Provisions. ....	29
3. Title VII Exemption for Religious Organizations.....	29
F. Audits.....	29
1. Requirement to Have an OMB Circular A-133 Audit Performed; Organization-Wide, Program- Specific, and Project Audits. ....	30
2. Requirement to Submit Audit to EDA.....	31
3. Audit Resolution Process.....	31
G. Debts.....	32
1. Payment of Debts Owed the Federal Government.....	32
2. Late Payment Charges.....	32
3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Guarantees.....	33
4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.....	33
H. Governmentwide Debarment and Suspension (Non-procurement).....	33
I. Drug-free Workplace.....	33
J. Lobbying Restrictions.....	34
K. Codes of Conduct and Subaward, Contract, and Subcontract Provisions.....	34
1. Code of Conduct for Recipients.....	34
2. Applicability of Award Provisions to Subrecipients.....	35
3. Competition and Codes of Conduct for Subawards.....	35
4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.....	36
5. Small Businesses, Minority Business Enterprises and Women’s Business Enterprises.....	37
6. Subaward and/or Contract to a Federal Agency.....	37

4. Intellectual Property Rights.....	47
5. Increasing Seat Belt Use in the United States. ....	49
6. Research Involving Human Subjects. ....	49
7. Federal Employee Expenses.....	50
8. Minority Serving Institutions (“MSIs”) Initiative. ....	50
9. Research Misconduct. ....	51
10. Publications, Videos, and Acknowledgment of Sponsorship.....	51
11. Care and Use of Live Vertebrate Animals. ....	52
12. Homeland Security Presidential Directive 12. ....	52
13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.....	53
14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175 .....	54
15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 Note) .....	56
16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown .....	58
APPENDIX .....	60

**ECONOMIC DEVELOPMENT ADMINISTRATION  
STANDARD TERMS AND CONDITIONS  
FOR CONSTRUCTION PROJECTS**

Title II - Public Works and Economic Development Facilities  
and  
Title II - Economic Adjustment Construction Components

**A. General Requirements and Responsibilities.**

**1. Purpose.**

The Economic Development Administration's ("EDA") grants for (i) public works (42 U.S.C. § 3141) and (ii) economic adjustment (42 U.S.C. § 3149) projects are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these construction standard terms and conditions (the "Construction Standard Terms and Conditions") are applicable to construction, design, and engineering projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual projects. In addition, these Construction Standard Terms and Conditions apply to construction projects of revolving loan funds ("RLFs") awarded between 1975 and 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

**2. Authority and Policies.**

EDA is a bureau within the U.S. Department of Commerce established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA"). (See 13 C.F.R. § 300.1.) As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

- a. Ensure compliance with applicable federal requirements;
- b. Safeguard the public's interest in the grant assets; and
- c. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the Recipient. The implementation of any such regulatory, administrative, or programmatic change in administering this Award must have prior EDA written approval.

estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the Recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

The Recipient agrees to provide EDA with information and documentation necessary for the agency to conduct due diligence to ensure the business integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

#### **5. Reaffirmation of Application.**

Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient(s) hereby reaffirms and state that:

- a. All data in said application and documents submitted with the application are true and correct as of the date of this Award and were true and correct as of the date of said submission;
- b. Said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s) and
- c. Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with, or attached to, said application.

For purposes of this provision, the term "application" includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

#### **B. Financial Requirements.**

##### **1. Financial Reports.**

- a. While EDA generally does not advance funds under an Award, the Recipient must submit Form SF-272, "Report of Federal Cash Transactions," for any Award where funds are to be advanced to the Recipient. Form SF-272 is due 15 business days following the end of each quarter for an Award under \$1 million, 15 business days following the end of each month for

- c. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the applicable EDA Project Officer.
- d. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

### **3. Federal and Non-Federal Cost Sharing.**

- a. For the purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-federal share, or "Matching Share," means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or third parties as a condition of the Award. Awards that include the Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved federal and non-federal cost share ratios to actual allowable costs. *See* 13 C.F.R. §§ 305.10 and 308.1. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount authorized by this Award.
- b. The Matching Share, whether cash or in-kind, shall be paid out at the same rate as the federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period.
- c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA's requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. EDA may disallow undocumented costs. *See* section C.17 of these Construction Standard Terms and Conditions.
- d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 C.F.R. § 301.5.

### **4. Budget Revisions and Transfers of Funds Among Budget Categories.**

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of any deviation from the budget or program plans, including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). *See* 15 C.F.R. §§ 14.25 or 24.30, as applicable.

- g. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting the Award, the Recipient agrees to fund any overrun amounts. Additional EDA assistance for an approved Project may not be approved.

**5. Indirect Costs and Facilities and Administrative Costs.**

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are generally not applicable under this Award.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless permitted under the award and specifically included as a line item in the award's approved budget.
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in applicable cost principles and the following subparagraphs:
- (i) **State and Local Governments:** Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 F.R. 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. *See* Subsection D.1.b. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
  - (ii) **Indian Tribes:** Department of the Interior serves as the cognizant agency for all Indian tribal governments. *See* Subsection D.1.c. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
  - (iii) **Educational Institutions:** Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. part 220 (OMB Circular A-21);
  - (iv) **Non-Profit Organizations:** Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. part 230 (OMB Circular A-122); and

- (ii) The Federal share of the total allocable indirect costs of the Award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the Award end date.

**6. Incurring Costs Prior to Award.**

Project activities carried out prior to EDA's approval of this Award shall be carried out at the sole risk of the Recipient. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or federal law, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs in writing and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and included in the EDA-approved budget. Pre-award costs not included and approved in the authorized budget are not allowable and may not be reimbursed. *See* 13 C.F.R. § 302.8.

**7. Incurring Costs or Obligorating Federal Funds Beyond the Project Expiration Date.**

- a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the authorized project period documented in the Award agreement, unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 calendar days following that date are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-calendar day Closeout period upon a request by the recipient as provided in 15 C.F.R. §§ 14.71 or 24.50.
- b. The Recipient shall adhere to the development time schedule and time limits set out in the Terms and Conditions of this Award. Any such Term or Condition supersedes the development time schedule and time limits set out in these Construction Standard Terms and Conditions.
- c. Neither DOC nor EDA have any obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of DOC and/or EDA.

**8. Time Extensions.**

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or a special award condition, any extension of the Project period can only be authorized by the Grants

- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

*See* 15 C.F.R. §§ 14.24 or 24.25, as applicable.

**C. Programmatic Requirements.**

**1. Project Progress and Performance Reporting.**

- a. Project progress reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. *See* 13 C.F.R. § 302.18(a).
- b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:
  - (i) A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
  - (ii) An explanation of any delays or failures to meet the Project timetable or Project goals; and
  - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the applicable special award conditions, or, in cases where report deadlines are not contained therein, Project progress reports will be due on a quarterly basis not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout. *See* 15 C.F.R. §§ 14.51 or 24.40, as applicable.

The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.

**2. Interim Reporting.**

The Recipient must report any event that will or may have significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The

**6. Other Federal Awards with Similar Programmatic Activities.**

The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.

**7. Noncompliance with Award Provisions.**

Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive future funding from the Department, including EDA, and may be considered grounds for any or all of the following actions: (a) the establishment of an account receivable; (b) withholding payments under any EDA or DOC Award(s) to the Recipient; (c) the imposition of additional special award conditions; (d) the suspension of any active DOC Awards; or (e) the termination of any active DOC Awards.

The Recipient hereby agrees that the Government may at its option withhold disbursement of any Award funds if the Government learns or has knowledge that the Recipient has failed to comply in any manner with any Term or Condition of the Award. *See* 13 C.F.R. § 302.18. The Government may withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs paid from Award funds, or if the Recipient fails to reimburse the Government, the Government shall have the right to offset the amount of such ineligible costs from any undisbursed award funds held by the Government. The Recipient agrees to repay the Government for all ineligible costs incurred in connection with the Project and paid from the Award including but not limited to those costs determined to be ineligible if the Government learns of any Award violations after all Award funds have been disbursed. *See* 15 C.F.R. §§ 14.72-14.73 or 24.51-24.52, as applicable.

**8. Use by Beneficiary.**

In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 C.F.R. §§ 314.4 and 314.5. Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

**9. Prohibition Against Assignment by the Recipient.**

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer, which may be provided in a special award condition.

### 13. Recipient's Duty to Refrain from Employing Certain Government Employees.

Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date the Government executes this Award, the Recipient(s) agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

- a. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Government, and
- b. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

The two-year period and associated restrictions referenced above also shall apply beginning on the date the Government executes any cost amendment to this Award that provides additional funds to the Recipient(s).

### 14. Commencement of Construction.

- a. **Delayed Construction Starts.** If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.
- b. **Early Construction Starts.** The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
- c. **Project Sign.** The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 C.F.R. § 305.12.

- (i) The amount and disposition of EDA investment assistance;
- (ii) All Project expenditures and procurement actions;
- (iii) The total cost of the Project that the Award funds;
- (iv) Copies of all reports and disbursement requests submitted to EDA;
- (v) The benefits/impacts of the project, as reported through GPRA and other reports to EDA;
- (vi) The amount and nature of the portion of Project costs provided by non- EDA sources;
- (vii) Contractor compliance with applicable federal requirements; and
- (viii) Such other records as EDA determines will facilitate an effective audit.

**b. *Records Retention.***

In general, all records pertinent to this Award must be kept retained for a period of three years from the date of submission of the final project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

- (i) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken;
- (ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition of the relevant real property or equipment; and
- (iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

Records relating to indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations on the rate at which a particular group of costs is chargeable are subject to different retention requirements. *See* 15 C.F.R. §§ 14.53 or 24.42, as applicable.

The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer in case records are not retained for the general retention periods noted above. *See* 13 C.F.R. § 302.14 and 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

**18. Termination Actions.**

- a. *Termination for Cause.*** If the Recipient materially fails to comply with any of the Terms and Conditions of this Award, EDA has the right to terminate for cause all or any part of its obligation hereunder, including if:

- any material findings (if the Recipient's currently valid OMB Circular A-133 audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);
- (v) The Recipient's certification that its currently valid audit (in accordance with OMB Circular A-133), if applicable, has been submitted to the Federal Audit Clearinghouse; and
  - (vi) Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be eligible and ineligible. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient's currently valid OMB Circular A-133 audit contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project Officer.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award.
- c. As required under GPRA and in accordance to a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- c. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or before the expiration date of this Award, whichever occurs earlier.
- d. The Closeout of this Award does not affect any of the following:
  - (i) Audit requirements per OMB Circular A-133 and the related "Compliance Supplement;"
  - (ii) The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
  - (iii) The Recipient's obligation to return any funds due as a result of later corrections or other transactions; and
  - (iv) Requirements for property management, records retention, and performance measurement reports.

5. **Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.),** and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.),** and implementing regulations issued at 49 C.F.R. part 24, which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a Project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 et seq.)** Establishing energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Requirements for New Construction.** For new building construction projects, the Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

**E. Non-Discrimination Requirements.**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the non-discrimination requirements below:

**1. Statutory Provisions.**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
- c. Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;

- g. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and DOC implementing regulations published at 15 C.F.R. part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- h. Other applicable Federal statutes, regulations, and Executive Orders, and other applicable non-discrimination law(s).

## 2. Other Provisions.

- a. Parts II and III of Executive Order 11246 (30 Fed. Reg. 12319, 1965), as amended by Executive Order 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order. 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. Executive Order 13166 (August 11, 2000), "*Improving Access to Services for Persons With Limited English Proficiency*," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 F.R. 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons.

## 3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*), provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

## F. Audits.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department's Inspector General ("OIG"), or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. When the OIG requires a program

business days of the end of the project period – the award close-out period is included in the 90 business days.

Some DOC programs have specific audit guidelines that will be incorporated into the Award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the Award Terms and Conditions, and to the OIG at [NonFederalAudits@OIG.DOC.GOV](mailto:NonFederalAudits@OIG.DOC.GOV). If e-mail is unavailable, submission to the OIG can be made at the following address:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, GA 30308

**2. Requirement to Submit Audit to EDA.**

If the Recipient's currently valid audit required under OMB Circular A-133 contains materials findings, the Recipient must submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project Officer. *See also* section C.18.a. of these Construction Standard Terms and Conditions.

**3. Audit Resolution Process.**

- a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
  - (i) Unless the OIG determines otherwise, the Recipient has 30 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
  - (ii) The Recipient has 30 business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There shall be no extension of this deadline.
  - (iii) EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination

Treasury in the Federal Register

(<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the DOC entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

**3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.**

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a federal agency. This prohibition does not apply to disaster loans.

**4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.**

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the U.S. or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

**H. Governmentwide Debarment and Suspension (Non-procurement).**

The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension*" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement transactions either through primary or lower-tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

**I. Drug-free Workplace.**

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A., Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102), and the Department's implementing regulations found at 15 C.F.R.

**2. Applicability of Award Provisions to Subrecipients.**

- a. The Recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of this Award, including applicable cost principles, administrative, and audit requirements, and all associated Terms and Conditions.
- b. A Recipient is responsible for subrecipient monitoring, including the following:
  - (i) *Award Identification* – At the time of the Award, identifying to the subrecipient the federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, name of the Federal agency, and the Award number) and applicable compliance requirements.
  - (ii) *During-the-Award Monitoring* – Monitoring the subrecipient’s use of federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
  - (iii) *Subrecipient Audits* – Ensuring that a subrecipient expending federal awards of \$500,000 or more during the subrecipient’s fiscal year has met the audit requirements of OMB Circular A-133 and that the required audits are completed within nine months of the end of the subrecipient’s audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the subrecipient’s audit report and ensure that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of a subrecipient’s continued inability or unwillingness to have the required audits, the pass-through entity shall take appropriate action using sanctions.

**3. Competition and Codes of Conduct for Subawards.**

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the Award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict-of-interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family,

disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.

5. **Small Businesses, Minority Business Enterprises and Women's Business Enterprises.**  
DOC encourages Recipients to utilize small businesses, minority business enterprises, and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce  
Minority Business Development Agency  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

6. **Subaward and/or Contract to a Federal Agency.**

- a. The Recipient, subrecipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Project Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

7. **EDA Contracting Provisions for Construction Projects.**

The Recipient shall use the "*EDA Contracting Provisions for Construction Projects*" as guidance in developing all construction contracts. The "*EDA Contracting Provisions for Construction Projects*" lists applicable EDA and other federal requirements for construction contracts.

L. **Property.**

1. **Standards.**

With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the property management standards found in the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15

b. *Recording EDA's Interest in Property.*

- (i) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 C.F.R. §§ 314.1 and 314.8(a).
  - (ii) This lien, covenant, or other statement of the Government's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA shall require an opinion of counsel for the Recipient to substantiate that the document has been properly recorded. *See* 13 C.F.R. § 314.8(b).
  - (iii) Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.(i) and (ii) above. *See* 13 C.F.R. § 314.8(c).
- c. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in the Property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth in 13 C.F.R. § 314.7(c). *See* 13 C.F.R. § 314.2(a).
- d. The Recipient agrees that in the event that any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purpose(s) of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 C.F.R. § 314.5. If, during the Project's estimated useful life, the property is no longer needed for the purpose(s) of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).
- e. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 C.F.R. § 314.5.

- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

#### **6. Eminent Domain.**

The Recipient will use funds solely for the authorized use of the Project. Pursuant to Executive Order 13406, "*Protecting the Property Rights of the American People*," the Recipient agrees:

- a. Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the use of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 C.F.R. §§ 314.4 and 314.5, as same may be amended from time to time.

#### **7. Disposal of Real Property.**

- a. If EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purpose(s) of this Award, the Recipient must obtain approval from the Government to use the property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).
- b. When property is not disposed of as provided in section L.7.a. above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 C.F.R. § 314.4.

#### **M. Environmental Requirements.**

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to: (i) approve a proposal for federal assistance; (ii) approve the proposal with mitigation; or (iii) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with early consideration of potential environmental impacts that Project(s) funded with federal assistance may

3. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 – 4375)**

Federally-supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. **Clean Air Act, Clean Water Act, and Executive Order 11738**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (42 U.S.C. § 1251 *et seq.*), and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency's ("EPA") *List of Violating Facilities* (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on EPA's *List of Violating Facilities* or knows that the facility has been recommended to be placed on the List.

5. **The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*)**

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

6. **Executive Order 11988, "Floodplain Management," (42 Fed. Reg. 26951, May 24, 1977) and Executive Order 11990, "Protection of Wetlands," (42 Fed. Reg. 26961, May 24, 1977)**

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. **The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration ("FEMA") or by EDA**

Flood insurance, when available, is required for Federally-assisted construction or acquisition in flood-prone areas.

8. **The Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*)**

Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.

**15. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 Fed. Reg. 7629, February 11, 1994)**

This Order identifies and addresses adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

**16. The Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. § 4821 et seq.)**

Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.

**17. The Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 – 4209)**

Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

**18. The Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 et seq.)**

Federally-supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

**19. The Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 et seq.)**

This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian Tribes, and Native Hawaiian organizations.

**N. Compliance with Environmental Requirements.**

The Recipient agrees to notify the Grants Officer of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable federal, State and local regulations; and (2) as set forth in the applicable Lease, Finding of Suitability to Lease ("FOSL"), Lease in Furtherance of Conveyance, Quitclaim Deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the three Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.

- d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval in accordance with the guidance provided by 41 C.F.R. § 301-10.142, the Recipient must provide a "certification" the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; (vi) and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.

### 3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

### 4. Intellectual Property Rights.

- a. **Inventions.** The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.

- (i) **Ownership.**

- (a) *Recipient.* The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or that is made by its employees. A recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (i.e., a university's Research Foundation). The Recipient's ownership rights are subject to the Federal Government's nonexclusive paid-up license and other rights.

Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

- c. *Data, Databases, and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. § 24.34, for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases, or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the data for Government purposes.
- d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted, but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may require the recipient to transfer to DOC its copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

## 5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

## 6. Research Involving Human Subjects.

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, "*Protection of Human Subjects.*" No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

## 9. Research Misconduct.

The Department of Commerce adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the Department's final determination.

## 10. Publications, Videos, and Acknowledgment of Sponsorship.

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of federally funded projects, e.g. scientific research, and expanding access to federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

*This [report/video] was prepared by [recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings,*

*routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

- b. *The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

**13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.**

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. *Definitions.*
- (i) *Export-controlled items.* Items (commodities, software, or technology), that are subject to the Export Administration Regulations (EAR) (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
- (ii) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.
- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, or regulations, including the EAR.

performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. part 1326, "Nonprocurement Debarment and Suspension."

- b. Provision applicable to a recipient other than a private entity. EDA as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- (i) Is determined to have violated an applicable prohibition in Section 14 paragraph a.1 of this award term; or
  - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - a) Associated with performance under this Award; or
    - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. part 1326, "Nonprocurement Debarment and Suspension."
- c. Provisions applicable to any Recipient.
- (i) You must inform EDA immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - (ii) EDA's right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - b) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - (iii) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
- (i) Employee means either:

is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

c. Central Contractor Registration and Universal Identifier requirements.

(i) Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. 25.110, you as the Recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

(ii) Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:

- a) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
- b) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

(iii) Definitions for purposes of this award term:

- a) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
- b) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- c) Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
  - (1) A Governmental organization, which is a State, local government, or Indian Tribe;
  - (2) A foreign public entity;

recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

- c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

To access the OMB Circulars, visit OMB's Internet website at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html).

To access the Davis Bacon wage rate determinations, visit the Department of Labor's Internet website at [www.wdol.gov/](http://www.wdol.gov/).

**EDA FORMS:**

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-451, "Amendment to Financial Assistance Award"
3. Form CD-346, "Identification - Applicant for Funding Assistance"
4. Form SF-425, "Federal Financial Report"
5. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
6. Form SF-272, "Federal Cash Transaction Report"
7. Form SF-LLL, "Disclosure of Lobbying Activities"

To access Department of Commerce forms ("CD"), visit the Department's Internet website at [http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic\\_Forms/index.htm](http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm).

To access the Standard Forms ("SF"), visit the General Services Administration's Internet website at [www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF](http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF).



# Memorandum

---

**To:** Cedar City/Iron County Economic Development Director  
**From:** Cedar City Attorney PAB  
**Date:** October 2, 2013  
**Subject:** EDA grant

This memorandum is intended to address my review of the following documents:

1. Special Award Conditions, U.S. Department of Commerce
2. U.S. Department of Commerce Financial Assistance Award
3. U.S. Department of Commerce standard terms and conditions for construction projects.

All of the above documentation is related to the \$935,900.00 grant from the U.S. Department of Commerce to Cedar City for the construction of street frontage improvements along Aviation way (in front of Metal Craft) and the construction of a taxi lane on the airport to connect Syber Jet's through the fence access with the rest of the airport.

## U.S. Department of Commerce Financial Assistance Award.

This document is in triplicate. It sets out the broad outline of the financial contribution by the U.S. Department of Commerce as well as the City's cost share obligation. It is the document the Mayor will need to sign. It incorporates the other documents that contain more of the substance of the grant requirements.

## Special Award Conditions.

This document supplements the standard terms and conditions. It is more tailored to our project than the standard terms and conditions. Below are my comments:

1. On page #1 item #2 Daniel Stewart is listed as the City's contact person. If this changes then the standard terms and conditions require us to notify our grants officer.

2. On page #2 item #7 there is a date to start construction of September 25, 2015. I am not sure if this date fits the time schedule both Cedar City and Syber Jet have in mind. In reading the standard terms and conditions it may be possible to move up the start date, but it looks like we have to get prior approval from the Economic Development Administration.
3. On page #3 item #8 there is a good discussion of the financial reporting requirements. Please read through these requirements and become familiar with the forms they reference. Also, please take a look at page #4 item #9 where it outlines the amounts approved for each phase of the project. The financial reporting the City will be required to complete will have to match the budget provided in section #9.
4. On page #6 item #14 there is a section related to goals for women and minorities in construction. The goal for women in construction is 6.9% and the goals for minorities is 12.6%. These are goals specific to Iron County and are included in the grant. When the City gets ready to build the project the City will need to work closely with the grants officer to figure out how to meet or exceed these goals.
5. Page #6 item #15 requires all procurement to be in accordance with Department of Commerce Regulations (15 C.F.R. § 24.36). Please work with the grants administrators to figure out what the federal procurement codes require. Also, please make sure you talk to the federal grant administrators about how the City is going to incorporate provisions of our local purchasing policy when we procure goods and services for this project. Specifically the City's local vendor preference.
6. On page #7 item #19 requires the City to attest that the project funded by this EDA grant is not going to induce the relocation of existing jobs from one region to another region. I am worried about the jobs that may possibly relocate here from Texas as a result of Syber Jet's expansion. Please work through this issue with the grant administrators.
7. On page #7 item #20 talks about performance measures. The City will be required to submit reports at three years, six years, and nine years. In addition there will be frequent performance reporting during construction as well as financial reporting during construction. Please work with the grant administrator to figure out the proper reporting forms and procedures.
8. Page #8 items #22 and #23 start talking about environmental issues. These types of issues are also addressed in the general terms and

conditions. It looks like in order to receive the grant the City will have to be willing and able to do a lot of environmental work. The special conditions require aviation permits and pollutant discharge permits as well as mitigation of damage to prairie dogs. I think going in we should be careful and talk with the grant administrators about any other environmental impact studies they may require. The general conditions talk about mitigating impacts on foul, wildlife, air, water, etc..... if these studies are going to be required and are not disclosed up front they will delay the project until the studies are complete. So it is better to talk to the grant administrators up front and get them what they need.

9. Pages #9 and #10 list specific environmental mitigation measures. There is language that will need to be inserted into every agreement related to the Utah prairie dog, how to take out the trash, vehicle maintenance, requiring a qualified biologist on the construction site to watch out for damage to the prairie dogs, prohibition on domestic dogs on the site, no firearms, and even a provision requiring the contractors to wash their equipment prior to entering the work site to avoid spread of noxious weeds. All of these items need to be in the contracts and requests for proposals prior to construction.

U.S. Department of Commerce standard terms and conditions for construction projects.

This document contains all of the strings attached to the grant. If you do nothing else please realize that with the size of this grant the City will most likely be audited, the Economic Development Administration will retain jurisdiction over the project for 10 years after it is done and the first, last, and best way to protect the City is to document, document, and document all compliance efforts. Also please keep the documentation for 11 years.

Here are my comments to more specific sections.

1. The last paragraph on page #7 states that all of the rules and regulations related to the grant award are subject to change and we will need to keep up with any changes and comply.
2. On the bottom of page #8 and the top of page #9 there is a statement that the City's compliance with the grant obligations will last for the useful life of the project. In the special award conditions the useful life of the project is set at 20 years. So the City will have to comply with the grant requirements for at least 20 years. Later in the documents it spells out the penalties for not complying with the grant requirements and basically these

include not receiving any more grants, stopping payment under this grant, and/or having to repay grant money previously received under this grant.

3. Page #11, paragraph 3(d) requires the City to demonstrate that the City's matching funds are committed and available as needed. So at some point we will need to show the City has \$401,001 budgeted, in the bank, and ready to spend. The alternative is in section 3(b) where there is allowance for in-kind contribution from the City. I think it is a good idea to get the in-kind match cleared in writing by the grant administrators prior to counting on being able to use it. You can put me down for about 10 hours of in-kind review of document time.
4. Page #17 starts to flesh out what types of performance reporting will be required. It specifies the forms to use and where on the internet you can find most forms. The grant administrator should be able to help locate the appropriate forms. Under this reporting section on page 18 there is a statement that reporting may be required for up to 10 years following project close out.
5. Page #19 starts to get into the penalties for violating the grant conditions. Basically these include no more money under this grant, no more future grants, and the chance to pay back the present grant proceeds already received.
6. Page #21 item #14(b) allows for early start of project construction but the City needs to make a written request and it needs to be approved. The special conditions have construction commencing sometime in September, 2015, so this paragraph will be useful if we want to start construction early.
7. Page #21 item #14( c) requires that on site we put up a sign of EDA's design basically stating that this project is funded by the EDA.
8. Page #22 item #16. Please spend some time here and please seek guidance from the grant administrators. This is the conflict of interest section. Not only does it prohibit direct financial conflict of interests but it also prohibits the perception of a benefit to ones reputation. I am not sure what type of policies the City will need to look at to avoid the perception of reputational conflicts.
9. Page #22 item #17 requires records be kept for 3 years after project close out. I would recommend keeping for 11 years. The EDA holds

jurisdiction for 10 years after project closeout so we need to protect ourselves with the documentation as long as they have jurisdiction.

10. Page #26 item #20 basically tells the grant applicant that all materials sent to EDA are open records and will be disclosed. If the City as the grant applicant can identify information in the grant documentation that needs to be kept private we need to tell EDA and give them an opportunity to classify the material.
11. Pages #26 through #29 list the strings attached to the grant. Some will be applicable to the Cedar City grant and some will not so if in doubt please contact the grant administrator. Some of the strings are: Davis-Bacon wages, work hours, safety standards, historic preservation, historic / archeological data preservation, architectural barriers (ADA), uniform relocation assistance and real property acquisition policies, energy conservation, non-discrimination (race, color, national origin, sex, disability, accessibility, age, religion, others), and accessibility to those with limited English proficiency. Later on in the document there are other strings including drug free work place, wear your seat belt, prohibition on human trafficking, homeland security requirements, fly America act, truthful in dealings with EDA, noise control, lead paint, farmland, fish and wildlife, endangered species, etc....

So there are a lot of strings attached and I think we need to be very careful to work with the grant administrators and document everything.

12. On page #30 it starts to talk about the project auditing requirements. I think with the guidelines in this document Cedar City will be audited on this project so documentation is going to have to be a key to making sure we can pass an audit.
13. On page #34 there are lobbying restrictions. Basically we can't use federal funds to lobby.
14. On page #34 paragraph K(1) it states, "... recipient (Cedar City) must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain in the administration of this award". I am not sure what they have in mind, but maybe the administrator can give some guidance.
15. On page #36 section #4 there is some language that must be included in the RFP. My suggestion is that the party that writes the RFP be provided a

copy of all of these grant restrictions and be able to include this language as well as any other requirements such as the language related to mitigating the impact on the prairie dogs.

16. Similar to the previous item, on page #37 item #7 requires the City to use "EDA contracting provisions for construction projects". I tried to look the document up today but the web page is down. I guess it is part of the government shut down.
17. Beginning on page #38 and running onto page #39 there is a lot of language related to the EDA's interest in the project. Basically they want to retain an interest for the life of the project. I think these provisions will require us to disclose the through the fence lease to MTI.
18. Page #40 item #4 requires us to include a bid bond, performance bond, and payment bond in the contract documents.
19. Page #42 requires compliance with the National Environmental Policy Act and the National Historic Preservation Act. I am not sure what else we will need to do to comply with the environmental policy act. I don't know if we will need to do a full environmental impact study, but it would be a good idea to find out early in the project so we don't run into a delay.
20. Page #58 talks about what to do in case of a funding hiatus or government shutdown. Basically we proceed at our own risk.

I can't see a legal reason not to enter the agreements. The challenges come in the form of compliance with all of the attached strings and documenting everything so we can pass an eventual audit.

Please let me know if there is anything else I can do.

CEDAR CITY COUNCIL  
WORK AGENDA ITEMS IV 13  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** October 10, 2013

**SUBJECT:** consider a resolution amending sections of the City's personnel policy..

**DISCUSSION:**

Attached is a resolution that if approved will amend eight (8) different chapters in the personnel policy. The resolution including all of the exhibits is rather long. The first page sets out the language whereby if approved the Council will authorize the changes to the personnel policy, it also delays a limit on part time hours until the City is required to comply with the health care law. The remaining pages are exhibits. Below is a summary of the changes in each exhibit. Please see the full exhibit for all of the detail.

A little note on the process that developed these changes. First there are staff suggestions to respond to frequently encountered issues. Next the Mayor, Manager, and Department Heads, on a weekly basis, have been in the process of reviewing each chapter of the personnel policy. Some of the proposed changes have grown out of these reviews and discussions. Last, the Manager, Attorney, and Human Resources have narrowed the requested changes, drafted a list of specific wording for the proposed changes, drafted the resolution, and sent the proposed resolution back to the Department Head meeting for another review.

Summary of Exhibit #1.

This exhibit contains the proposed changes to Chapter 3 of the Personnel Policy, Hiring Practices. The proposed changes are in section 3.1.1 and 3.1.7.

The proposed changes in 3.1.1 would include additional language requiring department heads to communicate with in house applicants their status during the recruitment process.

Section 3.1.7 is a proposed new section allowing the use of old recruitment efforts to fill a new opening of the same type of position if they are within six (6) months of each other.

Summary of Exhibit #2.

This exhibit contains the proposed changes to Chapter 4 of the Personnel Policy, Employment Status. The changes are contained in sections 4.1.1, 4.1.2, 4.1.3, 4.5, 4.5.1, and 4.5.2.

The changes in section 4.1.1 clarify which positions are appointed and out of the appointed positions which are exempt.

The change to 4.1.2 adds a statement that unless the discharge of an exempt appointed employee is regulated by State law the provisions of 4.1.2 apply. Basically, the majority of the council can dismiss an appointed/exempt employee. State law has an exception for the City Manager and in that case the Mayor also has a vote.

Section 4.1.3 lists all of the employee titles where the employees are exempt. These are not appointed positions, but they are exempt for purposes of the Fair Labor Standards Act.

Section 4.5 redefines classifications of temporary or seasonal employees. The change matches the employee classifications the City adopted relative to health care. This section and the health care benefits section should now be consistent in how they classify employees. The limitation on hours for part time employees will not kick in until the City is required to comply with the affordable care act.

#### Summary of Exhibit #3.

This exhibit contains the proposed changes to Chapter 5 of the Personnel Policy, Separation from Employment. There is one change suggested in section 5.1.4. The suggestion is to tie the appeal notice to an existing procedure for similar appeals in Chapter ten (10) of the personnel policy.

#### Summary of Exhibit #4.

This exhibit contains the proposed changes to Chapter 7 of the Personnel Policy, Work Hours and Compensation. The proposed changes are in sections 7.2.1 and 7.6.4.

The proposed change in section 7.2.1 changes a reference to the "FSLA" to the "FLSA" which is an acronym for the Fair Labor Standards Act.

The proposed change in section 7.6.4 keeps the general prohibition on pay advancements and eliminates reference to an exclusion for salary deferments.

#### Summary of Exhibit #5.

This exhibit contains the proposed changes to Chapter 9 of the Personnel Policy, Disciplinary (Corrective Counseling) Procedures. The amendment to this section is found in section 9.2.1.C. This is the section that allows discipline for insubordination by employees. If the change is to add "lawful" as a modifier of the supervisor's order. So the employee that refuses a lawful order of a supervisor would be insubordinate and if the order was unlawful the employee would not be insubordinate to refuse.

#### Summary of Exhibit #6.

This exhibit contains the proposed changes to Chapter 11 of the Personnel Policy, Employee Development. The proposed changes are found in section 11.1.1 and 11.2.2.

The change to section 11.1.1 includes alternate methods of reimbursing employees for travel and training if the method would save public money. Also it includes a clause that encourages department heads to use cost saving alternative methods.

The change to section 11.2.2 is an attempt to end some internal confusion over how many hours of college credit are eligible for reimbursement. It does not change any of the other prerequisites that qualify someone to receive the reimbursement, only the number of hours that qualify.

#### Summary of Exhibit #7.

This exhibit contains the proposed changes to Chapter 7 of the Personnel Policy, Harassment in the Work Place. The proposed changes are in sections 13.1.1, 13.3.1, and 13.3.7.

The change in section 13.1.1 adds pregnancy, childbirth, or pregnancy-related conditions, to the list of personal characteristics that are not to be harassed about in the work place. This language is straight out of UCA §34A-5--106.

The change in section 13.3.1 adds the City Manager, Attorney, and Human Resources as persons to whom staff is directed to report harassment, and removes the Mayor and Council.

The change in section 13.3.7 adds the words "of employment" to the end of the phrase, "...which may include termination".

#### Summary of Exhibit #8.

This exhibit contains the proposed changes to Chapter 16 of the Personnel Policy, Risk Management. The proposed change removes and replaces sections 16.6 and 16.7. These sections deal with what to do if in a vehicle accident and workplace injuries.

If there are questions you have about specific sections please ask. Natasha will present the resolution and cover reasons for the proposals during your October 16<sup>th</sup> work meeting.



CEDAR CITY RESOLUTION No. \_\_\_\_\_

A RESOLUTION OF THE CEDAR CITY COUNCIL AMENDING CHAPTERS 3,4,5,7,9,11,13,AND 16 OF THE CEDAR CITY PERSONNEL POLICY.

**WHEREAS**, Cedar City has adopted a written personnel policy; and

**WHEREAS**, from time to time the operational needs of the City change and it is appropriate to review the personnel policy; and

**WHEREAS**, City staff has reviewed the personnel policy and is recommending the amendments contained in exhibits eight (8) exhibits attached hereto and incorporated herein by this reference; and

**WHEREAS**, the City Council has reviewed the requested changes and finds that it is in the best interests of the health, safety, and general welfare of Cedar City to adopt the changes set forth herein.

**NOW THEREFORE**, be it resolved by the City Council of Cedar City, State of Utah, that the amendments to the individual chapters of the City's personnel policy contained in exhibits one (1) through eight (8) as attached hereto and incorporated herein are hereby adopted. That the underlined text be included in the personnel policy and the struck through text be excluded from the personnel policy.

**NOW THEREFORE**, be it further resolved that the amendments in exhibit #2 to section 4.5 of the personnel policy related to limiting part time workers to twenty eight (28) or less hours per week shall not take effect until the City is required to comply with the provisions of the affordable care act. The remaining amendments to this section will take effect with this ordinance, but until the City is required to comply with the affordable care act part time workers shall be those City employees who are not: (1) regular City employees; (2) seasonal employees, or; (3) variable hour employees. There shall not be a limit on the number of hours worked pursuant to the personnel policy. Once the City is required to comply with the provisions of the affordable care act the definition of part time workers limiting part time workers to twenty eight (28) hours per week will automatically become a part of the policy.

**NOW THEREFORE**, be it further resolved by the City Council of Cedar City, State of Utah, that City staff is authorized to make such non-substantive changes to the personnel policy format and table of content as are reasonably made necessary by the amendments adopted herein.

*Remainder of page intentionally left blank*

This resolution, Cedar City Resolution No. \_\_\_\_\_, is adopted this \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES: \_\_\_\_\_      NAYS: \_\_\_\_\_      ABSTAINED: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JOE BURGESS  
MAYOR

[SEAL]  
ATTEST:

\_\_\_\_\_  
RENON SAVAGE  
RECORDER

# Exhibit #1

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 3 of the Cedar City Personnel Policy.

## CHAPTER 3 – HIRING PRACTICES

### 3.1 City Hiring Practices.

3.1.1 When a regular full-time or regular part-time position opens in a department or a need arises to create a new position, the Department Head shall so inform Human Resources. Notification shall be accompanied by the position title and a description of the duties, responsibilities and required knowledge and skills. Minimum qualifications of education and experience shall be outlined for new positions.

3.1.2 After the Department Head and Human Resources have developed and/or updated the job description and applicable salary range, the City Council shall be notified of the vacancy prior to beginning the recruitment process.

Amended by Resolution Numbers 11-0309-1, and 12-0827.

3.1.3 Cedar City desires to promote employees when possible. Human Resources shall post position openings for at least five (5) working days in locations where all City employees will be made aware of an opportunity for promotion. The City may provide, in cases where practicable, that vacancies be filled by promotion on the basis of ascertained merit and qualification. Regular full-time and regular part-time employees are eligible to apply during this period. For regular full time fire department positions, hourly fire fighters are eligible to apply if they are Fire Fighter I certified. As appropriate during the hiring process Department Heads (or designee) will notify in house applicants as to decisions impacting the in house applicant's status in the recruitment process.

3.1.4 If the position cannot be filled by the procedure outlined above, the labor market shall become the object of a recruitment effort. The recruiting effort may utilize the City's web page, other electronic media, newspaper ads, schools and colleges, etc. Outside applications will be accepted for a minimum of two (2) weeks.

3.1.5 Human Resources and the Department Head (or designee) will review applications according to position qualifications. All applicants who are eligible for further consideration shall then be evaluated by consistent methods of testing their education experience, knowledge, skills and abilities. The top candidates shall be referred to the appropriate Department Head who then may select one for final hiring with the assistance of Human Resources. The City Council shall approve appointments as specified by City Ordinance.

3.1.6 After a candidate has been selected, the hiring Department and Human Resources shall arrange for a starting date and an orientation for the new employee.

3.1.7 If a position is vacated within six (6) months, or one (1) year for the Police Department and Fire Department, of a hire for a position with the same job description the same candidate pool may be used as a resource to fill the

position. Under this policy a new recruitment process is not required. This process may include hiring from the top candidates from the previous recruitment's interview list. Human Resources will maintain appropriate applications, screening records, and interview records to facilitate this policy.

# Exhibit #2

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 4 of the Cedar City Personnel Policy.

## CHAPTER 4 – EMPLOYMENT STATUS

### 4.1 Appointed Positions.

4.1.1 The following positions are exempt positions that are appointed by the Mayor with the consent of the City Council: City Manager, City Attorney, City Engineer, Public Works Director, Finance Director, Police Chief, Fire Chief, ~~Director of Golf~~, Economic Development Director, Library Director, Leisure Services Director, ~~Parks and Outdoor Facilities Director~~, ~~Community Development Director~~, ~~Heritage Center Director~~, ~~Public Relations Director~~. The following are non-exempt positions appointed by the Mayor with the consent of the City Council: City Recorder and City Treasurer.

Amended by Resolution No. 11-0309-1.

4.1.2 Appointed employees are part of the pay and benefit system applicable to all employees and shall be subject to policies contained in this handbook, with the following exception:

- A. Unless state law requires otherwise and with ~~With~~ the exception of the City Recorder and the City Treasurer, all appointed positions shall serve at the pleasure of the governing body of the City and may be dismissed by a majority vote of the governing body at any time with or without cause provided at least five (5) members of the governing body and the City Manager, are present at the time the ballot is taken however, and notwithstanding the foregoing, the above-named officers shall not be removed from office other than for cause, during or within the period of forty-five (45) days succeeding the date any member of the governing body takes office following any general municipal election held in the City at which a member of the City Council is elected; the purpose of this provision is to allow any newly-elected members of the City Council or a reorganized City Council after taking office to directly observe the actions and ability of the above-named officers in the performance of their office and duties. After the expiration of said forty-five (45) day period, the provisions of this paragraph regarding removal by the governing body shall apply and be effective.

Amended by Resolution No. 11-0309-1.

4.1.3 The following positions are exempt: Assistant City Attorney, Senior Engineer, Project Engineer, Fleet Manager, Golf Division Manager, Heritage Center/Events Director, Outdoor Facilities Manager, Police Lieutenant, Streets Superintendent, Water Superintendent, and Wastewater Superintendent.

**4.2 Probationary Employees.**

4.2.1 All new employees are required to serve at least a six (6) month probationary period. This period is designed to acquaint the new employee with his/her position and to allow the Department Head to evaluate fairly the employee's ability and aptitude to do the job. If an employee's performance is not satisfactory, he/she may be terminated at any time, without right of appeal, during this period. Probationary period may be extended in accordance with Section 7.8.

**4.3 Regular Full-time Employees.**

4.3.1 Regular full-time employees are those employees who are scheduled to work 40 hours per week for the City and have worked for the City at least six months. Regular full-time employees must have successfully completed their probationary period.

**4.4 Regular Part-time Employees.**

4.4.1 Regular part-time employees are those employees who are scheduled to work less than forty hours per week for the city and have worked for the City at least six months, having successfully completed their probationary period. Employees will be eligible for sick leave, vacation, holiday and retirement benefits proportionate to hours worked. Only employees working 32 hours per week or more shall be eligible for insurance benefits, premium to be prorated based upon hours worked.

**4.5 ~~Temporary or Seasonal Employees~~ Part Time, Seasonal, and Variable Hour Employees.**

~~4.5.1 Temporary or seasonal employees appointments are made by Department to carry out temporary work. Temporary or seasonal employees shall not qualify for rights and benefits. Temporary or seasonal employees may not work in excess of 1,600 hours per calendar year without prior consent of the Department Head and City Manager.~~

~~4.5.1 Part time employees shall mean an employee that provides twenty eight (28) hours of service per week or less.~~

~~Seasonal employee shall mean an employee that is employed for a maximum of twenty six (26) weeks during a twelve (12) month period.<sup>1</sup>~~

~~Variable hour employee shall mean an employee that is not a full time employee, part time employee, or seasonal employee; and that by designation or practice works variable hours.~~

<sup>1</sup> Until the City is required to comply with the affordable care act part time workers shall be those City employees who are not: (1) regular City employees; (2) seasonal employees, or; (3) variable hour employees. There shall not be a limit on the number of hours worked pursuant to the personnel policy. Once the City is required to comply with the provisions of the affordable care act the definition of part time workers limiting part time workers to twenty eight (28) hours per week will automatically become a part of the policy.

4.5.2 Unless otherwise specifically stated elsewhere in this policy, part time employees, seasonal employees, and variable hour employees shall not qualify for benefits provided for in this policy and are not eligible for due process and procedural protections provided for in this policy.

**4.6 Promotions.**

4.6.1 A promoted employee is an employee who, through a recruitment process, is promoted into a new position. A promoted employee will begin a new probationary period, beginning the effective date of the promotion and is eligible for a step increase at the end of probation. A promoted employee shall receive at least the step of the new grade which provides a one-step increase over his/her former salary, if the promoted employee is promoted within six months or more from his/her last evaluation. If the employee is promoted six months or more from his/her previous evaluation, the employee may be eligible for an increase equivalent to at least a two-step increase.

4.6.2 If a promoted employee's performance is determined by the City to be unsatisfactory, the City shall notify the employee in writing of his/her failure to complete probation and the employee may be reinstated to another similar position depending on availability and employee's qualifications. If an available position is in another department, both departments heads will agree on the placement.

**4.7 Transfers.**

4.7.1 A transfer, for purposes of this section, is defined as a City initiated move of an employee from one department to another in the same or equivalent job classification, and should not be confused with the managerial function of moving personnel from one division or office to another within the same department by promotion, demotion or reassignment.

4.7.2 Transfers must be cleared with Department Heads. A transferring employee must qualify for the job to which he/she is being transferred. A transferred employee shall retain all accumulated sick leave and annual leave. A transferred employee shall not be required to serve a new probationary period. A transferred employee shall be paid at the salary provided for the new job classification.

# Exhibit #3

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 5 of the Cedar City Personnel Policy.

## CHAPTER 5 – SEPARATION FROM EMPLOYMENT

### 5.1 Reduction in Force.

- 5.1.1 Selection of an employee for a reduction in force should be based upon the individual's ability to perform the work assignments within the affected department, and his/her years of service with the City. The weights given to these factors should be 75% performance and 25% seniority. Seniority should govern the selection when ability is equal.
- 5.1.2 Employees on lay-off status who are rehired within twelve (12) months of their separation will be reinstated with no reduction of longevity benefits.
- 5.1.3 Prior to an employee being dismissed due to reduction in force, a predetermination hearing will be conducted which requires: (a) Written notice of the reason for the reduction; an explanation of how the employee was selected; and (b) An opportunity for the employee to prepare and present their side of the situation. The hearing shall be conducted by the Department Head and Human Resources.
- 5.1.4 If, after the hearing, the decision is still made to lay-off the employee, the employee will receive written notice including:
- A. Notice of the proposed lay-off;
  - B. Date(s) lay-off will be effective;
  - C. Reasons for the lay-off; and
  - D. ~~A reasonable time limit in which an employee may appeal the decision, in writing, to the City Manager.~~ Full time employee's right to appeal the decision according to the appeal procedures in cases of discharge or transfer found in chapter ten (10) of this policy.

### 5.2 Resignation.

- 5.2.1 Whenever an employee resigns, an exit interview shall be conducted by the Department Head and City Manager or designee. Employees who resign and desire to leave the City in good standing should give a minimum of two (2) weeks' notice if they are to be considered for re-employment at a future date.

### 5.3 Abandonment of Position.

- 5.3.1 One unauthorized absence may constitute cause for separation. An Employee who fails to call their supervisor to report their absence for one (1) working day, and to request that the absence be recorded as authorized, may be deemed to have voluntarily

abandoned his/her position and may have his/her employment with the City terminated.

**5.4 Termination.**

5.4.1 Termination of employment may occur as a result of the employee's failure, in some instances, to satisfactorily complete a probationary period, as a result of disciplinary action, or at will. Terminated employees shall be notified according to DISCIPLINARY PROCEDURES of this handbook. At-will employees and those in probationary status (except promotional probation) have no appeal rights.

**5.5 Re-employment.**

5.5.1 A re-employment list for a classification consists of the names of former employees having regular status and who have been laid off. Such list shall take precedence prior to recruiting for the position. A re-employment list is established for a period of one year from the date of separation.

**5.6 Severance Pay.**

5.6.1 When a permanent employee is separated from City employment because of a reduction in force through no fault of the employee, and when such a separation requires immediate action, thereby not permitting a two (2) week notice, the employee shall be paid two (2) weeks severance pay in lieu of the two (2) week notice.

**5.7 Separation Pay.**

5.7.1 When an employee resigns, retires or is terminated, they shall be required to return all tools, safety helmets and other property, and to clear all financial obligations to the City prior to receiving their final paycheck. The Supervisor shall attach an Exit Interview form to the final time sheet. Final paychecks shall include compensation for the balance of annual leave and comp time. A terminated employee's check will be provided within twenty-four (24) hours of the termination date. A resigning employee's final check will be provided the next pay period after final work day. Leave time may be used through the end of the month after the final work day. A retiring employee may use leave time up to two months after final work day.

# Exhibit #4

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 7 of the Cedar City Personnel Policy.

## CHAPTER 7 – WORK HOURS AND COMPENSATION

### 7.1 Non-exempt Employees.

7.1.1 The normal work week shall be forty (40) hours, unless otherwise specifically provided in departmental working rules.

7.1.2 An employee unable to report to duty on a work day shall notify the Department Head or his/her agent as soon as practicable before the beginning of work.

7.1.3 Time spent by employees which will be counted as hours worked for the purpose of determining overtime will include:

- A. Rest breaks of fifteen (15) minutes or less within each continuous four (4) hour work period;
- B. Hours over and above the designated number of hours authorized in a work period, during which an employee is engaged in required attendance at lectures or meetings and the travel time associated with such attendance; and
- C. City Holidays.

7.1.4 Time spent by employees which will not be counted as hours worked for the purpose of determining overtime include:

- A. Paid leave (this includes, but is not limited to vacation sick leave, and comp. time);
- B. Meal periods when relieved of duty; and
- C. Travel time between home and work.

7.1.5 Employees who have completed their work shift and have left the premises and then are required to return to work shall receive a minimum of one (1) hour of overtime. Hours worked in excess of the one (1) hour shall be compensated at the overtime rate.

7.1.6 Supervisors may determine that employees must remain at work or return to work for a work related emergency. Employees shall receive overtime for hours worked in excess of the regular shift for that day at the overtime rate.

7.1.7 Hours worked (up to 40) and leave time used during the 7-day work week shall be compensated at the employees regular pay rate. Overtime hours worked shall be paid at time and a half.

### 7.2 Exempt Employees.

7.2.1 Exempt employees are those who are in positions which have been determined to be exempt from overtime according to ~~FSLA~~ FLSA criteria. Exempt employees are salaried

and shall be paid according to the salary schedule adopted by the City Council. Exempt employees are expected to work the hours required to complete their assignments and responsibilities.

**7.3 Overtime.**

7.3.1 Any time worked over forty (40) hours a week will be considered overtime, unless otherwise specifically provided. Overtime will be compensated at the rate of one and one-half the regularly hourly rate. Method of compensation, either monetary or comp-time off, shall be at the discretion of the supervisor. It is the City's policy to discourage the use of overtime. Supervisory personnel should, if possible, organize their department workload to avoid overtime payment. Overtime will be permitted in very exceptional circumstances, but should be kept to a minimum. Overtime work must have the prior approval of the supervisor.

**7.4 Compensatory Time.**

7.4.1 Compensatory time in lieu of monetary overtime compensation shall be earned at the rate of one and one-half hours of compensatory time for each hour of overtime worked. Employees may accrue up to 240 hours of comp time; (since comp time is accumulated at time and one-half, this is only 160 hours of actual overtime work). Employees who work in a public safety activity or emergency response activity may accumulate up to 480 hours of comp time. The 480-hour accrual limit does not apply to office personnel or other civilian employees who perform public safety activities in emergency situations, even if they spend substantially all of their time in a particular week on public safety activities.

**7.5 Classification of Positions.**

7.5.1 All City job classifications are comparatively evaluated on a set of common factors and are assigned a grade or grades. All employees hired for regular positions (full-time or part-time) will receive compensation according to the classification of the position for which they are hired.

7.5.2 **Reclassification.** If the duties and responsibilities of an employee change significantly, the Department Head should submit a request for reclassification to Human Resources, who shall perform an analysis of the classification and make the final recommendation for reclassification to the City Manager and the Mayor. A new probation period is not required with a reclassification.

7.5.3 **Reclassification Upward.** Upgrading occurs when the analysis reflects a change in a position to a higher salary grade. Compensation increases are not automatically given in conjunction with an upgrade, unless it is to bring the employee up to the minimum of the new salary range

- 7.5.4            Reclassification Downward. Downgrading occurs when the analysis reflects a change in a position to a lower salary grade. The employee shall be placed in the new salary grade at a level to receive what he/she was receiving at the old grade and shall be frozen until the new grade increases by salary adjustments to encompass the frozen salary.
- 7.5.5            Working out of Classification. An employee may be assigned or temporarily appointed to an out-of-classification position for a period of at least fourteen (14) and not to exceed one hundred eighty (180) consecutive calendar days upon recommendation of the Department Head and approval of the City Manager or designee. The out-of-class period may be extended due to unique circumstances, as approved by the City Manager.
- 7.5.6            Out-of-class compensation may be granted to an employee assigned to work in a higher classification for an extended period of time. Prior approval of the Department Head and City Manager is required. The pay shall be within the range for the new classification and an increase in salary of no more than an additional 5% of the employee's current salary shall be approved unless it is necessary to bring the employee's salary up to the minimum of the new range.
- 7.6              Compensation Plan.**
- 7.6.1            The City compensation plan for non-exempt employees consists of grades and steps. A grade is a specific salary range and a step is an increment of salary increase within a grade. The grade an employee is assigned is determined by his/her job classification. The compensation plan for exempt employees includes salary ranges as determined by the City Council.
- 7.6.2            Cost-Of-Living. Cost-of-living adjustments shall be considered each year when it is determined that such an adjustment is warranted by the City Council, and after considering the impact of such an adjustment on the City's budget.
- 7.6.3            Personnel Action Form. In an effort to ensure that salary adjustments are based upon an employee's current performance, all personnel actions that result in a change in compensation will be initiated with a Personnel Action Form. The form will be completed by the employee's supervisor. Prior to becoming effective, the Supervisor will forward the form to Human Resources for review.
- 7.6.4            Pay Advancement. The City will not make pay advances to employees. ~~This does not apply to the salary deferment.~~

**7.7 Employee Performance and Salary Advancement.**

7.7.1 New Employees. New Employees shall be assigned the first or probationary step of the grade for the class position. The City Manager and the Mayor may approve appointment to a higher step if: (1) an employee cannot be recruited for the position at the probationary step; or (2) the qualifications of the individual selected exceed the minimum requirements and the individual can be expected to perform at the level equal to that of other individuals being paid at the same step.

7.7.2 Performance Appraisals. Performance Appraisals shall be completed for all probationary and regular full and part-time employees at regular intervals described herein. Also, additional performance appraisals may be conducted during the course of employment due to specific problems with performance or behavior of an employee. The purpose is to record recent job performance, setting goals and objectives, recognizing accomplishments and noting particular strengths and/or deficiencies. Performance appraisals shall also serve to assist the employee in improving performance and behavior as necessary.

7.7.3 Performance Appraisals shall be prepared by the employee's supervisor. The appraisal shall be discussed with the employee and he/she shall be given an opportunity to make written comments.

7.7.4 All performance appraisals shall be filed with the City Recorder. The employee shall be given a copy of the appraisal by the supervisor.

**7.8 Probationary Employees/Non Exempt.**

7.8.1 Probationary employees will have a performance appraisal (with form) by their supervisor at the completion of the sixth (6<sup>th</sup>) month from the date of employment. During the probationary period, supervisors are encouraged to provide meaningful employment feedback to the probationary employee. At the completion of the six (6) month probationary period, an employee who has established a satisfactory performance record will be eligible for regular status and a one-step salary increase within the grade. A probationary period may be extended if the Department Head feels more time is necessary to evaluate the

employees performance and upon approval of the City Manager or designee. If the probation period is extended and then the employee attains regular status, the date of regular status establishes the anniversary date. Thereafter, while the employee remains within the same grade, the employee can expect to have an annual performance appraisal, with his/her supervisor, on or before the anniversary date of the employee's probationary period completion.

**7.9 Regular Full and Regular Part Time Employees/Non Exempt.**

7.9.1 Regular full and regular part time employees shall receive a performance appraisal on or before their anniversary date. If, through a performance appraisal a merit increase is not awarded, the employee's anniversary date does not change. A supervisor may grant a merit increase after satisfactory performance is achieved. An employee's anniversary date can be changed for assignment to a different position.

7.9.2 In addition to the aforementioned minimum performance evaluation interviews, a supervisor may evaluate an employee at any time, especially if some noteworthy incident occurs, either good or bad. The information should be added to the employee's file.

**7.10 Exempt Employees.**

7.10.1 Exempt employees shall receive their performance appraisals before March 31st. Appraisals will include a review of performance and salary adjustments according to the City's exempt employee salary plan. Salary adjustments are effective with the next fiscal-year budget.

# Exhibit #5

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 9 of the Cedar City Personnel Policy.

## CHAPTER 9 – DISCIPLINARY (CORRECTIVE COUNSELING) PROCEDURES

### 9.1 Discipline Policy.

9.1.1 It is the policy of Cedar City to use positive measures in encouraging excellent work performance and behavior, and to use a process of progressive discipline to minimize and/or resolve employee performance or behavioral problems before more serious actions must be taken.

9.1.2 For discipline to be effective, the discipline must be presented to the employee soon after the improper action occurred. The goal of the disciplinary process is to: (1) give employees the opportunity to improve by identifying what specific actions they must take in order to meet performance and behavior standards; and (2) ensure that disciplinary procedures are applied uniformly and consistently, in accordance with City policies, ordinances and work rules.

9.1.3 Supervisors and employees should work together to carry out the goals and responsibilities of their department and the City. It is the responsibility of all employees to observe regulations necessary for the proper operation of City government functions. The Supervisor is responsible for the activities of his/her work group.

### 9.2 Grounds for Discipline.

9.2.1 ACTIONS WHICH MAY RESULT IN DISCIPLINE INCLUDE, BUT ARE NOT LIMITED TO:

- A. Any conduct which reflects negatively on the character of the employee or the City.
- B. Failure to meet reasonable work performance standards and requirements.
- C. Insubordination by refusing a superior's lawful order, verbal abuse of a superior or unwillingness to submit to proper authority.
- D. Willful or negligent disobedience of any law, ordinance, City rule, departmental regulation or policy.
- E. Indulging in offensive conduct or using offensive language toward an individual.
- F. Commission of criminal conduct, including conviction of a misdemeanor or felony while a City employee.
- G. Deliberate or careless conduct endangering the safety of the public or other employees.

- H. Inducing or attempting to induce any City employee to commit an unlawful act in violation of City regulations, official policy or departmental orders.
- I. Using, threatening or attempting to use personal or political influence in an effort to secure special consideration as a City employee.
- J. Incompetency and inefficiency in the performance of job duties resulting in two (2) consecutive unsatisfactory ratings on performance evaluations.
- K. Carelessness or negligence with City monies or property.
- L. Theft or intentional destruction of City property.
- M. Intentional falsification of personal records, time reports or other City records.
- N. Possession, used and/or being under the influence of alcoholic beverages or illegal drugs while on duty and/or using City equipment.
- O. Sleeping on duty unless authorized by a Department Head.
- P. Excessive absenteeism and/or tardiness.
- Q. Horseplay and related kinds of activities which create safety hazards.
- R. Disregard or violating a defined safety rule or practice.
- S. Smoking in posted or unauthorized areas.
- T. Failure to report to work without notifying the Department Head or his/her agent, unless it is impossible to give such notice.
- U. Inattentiveness to work, failing to start work at the designated time, quitting early or leaving the work premises without authorization.
- V. Vending, soliciting or collecting contributions on the City's time or premises without proper authorization.
- W. Abuse of sick leave privileges.
- X. Harassment or illegal discrimination in the work place.
- Y. Failure to report any injury or accident.
- Z. Fighting or attempting to provoke a fight on City premises.
- AA. Threatening, intimidating or assaulting a supervisor or other employees.
- BB. Unauthorized removal, falsification or alteration of City records or intentional release of confidential information.

**9.3 Process of Progressive Discipline.**

9.3.1 The following outline describes the progressive discipline process, beginning with the verbal warning and progressing through alternative actions that increase in severity if the problem persists. The choice of alternative disciplinary actions will vary in accordance with the severity of the performance or behavior problem, and will not necessarily follow the sequence as outlined herein.

**9.4 Verbal Warnings.**

9.4.1 Whenever grounds for disciplinary action exist, and the supervisor determines that more severe action is not required, the supervisor should verbally communicate to the employee the observed deficiency and the corrective action which must be taken. Sufficient time for improvement should be given before more formal disciplinary action is taken. Record of the verbal warning shall be placed in the employee's personnel file.

**9.5 Written Reprimand.**

9.5.1 If the verbal warning fails to produce the desired results, the supervisor will provide a written reprimand to the employee. Such reprimand should be addressed to the employee and a signed copy should be delivered to the City Manager or designee for inclusion in the employee's personnel file.

9.5.2 It is the responsibility of the supervisor to insure that the written reprimand:

- A. Identify what occurred to warrant disciplinary action (including date(s) and time(s));
- B. Identify what City policy, ordinance, or work rule has been violated;
- C. Identify what prior action has been taken with employee;
- D. Identify what the employee is directed to do to correct the situation, establishing goals and timetables for improvement performance/behavior; and
- E. Inform the employee that failure to improve will result in more serious disciplinary action.

9.5.3 Warnings and reprimands may be removed from an employee's file, as determined by the Department Head with concurrence of the City Manager or designee, after a period of two (2) years. It is the responsibility of the employee to request the file be purged.

9.5.4 Probation. An employee may be placed on probation as an additional disciplinary action. Typically probation would be accompanied by a written reprimand which would outline: deficiencies in behavior and/or performance; corrective action to be taken; and, a time

certain when an evaluation with feedback would be provided. During probation, an employee would not be eligible for a merit increase. At the end of probation, if actions have been corrected by the employee, a merit increase may be given. There is no change to the employee's anniversary date.

**9.6 Suspension.**

9.6.1 This is a major disciplinary action. A Department Head, with the concurrence of the City Manager or designee may suspend without pay a permanent employee for up to, but not exceeding, fifteen (15) calendar days as a disciplinary measure. As an alternative to complete suspension from duties without pay, the employee may continue to perform his/her duties, but a temporary reduction in pay may be imposed. (See Procedure for Major Disciplinary Action.)

9.6.2 An employee may be placed on administrative leave when a serious violation has occurred and it is considered in the best interest of the City until appropriate action is taken.

9.6.3 Upon request of the employee, the record of suspension will be expunged upon sustained corrected behavior for a period of three (3) years, as determined by the City.

**9.7 Demotion.**

9.7.1 This is a major disciplinary action. Demotion is the removal of an employee from his/her present position to a lower classification. A Department Head may, with the concurrence of the City Manager or designee, demote or reduce in salary any permanent employee for disciplinary reasons. (See Procedure for Major Disciplinary Action.)

9.7.2 A record of demotion shall remain permanently in the employee's personnel file.

**9.8 Termination.**

9.8.1 This is a major disciplinary action. Termination is the permanent removal of an employee from employment service, for cause. The employee may be subject to dismissal by the Department Head with the concurrence of the City Manager or designee. (See Procedure for Major Disciplinary Action.) A copy of the Notice of Intent to Terminate shall be sent to the City Council.

Amended by Resolution No. 11-0309-1.

9.8.2 The employee may elect to resign in lieu of discharge; however the City retains the right to refuse the resignation.

9.8.3 A record of the discharge shall remain permanently in the employee's personnel file.

**9.9 Procedure for Major Disciplinary Actions.**

9.9.1 This procedure applies to all employees except hourly (temporary), seasonal, probationary or contract employees.

9.9.2 Prior to a major disciplinary action, a predetermination hearing will be conducted which requires:

- A. Written notice of the charges against the employee;
- B. An explanation of the employer's evidence against the employee; and
- C. An opportunity for the employee to prepare and present his/her side of the situation. The hearing shall be conducted by the Department Head and a written record shall be provided to the City Manager or designee.

9.9.3 If, after the hearing, the decision is still made to suspend, demote or dismiss, the employee will receive written notice including:

- A. Notice of the proposed disciplinary action;
- B. Date(s) disciplinary action will be effective;
- C. Reasons for the disciplinary action and the specific grounds and facts upon which the action is taken; and
- D. A reasonable time limit in which an employee may appeal the decision.

9.9.4 A written record of all proceedings shall be maintained in the employee's personnel file. Any employee desiring to review his/her personnel records must make written request to the City Recorder. All written requests shall be handled in accordance with Cedar City Ordinance, Chapter 1A.

9.9.5 Any regular employee subject to a major disciplinary action may appeal.

# Exhibit #6

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 11 of the Cedar City Personnel Policy.

## CHAPTER 11 – EMPLOYEE DEVELOPMENT

### 11.1 Business Travel and Training Expenses.

11.1.1 The City will reimburse employees for reasonable business travel and approved training expenses incurred while on assignment away from the normal work location. All business travel must be approved in advance by the Department/Division Manager. Costs of travel, meals and lodging will be reimbursed in accordance with applicable IRS travel rates. If alternative methods of travel and training reimbursement are reasonably available, such as the use of rental cars, where the use of such alternative methods would save the City money, these methods are allowed. Supervisory personnel should, if possible, organize the travel and training in their departments to use the lowest cost travel and training option.

Generally, employees are permitted to combine personal travel and business travel as long as time away from work is approved. Additional expenses from such non-business travel are the responsibility of the employee.

### 11.2 Education Assistance.

11.2.1 Cedar City Corporation recognizes the importance of educational growth of employees in advancing their technical and managerial skills. Through the Educational Assistance Program the City may provide assistance to an employee who undertakes a course of study which leads to a graduate or undergraduate degree and which is mutually advantageous to the City and the employee. In some cases, irregular work schedules may be considered as a means of accommodating class schedules.

11.2.2 For courses approved by the Department Head and the City Manager, and completed with a semester GPA of 3.0 or higher, the City will reimburse employees an amount up to one-half (½) the tuition and required fees for employees accepted for participation in an accredited program. Application for educational assistance may be approved for reimbursement up to three (3) hours ~~of courses taken at a maximum of six (6) hours~~ per semester. If the employee is entitled to Veteran's or other educational benefits, grants or scholarships, it is expected those funds will be used in combination with the city reimbursement, so long as the total education benefits do not exceed the tuition and fees.

11.2.3 Those accepted under this program will be required to sign a statement committing themselves to one (1) year of employment with Cedar City Corporation upon completion of the course work. If a degree is achieved, the following commitment will also apply:

A. Associate's Degree - One year

B. Bachelor's Degree - Two years

C. Master's Degree - Three years

11.2.4 If the employee separates from the City (voluntarily or involuntarily, except reduction in force) prior to the commitment period, he/she will be required to refund the City monies received under the program during the preceding one (1) year period. The closing date of the semester will be the date used to determine the parameters of such period.

11.2.5 All approved applicants must be regular full-time employees.

# Exhibit #7

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 13 of the Cedar City Personnel Policy.

## CHAPTER 13 – HARASSMENT IN THE WORK PLACE

### 13.1 Policy.

13.1.1 It is the policy of Cedar City that no employee shall harass any other employee based on such personal characteristics as race, religion, color, sex, national origin, age, pregnancy, childbirth, or pregnancy-related conditions, or physical or mental disability. Violations of this policy are not tolerated. Every report of harassment shall be investigated as set forth herein, and if harassment is established, the offender will be subject to discipline, which may include termination.

### 13.2 Definitions.

13.2.1 “Harassment” shall mean any unwelcome, written or oral slur, vulgar joke, derogatory statement or action directed at an individual’s race, color, religion, national origin, age, or mental or physical disability shall be considered harassment.

13.2.2 “Sexual Harassment” shall mean unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- A. Submission to such conduct is made either explicitly or implicitly the term or condition of an individual’s employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

### 13.3 Procedures and Responsibilities.

13.3.1 Any employee who feels he or she has been treated in a way not consistent with this policy from another employee or anyone doing business with the City, or who observes such behavior by or from a City employee shall report the matter to his or her supervisor, Department Head, Human Resources, City Attorney, City or Manager ~~member of Administration, Mayor or a member of the City Council.~~

13.3.2 Every report of harassment shall be investigated. If harassment is established, the offender shall be subject to discipline, which may include termination.

13.3.3 Employees who are victims, or are otherwise aware, of harassment by or against a city employee are encouraged to report such harassment. If an employee has attempted unsuccessfully to discourage such conduct, or believes formal action should be taken, a complaint shall be initiated in the following manner:

- A. Employees may make a report of harassment to any of the following individuals:
- i. The employee's immediate supervisor, unless the employee fails to receive action at this level, or if the supervisor is the source of the problem; or
  - ii. Any Department Head; the City Manager, Mayor, City Attorney, Human Resources Specialist, or a member of the City Council.

Amended by Resolution No. 11-0309-1.

- 13.3.4 Employees may bring good faith complaints without fear or reprisal, intimidation, coercion, or retaliation. Confidentiality will be protected to the extent practical.
- 13.3.5 Anyone receiving a report of harassment shall investigate the allegations with the help of appropriate supervisory personnel and will take care to protect the rights of both the complaining employee and the accused.
- 13.3.6 Determination of whether or not a particular action constitutes harassment, the supervisor or other appropriate officials shall look at the totality of the circumstances and the context in which the alleged incidents occurred. A written report of the findings of the investigation shall be submitted to the Department Head or next individual in the chain of command for the purpose of determining appropriate action.
- 13.3.7 If the investigation determines that harassment as described in this policy has occurred, appropriate disciplinary action must be taken, which may include termination of employment.

# Exhibit #8

Cedar City Resolution No. \_\_\_\_\_  
Amendments to chapter 16 of the Cedar City Personnel Policy.

## CHAPTER 16 – RISK MANAGEMENT

### **16.1 Working in Streets.**

16.1.1 Whenever a city employee is working in the street the employee shall wear a UDOT-approved safety vest or approved public safety attire.

### **16.2 Drivers License.**

16.2.1 All employees who may have occasion to drive a city vehicle shall have a valid driver license of the proper class. Employees shall be responsible for ensuring that their license and medical card, if required, remain valid. Employees shall immediately report to their supervisor any expiration or alteration of validity of their license or medical card.

### **16.3 Vehicle Maintenance.**

16.3.1 All city employees who operate city vehicles shall report to their supervisor any mechanical or other vehicle problem that is a safety hazard to the operator or the general public. City mechanics shall report vehicle safety problems that they discover in the course of their work to the Department Head responsible for the vehicle. Department heads shall not allow a reported vehicle or any vehicle that has a safety problem to be operated until the vehicle is safe to operate.

16.3.2 Department Heads shall be responsible for ensuring that the vehicles in their department(s) receive the annual state vehicle inspection by city inspectors. The Department Head in whose department vehicles are serviced, inspected or repaired shall ensure that records of all service, inspection and repair procedures are completed, filed by vehicle and retained for the life of the vehicle.

### **16.4 Seat Belts.**

16.4.1 All employees shall use available seat belts while traveling on city business. All occupants of vehicles owned by the city shall properly fasten available front and rear seat belts as long as the vehicle is in operation. Occupants of privately-owned vehicles whether operated at personal or city expense shall abide by this policy while on city business.

### **16.5 Traffic Control Devices-Report Damage.**

16.5.1 All city employees are requested to report damaged or missing traffic control devices. Report in the following manner:

- A. Stop and Yield Signs
  - i. During working hours. Immediately report the location and type of sign to the city office as soon as possible.

- ii. Out of working hours. Immediately report the location and type of sign to the police department. Do not call 911 for this report.

B. Other Signs

- i. During working hours. Report the location and type of sign to the city office as soon as possible.
- ii. Out of working hours. Report the location and type of sign to the city office as soon as working hours begin.
- iii. If an "other sign" situation creates an obvious traffic hazard, report it as you would a stop or yield sign.

~~16.6~~ ~~Personal Injury.~~

~~16.6.1~~ ~~Personal injuries occurring on the job are covered by worker compensation insurance. The following procedure shall be used for on the job injuries:~~

~~A.~~ ~~Notify your supervisor. If it is an emergency, get medical help first, then notify your supervisor.~~

~~B.~~ ~~Tell the medical provider that it is a worker compensation injury.~~

~~C.~~ ~~Complete First Report of Injury and Employee's Report of Accident forms. Submit these forms to the city office no later than two days after the injury.~~

~~D.~~ ~~Even if an injury does not require medical attention, submit First Report of Injury and Employee's Report of Accident forms to the city office.~~

~~E.~~ ~~Call the Human Resources Specialist at 865-2880 for information about injury procedure or worker compensation insurance.~~

~~Amended by Resolution No. 11-0309-1.~~

~~16.7~~ ~~Vehicle Accident.~~

~~16.7.1~~ ~~All accidents involving city vehicles within Cedar City shall be investigated by an outside police agency. The following actions shall be taken by employees involved in an accident. A card with these procedures along with the name of the city insurance company will be issued to each Department Head to be placed in each city vehicle. ALL VEHICLE ACCIDENTS SHALL BE REPORTED IMMEDIATELY REGARDLESS OF SEVERITY.~~

~~A.~~ ~~Stop as soon as possible.~~

~~B.~~ ~~Leave the vehicle where the accident occurred.~~

- ~~C. Call the police.~~
- ~~D. Do not leave the scene of the accident until the police have arrived and have told you that you may leave.~~
- ~~E. DO NOT ADMIT FAULT. Do not discuss accident with anyone except the police, city officials or the city insurance company.~~
- ~~F. If you are out of town where police do not respond to most vehicle accidents, obtain from all other drivers or witnesses involved in the accident their name, address, telephone number, registration number of the vehicle, name of their insurance company, and their driver license information.~~
- ~~G. Produce your drivers license for all other drivers.~~
- ~~H. Give to each driver your name, address and the following information about Cedar City Insurance:~~
  - ~~Utah Risk Management Mutual Association~~
  - ~~502 East 770 North~~
  - ~~Orem, Utah 84097~~
  - ~~Insurance effective date: July 1, 1985~~
- ~~I. Give to each driver the following information about the city:~~
  - ~~Cedar City~~
  - ~~10 North Main Street~~
  - ~~Cedar City, Utah 84720~~
  - ~~(435)586-2950~~
- ~~J. Immediately notify your supervisor and the City Attorney.~~
- ~~K. Complete a written report about the accident and submit it to the City Attorney within 24 hours of the accident.~~

## 16.6 POST ACCIDENT PROCESS

### 16.1 Vehicle Accident

All Accidents involving city vehicles within Cedar City shall be investigated by an outside police agency. The following actions shall be taken by employees involved in an accident. A card with these procedures along with the name of the city insurance company will be issued to each Department Head to be placed in each city vehicle. ALL VEHICLE ACCIDENTS SHALL BE REPORTED TO YOUR SUPERVISOR IMMEDIATELY REGARDLESS OF SEVERITY. If it is an emergency get medical help first and then notify your supervisor.

- A. Stop as soon as possible
- B. Leave the vehicle where the accident occurred
- C. Call the police
- D. Seek appropriate medical care if necessary

If possible seek medical attention at Work Med.  
WorkMed  
962 S Sage Drive  
Cedar City, UT 84720

- E. Do not leave the scene of the accident until the police have arrived and have told you that you may leave.
- F. DO NOT ADMIT FAULT. Do not discuss accident with anyone except the police, city officials or the city insurance company.
- G. If you are out of town where police do not respond to most vehicle accidents, obtain from all other drivers or witnesses involved in the accident their name, address, telephone number, registration number of the vehicle, name of their insurance company, and their license information.
- H. Produce your drivers license for all other drivers.
- I. Give to each driver your name, address and the following information about Cedar City Insurance:
  - Utah Risk Management Mutual Association
  - 502 East 770 North
  - Orem, UT 84097
  - Insurance effective date: July 1, 1985
- J. Give to each driver the following information about the City:

Cedar City Corporation  
10 N Main  
Cedar City, UT 84720  
435-586-2950

- K. Immediately notify your supervisor.
- L. Complete a written report about the accident and submit it to your immediate supervisor.

The following actions shall be taken by Supervisors after an employee involved accident.

- A. Drug-Testing-Post-accident testing shall be performed on drivers whose performance could have contributed to the accident i.e. cited for a moving traffic violation, and for any fatal accident. If possible Human Resources should be contacted to schedule a drug test. Testing should be performed at Workmed. If testing cannot be done at Workmed the employee shall be tested at the hospital.
- B. Complete a Supervisors report of accident.
- C. Submit completed Employee & Supervisor accident forms to the City Attorney and Human Resources within 24 hours or the next business day and notify department head.
- D. Supervisors and/or Department Head should review personnel file and past accident logs with Human Resources and then discuss accident with employee.
- E. If accident warrants discipline. Follow City's progressive discipline policy. City Attorney and Human Resource may be used as a resource in determining necessary discipline.

## 16.7 POST ACCIDENT PROCESS

### 16.7.1 Workers Compensation

It is the policy of the City to provide a workers compensation program to employees. The program covers any injury or illness sustained in the course of employment.

- A. Report Injuries promptly. Any employee who sustains a work-related injury or illness should inform their immediate supervisor as soon as reasonably possible. If it is an emergency, get medical help first then notify your supervisor. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately.
- B. Seek appropriate medical care if necessary. Tell medical provider it is a workers compensation injury.

If possible seek medical attention at Work Med.

WorkMed  
962 S Sage Drive

Cedar City, UT 84720

- C. Notify Human Resources 435-865-2880 and obtain required workers compensation paperwork.
- D. The supervisor shall contact Human Resource 435-865-2880 for information about procedure or workers compensation insurance.
- E. Supervisor and employee need to complete all workers compensation paperwork, Employee & Supervisor accident forms, and any other appropriate documentation and submit it to Human Resources within two days of the accident.
- F. Human Resources and the workers compensation coordinator will help the employee and the employee's supervisor throughout the claims process.
- G. Supervisor and/or Department Head should review personnel file and past accident logs with Human Resources and then discuss accident with employee.
- H. If accident warrants discipline. Follow City's progressive discipline policy. City Attorney and Human Resource may be used as a resource in determining necessary discipline.



**CEDAR CITY  
COUNCIL AGENDA ITEM 14  
STAFF INFORMATION SHEET**

**TO:** Mayor and Council

**FROM:** Kit Wareham

**DATE:** October 16, 2013

**SUBJECT:** Review the Design of the Landscaping for the South Interchange Re-construction Project

**DISCUSSION:**

At the City Council Work Meeting there is an item on the agenda where the landscape architects from Horrocks Engineering, who we have contracted with to do the design on the South Interchange Landscaping, will be presenting their proposed plans. The plans will be based on the attached aesthetic guidelines for the project that have been approved by UDOT. If you have any questions on anything, please let me know.



# SOUTH CEDAR

Festival City USA

## Interchange

### A E S T H E T I C   G U I D E L I N E S



# PROJECT BACKGROUND AND VISION

## 1.1 BACKGROUND

The Federal Highway Administration (FHWA) and the Utah Department of Transportation (UDOT), in conjunction with Cedar City (City), have approval and funding to reconstruct the existing interchange on I-15 at approximately Mile Post 57 (MP57) in Cedar City, Utah (see Figure 1-1 Project Location). The project area is located in Cedar City, Iron County, Utah, and includes the existing overpass just south of Exit 57 on I-15 and the Cross Hollow undercrossing and corresponding interchange to the north (see Figure 1-1 Project Location). The new configuration will consist of a Diverging Diamond Interchange (DDI) design. The south ramps will be completely reconstructed with the existing south overcrossing being abandoned from vehicular use and converted to a non-motorized, multi-use access facility. The north ramps will have minor changes made in order to meet new grades and alignments at the undercrossing on Cross Hollow Rd. The existing structures will remain unchanged with new retaining walls as necessary along the undercrossing at Cross Hollow Rd. All environmental commitments as set forth in the Categorical Exclusion prepared for the project will be incorporated into the landscaping and aesthetic design elements as appropriate.

The project has been selected by UDOT to follow the Construction Manager/General Contractor (CMGC) method for design and construction. Currently, first phase plans are being prepared and are approaching the 50% review stage. The landscape and aesthetics will primarily be funded through a City contribution (less the UDOT baseline funding and 0.75% enhancement funds, if available.) The priorities for the funding are as follows: 1) Staining and patterns on existing/new structures; 2) Colorization of traffic signal and street lighting poles; 3) Staining of stamped concrete; and 4) Additional landscape plantings and decorative mulch.

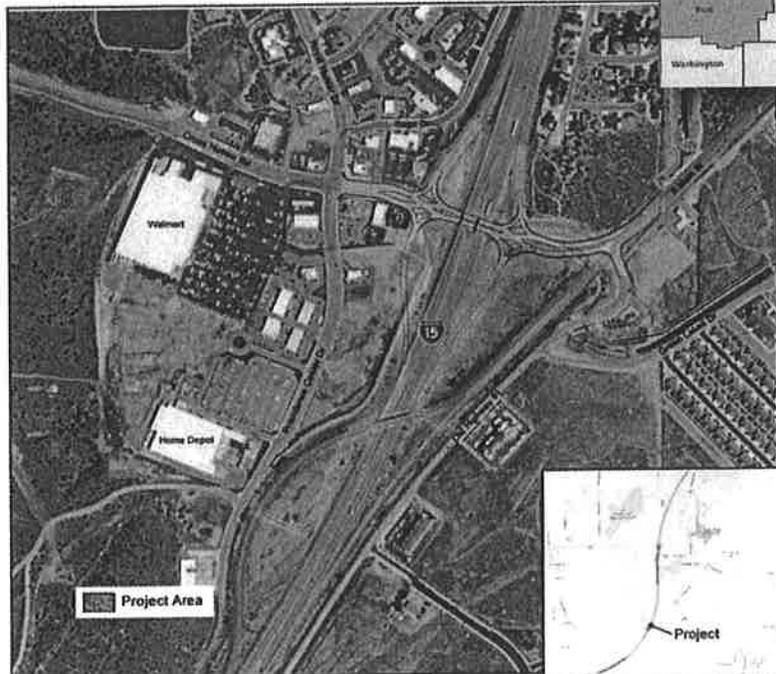
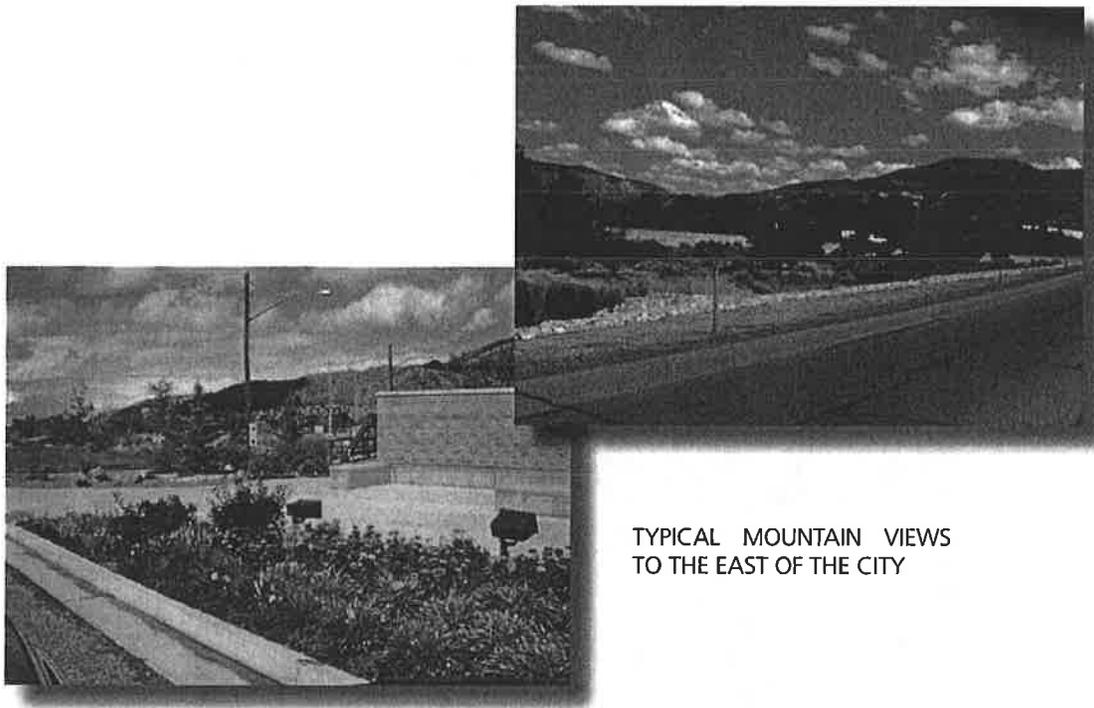


Figure 1-1 Project Location

## 1.2 VISION

The project is located in the heart of Southern Utah's beautiful Iron County. It is located in a unique setting with many challenging factors regarding the aesthetic treatment. Numerous land uses are juxtaposed to the project on all fronts. Such uses include: Providence Shopping Center, business offices, retail, restaurants, lodging, housing, livestock crossing routes and connections to major east-west connector routes to the City as well as the southerly gateway connection to the City's downtown. Along with the numerous land uses, the project site is located such that when traveling in the northbound direction on I-15 it provides a 'framed' view to the signature mix of red rocks of southern Utah in the foreground and the more alpine mountains in the background. In tandem with this project, the City has begun the process of authoring a Master Plan for the City in an attempt to standardize and enhance the aesthetic image of the many aged treatments along the I-15 corridor and City in general. It is the goal of this project to help set those timeless guidelines and standards that can be carried through for years to come. As such, this project is the first of several projects over the next several years to establish the foundation for the long-term aesthetic goals for the I-15 corridor through Cedar City rather than attempting to match existing features.



TYPICAL MOUNTAIN VIEWS  
 TO THE EAST OF THE CITY

With such a unique setting and adjacent land uses, the design team has developed a preferred set of design criteria for the project. Upon much study and input from the City's design committee, it is of the design team's opinion that the overall vision for the project should follow closely to that of blending in to the surrounding vernacular. This would include elements from existing structures as well as the natural surrounding landscape; the structure and surrounding built environment should be noticed, but not stand out and draw undue attention. These elements include design features such as battered sandstone colored ashlar columns and stone, gabion baskets filled with native cobble, patterns that follow the surrounding mountain variations, varied natural color contrasts on both the ground and vertical planes, and minimal high desert/sub-alpine landscaping.



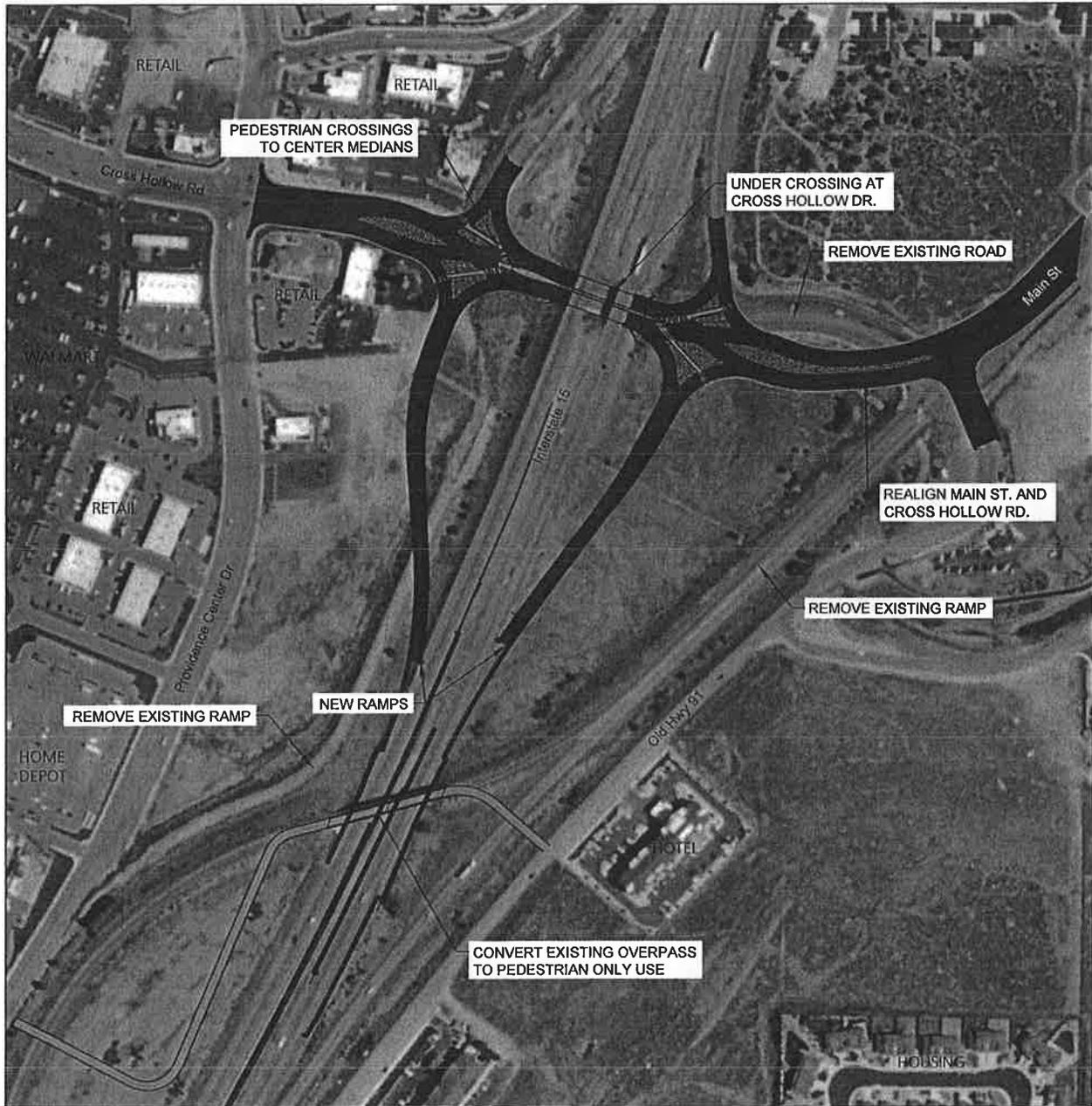
AERIAL PERSPECTIVE LOOKING WEST OF PROJECT SITE



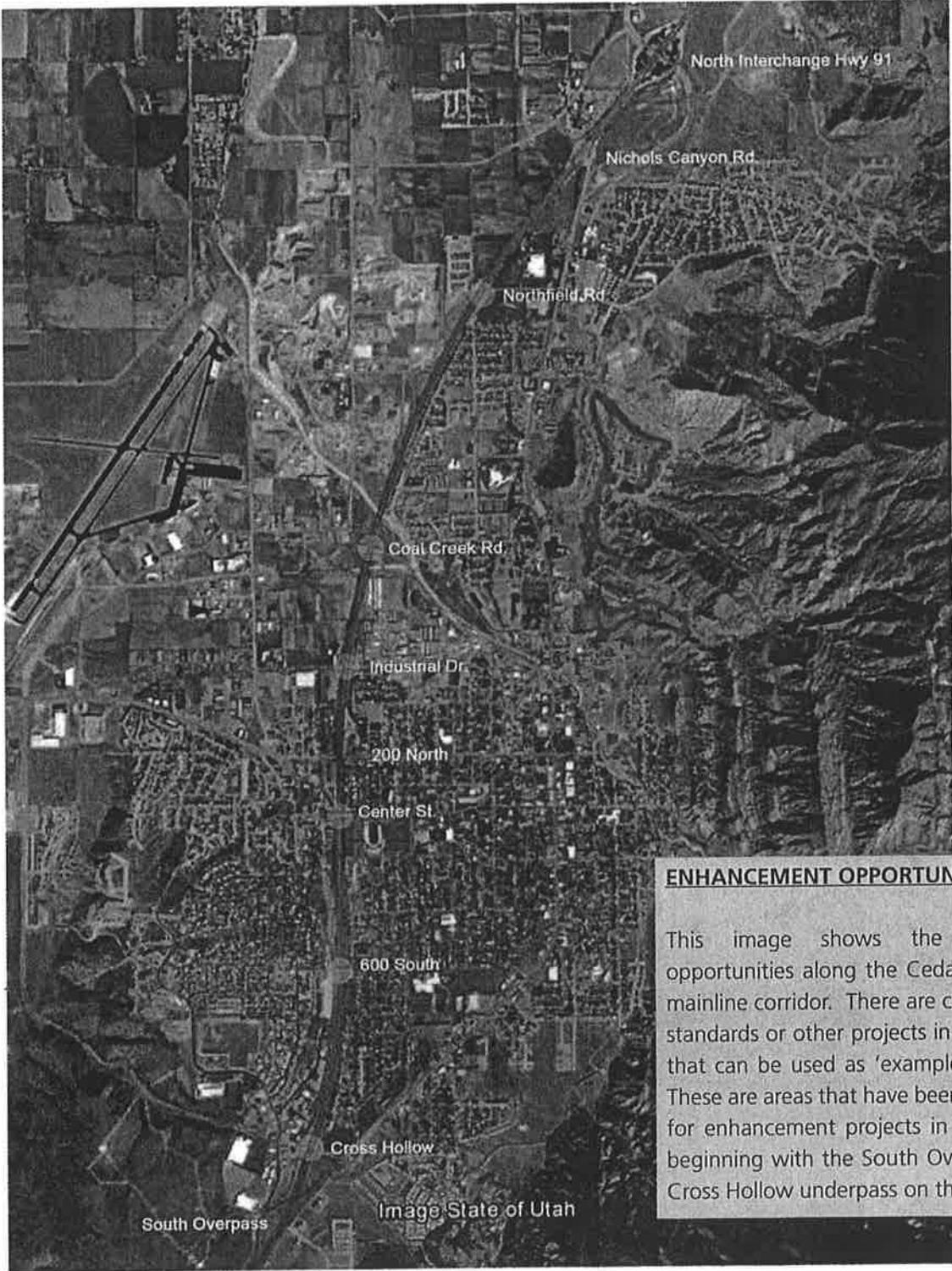
IMAGES OF CEDAR CITY THAT CONTRIBUTE TO THE DESIGN VISION



# SITE ANALYSIS



# CORRIDOR CONCEPT



**ENHANCEMENT OPPORTUNITIES**

This image shows the potential opportunities along the Cedar City I-15 mainline corridor. There are currently no standards or other projects in the region that can be used as 'example' projects. These are areas that have been identified for enhancement projects in the future beginning with the South Overpass and Cross Hollow underpass on this project.

- Primary Aesthetic Treatment Area
- Secondary Aesthetic Treatment Area

**Aesthetic Treatment Opportunities**



CROSS HOLLOW UNDERCROSSING LOOKING EAST

## DESIGN CONCEPTS

A - Add concrete stain and natural mountain themed patterns to all existing overpass structure faces (concrete parapets, girders, retaining walls, etc.). This will be done through a combination of staining, etching and scoring depending on the unique situation.

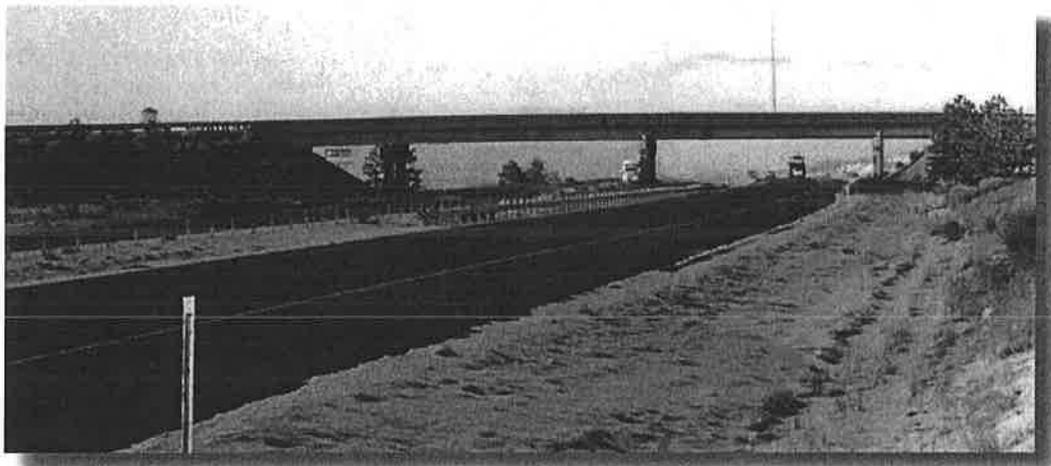
B - Use of gabions baskets for retaining and aesthetic treatment for infield walls with battered natural stone columns.

C - Use of naturalized plantings on the infield areas with rock mulch to match native stone and local vernacular.

D- Traffic signal and light poles will be typical UDOT cobra heads painted a dark forest green (FC14109) to match other existing Cedar City light standards. No other poles will be painted.

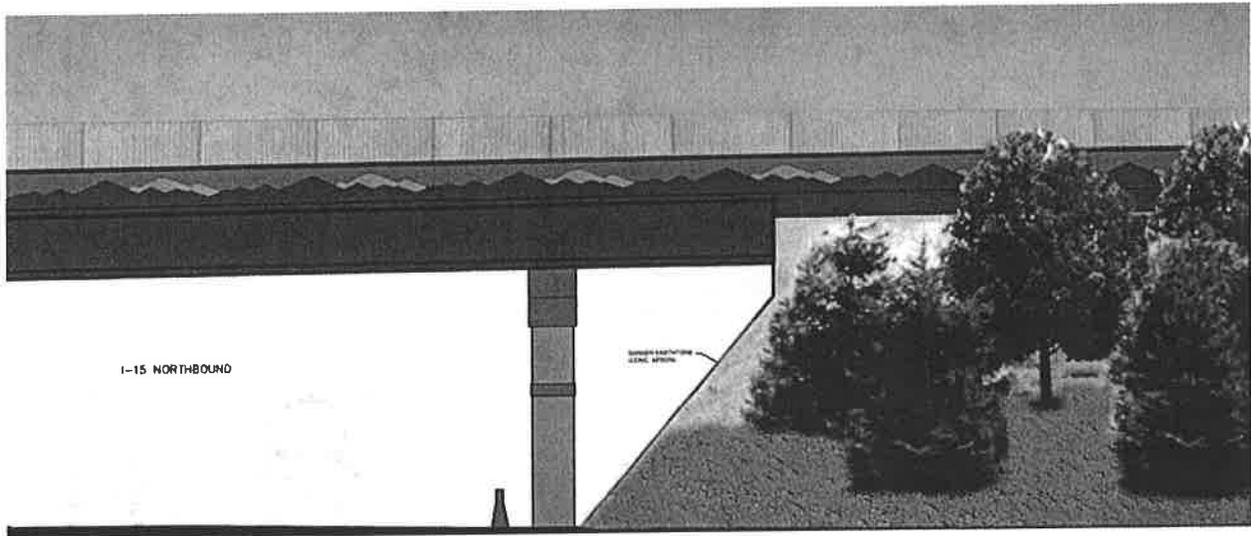


FC14109



SOUTH OVERPASS LOOKING NORTH

# DESIGN ELEMENTS



## SOUTH OVERPASS CONCEPT

- Add iron railing at deck to accommodate pedestrian use
- Option A for color pattern
- Minimal naturalized landscape on infields



FC30166



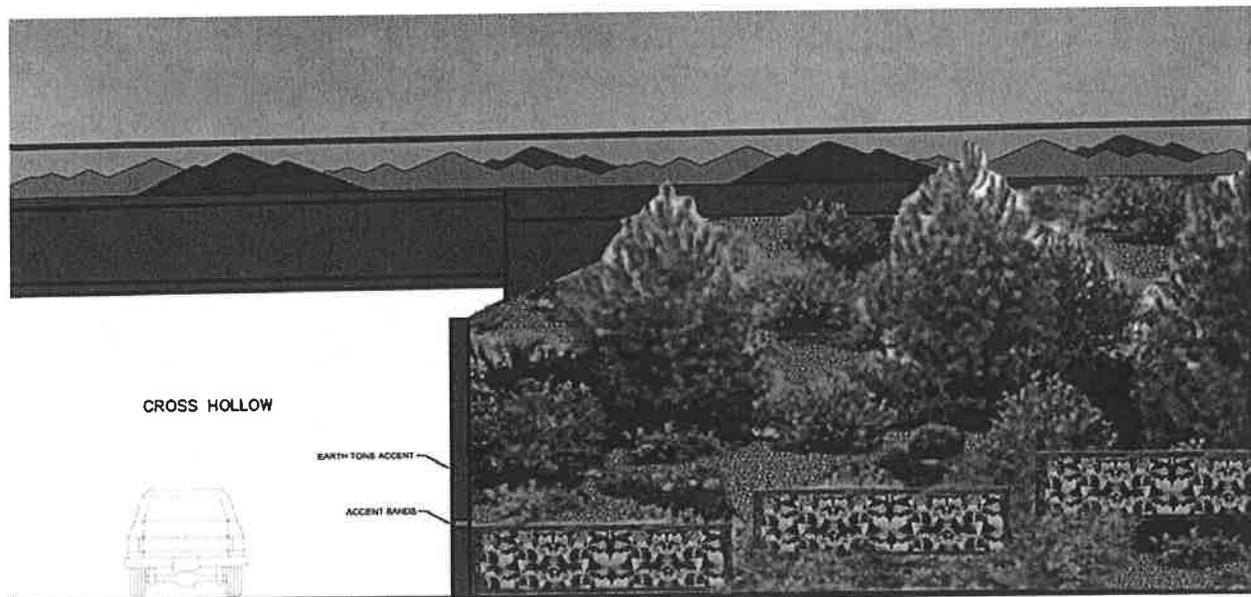
FC14109



FC30227

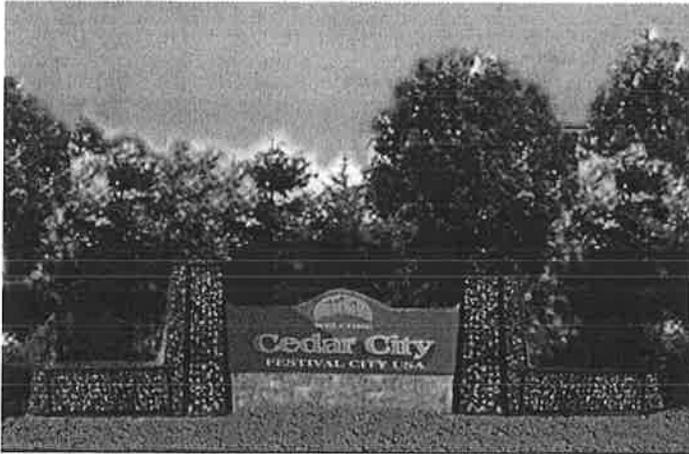


FC30450



## CROSS HOLLOW CONCEPT

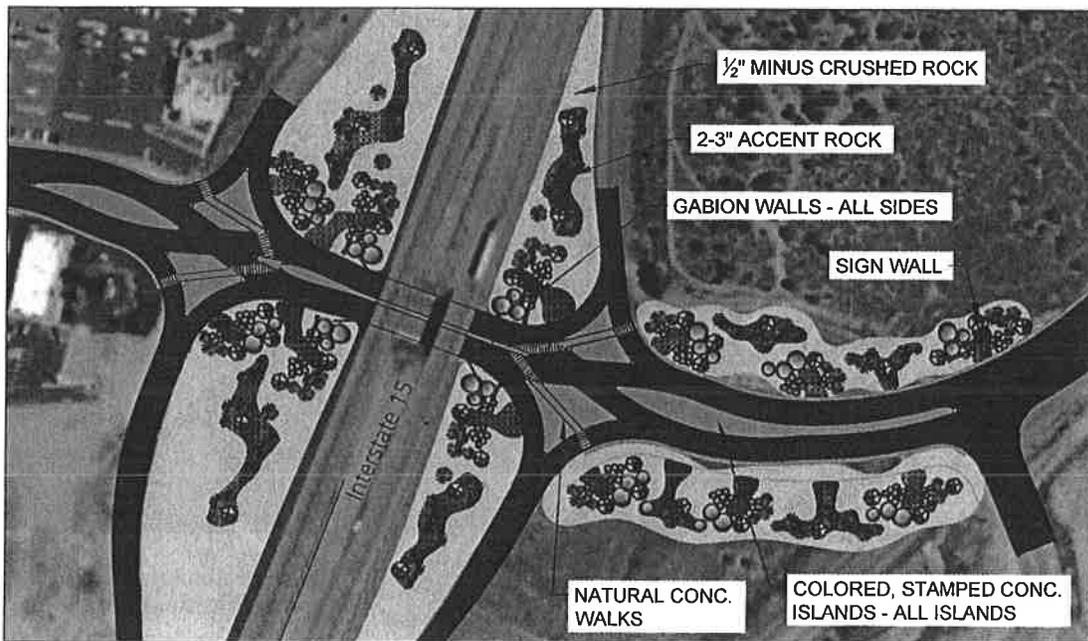
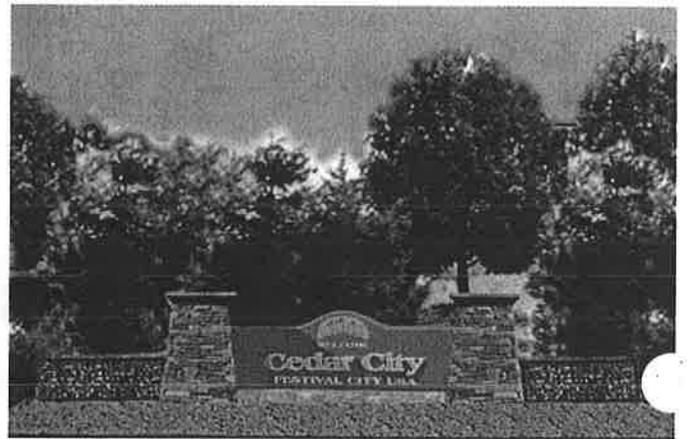
- Use of gabion walls for retaining and architectural elements
- Option B for color pattern
- Minimal naturalized landscape on infields



SIGN WALL WITH GABIONS

SIGN WALL OPTIONS

SIGN WALL WITH BATTERED STONE  
COLUMNS AND GABIONS WALLS



CONCEPTUAL LANDSCAPE PLAN

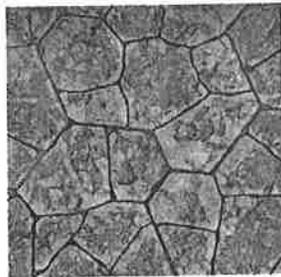
**STAMPED CONCRETE OPTIONS**



**COBBLE STONE**



**FRACTURED EARTH**



**SANDSTONE**

Stamped concrete patterns shown are from Scofield designs but may vary slightly depending on the contractor chosen and the final supplier. Below is a sample of the FSC Color, but each manufacturer has their own coloring system with each typically adding an antique release as a final finish.



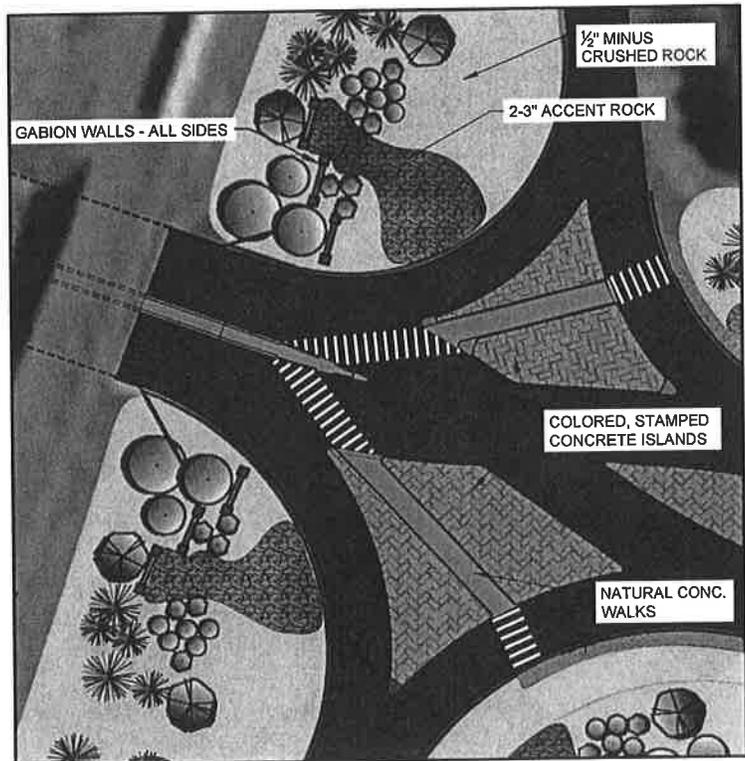
FC30233



FC30450

CANDIDATE PLANT LIST				
SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
<b>TREES</b>				
	<i>Acer rubrum 'October Glory'</i>	October Glory Maple	24" box	per plan
	<i>Fraxinus pennsylvanica 'Urbanite'</i>	Urbanite Ash	24" box	per plan
	<i>Picea nigra</i>	Austrian Pine	24" box	per plan
<b>SHRUBS</b>				
	<i>Cornus sericea 'Kelsey'</i>	Kelsey Dwarf Dogwood	5 gal.	per plan
	<i>Forsythia x Intermedia 'Spring Glory'</i>	Spring Glory Forsythia	5 gal.	per plan
	<i>Lupinus argenteus</i>	Silvery Lupine	1 gal.	per plan
	<i>Rosa 'Meisoubian'</i>	White Meisoubian Rose	5 gal.	per plan
<b>PERENNIALS</b>				
	<i>Eriophyllum lanatum</i>	Common Woolly Sunflower	1 gal.	24" o.c.
	<i>Calamagrostis acutiflora 'Karl Foerster'</i>	Feather Reed Grass	1 gal.	30" o.c.
	<i>Koeleria macrantha</i>	Prairie Junegrass	1 gal.	24" o.c.
	<i>Phlox longifolia</i>	Long-leaf Phlox	1 gal.	24" o.c.
	<i>Narcissus 'King Alfred'</i>	King Alfred Daffodil	bulb	12" triangular spacing

Decorative landscape boulders 24"-48" mixed sizing. Buy a min. of 1/2 the height of the boulder below finish grade. Submit min. 3 samples to City's Project Engineer prior to ordering for approval.



**ENLARGED PLAN AT PEDESTRIAN CROSSINGS**

