

## PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council will meet in a Business Meeting on Wednesday, May 18, 2022, at the hour of 7:00 p.m. The meeting will be held at the Tooele City Hall Council Chambers, located at 90 North Main Street, Tooele, Utah.

*We encourage you to join the City Council meeting electronically by logging on to the Tooele City Facebook page at <https://www.facebook.com/tooelecity>. If you are attending electronically and would like to submit a comment for the public comment period or for a public hearing item, please email [cmpubliccomment@tooelecity.org](mailto:cmpubliccomment@tooelecity.org) anytime up until the start of the meeting. Emails will be read at the designated points in the meeting.*

**1. Pledge of Allegiance**

**2. Roll Call**

**3. Mayor's Youth Recognition Awards**

*Presented by Debbie Winn, Mayor & Stacy Smart, Communities That Care Supervisor*

**4. Public Comment Period**

**5. Resolution 2022-41** A Resolution of the Tooele City Council Consenting to Mayor Winn's Appointment of Melody Barnett and Ryan Bajlo to the Library Board of Directors

*Presented by Jami Carter, Library Director*

**6. Resolution 2022-28** A Resolution of the Tooele City Council Approving a Lease Agreement with the Bit N' Spur Riding Club

*Presented by Roger Baker, City Attorney*

**7. Resolution 2022-29** A Resolution of the Tooele City Council Revising its Policy on Payment Made in Lieu of Water Rights Conveyance

*Presented by Roger Baker, City Attorney*

**8. Ordinance 2022-16** An Ordinance of Tooele City Amending the Tooele City Personnel Policies and Procedures Manual

*Presented by Kami Perkins, Human Resources Director*

**9. Resolution 2022-33** A Resolution of the Tooele City Council Declaring That Tooele City, After July, 1, 2022, Will Pick Up and Pay the Increased Amount of the Required Employee Contributions for All Tooele City Employees Who Are Members of The Utah State Retirement Tier II Public Safety & Firefighter Contributory Retirement Plan and Includes Provisions Relating to the Employer Pick Up

*Presented by Kami Perkins, Human Resources Director*

**10. Resolution 2022-34** A Resolution of the Tooele City Council Adopting the Public Employees' Health Plan (PEHP) Section 125 Cafeteria Prototype Plan for Tooele City's Section 125 Programs

*Presented by Kami Perkins, Human Resources Director*

11. **Resolution 2022-40** A Resolution of the Tooele City Council Authorizing the Mayor to Undertake All of the Necessary Actions to Enroll the City in the Benefit Programs of the Firefighters Retirement System Offered by Utah Retirement Systems

*Presented by Kami Perkins, Human Resources Director*

12. **Resolution 2022-42** A Resolution of the Tooele City Council Approving an Agreement with Morgan Pavement Maintenance for the 2022 Roadway Maintenance Project – Part 2, Bid Schedule “A” – Type II Slurry Seal

*Presented by Paul Hansen, City Engineer*

13. **Resolution 2022-43** A Resolution of the Tooele City Council Approving an Agreement with Staker & Parson Companies for the 2022 Roadway Maintenance Project – Part 2, Bid Schedule “B” – Light Weight Aggregate Chip Seal

*Presented by Paul Hansen, City Engineer*

14. **Resolution 2022-44** A Resolution of the Tooele City Council Approving an Agreement with Broken Arrow, Inc. for the 2022 Seventh Street Road and Utility Improvement Project

*Presented by Paul Hansen, City Engineer*

**15. Minutes**

~Wednesday May 4, 2022 City Council & RDA Work Meeting  
~Wednesday May 4, 2022 City Council Business Meeting

**16. Invoices**

**17. Adjourn**

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Michelle Y. Pitt, Tooele City Recorder

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 435-843-2111 or [michellep@tooelecity.org](mailto:michellep@tooelecity.org), Prior to the Meeting.

## TOOELE CITY CORPORATION

### RESOLUTION 2022-41

#### A RESOLUTION OF THE TOOELE CITY COUNCIL CONSENTING TO MAYOR WINN'S APPOINTMENT OF MELODY BARNETT AND RYAN BAJLO TO THE LIBRARY BOARD OF DIRECTORS.

WHEREAS, the Tooele City Council created the library board of directors by Ordinance 1989-13, and thereby ordained, among other things, that board members would serve three-year terms, that members cannot serve more than two full terms in succession, that the terms are to be staggered such that two expire one year, three expire the next year, and three expire the third year; and,

WHEREAS, the City Council's consent is required to the Mayor's appointments to the Board members pursuant to Tooele City Code §2-1-4; and,

WHEREAS, the Mayor, with the support of the Library Director, wishes to appoint Melody Barnett and Ryan Bajlo to the Library Board of Directors; and,

WHEREAS, they will begin their terms as shown in the table, below; and,

WHEREAS, the City Council finds it to be in the best interest of Tooele City to consent to the appointments:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that consent is hereby given to Mayor Debra E. Winn's appointment of Melody Barnett and Ryan Bajlo to the Library Board of Directors to serve three-year terms, as follows:

Board Members	Original Appointment	Original Expiration	Present Appointment	Present Term Expiration
Amanda Plaizier	09-20-2017	06-30-2020	11-18-2020	06-30-2023
Donilyn Leary	09-20-2017	06-30-2020	11-18-2020	06-30-2023
Emily Lee	11-18-2020	06-30-2023	11-18-2020	06-30-2023
Sarah Lawrence-Brunsvik	09-05-2018	06-30-2021	04-06-2022	06-30-2024
Melody Barnett	05-18-2022	06-30-2024	05-18-2022	06-30-2024
Ryan Bajlo	05-18-2022	06-30-2025	05-18-2022	06-30-2025
Berna Sloan	04-06-2022	06-30-2025	04-06-2022	06-30-2025
Kristalle Ford	04-06-2022	06-30-2025	04-06-2022	06-30-2025
Tony Graf (City Council)	01-01-2020			

The appointee is authorized to exercise the powers specifically delegated to members of the library board by the Tooele City Council, as declared in the Tooele City Code.

This Resolution shall become effective on the date of passage.

Passed this \_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

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(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(For)

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(Against)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2022-28

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING A LEASE AGREEMENT WITH THE BIT N' SPUR RIDING CLUB.**

WHEREAS, sometime prior to October 26, 1946, the Bit N' Spur Riding Club ("Club") or its predecessor entities owned Blocks 63, 64, and 65, Plat A, of the Tooele City Survey in Tooele City ("Premises") and conveyed the Premises to Tooele City; and,

WHEREAS, pursuant to that certain *Agreement* dated October 26, 1946, between the Parties, the Club leased the Premises from the City for a term of 50 years; and,

WHEREAS, the Parties entered into that certain *Agreement* dated March 22, 1965, with a term of 31 years, which terminated, replaced, and superseded the 1946 Agreement; and,

WHEREAS, the Parties entered into that certain *1983 Bit and Spur Lease Agreement* dated December 22, 1983, with a term of 50 years, which terminated, replaced, and superseded the 1965 Agreement; and,

WHEREAS, the City and Tooele County entered into that certain *Tooele City-County Multi-Purpose Recreation Complex Cooperative Agreement*, dated April 6, 1983 ("1983 Interlocal Agreement"), to which the Club was not a party, but under which the Club enjoyed priority of scheduling events on the Premises, and which was terminated on March 17, 1999, by that certain *Agreement Terminating April 6, 1983 Tooele City-County Multi-Purpose Recreation Complex Cooperative Agreement* between the City and the County; and,

WHEREAS, the Parties acknowledge the long-standing historic use of the Premises for recreational and equestrian activities and events, and desire the equestrian tradition to continue on the Premises, and the Parties now desire to enter into a new lease agreement, attached as Exhibit A:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Bit N' Spur Riding Club "Lease Agreement" attached hereto as Exhibit A is hereby approved, and that the Mayor is hereby authorized to execute the Lease Agreement on behalf of Tooele City.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, City Attorney

## Exhibit A

### Lease Agreement

## LEASE AGREEMENT

This Lease Agreement (“Agreement” or “2022 Lease”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, (“Effective Date”) by and between Lessor TOOELE CITY CORPORATION, a charter city and municipal corporation of the State of Utah, (“City”), and Lessee TOOELE BIT N’ SPUR RIDING CLUB, LLC, a Utah limited liability company (“Club”; together the “Parties”).

### RECITALS

WHEREAS, sometime prior to October 26, 1946, the Club or its predecessor entity owned Blocks 63, 64, and 65, Plat A, of the Tooele City Survey in Tooele City (“Premises”) and conveyed the Premises to the City; and,

WHEREAS, pursuant to that certain *Agreement* dated October 26, 1946, (“1946 Lease”) between the Parties, the Club leased the Premises from the City for a term of 50 years; and,

WHEREAS, the Parties entered into that certain *Agreement* dated March 22, 1965, (“1965 Lease”) with a term of 31 years, which terminated, replaced, and superseded the 1946 Agreement; and,

WHEREAS, the Parties entered into that certain *1983 Bit and Spur Lease Agreement* dated December 22, 1983, (“1983 Lease”) with a term of 50 years, which terminated, replaced, and superseded the 1965 Agreement; and,

WHEREAS, the City and Tooele County entered into that certain *Tooele City-County Multi-Purpose Recreation Complex Cooperative Agreement*, dated April 6, 1983 (“1983 Interlocal Agreement”), to which the Club was not a party, but under which the Club enjoyed priority of scheduling events on the Premises, and which was terminated on March 17, 1999, by that certain *Agreement Terminating April 6, 1983 Tooele City-County Multi-Purpose Recreation Complex Cooperative Agreement* between the City and the County; and,

WHEREAS, the Parties acknowledge the long-standing historic use of the Premises for recreational and equestrian activities and events, and desire the equestrian tradition to continue on the Premises, and the Parties now desire to enter into the 2022 Lease.

### AGREEMENT

- 1) Global Consideration. The Parties acknowledge the various considerations described in this Agreement as being sufficient and acceptable for the agreements and promises contained in this Agreement, individually and in their aggregate.
- 2) Premises. The Premises leased by the City to the Club shall be all of Blocks 63, 64, and 65, Plat A, Tooele City Survey in Tooele City, as illustrated in Exhibit A, less and excepting the Well Protection Area, also illustrated in Exhibit A. Lessee accepts the Premises “as is” with no representations or warranties.

- 3) **Well Protection Area.** The Well Protection Area, an area of 100-foot radius illustrated on Exhibit A, is a groundwater protection zone containing a fenced pump house and well, and an observation well exterior to the pump house fence, all City-owned. The Club agrees to not conduct, or allow to be conducted, any uses prohibited within the groundwater protection zone. The Club shall take care to protect the observation well from damage by Club activities.
- 4) **Well Protection Area Access.** The City reserves to itself the right to access the Well Protection Area through the access illustrated in Exhibit A.
- 5) **Fencing.** The Club may fence the premises at the Club's cost, and shall maintain in good condition all fencing and gates installed. The Club may install a gate across the Well Protection Area access so long as the gate is of sufficient size to reasonably accommodate City utility vehicles. The City may install its own lock connecting to the Club lock in a lock series.
- 6) **Utility Access.** The City reserves to itself ownership and access rights for all City-owned and operated utility facilities, including water lines and sewer lines, on and through the Premises. Reasonable access is reserved for any private utilities that may traverse the Premises. The utility facilities known to the City, both public and private, are illustrated in Exhibit A in their approximate locations.
- 7) **Term.** The term of this Agreement is 25 years. The Club may renew this 2022 Lease for up to two (2) additional 25-year terms by delivering to the Tooele City Mayor's office a written notice of term renewal no less than sixty (60) days prior to the expiration of any term. Absent timely renewal, this 2022 Lease shall terminate automatically at midnight on the \_\_\_\_\_ day of \_\_\_\_\_, 2047.
- 8) **Rent.** Within thirty (30) days of the Effective Date, the Club shall pay the one-time rent of \$50 for the 25-year term of this Agreement, with an additional \$50 rent per renewal term.
- 9) **Improvements.** The Club may make improvements to the Premises, including the construction of buildings and fixtures. The Club shall assume all responsibility for, and bear all costs associated with, the improvements. The City shall have no obligation to make improvements to the Premises. Upon the expiration of this Agreement, or the termination of this Agreement after an Event of Default, all fixtures and buildings on the Premises that the Club does not remove shall become part of the Premises and owned by the City.
- 10) **Maintenance.** The Club shall maintain the Premises and its improvements in good condition and at its cost. Maintenance shall include compliance with all Tooele City laws and regulations. The City shall have no obligation to maintain the Premises or its improvements.
- 11) **Club Utilities.** The Club shall be responsible for all utility accounts and connections and pay all connection and usage costs and rates, including for water and sewer service, and for garbage removal.
- 12) **Allowed Uses.** The Club may use the Premises for equestrian activities and events, including accessory and incidental uses, compliant with Tooele City land use regulations. Incidental uses may include community, holiday, and other similar activities and events. The Club may not use the Premises for illegal uses.
- 13) **Exclusive Use.** Subject to the terms of this Agreement, the Club shall have exclusive use of the Premises.

14) Termination. The City may terminate this 2022 Lease upon any event of default which the Club does not timely cure under the terms of this Agreement.

15) Insurance. The Club shall at all times during the 2022 Lease maintain uninterrupted commercial liability and property insurance on the Premises, naming Tooele City Corporation as an additional insured, for the minimum amounts of \$2 million aggregate and \$1 million each occurrence. The Club shall furnish to the City within 30 days of the Effective Date, and at any time requested thereafter, proof of adequate insurance. The insurance is to be provided by an insurance company with a rating of A or higher.

16) Event of Default. The following shall constitute Events of Default, any one or more of which shall be grounds for termination:

- a) Rent. Failure to timely pay rent.
- b) Sublease. Subleasing the Premises.
- c) Assignment. Purporting to assign this 2022 Lease.
- d) Insurance.
  - i) Failing to maintain the required commercial liability insurance, with Tooele City as an additional named insured, at all times during any term of the 2022 Lease.
  - ii) Failing to provide evidence of the required insurance as required under this 2022 Lease.
- e) Maintenance. Failure to maintain the Premises and its improvements in a safe and aesthetic manner.
- f) Nuisance. Allowing a public nuisance, as defined by Tooele City and/or State of Utah law.
- g) IRS Status. Loss of the Club's 501(c)(3) status, by IRS revocation, lapse, or otherwise.
- h) Registration.
  - i) Failure to maintain the Club in good standing on the records of the Utah Division of Corporations.
  - ii) Failure to file annual reports to the Division.
- i) Illegal Uses. Use of the Premises for illegal uses.
- j) Well Protection Area. Conducting prohibited activities within the groundwater protection zone shown on Exhibit A.
- k) Dissolution. Dissolution of the Club, or adjudged insolvency or bankruptcy.
- l) Abandonment. Abandonment of Club events on the Premises for a period of 24 or more consecutive months.
- m) Other. Noncompliance with any provision of this 2022 Lease.
- n) Failure to Cure. The failure to cure any event of default.

17) Cure of Default. Upon the occurrence of an event of default, the City shall provide written notice to the Club, at the address provided herein, of the event of default. Notice shall be deemed delivered on the third day after mailing by U.S. mail, or on the date of personal delivery. The Club shall then have thirty (30) days to cure the default. If the Club contests the

notice of default, or if the City contests the adequacy of a cure, or in the event of any other dispute, the Parties shall resolve the dispute as provided herein.

18) Survival. The following provisions shall survive any termination of this Agreement:

- a) Indemnification
- b) Utility Easements
- c) Prior Agreements Terminated
- d) Waiver of Jury Trial
- e) Dispute Resolution

19) Indemnification. The Club and its officers, agents, directors, employees, contractors, members, and member invitees (“Club Indemnitors”) shall indemnify the City against any claims arising from the negligent or intentional acts or omissions of the Club or Club Indemnitors.

20) Dispute Resolution. The Parties shall confer informally to resolve any dispute between them over the subject matter of this 2022 Lease. Failing resolution after informal meeting, the Parties shall then engage in good-faith non-binding mediation. Should mediation fail, the Parties may avail themselves of all legal and equitable remedies, subject to the provisions of this Agreement.

21) Notices. All notices, demands, requests, or other communications required or permitted by this Lease shall be in writing and effective when received, and delivery shall be made personally, or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, addressed as follows:

TOOELE CITY CORPORATION  
Attention: Mayor  
90 North Main  
Tooele, UT 84074

BIT N SPUR RIDING CLUB LLC  
Attention:

22) Defined Terms. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings given to them in the Agreement, which terms are incorporated by reference herein.

23) Prior Agreements Terminated. The Parties do hereby rescind, terminate, and cancel all prior agreements regarding the subject matter of this Agreement, including specifically the 1946 Lease, 1965 Lease, 1983 Lease, and 1983 Interlocal Agreement, and do extinguish all prior rights and obligations contained therein.

24) Entire Agreement. This Agreement constitutes the final expression of the Parties as to the terms of this Agreement and the subject matter hereof, and supersedes all prior agreements, negotiations, discussions, and understandings between the Parties and/or their respective counsel with respect to the subject matter covered hereby.

25) Force Majeure: If the Parties’ respective obligations under this Agreement are rendered impossible or hazardous or are otherwise prevented or impaired due to accident, interruption, or failure as related to acts of God, riots, strikes, labor difficulties, epidemics, pandemics, earthquakes, any act or order of any public authority, and/or act of terrorism, beyond the control

of the Parties, then the respective applicable obligations with respect to the performance of this Agreement shall be excused and the Parties shall have no liability to each other in connection therewith.

- 26) Limitation of Remedies. Lessee hereby waives any right to recover money damages, except direct damages, from Lessor for breach or termination of this Agreement.
- 27) Waiver of Jury Trial. The Parties waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement and the transactions contemplated herein.
- 28) Authority. The individuals executing this Agreement represent and warrant to the Parties that they possess the legal authority to execute this Agreement pursuant to the terms herein, such authority being granted and evidenced by duly adopted Resolution of each of the Parties.
- 29) No Third-Party Beneficiaries. Nothing in this Agreement is intended for the benefit of any party except for the named Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligation any of the Parties to, any person or entity other than to each other.
- 30) No Assignment. This Agreement is not assignable.
- 31) Attorney Fees. In any proceeding or action arising out of this Agreement, each of the Parties shall pay its own attorney fees and costs.
- 32) Construction of Agreement. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of Utah, without giving effect to conflict of law principles. The terms of this Agreement have been negotiated by the Parties at arm's length, and the language of the Agreement shall not be construed in favor of or against any particular party.
- 33) Headings. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, interpretation, or construction of any of the terms or provisions of this Agreement or the intent hereof.
- 34) Mutual Participation in Document Preparation. Each of the Parties has participated materially in the negotiation and preparation of this Agreement and any related items. In the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both parties will be deemed to have jointly drafted this document and the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.
- 35) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.
- 36) Facsimile Signatures. Facsimile signatures in one or more counterparts of this Agreement shall be binding.
- 37) Amendment to Agreement. The Parties may amend this Agreement at any time. Any amendment to this Agreement must be in a writing and signed by duly authorized

representatives of all of the Parties hereto, in conformance with state and local law, and affirmatively stating the intent of the Parties to amend this Agreement.

Now, therefore, this Agreement is hereby signed by the Parties:

TOOELE CITY CORPORATION

TOOELE BIT N' SPUR RIDING CLUB, LLC

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Debra E. Winn, Mayor

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\_\_\_\_\_, 2022 President

Attest

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Michelle Y. Pitt, City Recorder

Approved as to Form

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Roger Evans Baker, City Attorney

## Exhibit A

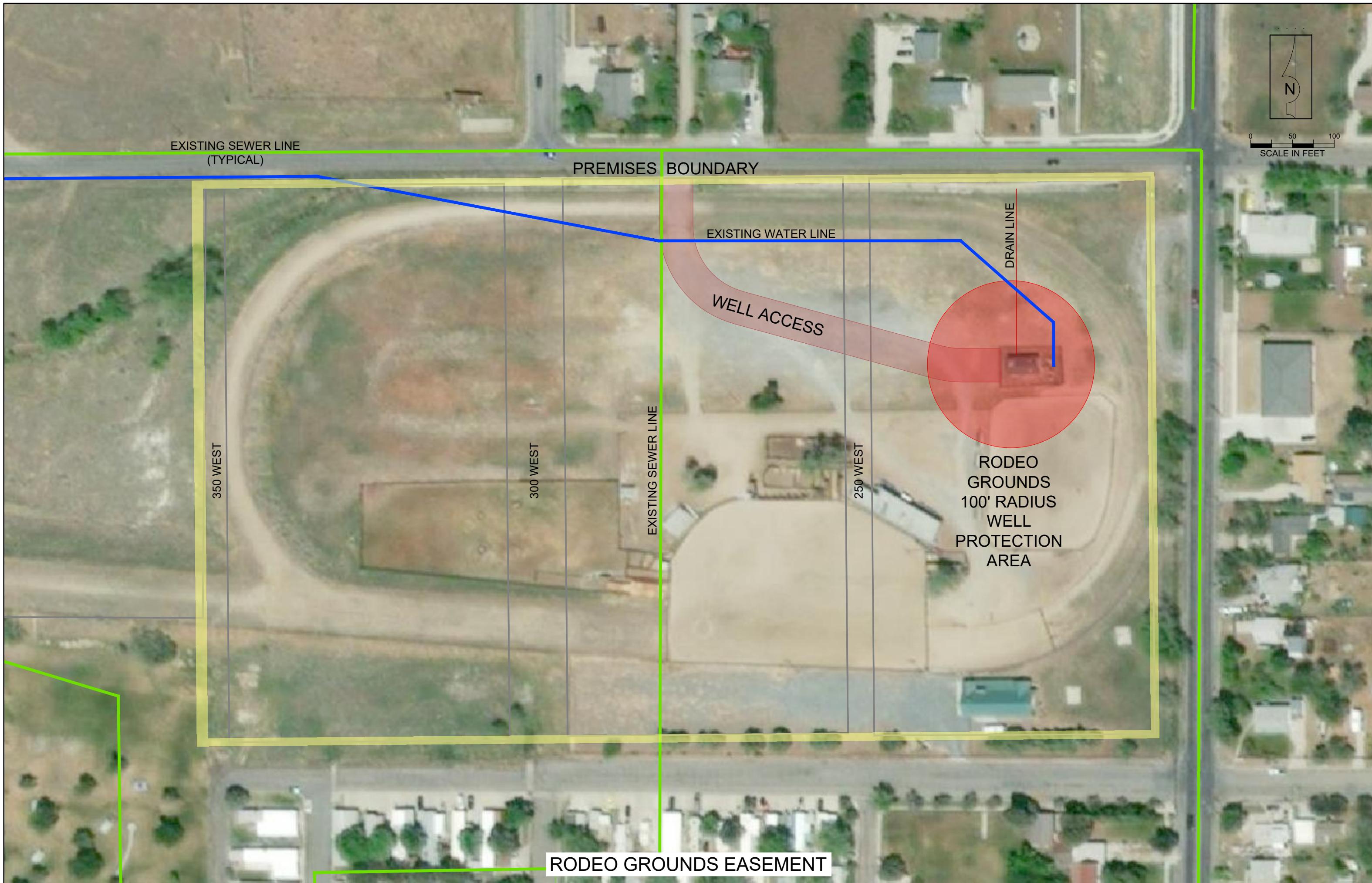
Leased Premises

Well Protection Area

Well Protection Area Access

Groundwater Protection Zone

Existing Utilities



## TOOELE CITY CORPORATION

### RESOLUTION 2022-29

#### **A RESOLUTION OF THE TOOELE CITY COUNCIL REVISING ITS POLICY ON PAYMENT MADE IN LIEU OF WATER RIGHTS CONVEYANCE.**

WHEREAS, Tooele City Code Chapter 7-26 governs the exaction by Tooele City of water rights as a condition of land use approval (see also UCA 10-9a-508); and,

WHEREAS, TCC Section 7-26-2(2) empowers the City Council to adopt a legislative policy allowing for the payment of a fee in lieu of water rights conveyance: "Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system"; and,

WHEREAS, the City Council adopted the referenced fee-in-lieu policy in 2007, revised the policy in 2008; and,

WHEREAS, on April 1, 2015, the City Council passed Resolution 2015-07, adopting a revised and expanded fee-in-lieu policy, which remains the current policy (see the 2015 Policy attached as Exhibit A, and the April 1, 2015, City Council meeting minutes attached as Exhibit B); and,

WHEREAS, the 2015 Policy recognized that for a homeowner to obtain on the market a water right, or a portion of a water right, for a single home, and to go through the Division of Water Rights change application process, could be time-consuming, disproportionately expensive, impractical, and a disincentive to in-fill development, and therefore allowed the payment of a fee-in-lieu for that single home (see Exhibit A); and,

WHEREAS, in addition, the 2015 Policy recognized the potential economic and general fiscal and other benefits of economic development and non-residential development, allowing the payment of a fee in lieu of water rights conveyance upon an examination of the particularized benefits of any particular development, retaining discretion to the City (see Exhibit A); and,

WHEREAS, the market price for a water right in the Tooele valley 20 years ago was in the neighborhood of \$2,000 per acre-foot, while the market price in 2015 approached \$15,000 per acre-foot; and,

WHEREAS, in adopting the 2015 Policy, the City Council established the fee-in-lieu at \$15,000 per acre-foot of municipal water right in recognition of the diminishing

supply and increasing demand for water rights, and wanted neither to subsidize the price of water rights locally nor to disincentivize commercial development nor to set the price artificially high so as to affect the market price; and,

WHEREAS, it is widely recognized that water rights available for development in Tooele City are today in extremely limited supply, so much so that a number of approved developments are stalled for the inability to obtain water rights; and,

WHEREAS, Tooele City has a limited number of water rights that are not committed by land use approval, development agreement, settlement agreement, or public uses, and must exercise caution in adopting or revising a fee-in-lieu policy; and,

WHEREAS, it has not been, and is not now, Tooele City's intention to use the 2015 Policy as a means of generating revenue to supplement the general fund, the enterprise funds, or otherwise—to the contrary fee-in-lieu revenues are deposited in an account reserved for the acquisition and management of water rights; and,

WHEREAS, in light of the current water market, housing market, and other market conditions, local and regional, the City Council desires to revise the 2015 Policy to incentivize water rights buyers to explore the water rights market and to disincentivize developers from relying on Tooele City's limited water rights inventory for their development needs; and,

WHEREAS, the City Council desires to establish the fee-in-lieu price at \$35,000 per acre-foot of municipal water rights; and,

WHEREAS, the City Council asserts that the \$35,000 per-acre price should not be considered Tooele City's opinion of the market value of municipal water rights, and Tooele City does not desire or intend to affect the market value by setting the fee-in-lieu price at \$35,000 per acre-foot, but rather that the price should be considered the City Council's policy determination, in its legislative discretion, about whether and how to use its limited inventory of water rights to encourage certain development which will provide a broad range of economic development benefits to the City; and,

WHEREAS, Tooele City continues to actively pursue water rights acquisition and development, as well as water source acquisition and development, in order to allow Tooele City to grow and to not stagnate:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the 2015 Policy is hereby revised to establish the fee-in-lieu price at \$35,000 per acre-foot of municipal water rights.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this  
\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

TOOELE CITY MAYOR

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

## Exhibit A

### 2015 Fee-in-lieu Policy

## **City Council Policy**

RE: Payment In Lieu Of Water Rights Conveyance under Tooele City Code §7-26-3(2).

Effective Date: April 1, 2015

Tooele City Code Chapter 7-26 requires the conveyance of water rights as a condition of approval of all land use applications. Section 7-26-3(2) states the following:

Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system.

This City Council Policy is established pursuant to the authority embodied in §7-26-3(2).

Residential Development. Beginning on the Effective Date, Tooele City will allow owners of existing parcels of record that are not part of a recorded subdivision, and owners of single lots subdivided from those existing parcels through two-lot subdivisions (e.g., a lot split), to pay a fee (the “Fee”) per parcel or lot in lieu of the residential water right requirement established in TCC §7-26-2(1). The item for which the Fee is paid shall be known for purposes of this Policy as a Water Rights Credit or Credit.

Credits will be available on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. An owner who previously paid the Fee and received a Fee refund due to an expired building permit may submit a new building permit application and pay the Fee on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid.

Non-residential Development. Beginning on the Effective Date, Tooele City will allow owners of non-residential developments to pay the Fee if the development is determined by the City to need less than 20 acre-feet of municipal water rights. Additional Credits may be made available, upon recommendation of the Public Works Director and with written approval of the Mayor, after full consideration of the following criteria in relation to the amount of water used:

- The number of jobs the development is anticipated to create, together with the nature of the jobs (e.g., full-time) and job compensation (e.g., wage levels, benefits).
- The amount of sales tax the development is anticipated to generate.
- The amount of property tax the development is anticipated to generate.
- The anticipated environmental and social impacts of the development.

Credits will be available on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. An owner who previously paid the Fee and received a Fee refund due to an expired building permit may submit a new building permit application and pay the Fee on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid.

General.

1. The Fee shall be established at \$15,000 per Credit, each Credit being the equivalent of 1.0 acre-foot of municipal water rights.
2. Credits sold pursuant to this Policy shall not exceed a total of 50 acre-feet of municipal water rights in any calendar year without the approval of the City Council.
3. Upon payment of the Fee, the City will indicate such payment on the approved building permit.
4. This Policy shall supersede any prior oral or written policies or practices on the subject of this Policy.
5. Revenues derived from the sale of Credits shall be utilized for the protection of existing water rights and/or the purchase of additional water rights, except that the City Council may authorize the use of such revenues for other Tooele City water-related projects and/or needs upon a finding of good cause.
6. The sale of Water Rights Credits under this Policy is subject to the availability of corresponding water rights, in the sole discretion of Tooele City.

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Chairman

## Exhibit B

April 1, 2015, City Council Meeting Minutes



## City Council Policy

RE: Payment In Lieu Of Water Rights Conveyance under Tooele City Code §7-26-3(2).

Effective Date: April 1, 2015

Tooele City Code Chapter 7-26 requires the conveyance of water rights as a condition of approval of all land use applications. Section 7-26-3(2) states the following:

Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system.

This City Council Policy is established pursuant to the authority embodied in §7-26-3(2).

Residential Development. Beginning on the Effective Date, Tooele City will allow owners of existing parcels of record that are not part of a recorded subdivision, and owners of single lots subdivided from those existing parcels through two-lot subdivisions (e.g., a lot split), to pay a fee (the "Fee") per parcel or lot in lieu of the residential water right requirement established in TCC §7-26-2(1). The item for which the Fee is paid shall be known for purposes of this Policy as a Water Rights Credit or Credit.

Credits will be available on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. An owner who previously paid the Fee and received a Fee refund due to an expired building permit may submit a new building permit application and pay the Fee on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid.

Non-residential Development. Beginning on the Effective Date, Tooele City will allow owners of non-residential developments to pay the Fee if the development is determined by the City to need less than 20 acre-feet of municipal water rights. Additional Credits may be made available, upon recommendation of the Public Works Director and with written approval of the Mayor, after full consideration of the following criteria in relation to the amount of water used:

- The number of jobs the development is anticipated to create, together with the nature of the jobs (e.g., full-time) and job compensation (e.g., wage levels, benefits).
- The amount of sales tax the development is anticipated to generate.
- The amount of property tax the development is anticipated to generate.
- The anticipated environmental and social impacts of the development.

Credits will be available on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. An owner who previously paid the Fee and received a Fee refund due to an expired building permit may submit a new



building permit application and pay the Fee on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid.

General.

1. The Fee shall be established at \$15,000 per Credit, each Credit being the equivalent of 1.0 acre-foot of municipal water rights.
2. Credits sold pursuant to this Policy shall not exceed a total of 50 acre-feet of municipal water rights in any calendar year without the approval of the City Council.
3. Upon payment of the Fee, the City will indicate such payment on the approved building permit.
4. This Policy shall supercede any prior oral or written policies or practices on the subject of this Policy.
5. Revenues derived from the sale of Credits shall be utilized for the protection of existing water rights and/or the purchase of additional water rights, except that the City Council may authorize the use of such revenues for other Tooele City water-related projects and/or needs upon a finding of good cause.
6. The sale of Water Rights Credits under this Policy is subject to the availability of corresponding water rights, in the sole discretion of Tooele City.

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Chairman

**Tooele City Council and  
Tooele City Redevelopment Agency  
Business Meeting Minutes**

Date: Wednesday, April 1, 2015

Time: 7:00 p.m.

Place: Tooele City Hall, Council Chambers  
90 North Main Street, Tooele Utah

**Council Members Present:**

Scott Wardle, Vice-Chairman  
Debbie Winn  
Steve Pruden  
Dave McCall

**Council Member Excused:**

Brad Pratt

**City Employees Present:**

Mayor Patrick Dunlavy  
Roger Baker, City Attorney  
Glenn Caldwell, Finance Director  
Michelle Pitt, City Recorder  
Lisa Carpenter, Deputy Recorder  
Rachelle Custer, City Planner  
Chief Ron Kirby, Chief of Police  
Paul Hansen, City Engineer  
Heidi Peterson, Communities that Care Director  
Randy Sant, RDA Director

Minutes prepared by Elisa Jenkins

Vice-Chairman Wardle called the meeting to order at 7:00 p.m. He excused Chairman Pratt from the meeting.

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Councilman Pruden.

**2. Roll Call**

Brad Pratt, Excused  
Scott Wardle, Present  
Dave McCall, Present  
Steve Pruden, Present

permanent. The easement could be relocated at Beehive Telephone's cost if needed. He tried to build in protections for the City in this resolution.

Councilman Wardle said that they discussed this very thoroughly in the work session meeting. The City does easements with the phone company often.

Mr. Baker said they do more easements with the power company but occasionally they also do them for phone companies.

**Councilwoman Winn moved to approve Resolution 2015-16.** Councilman McCall seconded the Motion. The vote was as follows: Councilman Pruden, "Aye", Councilwoman Winn, "Aye", Councilman McCall, "Aye", and Vice-Chairman Wardle, "Aye".

6. **Resolution 2015-17 A Resolution of the Tooele City Council Adopting a Water Rights Policy Allowing the Payment of a Fee-In-Lieu of Conveyance of Water Rights Under Tooele City Code Chapter 7-26**

Presented by Roger Baker

Mr. Baker said that the Tooele City Code regarding water rights requires that any new development provide water rights sufficient for their development. If a development uses an acre foot of water they have to provide water rights for an acre foot of water. The City Code provides that in limited circumstances instead of conveying water rights to the City a developer can pay a set fee to the City and access some of the City's water rights instead of bringing their own. The City Code says that would be done pursuant to a separate policy established by the Council. This is the policy he is bringing to the Council. The policy is drafted to limit one user up to 20 acre feet of water rights and limits the number of water rights purchased in a given year to 50 so the City's water rights would not be depleted by big water users. This policy is intended mostly for commercial development. It can be used for residential development only if there is a parcel of land that is being split into two, and then one of the parcels could buy water rights. The value established for one water right is \$15,000 per acre foot of water. He said that he has built into the policy a reservation that this is subject to water rights being available.

Councilman Wardle said that this is a policy they have had for quite some time and they are making clarifications.

Mr. Baker said that this policy has been in place since 2007 and they are making clarifications.

**Councilman Pruden moved to approve Resolution 2015-07.** Councilwoman Winn seconded the motion. The vote was as follows: Councilman Pruden, "Aye", Councilwoman Winn, "Aye", Councilman McCall, "Aye", and Vice-Chairman Wardle, "Aye".

7. **Resolution 2015-18 A Resolution of the Tooele City Council Adopting a Water Rights Policy Regarding De Minimus Increases in Water Usage**

## TOOELE CITY CORPORATION

### ORDINANCE 2022-16

#### AN ORDINANCE OF TOOELE CITY AMENDING THE TOOELE CITY PERSONNEL POLICIES AND PROCEDURES MANUAL.

WHEREAS, Section 40 of the Tooele City Policies and Procedures manual (the "Manual") provides that the Manual "may be amended by the two-thirds vote of the Policies and Procedures Recommendation Committee and the subsequent approval of the Mayor and City Council" by ordinance of the City Council; and,

WHEREAS, the Policies and Procedures Recommendation Committee has studied, prepared, solicited employee comment regarding, and voted to recommend amendments to the Manual, namely:

- Section 12: Computer Systems, Internet, and E-mail. Most significant update in this policy will be changes to the City's password policy requirements to improve our systems security. (Exhibit A)
- Section 23: Holidays. Adds National Freedom Day (also known as Juneteenth or Emancipation Day to the list of recognized holidays for Tooele City's paid holiday benefits. (Exhibit B)
- Section 25: Funeral Leave. Adds miscarriage to list pursuant to change in Utah State Law and retitles Section to Bereavement & Funeral Leave. (Exhibit C)
- Section 29: Benefits. Changes Council Tier 2 equalization benefit amount to match the City's contribution for other Tier 2 Non-contributory DC Only benefit employees; edits Tier 2 benefit protection contract provision to cover emergency responder line of duty long-term disability consistent with H.B. 70 Public Safety Disability Benefits Amendments passed in the 2022 General Session; removes Tooele City's Public Safety Tier 2 Enhanced Benefit 401K Contribution (City will be increasing the Pick-up election again), and edits for URS firefighter benefit program. (Exhibit D)
- Section 30: Retiring & Retiree Benefits. Removes the option to convert sick leave for insurance premiums at retirement; removes option to stay on Tooele City Group Health Insurance plan past a retiree's Earned Premium Credit Period (this was implemented prior to the Affordable Care Act and Healthcare Exchange) but allows anyone currently enrolled in this coverage to remain enrolled provided under age 65, not Medicare eligible, and premiums are paid timely; adds public safety mental health benefit for public safety retirees pursuant

to HB. 23 First Responder Mental Health Services Amendments passed in the 2022 General Session. (Exhibit E)

WHEREAS, the Mayor has approved the amendments recommended by the Policies and Procedures Recommendation Committee; and,

WHEREAS, the Administration distributed the proposed policy amendments via e-mail to all City employees, received oral and written comments to the proposed amendments, and incorporated as many comments as deemed possible and appropriate for the City's business needs; and,

WHEREAS, the Administration and Council find that the amendments are in the best interest of Tooele City Corporation and its employees; and,

WHEREAS, subsequent to the adoption of the above-listed amendments, Kami Perkins, Tooele City Human Resources Director, will make reasonable efforts to inform all employees of the amended policies, and the new policies will be placed on the City website for employee and public access:

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL that:

1. the Tooele City Policies and Procedures Manual is hereby amended as set forth in Exhibits A through E;
2. the revisions shall take effect June 15, 2022, and,
3. previous versions of the amended provisions of the Tooele City Policy and Procedures Manual shall be repealed and superseded upon the amendments in this Ordinance taking effect.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage or otherwise, as indicated above, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

**A**

**COMPUTER SYSTEMS, INTERNET,  
AND ELECTRONIC MAIL (E-mail)**  
Revised June 2022

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**A. APPLICABILITY & DISCLAIMER**

1. This policy has been developed to:
  - a. Provide for efficient operation of Tooele City's comprehensive computer systems;
  - b. Help maintain the integrity of the City's computer systems; and,
  - c. Provide guidelines to employees.
2. Due to changes in technology and harmful viruses and programs, Tooele City reserves the right to announce temporary or immediate changes to this Section.

**B. DEFINITIONS**

As used in this Section, the following have the stated meanings:

1. Access to or accessing – opening or searching for material that the employee knew or should have known what the material contained.
2. Computer systems – all hardware, software, computers, laptop computers, tablets, networks, computer hard drives, electronic records, files, disks, Internet access, portable electronic devices, mobile and smart phones, radios, electronic mail (e-mail) systems, social media, equipment, other technological devices, and stored data, including electronic communications and records, on those devices. Computer systems also includes cloud-based or remote systems contracted with Tooele City to be used for City business.
3. Electronic records – all data and records created, stored, deleted, or used on the City's computer systems or personal devices. This includes, but is not limited to, e-mail, computer files, deleted records, data on personal devices used for City business, and social media.
4. Government Records Access and Management Act (GRAMA) - the records law for the State of Utah. GRAMA defines what a record is and establishes the criteria for accessing government records.
5. IT or IT Department – City staff members assigned to Information Technology (IT) Department or provided with duties in support of the IT Department.
6. Social media – all means of communicating or posting information or content of any sort on the Internet, including employees' own or other web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board or chat room.

**C. PROPERTY OWNERSHIP, PRIVACY, & MONITORING**

1. The City's computer systems are City property provided to facilitate City business.

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2. Employees have no expectation of privacy in use of the City's computer systems. Any use or communications, whether City-related or personal, may be monitored and reviewed by the City or designee at any time. The City is authorized, but not obligated, to monitor and review employee use or communications.
3. The use of computer systems is subject to guidelines and rules as outlined further in this Section.
4. When necessary to conduct City business or as permitted or required by law, the City may disclose the contents of and copy data from any component of the City's computer systems, without the employee's consent.

### D. HARDWARE, SOFTWARE & LICENSES

1. The City has invested significant time and money to secure its computer systems from intrusion of harmful viruses and programs. Some hardware is not compatible with the City's computer systems. Employees may not use or install software or hardware without approval from the IT division.
2. The City purchases, owns, and administers the hardware, software, and licenses installed on City computer systems. Employees may not rent, copy, or loan the software, licenses, or documentation.
3. Requests for new hardware or software are submitted to the department head for approval. Each department head discusses such requests with the IT division for compatibility, pricing, and other recommendations.
4. To maintain the integrity of the City systems and license agreements, employees shall not install City-owned software for personal use or on employee-owned devices without approval from their department head and the IT division (refer to Section H).

### E. PASSWORDS & COMPUTER SYSTEMS SECURITY

1. **Importance of Strong Passwords & Systems Security** - The data employees work with may be classified as private or protected by law. As such, every employee of Tooele City is a data steward, a protector of information others have entrusted to the City. If a non-authorized individual or entity gains access to City systems it can result in loss of information, theft/release of private or protected information, system unavailability, and other damage including erosion of public trust.
2. **Setting Passwords/Password Requirements** - Passwords are the first level of defense in protecting data and our computer systems. A memorable and strong

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password usually consists of a phrase with changed characters. For example, the phrase “This May Be One Way To Remember!” could have a matching password like: “TmB1w2R!” or “Tmb1W>r~” or some other variation (do not use this example). Using a variation of the full sentence as a password is recommended as it is longer and harder to hack. Employees are required to establish strong passwords that as a minimum, meet these requirements:

- a. Length of password must be longer than 8 characters.
- b. Passwords must be changed every 180 days. Some departments may require passwords to be changed every 90 days.
- c. Passwords must include at least 3 of the following:
  - (1) Uppercase Letters
  - (2) Lowercase Letters
  - (3) Numbers
  - (4) Symbols
- d. Passwords may not contain any part of the following:
  - (1) Employee's personal identity information (DOB, name, address, family members, pets names, etc.)
  - (2) The words Tooele or City
  - (3) Employee's position or job title
- e. New passwords must not include the old password with minimal changes (i.e. password1 -> password2).
- f. Do not use the same password across multiple logins unless directed to by IT (i.e. using the same password to login to the network as the password for a department specific software system or website).
- g. Passwords established for work purposes may not also be used for personal passwords (i.e. do not use work passwords for personal bank account, a home computer, or other personal access).
- h. Passwords stored in browsers (such as autofill or “save password prompts”) are considered insecure and are at risk of exposure. Employees are advised to utilize a password storage program approved by the IT Department such as LastPass or MyGlue to minimize exposure of City credentials.
- i. Devices equipped with pin codes or passcode (smart phones, tablets, or other devices) that access ANY City data are required to have a pin code or passcode set.
- j. Passwords must be kept secured. Example:
  - (1) **Not Secured.** Password is written on sticky notes or any other similar physical item attached to the employee's desk, computer, or other easily accessible location; password is written in a notebook with other passwords and login information and stored in a desk drawer accessible

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to other employees; password is stored in a web browser that has not been secured by a storage program approved by the IT department.

If an employee is having issues remembering passwords, contact IT for suggestions on a secure password manager such as Keepass which allow users to store passwords in a highly protected space.

(2) **Secured.** Password is maintained in a secure password manager system such as Keepass which allow users to store passwords in a highly protected space electronically; password is written down and stored in a locked drawer where others don't have access to it and others are unlikely to know what it is (i.e. a book that says "passwords or login info" is not secure); password and username are not written down or stored together; password is noted on a personal device with a pin or secure access and does not have any identification as to the website, system, login, etc. that it belongs to (i.e. my phone has a simple note in it "Qr\$%2lrpr" and nothing else & my phone has a pin number to get into it).

**3. Sharing of Passwords / Password Requests -**

- a. Passwords are unique to individual employees and group passwords are not in line with Tooele City's IT security standards. If multiple employees need access to the same data, contact IT.
- b. Never, under any circumstances should passwords be shared with an outside vendor. Any outside vendor request must be referred to IT for a temporary password.
- c. There may be times where IT will need employee's passwords to troubleshoot an issue. IT will never ask an employee for his/her password over a phone call, email, or text message. If a password is provided to IT, employees will be required to change it once IT is finished with the ticket.
- d. Be aware of scams and phishing attempts. If you are concerned that your password may have been compromised, contact the IT department as soon as possible to get assistance with resetting passwords.

**4. Exceptions** – Tooele City may utilize software, cloud-based, or similar external systems where their password programming does not meet the above requirements (i.e. pin number is used, doesn't reset, etc.). The IT department should be consulted to identify the potential security risk and provide best practice recommendation.

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**F. PERSONAL USE – ALLOWED & PROHIBITED**

Tooele City's computer systems, in general, may not be used for personal use. Tooele City does recognize that incidental/occasional personal use may occur while working and such incidental/occasional use is allowed, provided it is not for one of the following:

1. Any illegal activity;
2. Pornographic material;
3. Classified ads for personal interests;
4. Potential SPAM generators;
5. Downloading, copying, or pirating software or electronic files that are copyrighted or without authorization;
6. Use for personal gain such as business ventures, solicitations, etc.;
7. Use to endorse, support, oppose or contradict any social issue, cause or religion;
8. Introducing malicious software onto the City's network and/or jeopardizing the security of the City's electronic communications systems;
9. Use that violates Tooele City's Equal Employment Opportunity, Anti-Harassment and Anti-Retaliation policies;
10. Use that discourages productivity such as group or mass mailings of jokes, chain letters, and non-business-related photographs, Internet surfing, and computer games;
11. Accessing or participating in non-work related chat rooms;
12. Downloading screen savers, music, movies, or other non-work related material;
13. Use by family or non-City employees;
14. Use of network sniffer or hacker software;
15. Any other use that may compromise the integrity of the City computer systems.

**G. EMAIL GUIDELINES**

1. E-mail should be used with the same level of professionalism as any other written communication.
  - a. E-mail could be classified as a public document and disclosed.
  - b. E-mail should not be used to transmit sensitive materials, such as personnel decisions and other similar information that may be more appropriately communicated in writing or personal conversation.
  - c. E-mail messages can be forwarded without the express permission of the original author.
  - d. E-mails are relatively insecure communications and can be easily intercepted and viewed. Employees should use caution in the transmission and dissemination of messages outside of the City.
  - e. E-mail should not be used to transfer large files. Contact IT for other means of transferring large files.

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- f. E-mail signatures are expected to follow the template provided by the City.
2. Passwords should not be communicated through e-mail.
3. E-mails often include links to websites or advertisements that are set up with the intent to trick users into installing software that will hijack a computer. Employees are reminded to be very cautious of e-mails opened with City computers and to NOT click on the link or open attachments of suspicious e-mail.
4. Tooele City understands that employees may involuntarily receive or inadvertently open e-mails containing material that is listed as prohibited.

**H. USE OF PERSONAL DEVICES**

1. Department head permission is required when employees use personal devices, such as phones, tablets, iPads, etc., for work-related duties. Personal devices must be secured consistent with Section E above. If the personal device is stolen or lost, employees are to contact IT and their department head immediately.
2. The employee is ultimately responsible for proper operation and functionality of any personal devices. The IT division may assist the employee with personal devices used for City business with the understanding that they are doing so in good faith and within their own level of expertise. The City is not responsible for the functionality of the personal device even if worked on by the IT Department. Circumstances may necessitate resetting devices and may result in data loss. Employees are responsible for backing up or securing their data prior to requesting assistance from IT.
3. Employees are reminded that using personal devices for City business may subject those devices to search and discovery in legal proceedings which may require the device to be taken for a period of time. The City is under no obligation to provide a replacement.
4. See M below for additional information regarding storage & retention of electronic records including cloud storage.

**I. CITY WEBSITES**

City websites, including [tooelecity.org](http://tooelecity.org) and specific department websites, may be used to enhance communications subject to the following rules and guidelines:

1. All Tooele City websites are to be approved by the Mayor.
2. Examples of prohibited postings include:

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- a. Classified advertisements;
- b. Advertisements that endorse, support, oppose or contradict any social issue, cause or religion (unless they are local events open to the public); or
- c. Commercial business advertisements that are not of global public interest or are not for City-sponsored projects such as downtown revitalization or sponsors for community activities.
3. Only employees designated as webmasters are authorized to post information to City websites.
4. All content created or posted on a City social media site belong to Tooele City.
5. The Mayor makes all final decisions about information posted to City websites.

**J. CITY USE OF SOCIAL MEDIA**

City social media, including the City's Facebook page and specific department social media efforts, may be used to enhance communications with citizens and program participants subject to the following rules and guidelines:

1. All Tooele City social media sites are approved by the Mayor.
2. Tooele City social media sites are generally used for:
  - a. Marketing/promotional channels which increase the City's ability to broadcast its messages to the widest possible audience;
  - b. Public information updates; and
  - c. The dissemination of time sensitive information (i.e. emergency information).
3. Content posted to Tooele City social media sites are expected to portray a professional image of Tooele City.
4. Content should also be made available on the City's main website whenever possible. Content posted to the City social media sites should contain links directing users back to the City's official website for in-depth information, forms, documents, or online services necessary to conduct business with Tooele City.
5. City social media sites may be used only for communication of City-related information and may not be used for personal purposes.
6. Examples of prohibited articles and comments include:
  - a. Comments in support of or opposition to political campaigns or ballot measures;
  - b. Profane or obscene language or content;

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- c. Content that violates Tooele City's Equal Employment Opportunity, Anti-Harassment and Anti-Retaliation policies, including sexual content or links to sexual content;
- d. Content that markets or promotes other businesses, unless such business is a sponsor of a City event or program, or is a business partner with Tooele City for public services;
- e. Conduct or encourage illegal activity;
- f. Information that may tend to compromise the safety or security of the public or public systems; or
- g. Comments not typically related to the particular social media article being commented upon, including random or unintelligible comments.

7. The guidelines described above should be displayed to users or made available by hyperlink.
8. Tooele City reserves the right to restrict or remove any content that is deemed to be in violation of this Section, has the potential to bring discredit to the City, violates any law, or is contrary to the public interest. A copy of any content removed based on these guidelines must be retained, including the time, date, and identity of the poster when available for a period of time determined by the City records officer consistent with state retention schedules.
9. All content created or posted on City social media sites belongs to Tooele City.
10. The City webmaster either collects and maintains all passwords to approved social media sites, or has administrative access to these sites. Passwords follow the password policy in this Section.
11. Final decisions about information posted to social media are approved by the Mayor.

**K. EXCEPTION TO CITY USE OF SOCIAL MEDIA**

Law enforcement personnel and legal staff may engage in use that is listed as prohibited when such use is necessary to perform their law enforcement and legal duties and he/she has received advance approval from his/her supervisor. It is recommended that supervisors provide the IT Department with notice of authorized use.

**L. EMPLOYEE PERSONAL USE OF SOCIAL MEDIA**

Employees' personal use of social media may create workplace implications. Therefore, the following guidelines and reminders are provided to employees:

1. **Workplace Implications** – The same principles and guidelines found in Tooele City's policies and procedures apply to social media activities. Conduct that adversely affects job performance, the workplace, the performance of fellow

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associates or otherwise adversely affects members, citizens, suppliers, people who work on behalf of Tooele City may be job-related. Employees are responsible for what they post online and are encouraged to consider some of the risks and rewards that are involved with social media activities.

2. **Know Policies and Procedures** – Employees are expected to carefully read these guidelines and the City’s Personnel Policies and Procedures giving special attention to EEO, No-Harassment & No-Retaliation, and Disciplinary Sections to ensure that postings are consistent with these policies. Employees are specifically expected to refrain from social media activities that reasonably could be viewed as malicious, obscene, and threatening or intimidating, that disparage citizens, members, associates or suppliers, or that might constitute harassment or bullying. Examples of such conduct might include offensive posts meant to intentionally harm someone’s reputation or posts that could contribute to a hostile work environment on the basis of race, sex, disability, religion or any other status protected by law.
3. **Be Respectful** – Employees should be fair, courteous, and respectful to fellow employees, citizens, suppliers or people who work on behalf of Tooele City.
4. **Consider Available Internal Resources to Resolve Workplace Complaints** – Workplace complaints are more likely to be resolved by speaking directly with co-workers or by utilizing the City’s internal grievance procedure than by posting complaints to a social media outlet.
5. **Be Honest and Accurate** – Employees are expected to convey a true and accurate impression of the facts and circumstances, to be honest, and to be accurate when posting information or news, and if a mistake is made, to correct it quickly.
6. **Confidentiality and GRAMA** – Employees are expected to maintain the confidentiality of private, confidential, and protected information. Employees may not post internal reports, other internal business-related confidential communications or records that have not been obtained pursuant to GRAMA.
7. **Disclosure** – Express only personal opinions. Employees may not represent themselves as a spokesperson for Tooele City. If Tooele City is a subject of the content being created, employees should be clear and open about the fact that they are an employee and make it clear that the views do not represent those of Tooele City, fellow associates, members, citizens, suppliers or people working on behalf of Tooele City. If employees do publish a blog or post online related to their work or subjects associated with Tooele City, they must make it clear that they are not speaking on behalf of Tooele City. It is best to include a disclaimer such as “The postings on this site are my own and do not necessarily reflect the views of Tooele City.”

## **COMPUTER SYSTEMS, INTERNET, AND ELECTRONIC MAIL (E-mail)**

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8. **Permanent Records** – The Internet archives almost everything; therefore, even deleted postings can be searched. Employees are reminded that their social media activities can become permanent records. Often times messages on social media reach a broader audience than was intended when the message was posted and these messages may be difficult to edit or retract once posted.

### M. STORAGE & RETENTION OF ELECTRONIC RECORDS

1. Department heads set standards for retention of electronic records. Individual department policy should follow the Utah Municipal General Records Retention Schedule.
2. Cloud services should not be used to store data unless approved by IT and the employee's supervisor. Sensitive data should be encrypted before being stored on Cloud services. Cloud services should not be used on personal devices unless it is password protected, and, if it contains sensitive information, that information should be encrypted. Other Cloud services should be reviewed with IT for approval and security just like any other application.
3. Electronic records generated or received on the City systems may be public records and may be subject to public inspection. This includes, but is not limited to:
  - a. E-mails;
  - b. Social media;
  - c. Deleted files;
  - d. Data on personal devices used for City business; and,
  - e. City's computer systems.
4. Public requests for electronic records will be handled in compliance with GRAMA.
5. Deleted records, including deleted e-mail messages from a workstation mailbox, might not be deleted from the central computer systems. Records may be stored on the computer's back-up system for an indefinite period.
6. Employees should archive all official and/or substantive e-mail messages, as they would paper letters and memoranda. Casual, personal, non-substantive, advertisements, and other such e-mail messages should be deleted as soon as possible after receiving them.

### N. SOFTWARE VENDORS, GUESTS, AND CONTRACTORS

1. When software vendors are visiting or accessing Tooele City and request a need to access the City's computer system, they may be granted limited access to the City

**COMPUTER SYSTEMS, INTERNET,  
AND ELECTRONIC MAIL (E-mail)**  
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network to administer, upgrade, or update their software. This shall be done under careful guidance of IT.

2. Guests, sales agents, and other non-City business related access can be allowed to use the Internet through a special visitor logon account to prevent access to City data, network, and equipment. Also, credentials may be shared for the use of non-internal Internet access, utilizing a wireless access point, by contacting an IT employee, when service is available. No one should connect to the City's network without IT permission.
3. Contractors may be granted the right to access the City's computer systems, with the Mayor's approval. Contractors are required to abide by this policy regarding acceptable use guidelines.

**O. REPORTING VIOLATIONS**

Employees should report violations of this policy to their immediate supervisor, or, if the violation is allegedly being committed by the supervisor, the employee may choose to report the violation to the department head, the human resource director, or the Mayor. To the extent possible, reports will be handled with confidentiality.

**P. PENALTIES**

Violations of this Section may be considered sufficient cause for disciplinary action in compliance with Tooele City's disciplinary policies, up to and including termination. Employees may be held responsible for any damages caused by unauthorized software or viruses they introduce into the computer system. In addition, violations of this Section or misuse of the e-mail, Internet system, or social media may be referred for criminal prosecution if warranted.

**B**

## HOLIDAYS

Revised November 2021/June 2022

SECTION: 23

**A. PURPOSE**

This Section specifies the days Tooele City provides time off with pay to eligible employees for recognized holidays ("Holiday Pay" or "Paid Holiday") and related policy matters.

**B. PAID HOLIDAYS**

The following days are designated as paid holidays for eligible employees:

January 1	New Year's Day
Third Monday in January	Observed as the anniversary of the birth of Dr. Martin Luther King, Jr., also known as Human Rights Day.
Third Monday in February	Presidents' Day
Last Monday in May	Memorial Day
While celebrated on June 19, under Utah State Law, if the holiday falls on a Tuesday, Wednesday, Thursday or Friday it will be observed on the preceding Monday. If the holiday falls on a weekend, it will be observed the following Monday.	National Freedom Day. Observed in honor of the emancipation of enslaved African Americans in the US, also known as Juneteenth and Emancipation Day.
July 4	Independence Day
July 24	Pioneer Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veterans' Day
Fourth Thursday in November	Thanksgiving Day
Generally the Fourth Friday in November	Friday After Thanksgiving Day
December 25	Christmas Day

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**C. HOLIDAYS ON WEEKENDS**

Excluding National Freedom Day. When a holiday falls on Saturday, the preceding Friday shall be the holiday. When a holiday falls on a Sunday, then the following Monday shall be the holiday. The exception is for sworn law enforcement officers normally assigned to patrol duty; the holiday will be the actual date of the holiday and for holidays worked, it will be recognized for employees whose shift begins on the date of the holiday.

**D. HOLIDAY ON NORMAL DAY OFF**

When a holiday falls on a normally scheduled day off, another day is substituted. The substituted day must be in the pay period prior to, during, or immediately following the pay period in which the original holiday occurred.

## **HOLIDAYS**

Revised November 2021/June 2022

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### E. FLSA EXEMPT WORK A HOLIDAY

When an FLSA exempt employee works on a designated holiday, another day may be substituted. The substituted day must be in the pay period prior to, during, or immediately following the pay period in which the original designated holiday occurred.

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## HOLIDAYS

Revised November 2021/June 2022

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### F. SPECIAL CONSIDERATIONS

#### 1. **Hire & Termination Date.**

Hire and termination dates may not be set to provide an employee with a paid holiday if the employee does not work their scheduled shift before and after the recognized holiday.

For example, if a termination date is set to be the day after the holiday and the employee plans to use paid leave for that final day as opposed to actually working, the termination date should be the last work day before the paid holiday.

Additionally, if the employee “calls-in” the day after the holiday, the City may retroactively set the termination date to the day before the holiday.

#### 2. **Paid Holiday Benefits Coordination with Other Leave & Unpaid Leave.**

See Section 27: Family and Medical Leave Act & City Approved Leave of Absence for benefit eligibility. If while on approved leave, the employee remains eligible for benefits, paid holiday benefits may be coordinated with other payments in an amount needed to bring the employee up to, but not greater than, 100% of their normal pay, rounded to the nearest quarter of an hour.

For example, an employee normally works 8 hours and is receiving short-term disability benefit payments that replaces 70% of salary. The employee receives 2.25 paid holiday hours representing the other 30% ( $8 \times 30\% = 2.4$ , rounds to 2.25). The human resource office can assist with making these calculations as needed.

C

## **BEREAVEMENT & FUNERAL LEAVE**

**Revised November 2018/June 2022**

### **SECTION: 25**

#### **A. PURPOSE**

This Section specifies the hours Tooele City provides time off with pay to eligible employees for bereavement and funeral needs and related policy matters. In order to minimize the financial hardships that may result from absences from work, Tooele City provides funeral leave benefits to qualifying employees who are approved to be absent from work due to: (1) the death of certain individuals; (2) to plan, attend, and/or travel to/from funeral services; (3) to attend to post-death affairs associated with the deceased; and, (4) to provide care and comfort to self or others who are grieving.

#### **B. POLICY**

1. In order to minimize the financial hardships that may result from absences from work, Tooele City provides bereavement & funeral leave benefits to qualifying employees who are approved to be absent from work due to: (1) the death of certain individuals; (2) to plan, attend, and/or travel to/from funeral services; (3) to attend to post-death affairs associated with the deceased; and/or, (4) to provide care and comfort to self or others who are grieving.

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4.2. Bereavement & Funeral leave benefits are provided to bring the employee up to their regular scheduled work hours. Funeral These leave hours may not be used to ensure general overtime is earned nor may they be paid as overtime/comp-time.

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2.3. Regular and appointed employees are provided with the following amounts of paid bereavement & funeral leave for each qualifying death (part-time employees are prorated):

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Up to 24 Hours Leave	Up to 16 Hours Leave	Up to 8 Hours Leave to Attend Services
<ul style="list-style-type: none"><li>• Parent or Step-parent;</li><li>• Parent-in-law or Step-Parent-in-law;</li><li>• Spouse;</li><li>• Child or Step-child (including still born children or miscarriage when a funeral, graveside, cremation, or other formal service is held);</li><li>• Grandchild or Step-grandchild;</li><li>• Sibling or Step-sibling, including half siblings;</li></ul>	<ul style="list-style-type: none"><li>• Employee's Grandparent or Step-grandparent; or</li><li>• Other persons with whom the employee has a "loco parentis" relationship meaning the employee has the day-to-day responsibilities for the care and financial support of the child or person who had such a responsibility for the</li></ul>	<ul style="list-style-type: none"><li>• Spouse's Grandparent, Spouse's Step-grandparent, or Spouse's Great-grandparent;</li><li>• Employee's Great-grandparent (not a step-great-grandparent);</li><li>• Employee's Great-grandchild (not a step-great-grandchild);</li><li>• Employee's or</li></ul>

## **BEREAVEMENT & FUNERAL LEAVE**

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<ul style="list-style-type: none"><li>• Brother in-law/Sister in-law;</li><li>• Son-in-law/Daughter-in-law; or,</li><li>• A person who has on a full-time basis, permanently resided in the home of an employee for at least the 12 consecutive months preceding death.</li></ul>	<p>employee when the employee was a child. A biological or legal relationship is not necessary.</p>	<ul style="list-style-type: none"><li>• Spouse's Aunt/Uncle; or, Employee's or Spouse's Niece/Nephew.</li></ul>	<p><b>Formatted:</b> Indent: Left: 0", Hanging: 0.49", Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"</p>
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3.4. For purposes of this Section, relationships include first generation unless otherwise specified, and biological or legal relationships unless otherwise specified. Legal action such as divorce or other legal relinquishment of parental rights dissolves relationships.

4.5. Bereavement and Funeral leave may be used in full day blocks or intermittently for up to 14 working days from date of the death, unless extenuating circumstances exist (i.e. delay due to autopsy, delay getting body due to organ or research donation, body transport, etc.) and in such cases, an employee may request extension of up to 30 days from date of death.

5.6. If, at the time of death, and an employee is on other approved or extended leave such as FMLA or disability leave, bereavement and funeral leave benefits may be used to supplement other paid benefits to bring the employee up to 100% of the pre-leave daily base pay.

#### **C. NOTICE & VERIFICATION OF NEED FOR LEAVE**

1. An employee is expected to notify his/her supervisor as soon as possible of the need for bereavement and funeral leave.
  - a. For a full-day block of leave, the supervisor may ask the employee to consider the needs of the department when scheduling; however, unless it may result in a hardship to the City (i.e. employee must be in court to testify or is the only employee able to perform certain critical tasks), the employee generally may take full-day blocks of leave.
  - b. For intermittent leave, the employee is expected to request approval for such leave in advance whenever feasible and the supervisor may consider both the needs of the department and the purpose of the leave request (For example, post-death financial affairs can generally be taken care of during banking hours. Although it may be more convenient for the employee at a certain time, the needs of the department may necessitate taking care of the post-

**BEREAVEMENT & FUNERAL LEAVE**  
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death financial affairs at a different time).

2. Tooele City retains the right to request documentation to support any claim for funeral-leave benefits.

**D. NEEDS OTHERWISE NOT COVERED BY THIS SECTION**

Employees who need to be absent for funeral-matters not otherwise covered by this Section or who need additional time off, may reference other paid leave policies such as annual leave.

D

## BENEFITS

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### A. PURPOSE

1. The purposes of this Section are to:

- a. Provide employees with some information about the Tooele City benefit package;
- b. Summarize employee benefit eligibility;
- c. Establish City policy regarding certain elements of the benefit package; and,
- d. Comply with federal notification requirements.

2. This Section does not:

- a. Establish a contract with employees regarding future benefit coverage or eligibility. Tooele City reserves the right to change, modify, and/or otherwise discontinue the benefit package for any or all employees at any time in the future (See Section 0: About This Manual, or as amended, herein this Manual for more information on contractual limitations);
- b. Provide employees with specific information about all benefits. Tooele City utilizes third-party benefits administrators for many of the benefits offered to employees. In cooperation with the Tooele City human resource department, the third-party administrator will make available summary plan descriptions and employee information. This information can be obtained from the human resource department, by contacting the insurance provider's customer service, or through various websites. Additional Sections in this Manual may also provide more detailed information regarding specific benefits;
- c. Provide a guarantee of benefit coverage, payment, or any other term or condition that is otherwise determined by a benefit provider. Benefits may change as providers, rules, or plans change. In the event of a conflict between this Section and the insurance providers' documents or contracts, the providers' documents or contracts will prevail; and,
- d. Provide important detailed information regarding benefits. These documents are available from the human resource office, directly from the insurance provider, or through providers' websites.

## BENEFITS

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### B. BENEFIT ELIGIBILITY

Benefit eligibility is determined by the employee's employment status, schedule status, and benefit provider contracts. In general, eligibility is as follows:

	Full-time		Full-time Mayor	
	Regular or Appointed			
	40 Hours	30-39.75 Hours		
401K	Yes	Yes	Yes	
Annual Leave	Yes	Prorated	N/A	
Dental	Yes	Yes	Yes	
EAP Program	Yes	Yes	Yes	
Flexible Spending Account	Yes	Yes	Yes	
Holiday Pay	Yes	Prorated	N/A	
IRA/Roth IRA	Yes	Yes	Yes	
Leave, Misc. Paid – Funeral, Jury & Witness, and Military	Yes	Prorated	N/A	
Life Insurance & AD&D	Yes	Yes	Yes	
Long-term Disability	Yes	Yes	Yes	
Medical – Health Insurance or Waiver payment in lieu of coverage if evidence of other coverage is provided to Tooele City	Yes	Yes	Yes	
Short-term Disability	Yes	Yes	No	
Sick Leave	Yes	Prorated	N/A	
State Retirement Benefits	Yes	Yes	Yes	
Vision	Yes	Yes	Yes	
Wellness/Recreation Pass	Yes	Yes	Yes	
Worker's Compensation	Yes	Yes	Yes	

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Prorated = Benefits are prorated as percentage of hours worked as compared to a 40 hour schedule. See specific policies regarding paid leave and holiday for additional information.

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(BENEFIT ELIGIBILITY CONTINUED)

	Part-time Regular or Appointed		Part-time Elected Officials	
	20-29.75 hours	1-19.75 hours	Part-time Mayor	Council Member
401K	Yes but no City Contribution	Yes but no City Contribution	Yes	Yes
Annual Leave	Prorated	Prorated	No	No
Dental	No	No	Yes	Yes
EAP Program	No	No	Yes	Yes
Flexible Spending Account	Yes	No	Yes	Yes
Holiday Pay	Prorated	Prorated	N/A	N/A
IRA/Roth IRA	Yes	Yes	Yes	Yes
Leave, Misc. Paid – Funeral, Jury & Witness, and Military	Prorated	Prorated	N/A	N/A
Life Insurance & AD&D	No	No	Yes	Yes
	Yes	No	Tier 1 = Yes, if salary meets URS eligibility criteria	
Long-term Disability			Tier 2 = No	
Medical – Health Insurance, or Waiver payment in lieu of coverage if evidence of other coverage is provided to Tooele City	No	No	Yes	Yes
Short-term Disability	No	No	No	No
Sick Leave	Prorated	Prorated	N/A	N/A
	Yes	No	Tier 1 = Yes, If salary meets URS eligibility criteria	
			Tier 2 = No, but equivalent URS rate is put into 401k plan as defined in this Section	
State Retirement Benefits				
Vision	No	No	Yes	Yes
Wellness/Recreation Pass	No	No	Yes	Yes
Worker's Compensation	Yes	Yes	Yes	Yes

Prorated = Benefits are prorated as percentage of hours worked as compared to a 40 hour schedule. See specific policies regarding paid leave and holiday for additional information.

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## BENEFITS

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(BENEFIT ELIGIBILITY CONTINUED)

### Variable Hour Employees

Contingent: Temporary, Seasonal, Cyclical, or On-call

401K	Yes, may make personal contributions but not eligible for any City Contribution
IRA/Roth IRA	Yes, may make personal contributions
Medical – Health Insurance	No, except an employee may become eligible pursuant to the Patient Protection and Affordable Care Act (PPACA) which requires coverage if an employee's average workweek was greater than or equal to 30 hours/week following certain measurement periods. Tooele City has adopted the PPACA Safe Harbor provision for calculating the average workweek for variable hour employees as it applies to PPACA. The average workweek will be calculated as follows:  New Hires - A newly hired employee's average workweek will be calculated following an <b>Initial Measurement Period</b> of 12-month from date of hire. It will be calculated by adding hours worked + overtime hours + comp-time paid, and dividing the sum by 52. If the employee is deemed eligible, an administrative period will be applied from the end of the initial measurement period through the end of the second full pay period beginning after the end of the initial measurement period to provide time to facilitate enrollment. The employee remains eligible for coverage for a 12 month <b>Stabilization Period</b> provided employee premiums are paid and the employee remains an employee, or is on seasonal layoff status on payroll and employee premiums are paid.  Ongoing - Once the <b>Initial Measurement Period</b> has passed, employee's future eligibility will be determined pursuant to the City's <b>Standard Measurement Period</b> which coincides with the City's fiscal budget preparation each year. The average workweek will be calculated by adding hours worked + overtime hours + comp-time paid during the period of April 1st of the prior year and March 31 of the current year, and dividing the sum by 52. If the employee is deemed eligible pursuant to PPACA, an administrative period will be applied from April to June 30 to provide time to facilitate enrollment. Coverage becomes effective July 1 and the employee remains eligible for coverage for a 12 month <b>Stabilization Period</b> (the fiscal year) provided employee premiums are paid and the employee remains an employee, or is on seasonal layoff status on payroll and employee premiums are paid. Future eligibility will be determined by recalculating the <b>Standard Measurement Period</b> each respective year.  Tooele City's Health Insurance Waiver Payment is not available to Variable Hour employees who become eligible for health insurance coverage due to PPACA but decline coverage.  Plan eligibility and premiums are established with each fiscal year budget.
State Retirement	No
Worker's Compensation	Yes
No other benefits are offered to variable hour employees.	

## BENEFITS

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### C. SECTION 125 PREMIUM ONLY PLAN

Pursuant to Section 125 of the Internal Revenue Code of 1986, Tooele City has adopted a Premium Only Plan which allows certain insurance premiums to be excluded from the employees' income for federal-tax purposes. Eligible employees are automatically enrolled in the Section 125 Premium Only Plan. If employees desire not to participate in this component, they may do so by signing a declination form available from the human resource office.

### D. FLEXIBLE SPENDING ACCOUNT (FSA)

Pursuant to Section 125 of the Internal Revenue Code the Flexible Spending Plan includes dependent care reimbursement and medical reimbursement components. Eligible employees may obtain tax-advantaged opportunities by paying for eligible expenses with pre-tax dollars.

1. Dependent Care and Medical Reimbursement. Eligible employees may participate in the Flexible Spending Dependent Care or Medical Plan by completing an enrollment form each Plan Year. The Plan Year is July 1 to June 30 of each fiscal year. Once enrolled, an employee may not make a change during the Plan Year unless the employee has a qualifying life event. The maximum allowed contribution for dependent care or medical reimbursement is set by the Internal Revenue Service each calendar year.
2. Plan Administration. Tooele City utilizes a third-party benefits administrator. In cooperation with Tooele City human resource department, the third-party administrator will make available rules, guidelines, and information pertaining to the Plan. This information can be obtained from the human resource department and may change as plan guidelines change, tax laws, and/or administration guidelines change.

### E. HEALTH SAVINGS ACCOUNT (HSA)

Tooele City has adopted a Health Savings plan option for eligible employees. Such accounts are individual trusts or custodial accounts, each established and maintained by the employee with a qualified trustee/custodian. Tooele City will withhold contributions from the employee's paycheck and forward the contributions to the trustee/custodian on behalf of the employee. The employee is responsible for using their account in compliance with all IRS regulations. Tooele City utilizes a third-party benefits administrator to assist with administering the HSA account. In cooperation with Tooele City human resource department, the third-party administrator will make available rules, guidelines, and information pertaining to the Plan. This information can be obtained from the human resource department and may change as plan guidelines change, tax laws, and/or administration guidelines change.

## BENEFITS

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### F. UTAH STATE RETIREMENT PLAN

1. The Utah State Retirement program laws and regulations determine which retirement plan an employee is enrolled in. In summary, the plans are:

- a. Tier 1 (*For employees enrolled in the Utah State Retirement System prior to July 1, 2011*)

- 1) Public Employees' Contributory Retirement Plan
  - 2) Public Employees' Non-Contributory Retirement Plan
  - 3) Public Safety Employees' Non-Contributory Retirement Plan
  - 3) 4) Firefighter's Non-Contributory Retirement Plan

Tier 1 plans include a benefits protection contract between the Utah State Retirement Office and Tooele City that provides for continued service accrual in the event of a period of leave that is covered by worker's compensation insurance, Tooele City's group short-term disability insurance, or Tooele City's group long-term disability insurance, when approved for applicable benefit coverage.

~~4) 5) Exemption from participation.~~ Elected officials and appointed department heads eligible for enrollment in the Tier 1 Utah State Retirement System plan may file a formal request for exemption from membership in the retirement plan. In such cases, Tooele City will contribute to the employee's 401(k) plan, an amount equivalent to the Utah Retirement System's Total Cost Rate (URS normal cost + URS amortization of UAAL) for the respective plan applicable to the employee had he/she not exempted from participation. This amount is subject to change each year and is based on the rates established by the Utah Retirement System. This contribution must be included with any other Employer's 401(k) contributions in meeting the Internal Revenue Service (IRS) contribution limitations and therefore, may be limited if IRS limitations apply.

Employees who exempt from participation in Tier 1 plans are not covered by benefit protection with the Utah State Retirement System. Tooele City, by policy, however, provides for continued benefit contributions in the event of a period of leave that is covered by short-term disability insurance and for a period of up to 3 months when leave is covered by worker's compensation insurance. In the event such employee is approved for long-term disability benefits (LTD) or the leave exceeds 3 months, benefit continuation/contributions will cease at the end of the pay period following LTD benefit approval or the 3 month maximum, except as required by law.

## BENEFITS

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b. Tier 2 (*For employees first entering the Utah State Retirement System after July 1, 2011*)

- 1) Public Employees' Defined Contribution Plan Only
- 2) Public Employees' Hybrid Retirement Plan
- 3) Public Safety & Firefighter Employees' Defined Contribution Plan Only
- 4) Public Safety & Firefighter Employees' Hybrid Retirement Plan

Tier 2 plans do not include a benefit protection contract between the Utah State Retirement Office and Tooele City that provides for continued service accrual in the event of a period of leave that is covered by long-term disability (LTD), except as required. In the event an employee in Tier 2 plans is approved for long-term disability benefits, benefit continuation/contributions will cease at the end of the pay period in which the LTD benefits were approved and became effective.

Tier 2 plans include a benefit protection contract between the Utah State Retirement Office and Tooele City that provides for continued service accrual/URS required contribution in the event of a period of leave that is covered by Tooele City's worker's compensation insurance or Tooele City's group short-term disability insurance, when approved for applicable benefit coverage.

c. Part-time Elected Officials

Tier 2 part-time elected officials are not eligible to participate in the URS plans pursuant to Utah State law. To equalize benefits for both Tier 1 and Tier 2 part-time elected officials, Tier 2 part-time elected officials who enroll in the URS 401(k) plan will receive a City contribution that is equal to the Utah Retirement System's Tier 2 Total Cost Rate (URS - Normal Cost Rate + URS amortization of UAAL). This amount is subject to change each year. This contribution must be included with any other Employer's 401(k) contributions in meeting the Internal Revenue Service (IRS) contribution limitations and therefore, may be limited if IRS limitations apply.

2. Due to the complexity of the plans, employees should refer to the highlights handbooks prepared by the Utah State Retirement Office regarding questions concerning the systems. Employees can also contact the Utah State Retirement Office, 540 East 200 South, Salt Lake City, Utah 84102. Their telephone number is available from the Human Resource Department.
3. In all circumstances, Utah State Retirement benefit programs will be in compliance with established law and regulations of the Utah State Retirement Office.

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### G. 401(k) PLAN

Pursuant to Section 401(k) of the Internal Revenue Code, Tooele City offers eligible employees the opportunity to participate in a 401(k) plan.

1. Plan enrollment for eligible employees is as follows:
  - a. If enrolled in John Hancock 401(k) plan before June 30, 2011.
    - 1) If prior to June 30, 2011, an employee is enrolled in the Tooele City Employees' 401(k) Plan administered by John Hancock Financial, and remains an active status employee, he/she may continue to participate in the Plan.
    - 2) Employees may elect to discontinue making any future contributions to John Hancock and enroll in and contribute to the Utah Retirement 401(k) Plan. This is a one-time change. If an employee discontinues contributing to John Hancock and instead contributes to the Utah Retirement 401(k) Plan, he/she may not change back to John Hancock at a later time. IRS regulations specify whether or not account balances may be rolled from one plan to another. Employees are advised to carefully consider their options regarding each plan prior to making a decision. Employees may not contribute to both John Hancock and the Utah Retirement 401(k) Plan.
  - b. Employees who enroll in a 401(k) plan on or after July 1, 2011 may enroll ONLY in the Utah Retirement 401(k) Plan.
2. Enrollment Date. Employees may enroll upon eligibility. There is no waiting period for enrollment in a 401(k) Plan.
3. Employee Contributions. Eligible employees may have a portion of wages deducted from his/her paycheck and deposited into the 401(k) plan. These contributions are known as employee contributions or deferrals. Employee contributions are subject to each Plan's Adoption Agreement and limitations established by the IRS.
4. City/Employer Contributions. Employer contributions (City Contributions) to employees' 401k accounts are determined each year as part of the City's fiscal budget. Employer contributions to the 401k Plan may differ based on each employee's respective Utah State Retirement (URS) plan enrollment. City/employer contributions will be submitted as pre-tax traditional contributions and will be sent to the plan consistent with the employees' last employee contribution (i.e. John Hancock or URS).
5. Plan Administration and Summary Plan Descriptions. The 401(k) Plans are

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administered in compliance with applicable IRS code regulations, the respective adoption agreements, and the provider's policies & procedures. Summary Plan Descriptions for each 401(k) plan are available from the human resource office.

6. Self Directed Plans. Neither Tooele City, nor any employee, may provide tax, legal, investment or any other advice or consultation to any employee regarding their 401(k) plan. Any communications, information, or assistance is provided for administrative and/or educational purposes only. Employees needing tax, legal, investment, or any other advice or consultation are encouraged to seek assistance from a licensed professional of their choosing.

### H. TIER 2 PUBLIC SAFETY EMPLOYEES ENHANCED RETIREMENT BENEFIT

4. Tier 2 Public Safety Employees are those employees deemed eligible for enrollment in the Utah State Retirement Tier 2 Public Safety Retirement Plan.
2. A discretionary City contribution may be made to Tier 2 Public Safety Employees' 401k accounts for the purpose of providing an enhanced retirement benefit. The amount of the discretionary contribution is determined each year as part of the fiscal budget and is subject to change at any time, including reduction to no contribution. The contributions will be deposited to the Utah State Retirement 401k plan as pre-tax traditional 401k employer discretionary contribution and is subject to all rules and regulations pertaining to the Utah State 401k plan. This contribution is immediately vested. For payroll purposes, this amount is calculated in the same manner as any other discretionary City 401k contribution provided to the workforce. This generally is a percentage of gross salary paid by Tooele City and may be reduced while on leave, disability insurance, work comp, etc.
3. For IRS limitations/compliance purposes, this contribution is combined with all other City and employee contributions. This may limit employees' personal contributions.

### II. HEALTH INSURANCE

1. Premiums. Premiums are established with the fiscal budget and may vary based on employment and schedule status. Failure to pay premiums by the due date may result in cancellation of coverage.
2. Automatic Enrollment/Default Plan. Employees eligible for medical insurance will be automatically enrolled in the least expensive plan offered to Tooele City employees at the time of eligibility unless the employee declines, waives, or makes another health insurance election within 30-60 days of eligibility.

## BENEFITS

Revised November 2021/June 2022

SECTION: 29

### J. COBRA CONTINUATION COVERAGE

If a qualifying event occurs that causes an insured employee, spouse, or dependent to lose coverage under Tooele City's group health or dental plan, they have a legal right under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to purchase a temporary extension of health coverage (herein called continuation coverage). This notice is intended to inform employees, in a summary fashion, of their rights and obligations under COBRA. Employees are encouraged to share this notice with their spouse.

1. Health, dental, or flexible spending account benefits may be continued through COBRA.
2. Employees and dependents can elect continuation coverage if one of the following qualifying events occurs:
  - a. Voluntary or involuntary termination of employment for reasons other than gross misconduct; or
  - b. Voluntary or involuntary reduction of work hours below the level required for participation in the group health and/or plan.
3. The spouse of an employee or other individual covered by Tooele City's group health care plan can elect continuing coverage if one of the following qualifying events occurs:
  - a. The death of the employee or other covered individual;
  - b. A termination of the employee's employment for reasons other than gross misconduct, or a reduction in the employee's hours of work below the level required for participation in the group health plan;
  - c. A divorce or legal separation from the employee; or
  - d. A retired employee's enrollment in Medicare.
4. The dependent child of an employee or other individual covered by Tooele City's group health care plan can elect continuing coverage if one of the following qualifying events occurs:
  - a. The death of the parent employee or other covered individual;
  - b. The termination of employment or reduction of work hours of the parent employee;
  - c. The divorce or legal separation of the parents, if this causes the dependent child to lose coverage under Tooele City's group health plan;
  - d. The enrollment in Medicare of the retired parent or employee; or
  - e. The child's loss of dependent status due to attainment of the maximum age for coverage under the group health plan.

## BENEFITS

Revised November 2024-June 2022

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5. The employee or other covered individual has the responsibility to inform the Tooele City Human Resource Department of a divorce, legal separation, or a child's loss of dependent status within 60 days of the qualifying event or the date on which group coverage would be lost because of the event. If an employee fails to provide the proper notice within 60 days, continuation coverage might not be available.
6. When a qualifying event occurs, a written reminder of the right to elect continuation coverage will be sent to the address on file. There is a 60 days grace period to elect continuation coverage. If it is decided not to continue coverage, either through formal declination or lack of written response, group health insurance coverage will end effective the date of the qualifying event. If coverage is continued, the coverage will be identical to the coverage provided to ~~similarly-situated~~similarly situated active employees and family members. If an employee had family coverage at the time of the qualifying event, family coverage or a less broad category of coverage may be elected.
7. Continuation coverage is available for up to 18 months if the qualifying event is the termination or reduction in work hours of the employee. If an employee or family member is disabled under the rules for Social Security Disability Benefits, the worker and family members are eligible for an additional 11 months of continuation coverage, for a total of 29 months. For other qualifying events, the spouse or dependent children are eligible for up to 36 months of continuation coverage. Furthermore, the 18-month period for termination or reduced work hours can be extended to 36 months for family members if a second qualifying event-for example, divorce, death, Medicare entitlement-occurs during the 18-month period. Continuation coverage can be cut short of the full coverage period when:
  - a. Tooele City no longer provides group health coverage to employees;
  - b. The premium for continuation coverage is not paid in a timely fashion;
  - c. The covered individual becomes covered or is eligible for coverage under another group health plan that does not penalize or subject the insured to restricted or limited coverage due to a preexisting medical condition;
  - d. The insured becomes entitled to Medicare;
  - e. The disabled individual is no longer defined as disabled under Social Security rules during the 11 months of extended continuation coverage.
8. There is no required evidence of insurability. However, the insured is responsible for premium payment for the coverage and is allowed a 30-day grace period for timely payments. The premium will include the portion an employee now pays, plus the amount the City contributes, plus a two percent administrative fee. At the end of the 18, 29, or 36 months of continuation coverage, the insured may be allowed to enroll in an individual conversion health plan provided under Tooele City's group health plan.
9. Questions regarding COBRA should be directed to the human resource department.

E

## RETIRING & RETIREE BENEFITS

Revised January 2016/June 2022

SECTION: 30

### A. RETIREMENT NOTIFICATION

1. Employees are asked to notify their department head and the human resource office of their intent to retire at least 90 days prior to their retirement date. This notification is requested to allow time to facilitate insurance matters and to address staffing needs.
2. Notification to Tooele City does not constitute notification to the Utah State Retirement office or to other benefit providers. Employees must contact the Utah State Retirement office or the respective retirement plan to begin the retirement process.

### B. LIFETIME PASS TO CITY RECREATION FACILITIES

An employee who retires from Tooele City Corporation as their last employer and is credited with at least 10 years of service as a Tooele City full-time regular or appointed status employee is provided a lifetime individual wellness/recreation card, the use of which is to be consistent with Section 31 herein this Manual. The pass is non-transferable.

### C. COBRA CONTINUATION COVERAGE UPON RETIREMENT

Retirees may be eligible to continue certain benefits pursuant to COBRA continuation coverage. COBRA continuation is described in Section 29: Benefits, herein this Manual.

### D. HEALTH & LIFE INSURANCE FOR RETIREES & RETIREE'S DEPENDENTS

Prior to retiring, employees are encouraged to carefully evaluate their rights and responsibilities regarding continuation of health insurance or other benefits following retirement. Although it is the intent of Tooele City to maintain insurance coverage as specified below, it is understood that insurance providers may change eligibility or coverage provisions for retirees at any time. Tooele City will make reasonable effort to include coverage in negotiations with 2<sup>nd</sup> party insurance carriers; however, if such carriers refuse to provide coverage on terms deemed reasonable by Tooele City, or if coverage is not available, the provisions below are subject to change and may impact past, current, and future retirees. If coverage lapses or changes, Tooele City will make reasonable effort to notify affected retirees.

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#### 1. **Eligible Retiree.**

Some retirees are provided with health and life insurance benefits after they retire from Tooele City. Retirees and/or his/her dependents may be able to continue Tooele City sponsored health and life insurance beyond their COBRA or other post-termination benefit continuation periods. For purposes of this Section, these retirees are defined as an "Eligible Retiree" and must meet the

## RETIRING & RETIREE BENEFITS

Revised January 2016/June 2022

SECTION: 30

following criteria provided the retiree:

- a. Was not involuntarily dismissed from employment, with the exception of appointed employees;

- b. Did not voluntarily separate employment from Tooele City Corporation before being eligible for and electing to retire;

Example: An employee quit (did not retire from) Tooele City, ~~and accepted a position with the County, worked~~. The employee worked for the County for a period of time, and retires. The employee retired from the County and is therefore, not eligible for retiree benefits offered by Tooele City ~~to an Eligible Retiree~~.

- c. Has been eligible to participate in the Tooele City health and life insurance plans for an equivalent of at least ten (10) years. Tooele City's policy regarding reinstatement of service will be used to determine equivalent and credited years should an employee encounter a break in service or changes in health/life insurance eligibility (i.e. change to part-time);
- d. Is a bona fide retiree under the Utah State Retirement System ~~pension plan, or if participating in a 401K plan only due to Exemption or the employee elected to participate in the URS Tier 2 Defined Contribution (401k) Only Plan~~, is eligible to withdraw from the retiree's 401K account as an eligible retiree, penalty free, as specified by the IRS;
- e. Is not retiring under a medical retirement (i.e. long-term disability) plan;
- f. Is not an elected city council member; and,
- g. Ensures that the required premium payments are made.

### 2. Earned Premium Credit (EPC).

At the time of retirement, Tooele City will calculate an Earned Premium Credit (EPC) that will equal 1 year for every 5 full years of service as a benefit eligible employee with Tooele City. Tooele City's policy regarding reinstatement of service will be used to determine equivalent and credited years should an employee encounter a break in service or changes in health/life eligibility status (i.e. went part-time). Service credited by the Utah Retirement System for pension calculation purposes, but not actually rendered to Tooele City, is not considered

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## RETIRING & RETIREE BENEFITS

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service with Tooele City for purposes of the EPC calculation.

a. The EPC represents:

- (1) The time the City will pay for a City-sponsored single insurance plan for the Eligible Retiree, a City-sponsored Medicare Supplement Plan for the Eligible Retiree, or the Waiver Payback to an Eligible Retiree in lieu of coverage.
- (2) The time period an Eligible Retiree is eligible to remain on the group life insurance policy and the time period Tooele City will pay for such plan.
- (3) The time period an Eligible Retiree is eligible to continue their group voluntary/supplemental spouse or dependent life insurance policy.

b. If during the EPC period, an Eligible Retiree passes away, the EPC ends. There is no transferability of the EPC.

c. If the Eligible Retiree returns to employment with the City as an active benefit eligible employee, the EPC is put on hold and the remaining EPC balance is again made available to the Eligible Retiree when no longer eligible for coverage as an active benefit eligible employee.

### 3. **Health Insurance.**

2.

An eligible retiree may remain and his/her dependents covered under the Tooele City group health plan through their EPC, provided he/she was covered on the last day worked, is not Medicare eligible, and is under age 65. (Tooele City modified the continuation policy effective June 2022. Eligible Retirees who were covered under the City group health plan with an expired EPC prior to this date were authorized to remain on the City group health plan until age 65 or upon becoming Medicare eligible, provided coverage remains continuous and premiums are remitted.) may continue their coverage pursuant to the insurance provider regulations. A summary of the continuation privileges is as follows:

a. Health Insurance for Retirees and Dependents Under Age 65 -

(1) a. Eligible retirees and their eligible spouse may continue coverage until age 65 or until becoming eligible for Medicare.

(2) Eligible dependent children may continue coverage until attaining the maximum coverage age or eligibility criteria that applies to Tooele City's active employees under the health

## RETIRING & RETIREE BENEFITS

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insurance plan or until becoming eligible for Medicare.

(3) In the event the eligible retiree turns 65 years old, becomes eligible for Medicare coverage, or dies:

- (a) A spouse may continue coverage until age 65 or until becoming eligible for Medicare coverage.
- (b) Dependent children may continue coverage until attaining the maximum coverage age or eligibility criteria that applies to Tooele City's active employees under the health insurance plan or until becoming eligible for Medicare coverage.

b. At expiration of EPC, age 65, or upon becoming eligible for Medicare coverage, ~~an Eligible Retiree and/or dependents may no longer remain covered under the City group health plan (to participate in the Tooele City group health coverage beyond their COBRA eligibility may apply) period.~~ Such ~~Eligible Retirees and dependents~~ are encouraged to contact the Utah State Retirement Office to determine if a Medicare Supplemental Insurance plan is available.

c. Coverage may not be reinstated if an ~~Eligible Retiree and/or dependents~~ at any time, declines coverage, drops coverage, or has coverage cancelled for non-payment.

4. **Life Insurance.** *(Some provisions apply to married couples both retired from Tooele City. Specific plan documents and contracts will apply and may limit the following benefits.)*

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- a. An ~~Eligible Retiree~~ may remain covered under the City group ~~continue their group basic life insurance plan and group basic dependent life insurance plan coverage during their EPC, as allowed by the insurance provider, for 1 year for every 5 full years the retiree participated in or was eligible to participate in the Tooele City group life insurance plan (this is generally going to be equal to the EPC period as defined below).~~ Tooele City's policy regarding reinstatement of service will be used to determine equivalent and credited years should an employee encounter a break in service or changes in health/life eligibility status (i.e. went part-time).
- b. An Eligible Retiree may continue their group ~~Because voluntary/supplementary employee, spouse, and dependent life coverage during their EPC, as allowed by the insurance provider, is subject to~~

## RETIRING & RETIREE BENEFITS

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approval from the insurance provider and may be continued or require individual conversion at any time, employees are encouraged not to plan on this insurance as part of their estate planning. Continuation of supplementary coverage will be dependent on the insurance provider.

Once the EPC period has expired, Tooele City will maintain and pay for a \$5,000 basic life policy on the eEligible fRetiree and if coverage was in effect during the EPC, a \$2,500 basic life policy on their dependent spouse if married at the time of retirement, until the eEligible fRetiree dies or the legal relationship ends, as allowed by the insurance provider.

All dependent life coverage discontinues at the time of the eEligible fRetiree's death.

c.

### 4. **Retiree Premiums / Earned Premium Credit (EPC).**

a. Retiree premiums for health and life coverage will be established each year with the annual budget and are subject to change.

b. Eligible retirees are provided with an Earned Premium Credit (EPC) which pays the cost of a City sponsored single health insurance plan (or waiver in lieu of health) and retiree life insurance for 1 year for every 5 full years of service as a benefit eligible employee with Tooele City. Tooele City's policy regarding reinstatement of service will be used to determine equivalent and credited years should an employee encounter a break in service or changes in health/life eligibility status (i.e. went part-time). Service credited by the Utah Retirement System for pension calculation purposes, but not actually rendered to Tooele City, is not considered service with Tooele City for purposes of this Section.

(1) The credit may be applied to the retiree's Medicare Supplement coverage.

(2) If the retiree dies prior to the EPC expiration, the credit may be transferred to a covered dependent's premium. If there are no enrolled dependents, the City has no further obligations. If the enrolled dependent dies prior to using any deceased spouse's transferred EPC, the City has no further obligations.

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## RETIRING & RETIREE BENEFITS

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e. If during the EPC period, a qualified retiree elects to waive their health plan or Medicare Supplement coverage or becomes ineligible for Tooele City's group health plan, the City will pay the qualified retiree or their surviving dependent a waiver payback equal to that offered to active employees until the EPC has expired. A form 1099 will be issued for tax purposes. Qualified retirees who voluntarily waive their group health coverage may not have it later reinstated.

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## RETIRING & RETIREE BENEFITS

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d. If the retiree returns to employment with Tooele City as an active benefit eligible employee, the EPC is put on hold and the remaining balance is again made available to the retiree when no longer eligible for coverage as an active benefit eligible employee.

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### E. RETIREE SICK LEAVE CONVERSION

1. There is no minimum service requirement for retiree sick leave conversion. A retiree may convert his/her sick leave provided that the employee is retiring from Tooele City and will be eligible to receive pension payments from the Utah State Retirement System or the City sponsored 401K plan(s) without IRS penalty within 30 days of separation.
2. Employees may not change their conversion option after their account has been converted.

3.2. Retiring employees may convert their sick leave as follows:

Hours of Sick Leave at Retirement	Converted Cash Payout	Convert to Purchase Years Under the Utah State Retirement System, if applicable
0 - 250 Hours	(# Hours * .05) * Hourly Rate at retirement	(# Hours * .20) * Hourly Rate at time of payment
251 - 400	(# Hours * .07) * Hourly Rate at retirement	(# Hours * .25) * Hourly Rate at time of payment
400 - 600	(# Hours * .10) * Hourly Rate at retirement	(# Hours * .30) * Hourly Rate at time of payment
601- 1000	(# Hours * .15) * Hourly Rate at retirement	(# Hours * .35) * Hourly Rate at time of payment
1001-1500	(# Hours * .20) * Hourly Rate at retirement	(# Hours * .40) * Hourly Rate at time of payment
1501 - 2000	(# Hours * .25) * Hourly Rate at retirement	(# Hours * .45) * Hourly Rate at time of payment
2000+ up to a maximum of 2500	(# Hours * .30) * Hourly Rate at retirement	(# Hours * .50) * Hourly Rate at time of payment

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a. Special Requirements if Converting to Convert to Cash Payout—Retirees may convert their sick leave to a cash payout upon retirement.

b. Conversion for Premium Account

(1) Converted Premium Accounts are established to provide retirees with a convenient

## RETIRING & RETIREE BENEFITS

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way to remit insurance premiums due to the City.

- (2) The employee is taxed on the value of the account at the time of retirement and therefore, the funds are owned by the retiree.
- (3) As a condition of Tooele City providing this service and administering the account, the retiree agrees to the following:
  - (a) No interest is earned on the account;
  - (b) No service fee is charged by Tooele City to administer the account;
  - (c) The account may not be used to pay premiums payable to external insurance carriers, only to pay premiums that are billed directly to Tooele City;
  - (d) After 12 months of retirement and establishment of the Converted Premium Account (regardless of whether or not there has been account activity), the retiree may cancel the City's administration of the account and request payment of any outstanding balance in one lump sum; and,
  - (e) After 12 months of no account activity, the City may discontinue administering the account and return any outstanding balance in one lump sum to the retiree;
  - (f) Upon the death of the retiree, the remaining account balance will be paid to the beneficiary of the retirees' estate consistent with Utah law. Such beneficiary will be sent a Form 1099-Misc for tax purposes; and,
  - (g) Tooele City reserves the right to make determination relevant to account administration when not specifically listed herein.

### e.3. Conversion for Purpose of Buying Years to Retire -

(4)a. Retirees may provide Tooele City with documentation from the Utah Retirement Office (URS) substantiating their desire to purchase years for the purpose of retiring at a specified date. When such documentation is provided and intent to retire is official, the employee may convert his/her sick leave to a cash payment, contingent upon employee purchasing years and retiring as specified in the documentation. Payment is made to the employee within the time period required by the URS Office and the employee then remits payment to the URS office. Employee are encouraged to consult with a tax advisor and the URS office about the possibility of deferring this payment to a URS 401k plan and the possibility of in-service transfer from plan to plan at the URS level.

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b. If the employee fails to retire as committed, the employee is responsible for reversing such payment within 2 weeks and will be responsible for any taxes, fees, penalties, etc. incurred to do so.

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## RETIRING & RETIREE BENEFITS

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### F. PUBLIC SAFETY MENTAL HEALTH RETIREE BENEFITS

(2) Consistent with Utah Code Section 50, Chapter 20, Mental Health Resources for First Responders, Tooele City provides mental health resources through our Employee Assistance Program (EAP) benefits to eligible first responders who have retired from Tooele City on or after May 15, 2022.

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## TOOELE CITY CORPORATION

### RESOLUTION 2022-33

#### **A RESOLUTION OF THE TOOELE CITY COUNCIL DECLARING THAT TOOELE CITY, AFTER JULY 1, 2022, WILL PICK-UP AND PAY THE INCREASED AMOUNT OF THE REQUIRED EMPLOYEE CONTRIBUTIONS FOR ALL TOOELE CITY EMPLOYEES WHO ARE MEMBERS OF THE UTAH STATE RETIREMENT TIER II PUBLIC SAFETY & FIREFIGHTER CONTRIBUTORY RETIREMENT PLAN AND INCLUDES PROVISIONS RELATING TO THE EMPLOYER PICK-UP.**

WHEREAS, on April 1, 2020, the Tooele City Council approved Resolution 2020-25 declaring that Tooele City, After July 1, 2020, will pick-up and pay a portion of the required employee contribution for all Tooele City employees who are members of the new Tier II Public Safety & Firefighter Contributory Retirement System, including provisions relating to the employer pick-up; and,

WHEREAS, the cost of the benefit change included a required increase to the City (Employer is currently 2.00% but subject to change each year) and a cost to the employee (currently 2.27% but subject to change each year); and,

WHEREAS, Tooele City completed the appropriate forms with the Utah State Retirement Office declaring the Pick-up election, up to 2.5% (attached as Exhibit A); and,

WHEREAS, the Utah Retirement System has published the rates to become effective July 1, 2022, and the cost to the employee effective July 1, 2022, will increase from 2.27% to 2.59% and this amount exceeds Tooele City's prior Pick-up election limitation by 0.09%; (attached as Exhibit B); and,

WHEREAS, Tooele City desires to formally pick-up the July 1, 2022, employee contributions required to be paid under UCA Section 49-23-301(2)(c), as enacted in Senate Bill 56, Tier II Public Safety & Firefighter Retirement Enhancements (2020 General Session), for all City employees participating in the Tier II Public Safety & Firefighter Contributory Retirement System with a new limit of 2.60%; and,

WHEREAS, in accordance with federal and state law, including Section 414(h)(2) of the Internal Revenue Code, Tooele City took formal action to pick-up required employee contributions, which will be paid by the employer in lieu of employee contributions; and,

WHEREAS, Senate Bill 56 required that if an entity elects to pick-up the cost to the employee in the Tier II Public Safety & Firefighter Contributory Retirement System, the agency must also make an equivalent employer 401(k) contribution to employees participating in the Public Safety Tier II Defined Contribution Only Plan (i.e. 401k only):

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that: Tooele City declares that beginning July 1, 2022, the City, determines that it is in the best

interest of Tooele City to prospectively increase the pick-up election and pay the required employee contributions for all City employees who are members of the Tier II Public Safety & Firefighter Contributory Retirement System.

BE IT FURTHER RESOLVED that the picked-up contributions paid by the employer, even though designated as employee contributions for Utah state law purposes, are being paid by the City on behalf of employees in lieu of the required employee contributions.

BE IT FURTHER RESOLVED that the picked-up contributions will not be included in the gross income of the employees for tax reporting purposes, that is, for federal or state income tax withholding taxes, until distributed from the Utah Retirement System, so that the contributions are treated as employer contributions pursuant to Section 414(h)(2) of the Internal Revenue Code.

BE IT FURTHER RESOLVED that the picked-up contributions are supplemental and not a salary reduction to the City employees who are eligible for and participating members in the Tier II Public Safety & Firefighter Contributory Retirement System.

BE IT FURTHER RESOLVED that from and after the date of this pick-up, a City employee shall not have a cash or deferred election right with respect to the designated employee contributions, including that the employees shall not be permitted to opt out of the pickup and shall not be entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the City on behalf of its employees to the Utah Retirement Systems.

BE IT FURTHER RESOLVED that beginning July 1, 2022, the City, in compliance with Senate Bill 56 (2020 General Session) will also prospectively contribute an amount equivalent to that of the annual pick-up to the Utah State Retirement System 401(k) plan any member of the Tier II Public Safety & Firefighter Defined Contribution Only plan as an employer 401(k) contribution.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

TOOELE CITY MAYOR

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

# Exhibit A



Utah Retirement Systems  
PO Box 1590  
Salt Lake City, UT 84110-1590  
801-366-7318 | 800-753-7318  
www.urs.org

## Employer Election To Pick-Up

### Member Contributions

#### Tier 2 Public Safety and Firefighter

##### Instructions:

1. This form is designed to notify Utah Retirement Systems (URS) of an Employer's formal election to "pick-up" retirement contributions.
2. This form and accompanying documentation must be returned to URS for processing.
3. A pick-up election is subject to federal law, resulting in tax and legal consequences, including limitations about the ability to modify or revoke the election. For information regarding employer pick-up contributions, please refer to federal law and guidance, including Internal Revenue Code Section 414 and IRS Revenue Ruling 2006-43.
4. An Employer should consult its legal, financial, and tax advisors if it has any questions concerning the consequences of Member contribution "pick-ups" and submitting this form.

##### SECTION A » EMPLOYER INFORMATION

Employer Name	Employer Number	Date
Tooele City Corporation	#491	4/14/2020
Desired Effective Date: 7-1-2020 (The effective date must be after the date that the pick-up election was formally adopted as provided in the attached documentation.)		

##### SECTION B » PICK-UP AMOUNT(S)

The above-named Employer certifies that it has taken formal action to provide that the contributions on behalf of its covered employees in the following URS System, although designated as employee contributions, will be paid by the employer in lieu of employee contributions. (Please check the box and fill in the portion of employee contributions picked-up for each class of employees below. For example, mark "ALL" for a pick-up of all employee contributions for that system or a percentage of salary for a pick-up of a portion of employee contributions.)

**Please also attach written documentation to this form that provides evidence that the Employer formally elected to prospectively pick-up specified employee contributions.** (For example, ordinance, resolution, governing body meeting minutes, etc.)

Note: If you are picking-up contributions for both public safety and firefighter employees, check both boxes



Tier 2 Public Safety and Firefighter Contributory Retirement System, with the following pick-up election that will be paid by the Employer in lieu of employee contributions for members serving as a Public Safety Officer:

ALL \_\_\_\_\_; OR  
 up to 2.5% of salary.

Tier 2 Public Safety and Firefighter Contributory Retirement System, with the following pick-up election that will be paid by the Employer in lieu of employee contributions for members serving as a Firefighter:

ALL \_\_\_\_\_; OR  
 \_\_\_\_\_ % of salary.

##### SECTION C » CERTIFICATION AND SIGNATURE

I acknowledge and certify the following:

- I represent and have the authority to sign and submit this form on behalf of the participating employer;
- That Employer has taken all appropriate and necessary actions to make a formal Employer pick-up regarding employee contributions on behalf of its employees;
- The election to pay for the Employee contributions shall constitute an Employer pick-up of designated contributions pursuant to Internal Revenue Code Section 414;
- From and after the date of the pick-up election, an Employee may not: 1) have a cash or deferred election right with respect to designated Employee contributions; 2) be permitted to opt out of the pick-up; or 3) have the option of choosing to receive or receiving the contributed amounts directly instead of having them paid by the Employer to the specified system/plan;
- In order for contributions to be considered paid by the employer, and therefore not subject to Social Security and Medicare tax (FICA), the Employer contributions: 1) Must be mandatory for all Employees covered by the retirement system; and 2) Must be a salary supplement and not a salary reduction—in other words, the Employer must not reduce employee salary to offset the amount designated as employee contributions;
- Future modifications to this Employer election may be disallowed or limited;
- The election authorized to be taken by the foregoing is not contrary to any governing provisions of the Employer;
- I understand that URS is not providing the Employer legal, financial, or tax advice relating to making a "pick-up" election or submitting this form; and
- The information provided on this form and attached documentation is correct and can be relied upon by URS.

Printed Name of Employer Representative (Binding Official)

Debra E. Winn

Signature of Binding Official

Debra E. Winn

Title

Mayor

Page 1 of 1 Attest:

Michelle J. Tooele City  
Inc. 1813

MMS-01 3/03/00

# Exhibit B

Utah Retirement Systems  
Final Condensed Retirement Contribution Rate Guide  
Fiscal Year July 1, 2022 - June 30, 2023

		Tier 1 DB System			Tier 1 401(k) System			Tier 2 - DB Hybrid System			Tier 2 - DC Plan						
		Contribution Reporting Fields		Tier 1 - Post Retired	Post Retired Employment after 6/30/2010 - NO 401(k)		Contribution Reporting Fields		Tier 2 - Post Retired	Tier 2 - DB Hybrid System		Contribution Reporting Fields					
		Employee	Employer	TOTAL	Employee	Employer	Optional 401(k)	Employee	Employer	Optional 401(k)	Employee	Employer	401(k)	TOTAL			
Public Employees																	
Contributory Retirement System																	
11- Local Government	6.00	13.96	19.96		7.87	12.09		111	0.00	17.77	0.18	17.95	211	0.00	7.95	10.00	17.95
12- State and School <sup>1</sup>	6.00	17.70	23.70		12.25	11.45											
17- Higher Education	6.00	17.70	23.70		12.25	11.45											
Public Employees																	
Noncontributory Retirement System																	
15- Local Government	"	17.97	17.97		6.11	11.86		111	0.00	16.01	0.18	16.19	211	0.00	6.19	10.00	16.19
16- State and School <sup>1</sup>	"	22.19	22.19	*	9.94	12.25		112	0.00	19.84	0.18	20.02	212	0.00	10.02	10.00	20.02
18- Higher Education	"	22.19	22.19	*	9.94	12.25		117	0.00	19.84	0.18	20.02	217	0.00	10.02	10.00	20.02
Public Safety																	
Contributory Retirement System																	
Division A	12.29	22.79	35.08		11.77	23.31		122	2.59	25.85	0.00	28.44	222	0.00	11.85	14.00	25.85
23- Other Division A With 2.5% COLA	12.29	24.37	36.66		12.93	23.73		122	2.59	27.01	0.00	29.60	222	0.00	13.01	14.00	27.01
77- Other Division A With 2% COLA																	
Division B																	
29- Other Division B With 2.5% COLA	10.50	22.81	33.31		9.77	23.54		122	2.59	23.85	0.00	26.44	222	0.00	9.85	14.00	23.85
74- Other Division B With 2% COLA	10.50	27.98	38.48		14.94	23.54		122	2.59	29.02	0.00	31.61	222	0.00	15.02	14.00	29.02
Noncontributory Retirement System																	
Division A																	
41.35	41.35	41.35	18.46		22.89	22.89		122	2.59	32.54	0.00	35.13	222	0.00	18.54	14.00	32.54
34.04	34.04	34.04	11.75		22.29	22.29		122	2.59	25.83	0.00	28.42	222	0.00	11.83	14.00	25.83
35.71	35.71	35.71	12.91		22.80	22.80		122	2.59	26.99	0.00	29.58	222	0.00	12.99	14.00	26.99
50.38	50.38	50.38	26.89		23.49	23.49		122	2.59	40.97	*	43.56	222	0.00	26.97	14.00	40.97
Division B																	
46.71	46.71	46.71	24.20		22.51	22.51		122	2.59	38.28	0.00	40.87	222	0.00	24.28	14.00	38.28
48.72	48.72	48.72	26.30		22.42	22.42		122	2.59	40.38	0.00	42.97	222	0.00	26.38	14.00	40.38
42.23	42.23	42.23	19.61		22.62	22.62		122	2.59	33.69	0.00	36.28	222	0.00	19.69	14.00	33.69
41.97	41.97	41.97	19.37		22.60	22.60		122	2.59	33.45	0.00	36.04	222	0.00	19.45	14.00	33.45
32.28	32.28	32.28	9.66		22.62	22.62		122	2.59	23.74	0.00	26.33	222	0.00	9.74	14.00	23.74
37.97	37.97	37.97	14.94		23.03	23.03		122	2.59	29.02	0.00	31.61	222	0.00	15.02	14.00	29.02
Firefighters' Retirement System																	
Division A																	
15.05	3.61	18.66	"														
16.71	6.24	22.95	"														
37- Judges' Noncontributory Retirement System																	
44.76	44.76	44.76	"														

\* Does not include the required 1.5% 401(k) contribution.

\*\* Unfunded Actuarial Accrued Liability

<sup>1</sup> Public School Districts and Charter School rates are effective September 1, 2022 - August 31, 2023



**TOOELE CITY CORPORATION**

**RESOLUTION 2022-34**

**A RESOLUTION OF THE TOOELE CITY COUNCIL ADOPTING THE PUBLIC EMPLOYEES HEALTH PROGRAM (PEHP) IRC SECTION 125 CAFETERIA PROTOTYPE PLAN FOR TOOELE CITY'S SECTION 125 PROGRAMS.**

WHEREAS, Tooele City provides eligible City employees with IRC Section 125 Cafeteria Plan benefits for Medical Reimbursement, Dependent Care Reimbursement, Limited Flex (and Health Savings Plan), and Insurance Premium Payment plans; and,

WHEREAS, IRC Section 125 requires the adoption of written Plan Documents to govern the program administration and ensure compliance with IRC requirements of such eligible programs; and,

WHEREAS, in 2004, Flex Check, a service of Benefit Management Services, Inc. and later of Goldenwest Insurance, assisted Tooele City with the adoption of appropriate Plan Documents for the administration of our Section 125 Cafeteria Programs; and,

WHEREAS, in November 2021, Goldenwest Insurance notified Tooele City that they were reevaluating their ongoing administration of Section 125 Cafeteria Programs and began discussions to transition our plan administration to the Public Employees Health Program (PEHP); and,

WHEREAS, PEHP has produced Prototype Plan documents for administration of Section 125 Cafeteria programs for their clients' adoption; and,

WHEREAS, Tooele City desires to adopt the Prototype Plan documents for administration of our IRC Section 125 Cafeteria Programs, and to move our Section 125 Cafeteria Plan administration to PEHP effective July 1, 2022:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that: the document attached as Exhibit A is duly adopted by Tooele City as the Plan Documents to be used for the administration of Tooele City's IRC Section 125 Cafeteria Programs.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

TOOELE CITY MAYOR

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

## Exhibit A

Prototype Plan Documents for:

- Amended 125 Cafeteria Plan
- Limited Flexible Spending Account Plan & Health Savings Program
- Section 125 Insurance Premium Payment Plan

And,

Cafeteria Plan Administrative Agreement with Public Employees Health Program (PEHP)

# **AMENDED 125 CAFETERIA PLAN**

## **With Rollover Provisions**

*Prepared for*

**Tooele City**

**Effective July 1, 2022**

**AMENDED 125 CAFETERIA PLAN  
With Rollover Provisions**

**FOR Tooele City**

**ARTICLE 1**

**1.1 Purpose of Plan.** The purpose of the Plan is to provide Eligible Employees of the Employer with the opportunity to choose between taxable Compensation and Qualified Benefits made available under or in conjunction with the Plan. Such Qualified Benefits shall be as described in the Benefit Programs outlined herein, which Benefit Programs are incorporated herein and form part of the Plan.

**1.2 Effective Date.** The effective date of this Plan is July 1, 2022.

**1.3 Source of Funds.** The Plan and Benefit Programs forming part of the Plan shall be funded and maintained by contributions from Participants made pursuant to salary reduction agreement[s] with the Employer as prescribed under the Plan, and by such other contributions of the Employer, Participants and Beneficiaries to the extent described in a Benefit Program.

**1.4 Tax Compliance.**

(a) The Plan, and certain or all of the Benefit Programs forming part of the Plan, are intended to result in favorable tax treatment to Participants, Beneficiaries or the Employer, as the case may be. The Plan is therefore intended to comply with any requirements of the Internal Revenue Code (the "Code") and regulations there under which impose conditions to such favorable tax treatment.

The Plan is specifically intended to qualify as a "cafeteria Plan" under Section 125 of the Code.

(b) To the extent that any Benefit Program or other feature of the Plan is required to satisfy a standard or other prerequisite to favorable tax treatment, the Plan is intended to facilitate and ensure compliance therewith. Notwithstanding any other terms of the Plan, as with respect to any Benefit Program subject to such prerequisites, the terms of such Benefits Program, including those relating to coverage and Benefits, are hereby intended to be legally enforceable, and each such Benefit Program is intended to be maintained for the exclusive benefit of Eligible Employees.

(c) Each Benefit Program or other component of the Plan may be deemed to be, and shall be treated as, a separate Plan to the extent required or permitted by law, as determined by the Plan Administrator or other legal authority. In the event a Benefit Program, or any portion thereof, is determined to have failed to comply with one or more prerequisites to favorable tax treatment as prescribed under the Code or applicable regulations, that Benefit Program or portion thereof shall be deemed to be and shall be treated as a separate benefit Plan, and the remaining Benefit programs, or portions thereof, shall not be affected by such non-compliance.

(d) The Plan is intended not to discriminate in favor of Highly Compensated Individuals as to eligibility to participate, contributions and Benefits, and to comply in this respect with the requirements of the Code. If, in the judgment of the Plan Administrator, the operation of the Plan in any Plan Year would result in such discrimination, then the Plan Administrator shall select and exclude from coverage under the Plan such Highly Compensated Individuals who are Plan Participants, and/or reduce contributions and/or Benefits under the Plan by Highly Compensated Individuals who are Plan Participants, to the extent necessary to assure that, in the judgment of the Plan Administrator, the Plan does not discriminate against any individuals.

## ARTICLE 2 DEFINITIONS

When used in the Plan, certain terms are capitalized and shall have the respective meanings set forth in this Article or in certain other Articles of the Plan.

**Beneficiary.** “Beneficiary” means a person who is eligible to receive Benefits under a Benefit Program maintained under the Plan by reason of another individual’s active or former service with the Employer.

**Benefits.** “Benefits” means any amounts paid to a Participant for Qualified Benefits available from time to time under the Plan.

**Benefit Program.** “Benefit Program” means the Health Care Reimbursement Program, Premium Payment Plan, and the Dependent Day Care Assistance Program as set forth in this Plan.

**COBRA.** “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

**Code.** “Code” means the Internal Revenue Code of 1986, as amended from time to time.

**Compensation.** An Eligible Employee’s “Compensation” for any Plan Year means the Compensation paid to the Eligible Employee by the Employer during that period which is currently treated as wages for income tax withholding purposes pursuant to Code Section 3401(a)(determined without regard to any rules under said Code Section that limit the remuneration included in wages based on the nature or location of the employment or the services performed), plus all other payments of Compensation to the Eligible Employee by the Employer for such period which is not included above, but which is subject to reporting under Code Section 6401(d) and 6051(a)(3), and further including amounts contributed by the Eligible Employee under a salary reduction agreement with the Employer which are excludable from taxable income under Code Section 125, 457, 402(g), and 414(h).

**Dependent.** Except as otherwise provided under the Plan, the term “Dependent” with respect to a Participant (or, if the Participant is married, by the Participant and Spouse) shall have the meaning of that term given by section 152 of the Code, as amended from time to time. Solely for purposes of the Medical Expense Reimbursement Program, Dependent includes a child (son, daughter, stepson, stepdaughter, or child legally adopted) of a participant, who has not attained age 27 as of the end of the taxable year, regardless of whether that child is married or meets the residency, support, and other tests described in IRC §152(c) for a dependent.

**Dependent Day Care Assistance Program.** The “Dependent Day Care Assistance Program” is a Benefit Program, the terms and conditions of which are set forth in Article 6.

**Eligible Employee.** Eligible Employee means any Employee working for and compensated by Employer who satisfies the eligibility requirements of the Plan as prescribed in Section 3.1 and as defined by the Employer.

**Employee.** For purposes of this document, Employee means an individual who works for the Employer in an active Employee-Employer relationship; is eligible to participate in any Plan established under this document; and receives wages for employment with the Employer.

**Employer.** “Employer” means Tooele City, a governmental entity of the State of Utah which has taken all necessary steps to adopt this Cafeteria Plan.

**Enrollment.** “Enrollment” shall be the period beginning sixty (60) days prior to the commencement of each Plan Year and ending thirty (30) days prior to the commencement of each Plan Year. In the case of an Employee who first becomes eligible to participate in a Plan after the commencement of a Plan Year, such Employee shall have sixty (60) days following the date the Employee commences work to complete the Salary Reduction agreement and deliver them to Employer or the Plan Administrator.

**Health Care Reimbursement Program.** The “Health Care Reimbursement Program” is a Benefit Program, the terms and conditions of which are set forth in Article 5.

**Highly Compensated Employee.** “Highly Compensated Employee” means, with respect to any Plan year, an Employee of the Employer who meets the definition of highly compensated in Code Section 414(q) and Section 125 (b)(1) and (d), as amended from time to time.

**Key Employee.** A “Key Employee” is any current or former Employee of the Employer (and the Beneficiaries of such Employee) who at anytime during the determination period was an Employee that met or meets the definition of a Key Employee in Code Section 416(i)(l), as amended from time to time.

**Participant.** A “Participant” is a current Eligible Employee who has elected to participate and has enrolled in the Plan for the Plan Year pursuant to the procedures prescribed in Article 4.

**Plan.** “Plan” means the Cafeteria Plan created by this document, including all Benefit Programs hereunder, and all documents associated with the Plan or any Benefit Program.

**Plan Administrator.** The “Plan Administrator” is the person, committee, entity or other third party designated under Article 9.1 to serve as administrator of the Plan. In the absence of such designation, the Employer shall serve as the Plan Administrator.

**Plan Year.** “Plan Year” means the 12-month participation period beginning on July 1<sup>st</sup> and ending on June 30th. If the effective date is other than July 1, the initial plan year will be from the effective date to June 30<sup>th</sup>.

**Qualified Benefits.** “Qualified Benefits” shall mean a benefit under the Benefit Program[s] described herein.

**Qualified Expense.** “Qualified Expense” shall mean any amount paid or incurred by a Participant for Qualified Benefits not otherwise reimbursed under any other source.

**Rollover.** “Rollover” shall mean an amount in the Health Care Reimbursement Program up to \$570 which can be used to reimburse qualified medical expenses in the following Health Care Reimbursement Program plan year. The Rollover amount may adjust annually for inflation.

**Run-out period.** “Run-out” Period shall mean the time frame at the end of a plan year in which a Participant has to request reimbursement for an eligible expense. With regards to this Plan Year a Run-out period will be ninety (90) days or sixty (60) days in accordance with Section 4.6(e).

**Salary Reduction Agreement.** “Salary Reduction Agreement” means a voluntary agreement whereby an Employee agrees to reduce his or her Compensation for the forthcoming Plan Year (or if the agreement becomes effective after the beginning of the Plan Year, for the balance of the Plan Year), for purposes of obtaining the Qualified Benefits offered by the Plan.

**Spending Account[s].** “Spending Account[s]” shall mean the account[s] established in the Participant’s name and which is used to record amounts allocated to a Participant for a Benefit Program and their expenditure for Qualified Benefits.

**Spouse.** “Spouse” means a person to whom a Participant is legally married. An individual shall be deemed to be a “Spouse” of a Participant as with respect to any expense which is payable or reimbursable under the Plan if that individual is legally married to the Participant at the time the expense is incurred.

**Status Change, Family Status Change, and/or Employment Status Change.** “Status Change, Family Status Change and/or Employment Change” means a change in Status, family status or employment status as defined in Article 4.5 of this Plan.

## ARTICLE 3

### ELIGIBILITY AND PARTICIPATION

**3.1 Eligibility Requirements.** Each Eligible Employee shall be eligible to become a Participant on the first day of employment. An Eligible Employee shall have sixty (60) days following the date the Employee commences work to complete the Salary Reduction Agreement and to deliver the same to Employer's Plan Administrator. If the Plan Administrator does not receive the Salary Reduction Agreement form within sixty (60) days of employment, the Employee shall not be eligible to participate in the Plan until the next Plan Year.

**3.2 Cessation of Participation Generally.** A Participant shall cease to be a Participant in the Plan as of the earliest of:

- (a) the first day of a Plan Year for which the Participant does not elect to participate in any Benefit Program;
- (b) the date a Participant ceases to be an Eligible Employee and thereafter fails to make required or voluntary contributions under the Plan; or
- (c) the date on which the Plan is terminated.

**3.3 Family Medical Leave.** A Participant who takes an unpaid leave of absence under the Family and Medical Leave Act of 1993 ("FMLA Leave") may revoke his election to participate under any Benefit Program offered under this Plan, for the remainder of the Plan Year in which such leave of absence commences. Such revocation shall be in accordance with such procedures as prescribed by the Plan Administrator. Upon such Participant's return from his or her FMLA Leave, the Participant may elect to be reinstated in the Plan, on the same terms that applied to the Participant prior to his or her taking the FMLA Leave, and with such other rights to revoke or change elections as are provided to other Participants under the Plan. Notwithstanding the foregoing, a Participant on FMLA Leave shall have no greater rights to Benefits for the remainder of the Plan Year in which the FMLA Leave commences as other Plan Participants.

## **ARTICLE 4**

### **PARTICIPATION ELECTIONS PROCEDURES**

**4.1 Election Rights.** Each Eligible Employee who has satisfied the eligibility requirements of Section 3.1 may elect to participate in any or all of the Benefit Programs made available under the Plan. An Eligible Employee's participation in any Benefit Program shall be subject to the terms and conditions of the Benefit Programs as set forth in the respective Articles of this Plan.

**4.2 Effect of Election.** For each Plan Year, an Eligible Employee may elect with respect to any Benefit Program to have the Employer reduce a portion of his or her Compensation, and to have such elected amount made available under the Benefit Program to pay for Qualified Expenses incurred by or on behalf of the Eligible Employee and his or her Beneficiaries. An election so made by an Eligible Employee shall constitute the Eligible Employee's Salary Reduction Agreement with the Employer allowing for a reduction in the Eligible Employee's Compensation in an amount equal to the amount to be made available under the Benefit Program to cover Qualified Benefits for and on behalf of the Eligible Employee.

#### **4.3 Election procedures.**

(a) At least 60 days prior to the commencement of each Plan Year, the Plan Administrator shall make available to each Eligible Employee a Salary Reduction Agreement in regard to participation in the Plan for the next Plan Year. In the case of an Employee who first becomes eligible to participate in the Plan after the commencement of a Plan Year, such participation Salary Reduction Agreement shall be made available as prescribed under Section 3.1.

(b) Each Eligible Employee who desires to participate in a Benefit Program for a Plan Year shall so designate such on the Salary Reduction Agreement, and shall further specify the amount of his or her Compensation to be reduced and allocated to each Benefit Program.

(c) To be effective for any Plan Year, a Salary Reduction Agreement must be completed and returned to the Plan Administrator or its delegate at least thirty (30) days prior to the first day of that Plan Year. If an Eligible Employee fails to deliver a Salary Reduction Agreement to the Plan Administrator prior to the first day of a Plan Year, the Eligible Employee shall not be eligible to participate in any Benefit Program for that Plan Year.

(d) An Eligible Employee must complete and deliver a Salary Reduction Agreement to the Plan Administrator for each Plan Year for each Benefit Program in

which the Eligible Employee desires to participate.

**4.4 Irrevocable Status of Elections.** Except as otherwise provided in this Article 4, any election made or deemed to have been made by an Eligible Employee with regard to participating or declining to participate in any Benefit Program offered within the Plan and with respect to any Plan Year shall be irrevocable for the duration of that Plan Year. During Family Medical Leave, a Participant may exercise whatever rights such Participant has under the Family Medical Leave Act and regulations promulgated thereunder as more fully set forth in Article 3.3.

#### **4.5 Status Changes, Family or Employment Status Changes.**

(a) Notwithstanding Section 4.4 above, a Participant may revoke the Salary Reduction Agreement with respect to a Benefit Program in effect for a Plan Year or, alternatively, may modify a prior election to take effect for the remainder of the Plan Year, if the revocation and the new election or modification, as the case may be, is on account of and consistent with a Status Change, Family Status Change or Employment Status Change. In this regard, a benefit election revocation or modification shall be deemed to be consistent with a Status Change, Family Status Change and/or Employment Change only if the revocation or modification is necessary or appropriate as a result of the Status Change, Family Status Change and/or Employment Change.

(b) For purposes of subsection (a) above, a “change in family status,” “Employment Status Change,” and/or “change in status” as with respect to a Participant shall include the following:

- (i) the marriage, divorce or legal separation of the Participant;
- (ii) the death of the Participant’s Spouse or Dependent;
- (iii) the birth or adoption of a child of the Participant;
- (iv) the commencement or termination of employment of the Participant’s Spouse;
- (v) a change from part-time to full-time employment status (or vice versa) by the Participant or the Participant’s Spouse;
- (vi) the taking of an approved unpaid leave of absence by the Participant or the Participant’s Spouse which leave shall include entering into or returning from “uniformed service” as defined under the Uniformed Services Employment and

Reemployment Rights Act of 1994 (USERRA); or the occurrence of a special Enrollment period as defined in Section 9801(f) of the Code);

(vii) a significant change in the heath coverage of the Participant or the Participant's Spouse attributable to the Spouse's employment; or

(viii) such other events that the Plan Administrator determines will permit a change or revocation of an election during a Plan Year under regulations and rulings of the Internal Revenue Service.

(c) Any new election made under subsection (a) above shall be effective at such time as the Plan Administrator shall prescribe, but not earlier than the first pay period beginning after the Status Change, Family Status Change and/or Employment Change form is completed and returned to the Plan Administrator or its delegate. Status Change, Family Status Change and/or Employment Changes must be made within 60 days of when the event occurred. If the Status Change, Family Status Change and/or Employment Change form is not received by the Plan Administrator within sixty (60) days of the change in family status, the Status Change, Family Status Change and/or Employment Change form shall be invalid.

#### **4.6 Effect of Separation from Service.**

(a) Except as specifically provided under the Plan, a Participant who separates from service during a Plan Year may revoke all existing benefit elections and terminate the entitlement to the reimbursement of expenses incurred during the Plan Year after the separation of service.

(b) To the extent required or permitted under the Plan, a Participant who separates from service may elect to continue to make contributions to the Plan to provide for the funding of Benefits for the remainder of that Plan Year. If such a Participant fails to timely make any required contributions, the Participant shall not be entitled to reimbursements under the Plan. (Refer to COBRA requirements under Article 8)

(c) However, nothing in this Article 4.6 shall prohibit the payment of Benefits for Qualified Expenses with respect to claims arising prior to the Participants termination of participation. Also, a former Participant who continues to receive Compensation from the Employer and for whom payroll deductions continue to be made shall remain a Participant for all purposes until such Compensation ceases.

(d) A Participant who separates from service may elect to pre-pay the

remaining obligation under the current Salary Reduction Agreement. The Participant may then apply for reimbursement throughout the end of that Plan Year.

(e) If a Participant terminates mid-Plan Year, they are not eligible for a Rollover of unused amounts. However, a Participant has a sixty (60) day Run-out period after the date of the mid-Plan termination to submit claims within the dates of service for which they were eligible for reimbursement. (Please refer to COBRA for extended coverage under Article 8)

(f) Moreover, a terminated Participant shall be entitled to reimbursement of claims for Qualified Expenses incurred prior to his or her termination of employment, but only if the Participant (or his or her estate) applies for such reimbursement on or before sixty (60) days following the Participant's termination of participation or ninety (90) days following the close of the Plan Year, whichever is applicable.

(g) A Participant whose benefit election[s] for a Plan Year are revoked under either subsection (a) or (b) above shall not be entitled to make any new benefit elections in regard to the remaining portion of that Plan Year of separation. A former Participant, who returns to service as an Eligible Employee within 30 days, may have the previous election reinstated for the remainder of that Plan Year. If the former Participant returns to service as an Eligible Employee after 30 days, that Employee may make a new election or resume the previous election for the remainder of that Plan Year.

**4.7 Payment of Contributions While on FMLA Leave.** A Participant who takes an unpaid leave of absence under the Family and Medical Leave Act of 1993 (“FMLA Leave”) and who elects to continue participation under this Plan shall be responsible for making the required contributions under the health care savings account offered under this Plan during the period of the FMLA Leave. The manner in which such payments are made shall be determined by the Employer in its sole discretion, among the following alternatives:

(a) Prepayment: The Participant may prepay the contributions due during the FMLA Leave period. Prepayment may not be required as a condition to remaining in the Plan, and prepayment may not be the sole option of making contributions hereunder.

(b) Pay-As-You-Go: The contributions due during the FMLA Leave period may be paid based on the same schedule as payments would have been due if the Participant had not been on FMLA Leave, on the same schedule as COBRA payments are made, under the Employer's existing rules for payment by Employees

on leave without pay, or on any other schedule voluntarily agreed upon by the Plan Administrator and the Participant.

(c) **Catch-Up Option:** The Employer may advance the contributions on behalf of the Participant, and may recoup such contributions upon the Participant's return to employment. The "Catch-Up Option" shall be applied in a manner consistent with Prop. Treas. Reg. Sec. 1.125-3.

Prepayments may be made from salary, vacation pay or sick pay, to the extent permitted by applicable law. The Prepayment Option and Catch-Up Option may not be offered without also offering the Pay-As-You-Go Option.

If the Employer chooses more than one payment option the Employee may choose among the options.

**4.8 Uniformed Service Under USERRA.** A Participant who is absent from employment with the Employer on account of being in "uniformed service," as that term is defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), may elect to continue participation in the Plan. The coverage period shall be in accordance with USERRA  4317 as amended from time to time. The Participant shall be responsible for making the required contributions during the period during which he or she is in "uniformed service." The manner in which such payments are made shall be determined by the Employer, in a manner similar to Article 4.7 (regarding the payment of contributions with respect to FMLA Leave). A 2% administrative fee may be charged in accordance with USERRA. A Participant whose coverage under the Health Care Reimbursement Program is terminated on account of his or her being in "uniformed service," and is later reinstated, shall not be subject to a new exclusion or waiting period requirement imposed by such Plan, provided that such requirements would not have been imposed if coverage had not been terminated as a result of "uniformed service."

**4.9 Changes by a Plan Administrator.** The Plan Administrator may adopt such rules and take such actions as it deems necessary or desirable to assure that the various statutory or other limitations on Benefits provided to prescribed classes of Participant are satisfied. Such action may include a modification of any election made by a Participant as to the amount of salary reduction contributions to be made by the Participant under the Plan during a Plan Year.

## **ARTICLE 5**

### **HEALTH CARE REIMBURSEMENT PROGRAM**

**5.1 Purpose of Program.** The purpose of the Health Care Reimbursement Program as described in this Article 5 is to provide Eligible Employees with the opportunity to elect for each Plan Year to have a portion of their taxable Compensation reduced, and to have such elected amount allocated and made available to reimburse them for Qualified Medical Expenses incurred during such Plan Year which are not payable or reimbursable under a Group Medical Plan, or from any other Plan or source.

**5.2 Status as Accident or Health Plan.** It is the intention of the Employer that the Health Care Reimbursement Program qualify as an “accident or health Plan” within the meaning of Section 105(e) of the Code, and that Benefits provided under the Health Care Reimbursement Program to or on behalf of Eligible Employees, or their Spouses or Dependents, be eligible for exclusion from their gross income pursuant to Sections 105(b), 106 and 125 of the Code.

**5.3 Enrollment in Program.** Each Eligible Employee may elect to enroll in the Health Care Reimbursement Program for a Plan Year pursuant to the procedures set forth in Sections 4.3. and 3.1. Such election shall specify the amount of the Compensation for that Plan Year which the Eligible Employee directs to have reduced and made available for reimbursement of Qualified Medical Expenses during that Plan Year.

**5.4 Maximum Annual Benefits.** The maximum amount of Compensation which an Eligible Employee may elect to have reduced and set aside on the Eligible Employee's behalf under the Health Care Reimbursement Program for Plan Year, and thus the maximum amount of reimbursements which may be made to the Eligible Employee for Qualified Medical Expenses incurred during the Plan Year is \$2,850, regardless of any Rollover amount. The \$2,850 limit will be indexed for inflation and may increase with each plan year.

**5.5 Spending Accounts.** The Plan Administrator shall establish a separate Health Care Spending Account for each Eligible Employee who elects to participate in the Health Care Reimbursement Program for a Plan Year. Such Spending Account shall be credited with the salary reduction contribution which the Eligible Employee has elected to have set aside for the Plan Year under the Health Care Reimbursement Program, and shall be charged with all reimbursements and any administrative expenses made from or assessed against such Spending Account for that Plan Year.

**5.6 Conditions to Reimbursement.** A Participant shall be entitled to a reimbursement from his or her Health Care Spending Account for a Plan Year only if the following conditions are satisfied:

- (a) The expense to which the reimbursement relates is a Qualified Medical Expense as defined in Section 5.7 below;
- (b) Such expense was incurred during that Plan Year and while the Participant was enrolled in the Health Care Reimbursement Program; and
- (c) The Participant has complied with the Health Care Reimbursement procedures prescribed under Article 7.

**5.7 Qualified Medical Expenses.** A “Qualified Medical Expense” with respect to a Participant means an expense incurred for the medical care, as defined in Section 213 of the Code and as allowed by the Internal Revenue Service rules for Cafeteria Accounts, of Participant, or for the Spouse or Dependent of the Participant.

For purposes of establishing the status of an expense as a Qualified Medical Expense, the term “Dependent” as with respect to a Participant is defined in Article 2. In addition, and solely for purposes of this Health Care Reimbursement Program, a child of a divorced Participant shall be treated as a Dependent of the Participant for a Plan Year if more than one-half of the child’s support for the year is provided by the Participant. Such status shall exist even if the Participant is not the custodial parent with respect to the child or is otherwise not eligible to claim a personal exemption education with respect to such child for income tax purposes.

**5.8 Timing of Expense Incurrence.** A Qualified Medical Expense is reimbursable from a Participant’s Health Care Spending Account for a Plan Year only if such expense is incurred during that Plan Year, while the Participant is enrolled in the Health Care Reimbursement Program. In this regard, an expense is deemed to have been incurred by a Participant on the date the Participant or Beneficiary is provided with medical care that gives rise to the expense, and not when the Participant or individual is billed, charged for or pays the medical care. Accordingly, an otherwise Qualified Medical Expense is not reimbursable from a Participant’s Health Care Spending Account if such expense was incurred prior to the date on which the Participant enrolled in the Health Care Reimbursement Program. Similarly, reimbursements may not be made from a Participant’s Health Care Spending Account for any Plan Year with respect to any expense incurred prior to or after that Plan Year.

**5.9 Uniform Availability of Benefit.** A Participant who elects to participate in the Health Care Reimbursement Program for a Plan Year shall be entitled at all times during that Plan Year to reimbursements from the Health Care Spending Account. The amount of reimbursements to which the Participant is so entitled as of any date is an amount equal to the total annual benefit elected by the Participant pursuant to Section 5.4 (or, if the Participant has modified such elected benefit amount, equal to the modified amount), reduced by any prior reimbursement or expenses charged to such Spending Account for that Plan Year. Such right to reimbursement as of any date shall be without regard to the amount of the Participant's Compensation which has been reduced and allocated to the Participant's Health Care Spending Account as of that date.

**5.10 State Medicaid Benefits Rights.** Notwithstanding any provision of the Plan to the contrary, the following rules shall apply.

(a) Payment for Benefits with respect to a Participant under the Health Care Reimbursement Program shall be made in accordance with any assignment of rights made by or on behalf of such Participant, or a Beneficiary of the Participant, as required by a State Medicaid Plan.

(b) The fact that an individual is eligible for or is provided medical assistance under a State Medicaid Plan shall not be taken into account in regard to the individual's Enrollment as a Participant or Beneficiary in the Health Care Reimbursement Program, or in determining or making any payments for Benefits of the individual as a Participant or Beneficiary in the Health Care Reimbursement Program.

(c) Payments for Benefits under the Health Care Reimbursement Program shall be made to a State in accordance with any State law which provides that the State has acquired the rights with respect to a Participant for items or services constituting medical assistance under a State Medicaid Plan.

(d) For purposes of this Section 5.10, a "State Medicaid Plan" means a State Plan for medical assistance approved under Title XIX of the Social Security Act.

**5.11 Special Enrollment.** A Participant's revocation or amendment of participation during the Plan Year, and new election for the remainder of the Plan Year, is allowable:

(a) If a judgment, decree, or order (collectively, "Order") results from a

divorce, legal separation, annulment, or change in legal custody (including a Qualified Medical Child Support Order defined in Section 609 of ERISA) that requires accident or health coverage for an Employee's Dependent Child, and

- (b) the Employee changes his or her election to provide coverage for the Dependent Child if the Order requires coverage under the Employee's plan; or
- (c) the Employee changes his or her election to revoke coverage for the Dependent Child if the Order requires the former spouse to provide coverage.

**5.12 Medicare / Medicaid Entitlement.** A Participant's revocation or amendment of participation during the Plan Year, and new election for the remainder of the Plan Year, is allowable:

- (a) if the Employee, Spouse, or Dependent Child becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of the benefits under Section 1928 of the Social Security Act (the program for the distribution of pediatric vaccines); and
- (b) the Employee changes his or her election to revoke coverage for that Employee, Spouse or Dependent Child under the Plan.

**5.13 Indemnification of Employer and/or Plan Administrator by Participants.** If any Participant receives one or more payments or reimbursements under this Plan that are not for Eligible Medical Care Expenses, such Participant shall indemnify and reimburse the Employer and/or Plan Administrator for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements.

## **ARTICLE 6** **DEPENDENT DAY CARE ASSISTANCE PROGRAM**

**6.1 Purpose of Program.** The purpose of the Dependent Day Care Assistance Program as described in this Article 6 is to provide Eligible Employees with the opportunity to elect for each Plan Year to have a portion of their taxable Compensation reduced, and to have such elected amount allocated and made available to reimburse them for Qualified Dependent Day Care Expenses

incurred during such Plan Year which are not payable or reimbursable from any other Plan or source.

**6.2 Status as Dependent Day Care Assistance Program.** It is the intention of the Employer that the Dependent Day Care Assistance Program qualify as a “Dependent Day Care Assistance Program” within the meaning of Section 129(d) of the Code, and that reimbursements provided under the Dependent Day Care Assistance Program to Participants be eligible for exclusion from their gross income pursuant to Section 129(a) of the Code.

**6.3 Enrollment in Program.** The Plan Administrator shall provide each Eligible Employee with a written notice of the availability of the Dependent Day Care Assistance Program including the terms and conditions of participation. An Eligible Employee may thereupon elect to enroll in the Dependent Day Care Assistance Program for a Plan Year pursuant to the procedures prescribed in Section 4.3. Such election shall specify the amount of the Compensation for that Plan Year which the Eligible Employee directs to have reduced and made available for the reimbursement of Qualified Dependent Day Care Expenses incurred during that Plan Year.

#### **6.4 Maximum Annual Benefits.**

(a) Subject to subsection (b) below, the maximum amount of Compensation which a Participant may elect to have reduced and set aside on the Participant’s behalf under the Dependent Day Care Assistance Program for a Plan Year, and thus the maximum amount of reimbursements which may be made to the Participant for Qualified Dependent Day Care Expenses incurred during the Plan Year, is \$5,000.

(b) Notwithstanding subsection (a) above, the maximum annual benefit which a Participant may elect for a Plan Year shall be limited to the least of the amounts set forth below:

(i) \$2,500, in the case of a married Participant if the Participant and the Participant’s Spouse will file a separate federal income tax return for the tax year which coincides with such Plan Year;

(ii) the total taxable Compensation and other earned income of the Participant from the Employer, for that Plan Year; and

(iii) in the case of a married Participant, the total taxable Compensation

and other earned income of the Participant's Spouse for that Plan Year.

(iv) The amount Participant elects to set forth pursuant to Article 6.3 above.

Notwithstanding the foregoing, the additional limitations prescribed above shall be imposed with respect to an Eligible Employee for a Plan Year only if at the time of the Eligible Employee's election the Plan Administrator knows or has reason to know that the circumstances giving rise to such limitation in fact exist or will exist with respect to the Eligible Employee for that Plan Year.

(c) For purposes of subsections (b)(ii) and (iii) above, a Participant shall be deemed to be married with respect to a Plan Year if the Participant is so married to a Spouse on the last day of that Plan Year.

(d) For purposes of subsection (b)(iii) above, the Spouse of a married Participant shall be deemed to have earned income for any month during a Plan year in which such Spouse is either physically or mentally incapable of self-care, or is a full-time student during at least five (5) calendar months during that Plan Year. The amount of such deemed earned income for each such month is \$200 if the Participant has one Qualifying Individual (as defined in Section 6.7 below), and \$400 per month if the Participant has more than one Qualifying Individual.

(e) The Plan Administrator may, in its sole discretion, secure from an Eligible Employee such information as may be appropriate to determine whether any of the special limitations prescribed in subsection (b) above may be applicable to the Eligible Employee for a Plan Year.

**6.5 Spending Accounts.** The Plan Administrator shall establish a separate Dependent Day Care Spending Account for each Eligible Employee who elects to participate in the Dependent Day Care Assistance Program for a Plan Year. Such Spending Account shall be credited with the salary reduction contributions which the Eligible Employee has elected to have set aside for the Plan Year under the Dependent Day Care Assistance Program, and shall be charged with all reimbursements and any administrative expenses made from or assessed against such Spending Account for that Plan Year.

**6.6 Conditions to Reimbursement.** A Participant shall be entitled to a reimbursement from the Dependent Day Care Spending Account for a Plan Year only if the following conditions are satisfied:

(a) The Participant has one or more Qualifying Individuals, as defined in Section 6.7 below, with respect to such Plan Year;

(b) The expense to which the reimbursement request relates is a Qualified Dependent Day Care Expense as defined in Section 6.8 below;

(c) The expense to which the reimbursement request relates was incurred (as defined in Section 6.9 below) during that Plan Year and while the Participant was enrolled in the Dependent Day Care Assistance Program; (There is no rollover allowed for the Dependent Care Assistance Spending Program); and

(d) The Participant has complied with the expense reimbursement procedures prescribed under Article 7.

**6.7 Qualifying Individuals.** For purposes of this Article 6, a person is a “Qualifying Individual” with respect to a Participant as of any date if as of such date such person is:

(a) a Dependent of the Participant under the age of 13 with respect to whom the Participant is entitled to a personal exemption deduction for income tax purposes; or

(b) a Dependent or Spouse of the Participant who is physically or mentally incapable of self-care.

## **6.8 Qualified Dependent Day Care Expenses.**

(a) Except as may otherwise be provided below, a “Qualified Dependent Day Care Expense” with respect to a Participant means an expense for Dependent care which is incurred to enable the Participant to be gainfully employed during a period for which there are one or more Qualifying Individuals with respect to the Participant.

(b) Notwithstanding the foregoing, the following expenses shall not be deemed “Qualified Dependent Day Care Expenses,” and thus shall not be reimbursable under the Dependent Day Care Assistance Program, these expenses include, but are not limited to:

(i) Any expense associated with providing Dependent care to a Participant’s Dependent or Spouse who is a Qualifying Individual by reason of being incapable of self-care, if the Plan Administrator knows or has reason to know such person does not regularly spend at least eight (8) hours each day in the Participant’s home.

(ii) Any expense for services provided by a day care center if the Plan Administrator knows or has reason to know that such center either does not comply with all applicable state and local laws and regulations, or does not provide care to more than six (6) individuals on a regular basis during the Plan Year.

(iii) Any expense which the Plan Administrator knows or has reason to know represents the cost of sending a child to an overnight camp.

(iv) Any expense which the Plan Administrator knows or has reason to know represents an amount paid to any individual who is:

- (A) a Dependent of the Participant with respect to when the Participant can claim a personal exemption deduction for income tax purposes;
- (B) the Spouse of the Participant; or
- (C) a child of the Participant who is under the age of 19 as of the last day of the Plan Year.

(v) Any expense which the Plan Administrator knows or has reason to know has been paid or is reimbursable under any other program or from any source (other than this Plan).

(vi) Any expense that is excluded by federal regulations including but not limited to food, clothing, or educational services unless these services are minimal or insignificant and inseparable from the portion of the expense that is for care, or for the individual's well being and protection.

(c) For purposes of establishing the status of an expense as a Qualified Dependent Day Care Expense, the term "Dependent" with respect to a Participant is as defined in Article 2; except that a child of a divorced Participant shall be treated as a Dependent of the Participant for a Plan Year only if the Participant has custody of the child for a longer period during the Plan Year than the other parent. Such status shall exist even if the Participant is not otherwise eligible to claim a dependency exemption deduction with respect to such child for income tax purposes by reason of a written release to such exemption claim made under Code Section 152(e).

**6.9 Timing of Expense Incurrence.** A Qualified Dependent Day Care Expense is reimbursable from a Participant's Dependent Day Care Spending

Account for a Plan Year only if such expense is incurred during the Plan Year while the Participant is enrolled in the Dependent Day Care Assistance Program. In this regard, an expense is deemed to have been incurred by an individual on the date on which the Qualifying Individual to whom the expense relates is provided with the Dependent care that gives rise to the expense, and not when the Participant or Qualifying Individual is billed, charged for or pays for the Dependent care.

Accordingly, an otherwise Qualified Dependent Day Care Expense is not reimbursable from a Participant's Dependent Day Care Spending Account if such expense was incurred prior to the date on which the Participant enrolled in the Dependent Day Care Assistance Program. Similarly, reimbursements may not be made from a Participant's Dependent Day Care Spending Account as with respect to any expense incurred prior to or after that Plan Year. However, reimbursements of Qualified Dependent Day Care Expenses incurred during a Plan Year may be made after the end of the Plan Year as prescribed in Article 7. (There is no rollover allowed for the Dependent Care Assistance Spending Program)

**6.10 Limited Availability of Benefits.** The amount to which a Participant is entitled as a reimbursement under the Dependent Day Care Spending Account as of any date during a Plan Year is limited to the total amount of the Participant's elective contributions made to such account for the Plan Year as of such date, reduced by any prior reimbursements and administrative expenses charged to that account for that Plan Year. (There is no rollover allowed for the Dependent Care Assistance Spending Program)

**6.11 Plan Administrator Rules.** The Plan Administrator may adopt such rules as it deems necessary or desirable to impose limitations on the amount of contributions elected to be made by Participants under the Dependent Day Care Assistance Program for the purpose of assuring that the limitations prescribed under this Article 6 are satisfied.

**6.12 Annual Benefit Statement.** The Plan Administrator or Employer shall provide to each Participant receiving reimbursements from the Dependent Day Care Assistance Program during a calendar year a written statement setting forth the amounts reimbursed or to be reimbursed to the Participant for such year. Such written statement shall be provided on or before January 31 following the end of the calendar year at issue. In lieu of a separate written statement, the information may be included in the Participant's Form W-2, Wage and Tax Statement, for such year. If as the time such annual benefit statement is being prepared, the Plan Administrator is unable to ascertain the total amount of reimbursement which will be made to a Participant for the year, the Plan Administrator may report in the annual benefit statement a reasonable estimate of the total amount of reimbursements. In

this regard, the amount of Compensation which the Participant elected to have set aside under the Dependent Day Care Assistance Program for the year shall be deemed to be a reasonable estimate of the total amount to be reimbursed to the Participant for the year.

**6.13 Indemnification of Employer / Plan Administrator by Participants.**

If any Participant receives one or more payments or reimbursements under this Plan that are not for Eligible Dependent Day Care Expenses, such Participant shall indemnify and reimburse the Employer and/or Plan Administrator for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements.

**ARTICLE 7**  
**EXPENSE REIMBURSEMENT PROCEDURES**

**7.1 General Rules.** Reimbursements of Qualified Expenses under the Plan shall be made to a Participant upon the filing of a prior request for such reimbursement with the Plan Administrator or its delegate. The use of a benefit card shall constitute such a request. The reimbursement for use of a benefit card shall be satisfied by the honoring of the charge on the card with a corresponding reduction of the participants account balance. Any such request, other than use of a benefit card, shall not be acted upon unless it is (i) made on such form as the Plan Administrator may approve for such purpose, (ii) signed by the requesting Participant; and (iii) timely filed with the Plan Administrator or its delegate. All requests for reimbursements under the Plan shall be subject to, and shall be processed in accordance with, the procedures set forth in this Article 7 and such other procedures prescribed from time to time by the Plan Administrator. All such procedures shall be uniformly applied to similarly situated Participants.

**7.2 Timing of Requests.** Requests for reimbursements under the Plan for Qualified Expenses incurred during a Plan Year may be made at any time during the plan year, or within 90 days following the end of the plan year in accordance with the Run-out Period.

**7.3 Forfeitures.** Except as allowed in Section 7.4, if the total Qualified Expenses paid or reimbursed to a Participant with respect to any Plan Year are less than the amount set aside for reimbursement by Participant in any Plan Year, the unused portion shall be forfeited sixty (60) days following a Participant's date of termination from plan participation or ninety (90) days after the end of the plan year.

#### **7.4 Rollover.**

(a) Up to \$570 of unused amounts in the Health Care Reimbursement Program at the end of the Plan Year may be rolled over for use in the next plan year. The following provisions apply to Rollover amounts:

- (i) A Participant may incur and/or request reimbursement of the Rollover amount until the end of that plan year.
- (ii) A request for reimbursement from any Rollover amounts must be made within ninety (90) days following the end of the plan year the Rollover occurred (the year following the Plan Year in which the deductions were taken); and
- (iii) A maximum of \$570 may be rolled over from the Health Care Reimbursement Program at the end of each Plan Year. The maximum may adjust annually for inflation.

**7.5 Reimbursements.** Except as provided in any Plan, contract or arrangement established to provide Benefits, reimbursement of Qualified Expenses shall be made at such time and in such amounts as shall be determined by the Plan Administrator in accordance with the law. Except as provided under 7.4, the amounts set aside under a Participant's Salary Reduction Agreement for any Plan Year shall be used only to reimburse the Participant for Qualified Expenses incurred for such Plan Year.

**7.6 Minimum Reimbursements.** At the discretion of the Plan Administrator, a request by a Participant for a reimbursement under either the Health Care Reimbursement Program or the Dependent Day Care Assistance Program shall be accepted and acted upon if the amount of the request is for at least \$50.00 (or, if less, the remaining balance of the Participant's account). The foregoing restriction shall not apply, however, to the final reimbursement to be made to a Participant for a Plan Year.

**7.7 Claims Substantiation.** No expense reimbursement shall be made to a Participant under the Health Care Reimbursement Program or the Dependent Day Care Assistance Program unless the expense is documented directly by the Administrator or the Participant:

(a) provides an invoice or other written statement from the service provider or other applicable independent third party which evidences that the expense has been incurred and the amount of such expense; and

(b) attests in writing that the expense at issue has not been reimbursed and is not reimbursable under any other Plan.

**7.8 Processing Fee.** The Plan Administrator may impose upon a Participant a reasonable fee for the processing of a reimbursement under the Plan. Any such fee shall be charged to the Spending Account of the Participant from which such reimbursement is made. Any such fee shall be in accordance with the agreement between the Plan Administrator and the Employer.

**7.9 Nondiscrimination.** Notwithstanding any provision of the Plan to the contrary, in no event shall the aggregate amount of reimbursements or other Benefits provided to Key Employees under the Plan for a Plan Year exceed twenty-five percent (25%) of the aggregate amount of such reimbursements or other Benefits provided to all Participants for such Plan Year. The Plan Administrator may adopt such rules as it deems necessary or desirable to assure that the foregoing limitation is satisfied, including imposing restrictions on the amount of contributions which a Key Employee may elect to have set aside under the Plan for a Plan Year. Any such rules shall be uniformly applied to similarly situated individuals.

#### **7.10 Appeals Procedure.**

(a) Any Participant or other person who believes that a benefit is then due to such person under the Plan, including one greater than that initially determined by the Plan Administrator, may file an appeal in writing with the Plan Administrator.

(b) The Plan Administrator shall within ninety (90) days of the receipt of an appeal either allow or deny the appeal in writing. A denial of a claim shall be written in a manner calculated to be understood by the claimant and shall include:

- (i) the specific reason or reasons for the denial;
- (ii) specific references to pertinent Plan provisions on which the denial is based;
- (iii) a description of any additional material or information necessary for the claimant to perfect the claim for the benefit believed due and an explanation of why such material or information is necessary; and
- (iv) an explanation of the Plan's claim review procedure.

(c) A claimant whose claim is denied (or the claimant's duly authorized representative) may, within sixty (60) days after receipt of denial of the claim:

- (i) submit a written request for review to the Plan Administrator;
- (ii) review pertinent documents; and
- (iii) submit issues and comments in writing.

(d) The Plan Administrator shall notify the claimant of its decision on review within sixty (60) days of receipt of a request for review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provision on which the decision is based.

(e) The 90-day and 60-day periods described in subsections (b) and (d), respectively, may be extended at the discretion of the Plan Administrator for a second ninety (90) or sixty (60) day period, as the case may be, provided that written notice of the extension is furnished to the claimant prior to the termination of the initial period, indicating the special circumstances requiring such extension of time and the date by which a final decision is expected.

(f) A claimant may state the reason or reasons forming the basis of the appeal to a benefit under the Plan, and may submit written evidence in support of the appeal made under and in accordance with the procedures set forth in this Section. Such action is not required. However, the failure to state a reason or to submit written evidence in support of an appeal shall permanently bar the claimant from raising such reason or submitting such evidence in any forum at a later date.

(g) Participants and Beneficiaries shall not be entitled to challenge the Plan Administrator's determinations in judicial or administrative proceedings without first complying with the procedures in this Article. The decisions made pursuant to this Section are intended to be final and binding on Participants, Beneficiaries and others.

(h) Notwithstanding the other sections of this Article 7, if the Public Employees Health Program (PEHP) is the Plan Administrator, the procedure for appealing denied claims shall be administered in accordance with Utah Code Ann. § 49-11-613 as amended.

## **ARTICLE 8** **COBRA CONTINUATION RIGHTS**

**8.1 In General.** Any Participant and/or Dependent who experiences a Qualifying Event with respect to the Health Care Reimbursement Program shall thereafter be eligible for Benefits under the Health Care Reimbursement Program in such amounts and for such periods as may be mandated under the health care continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and this Article 8.

**8.2 Continuation of Coverage.** To the extent required by Section 8.1 above, a Qualified Beneficiary who would lose coverage under this Plan as a result of a qualifying event is entitled to elect continuation coverage within the election period under this Plan. Coverage provided under this provision is on a contributory basis. No evidence of good health will be required.

Except as otherwise specified in an election, any election by a Qualified Beneficiary who is a Participant or Spouse of the Participant will be deemed to include an election for continuation coverage under this provision on behalf of any other Qualified Beneficiary who would lose coverage by reason of a qualifying event.

**8.3 Type of Coverage.** Continuation coverage under this provision is coverage which is identical to the coverage provided under this Plan to similarly situated Beneficiaries under this Plan with respect to whom a qualifying event has not occurred as of the time coverage is being provided. If coverage under this Plan is modified for any group of similarly situated Beneficiaries, the coverage shall also be modified in the same manner for all qualified Beneficiaries under the Plan in connection with such group.

**8.4 Coverage Period.** The coverage under this provision will extend for at least the period beginning on the date of a qualifying event and ending not earlier than the earliest of the following:

- (a) the date continuation period under the IRS regulations has been exhausted;
- (b) the date on which Employer ceases to provide any flexible spending Plan to any Employee.
- (c) the date on which the Qualified Beneficiary fails to make timely payment of the required contribution pursuant to this provision;

(d) the date on which the Qualified Beneficiary first becomes, after the date of the election, covered under any other group health Plan as an Employee or Dependent, or otherwise becomes entitled to Benefits under Title XVIII of the Social Security Act (Medicare).

### **8.5 Contribution.**

(a) A Qualified Beneficiary shall only be entitled to continuation coverage provided such Qualified Beneficiary pays the applicable contribution required under the Plan in full and in advance, except as provided in (b) below. Such contribution shall not exceed the requirements of applicable federal law. A Qualified Beneficiary may elect to pay such contribution in monthly installments.

(b) Except as provided in (c) below, the payment of any contribution shall be considered to be timely if made within thirty (30) days after the date due, or within such longer period of time as applies to or under this Plan.

(c) Notwithstanding (a) and (b) above, if an election is made after a qualifying event during the election period, this Plan will permit payment of the required contribution for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

(d) A 2% administrative fee may be charged in accordance with COBRA.

**8.6 Notification by Qualified Beneficiary.** Each Participant or Qualified Beneficiary must notify the Plan Administrator or the Employer of the occurrence of a divorce or legal separation of the Participant from such covered Participant's Spouse, and/or the Participant's Dependent child ceasing to be a Dependent child under the terms of this Plan within sixty (60) days after the date of such occurrence. This 60-day time limit shall only apply to those occurrences as described in this paragraph which occur after the date of the enactment of the Tax Reform Act of 1986.

### **8.7 Notification to Qualified Beneficiary.**

(a) Upon receipt of written notice of a Qualifying Event the Plan Administrator shall then provide written notice to each Qualified Beneficiary of his or her right to continuation coverage under this provision as required by federal law.

(b) The Plan Administrator shall notify any Qualified Beneficiary of the right to elect continuation coverage under this provision as required by federal law. If the

qualifying event is the divorce or legal separation of the Participant from the Participant's Spouse or a Dependent child ceasing to be a Dependent child under the terms of this Plan, the administrator shall only be required to notify a Qualified Beneficiary of his or her right to elect continuation coverage if the Qualified Beneficiary notifies the Administrator of such qualifying event occurring after the date of the enactment of the Tax Reform Act of 1986 within sixty (60) days after the date of such qualifying event.

(c) Notification of the requirements of this provision to the Spouse of a Participant shall be treated as notification to all other qualified Beneficiaries residing with such Spouse at the time notification is made.

**8.8 Definitions.** The terms used in the text of this Article 8 are defined as follows:

(a) "Dependents" for the purposes of the Health Care Reimbursement Plan, include individuals who are Dependents within the meaning of section 152(a) of the Code. No person shall be considered a Dependent of more than one Employee. If both an Employee and an Employee's Spouse are employed by Employer, Dependent children may be covered by either Spouse, but not by both.

(b) "Election Period" means the 60-day period during which a Qualified Beneficiary who would lose coverage as a result of a qualifying event may elect continuation coverage. This 60-day period begins not later than the date of termination of coverage as a result of a qualifying event and ends not earlier than sixty (60) days after the later of such date of termination of coverage or the receipt of notice of the right to elect continuation coverage under this Plan.

(c) "Full-Time Student" means a Dependent child who is enrolled in, regularly attends and is recognized by the Registrar of an accredited secondary school, college or university, institution for the training of registered nurses (R.N.), or any other accredited or licensed school for the minimum number of credit hours required by that institution in order to maintain Full-Time Student status.

(d) "Medicare" means the Health Insurance for the Aged and Disabled Act, Title XVIII of Public Law 89-97, Social Security, as amended.

(e) "Qualified Beneficiary" means an individual who, on the day before the qualifying event for a Participant, is a Beneficiary under this Plan as the Spouse or Dependent child of the Participant. In the case of the termination of a Participant or

the reduction in hours of the Participant's employment, the term Qualified Beneficiary includes the Participant. Effective January 1, 1997, a child who is born to (or placed for adoption with) a Qualified Beneficiary who is a Participant during the Coverage Period shall also be a Qualified Beneficiary.

Exception - the term Qualified Beneficiary does not include an individual whose status as a Participant is attributable to a period in which such individual is a nonresident alien who received no earned income from the Employer which constituted income from sources within the United States (within the meaning of Code Section 911(d)(2) and section 861(a)(3)). If an individual is not a Qualified Beneficiary pursuant to this paragraph, a Spouse or Dependent child of such individual shall not be considered a Qualified Beneficiary by virtue of the relationship to such individual.

(f) "Qualifying Event" means with respect to a Participant, any of the following events which, but for the continuation coverage under this provision, would result in the loss of coverage of a Qualified Beneficiary:

- (1) the death of the Participant;
- (2) the termination (except by reason of such Participant's gross misconduct) or reduction in hours of the Participant's employment;
- (3) the divorce or legal separation of the Participant from such Participant's Spouse;
- (4) the Participant becoming entitled to Benefits under Title XVIII of the Social Security Act (Medicare);
- (5) a Dependent child who ceases to be a Dependent child under the terms of this Plan.
- (6) "University/College" means an accredited institution listed in the current publication of accredited institutions of higher education.

## **ARTICLE 9** **ADMINISTRATION OF THE PLAN**

**9.1 Plan Administrator.** The Employer may appoint a person, a committee consisting of more than one person, an entity, or other third party to

serve as the Plan Administrator and named fiduciary of the Plan. In the absence of such an appointment, the Employer shall serve as such Plan Administrator.

**9.2 Powers and Duties of Plan Administrator.** Except as specifically provided otherwise, the Plan Administrator shall have final and binding discretionary authority to control and manage the operation and administration of the Plan, including all rights and powers necessary or convenient to the carrying out all of its functions hereunder, whether or not such rights and powers are specifically enumerated herein. In exercising its responsibilities hereunder, the Plan Administrator may manage and administer the Plan through the use of agents (who may include Employees of the Employer). Without limiting the generality of the foregoing, and in addition to the other powers set forth in this Article 9, the Plan Administrator shall have the following express authorities:

(a) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any Benefits hereunder, all in the sole discretion of the Plan Administrator. Any such construction, interpretation, etc., shall be final and binding on Participants, Beneficiaries and all other persons.

(b) To prescribe procedures to be followed by Participants in filing requests for reimbursements of proper expenses, and to authorize payment of such expense reimbursements.

(c) To prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, information explaining the Plan.

(d) To receive from the Employer, and from Participants and Beneficiaries, such information, and to maintain records concerning such information, as shall be necessary for the proper administration of the Plan.

(e) To furnish the Employer upon request such annual and other reports with respect to the administration of the Plan as are reasonable and appropriate.

(f) To review and decide claims for Benefits, and the review of the denial of any such claims, pursuant to and to the extent provided in Article 7, including any interpretations of the Plan, which decisions and interpretations the Plan Administrator shall have full discretion and authority to make hereunder.

**9.3 Consultation with Advisors.** Except as specifically provided herein, the Plan Administrator (or any other fiduciary designated pursuant to Section 9.5) may employ one or more persons to render advice with regard to any responsibility

it may have under the Plan. The Plan Administrator may consult with counsel, actuaries, accountants, physicians or other advisors (who may be counsel, actuaries, accountants, physicians or other advisors for the Employer) and may also from time to time utilize the services of Employees and agents of the Employer in the discharge of its responsibilities.

**9.4 Records and Reports.** The Plan Administrator and Employer shall take all such action as it deems necessary or appropriate to comply with governmental laws and regulations relating to the maintenance of records, notifications to Participants, filings with the Internal Revenue Service and U.S. Department of Labor, and all other such requirements applicable to the Plan. The Plan Administrator shall be responsible for preparing the Form 5500. The Employer shall be responsible for filing the Form 5500 with the Internal Revenue Service.

**9.5 Designation of Other Fiduciaries.** The Employer may designate in writing other persons to carry out a specified part or parts of the Plan Administrator's responsibilities hereunder (including the power to designate other persons to carry out a part of such designated responsibility); provided, however, that such designation may not include any power to manage or control assets of the Plan, or to amend the Plan. Any such designation must be accepted by the designated person, who shall acknowledge in writing that such person is a fiduciary with respect to the Plan.

#### **9.6 Obligations of Plan Administrator and Employers.**

(a) The Plan Administrator shall make such determinations as are necessary to accomplish the purposes of the Plan with respect to individual Participants or classes of such Participants.

(b) The Employer shall notify the Plan Administrator of facts relevant to such determinations, including without limitation, length of service, Compensation for services, date of death, permanent disability, granting or terminating of leave of absence, age, retirement and termination of service for any reason (but indicating such reason), and termination of participation. The Employer shall also notify the Plan Administrator of all other facts which may be necessary for the Plan Administrator to discharge its responsibilities hereunder.

## **ARTICLE 10** **AMENDMENT OR TERMINATION**

### **10.1 Amendment or Termination of Plan.**

(a) The Employer reserves the right at any time and from time to time to amend or terminate in whole or in part any of the provisions of the Plan or Benefit Program.

(b) Any such amendment or termination shall be effective as of the date specified by the Employer. An amendment may be effected by establishment, modification, or termination of a Benefit Program by Employer. Any such amendment or termination may take effect retroactively or otherwise.

(c) In the event of a termination or reduction of Benefits under the Plan or any Benefit Program, the Plan shall be liable only for benefit payments due and owing as of the effective date of such termination or reduction, and no payments scheduled to be made on or after such effective date shall result in any liability to the Plan, the Plan Administrator, the Employer, or any agent thereof.

**10.2 Form of Amendment or Termination.** Any amendment or termination of the Plan or any part of the Plan shall be made by an instrument in writing, duly certified, reflecting that such change has been authorized by Employer or the Plan Administrator.

## **ARTICLE 11** **MISCELLANEOUS**

**11.1 Exemption for ERISA.** This Plan is exempt from the Employers Retirement Income Security Act of 1974 pursuant to 29 U.S.C. 1003(b).

**11.2 No Guarantee of Employment, etc.** Neither the maintenance of the Plan nor any part thereof shall be construed as giving any Participant hereunder or other Employees any right to remain in the employ of the Employer and none of the terms hereof shall be construed as an express or implied contract between the Employer and any Participant or Beneficiary. All terms and conditions of this Plan are subject to unilateral modification, or termination by Employer. No commissioner, officer, or Employee of the Employer in any way guarantees to any Participant or Beneficiary the payment of any benefit or amount which may become due in accordance with the terms of the Plan.

### **11.3 Required Information to Be Furnished.**

(a) Each Participant and Beneficiary will furnish to the Plan Administrator such information as the Plan Administrator considers necessary or desirable for purposes of administering the Plan, and the provisions of the Plan respecting any payments hereunder are conditional upon the prompt submission by the Participant or Beneficiary of such true, full and complete information as the Plan Administrator may request.

(b) Any communication, statement or notice to a Participant and Beneficiary addressed to the last post-office address filed with the Plan Administrator, or if no such address was filed with the Plan Administrator, then to the last post-office address of the Participant or Beneficiary as shown on the Employer's records, will be binding on the Participant or Beneficiary for all purposes of this Plan and neither the Plan Administrator nor the Employer shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary.

**11.4 Non-alienation.** To the fullest extent permitted by law, Participants and Beneficiaries shall have no right to assign, transfer, hypothecate, encumber, commute or anticipate an interest in any Benefits under the Plan, and the payment of Benefits shall in no way be subject to any legal process to levy upon or attach the same for payment of any claim against any Participant or Beneficiary.

**11.5 Recovery of Overpayments.** Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator shall be authorized on behalf of the Plan to institute or cause to be instituted action to recover an overpayment of Benefits made pursuant to the Plan to any Participant or Beneficiary as authorized by the Code.

**11.6 Payment of Benefits to Persons under Legal Disability.** Whenever and as often as any person entitled to payments under the Plan shall be determined to be a minor or under other legal disability or otherwise incapacitated in any way so as to be unable to manage such person's financial affairs, or otherwise incapable of giving a valid receipt and discharge for any payment, the Plan Administrator, in its sole discretion, may direct that all or any portion of such payments be made (i) to such person, (ii) to such person's legal guardian or conservator, or (iii) to such person's Spouse or to any other person, in any manner the Plan Administrator considers advisable, to be expended for the person's benefit. The decision of the Plan Administrator shall, in each case, be final and binding upon all persons. Any payment made pursuant to the power herein conferred shall operate as a complete discharge of the obligations under the Plan in respect thereof of the Plan, the Employer, and the Plan Administrator.

**11.7 Controlling Law.** To the extent not preempted by the law of the United States of America, the laws of the State of Utah shall be the controlling state law in all matters relating to the Plan and shall apply.

**11.8 Severability.** If any provisions of the Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced as if said illegal and invalid provisions had never been included herein.

**11.9 Limitations on Provisions.** The provisions of the Plan and any Benefits provided by the Plan shall be limited as described herein. Any benefit payable under any other Employee benefit Plan maintained by the Employer shall be paid solely in accordance with the terms and provisions of such Plan, and nothing in this Plan shall operate or be construed in any way to modify, amend, or affect the terms and provisions of such other Plan.

**11.10 Gender and Number.** Masculine gender shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, unless the context clearly indicates otherwise.

**11.11 Headings.** All article and section headings in the Plan are intended merely for convenience and shall in no way be deemed to modify or supplement the actual terms and provisions set for thereunder.

**11.12 Counterparts.** This Plan may be executed in several counterparts, and each shall be an original without reference to the others.

IN WITNESS WHEREOF, and as evidence by the adoption of this Plan, Tooele City has caused its authorized officers to duly execute this Plan this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Tooele City**

By: \_\_\_\_\_

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

Attest:

**LIMITED FLEXIBLE SPENDING  
ACCOUNT PLAN  
&  
HEALTH SAVINGS PROGRAM**

**Prepared for**

**Tooele City**

**Effective July 1, 2022**

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**LIMITED FLEXIBLE SPENDING ACCOUNT PLAN & HEALTH SAVINGS  
PROGRAM  
For Tooele City**

**ARTICLE 1**

- 1.1 Purpose of Plan.** The purpose of the Plan is to provide Eligible Employees of the Employer with the opportunity to choose between taxable Compensation and Qualified Benefits made available under or in conjunction with the Plan. Such Qualified Benefits shall be as described in the Benefit Programs outlined herein, which Benefit Programs are incorporated herein and form part of the Plan.
- 1.2 Source of Funds.** The Plan and Benefit Programs forming part of the Plan shall be funded and maintained by contributions from Participants made pursuant to salary reduction agreement(s) with the Employer as prescribed under the Plan, and by such other contributions of the Employer and Participants to the extent described in a Benefit Program.
- 1.3 Tax Compliance.**
  - (a) The Plan, and certain or all of the Benefit Programs forming part of the Plan, are intended to result in favorable tax treatment to Participants, Beneficiaries or the Employer, as the case may be. The Plan is therefore intended to comply with any requirements of the Internal Revenue Code (the "Code") and regulations thereunder which impose conditions to such favorable tax treatment. The Plan is specifically intended to qualify as a "Cafeteria Plan" under Section 125 of the Code.
  - (b) To the extent that any Benefit Program or other feature of the Plan is required to satisfy a standard or other prerequisite to favorable tax treatment, the Plan is intended to facilitate and ensure compliance therewith. Notwithstanding any other terms of the Plan, as with respect to any Benefit Program subject to such prerequisites, the terms of such Benefits Program, including those relating to coverage and Benefits, are hereby intended to be legally enforceable, and each such Benefit Program is intended to be maintained for the exclusive benefit of Eligible Employees.
  - (c) Each Benefit Program or other component of the Plan may be deemed to be, and shall be treated as, a separate Plan to the extent required or permitted by law, as determined by the Plan Administrator or other legal authority. In the event a Benefit Program, or any portion thereof, is determined to have failed to comply with one or more prerequisites to favorable tax treatment as prescribed under the Code or applicable regulations, that Benefit Program or portion thereof shall be deemed to

be and shall be treated as a separate benefit Plan, and the remaining Benefit Programs, or portions thereof, shall not be affected by such non-compliance.

(d) The Plan is intended not to discriminate in favor of Highly Compensated Individuals as to eligibility to participate, contributions and Benefits, and to comply in this respect with the requirements of the Code. If, in the judgment of the Plan Administrator, the operation of the Plan in any Plan Year would result in such discrimination, then the Plan Administrator shall select and exclude from coverage under the Plan such Highly Compensated Individuals who are Plan Participants, and/or reduce contributions and/or Benefits under the Plan by Highly Compensated Individuals who are Plan Participants, to the extent necessary to assure that, in the judgment of the Plan Administrator, the Plan does not discriminate against any individuals.

**1.4 Effective Date.** The provisions of this Plan and of the Benefit Programs forming part of the Plan shall all be effective July 1, 2022.

## ARTICLE 2

### DEFINITIONS

When used in the Plan, certain terms are capitalized and shall have the respective meanings set forth in this Article or in certain other Articles of the Plan.

**Beneficiary.** “Beneficiary” means a person who is eligible to receive Benefits under a Benefit Program maintained under the Plan by reason of another individual’s active or former service with the Employer.

**Benefits.** “Benefits” means any amounts paid to a Participant for Qualified Benefits available from time to time under the Plan.

**Benefit Program.** “Benefit Program” means the Limited Expense Reimbursement Program, the Health Savings Program, and the Dependent Care Assistance Program as set forth in this Plan.

**COBRA.** “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

**Code.** “Code” means the Internal Revenue Code of 1986, as amended from time to time.

**Compensation.** “Compensation” for any Plan Year means the Compensation paid to the Eligible Employee by the Employer during that period which is currently treated as

wages for income tax withholding purposes pursuant to Code Section 3401(a) (determined without regard to any rules under said Code Section that limit the remuneration included in wages based on the nature or location of the employment or the services performed), plus all other payments of Compensation to the Eligible Employee by the Employer for such period which is not included above, but which is subject to reporting under Code Section 6401(d) and 6051(a)(3), and further including amounts contributed by the Eligible Employee under a salary reduction agreement with the Employer which are excludable from taxable income under Code Section 125, 402(a)(8), 402(h) or 403(b).

**Dependent.** Except as otherwise provided under the Plan, the term “Dependent” with respect to a Participant (or, if the Participant is married, by the Participant and Spouse) shall have the meaning of that term given by Section 152 of the Code, as amended from time to time. Solely for purposes of the Medical Expense Reimbursement Program, Dependent includes a child (son, daughter, stepson, stepdaughter, or child legally adopted) of a participant, who has not attained age 27 as of the end of the taxable year, regardless of whether that child is married or meets the residency, support, and other tests described in IRC §152(c) for a dependent.

**Dependent Care Assistance Program.** The “Dependent Care Assistance Program” is a Benefit Program, the terms and conditions of which are set forth in Article 7.

**Eligible Employee.** Eligible Employee means any benefit Eligible Employee working for and compensated by Employer who satisfies the eligibility requirements of the Plan as prescribed in Section 3.1.

**Employee.** For purposes of this document, Employee means an individual who works for the County in an active Employee-Employer relationship; is eligible to participate in any Plan established under this document; and receives wages for employment with Tooele City.

**Employer.** “Employer” means Tooele City.

**Enrollment.** “Enrollment” shall be the period beginning sixty (60) days prior to the commencement of each Plan Year and ending thirty (30) days prior to the commencement of each Plan Year. In the case of an Employee who first becomes eligible to participate in a Plan after the commencement of a Plan Year, such Employee shall have sixty (60) days following the date the Employee commences work to complete the Salary Reduction Agreement and deliver them to Employer or the Plan Administrator.

**Family Status Change.** “Family Status Change” means a change in Family Status as defined in Article 4.5 of this Plan.

**Health Savings Account.** A “Health Savings Account” (HSA) is a tax-exempt trust or custodial account setup to pay or reimburse certain medical expenses.

**Health Savings Program.** The “Health Savings Program” is a Benefit Program, the terms and conditions of which are set forth in Article 6.

**High Deductible Health Plan.** A “High Deductible Health Plan” (HDHP) is a health insurance plan with a higher annual deductible than traditional plans and with a maximum limit on out-of-pocket payments for the covered medical expenses.

**Highly Compensated Employee.** “Highly Compensated Employee” means, with respect to any Plan Year, an Employee of the Employer who meets the definition of highly compensated in Code Section 414(q) and Section 125(b)(1) and (d), as amended from time to time.

**Key Employee.** A “Key Employee” is any current or former Employee of the Employer (and the Beneficiaries of such Employee) who at any time during the determination period was an Employee that met or meets the definition of a Key Employee in Code Section 416(i)(1), as amended from time to time.

**Limited Expense Reimbursement Program.** The “Limited Expense Reimbursement Program” is a Benefit Program, the terms and conditions of which are set forth in Article 5.

**Participant.** A “Participant” is a current Eligible Employee who has elected to participate in the Plan for Plan Year pursuant to the procedures prescribed in Article 4.

**Plan.** “Plan” means the Limited Flexible Spending Account Plan of Employer, including all Benefit Programs hereunder, and all documents associated with the Plan or any Benefit Program.

**Plan Administrator.** The “Plan Administrator” is the person, committee, entity or other third party designated under Article 10.1 to serve as administrator and named fiduciary of the Plan. In the absence of such designation, the Employer shall serve as the Plan Administrator.

**Plan Year.** “Plan Year” means the 12-month period beginning on July 1<sup>st</sup> and ending on June 30th.

**Qualified Benefits.** “Qualified Benefits” shall mean a benefit under the Benefit Program(s) described herein.

**Qualified Expense.** “Qualified Expense” shall mean any amount paid or incurred by a Participant for Qualified Benefits not otherwise reimbursed under any group Plan.

**Rollover.** “Rollover” shall mean an amount in the Limited Expense Reimbursement Program up to \$570 which can be used to reimburse qualified vision, dental and post deductible expenses in the following Limited Expense Reimbursement Program plan year.

**Run-out period.** “Run-out” Period shall mean the time frame at the end of a plan year in which a Participant has to request reimbursement for an eligible expense. With regards to this Plan Year a Run-out period will be ninety (90) days, or sixty (60) days in accordance with Section 4.6(e).

**Salary Reduction Agreement.** “Salary Reduction Agreement” means a voluntary agreement whereby an Employee agrees to reduce his or her Compensation for the forthcoming Plan Year (or if the agreement becomes effective after the beginning of the Plan Year, for the balance of the Plan Year), for purposes of obtaining tax Qualified Benefits offered by the Plan.

**Spending Account(s).** “Spending Account(s)” shall mean the account(s) established in the Participant’s name and which is used to record amounts allocated to a Participant for a Benefit Program and their expenditure for Qualified Benefits.

**Spouse.** “Spouse” means a person to whom a Participant is legally married. An individual shall be deemed to be a “Spouse” of a Participant as with respect to any expense which is payable or reimbursable under the Plan if that individual is legally married to the Participant at the time the expense is incurred.

## ARTICLE 3

### ELIGIBILITY AND PARTICIPATION

**3.1 Eligibility Requirements.** Each Eligible Employee shall be eligible to become a Participant on the first day of employment. To be eligible to enroll in the Limited Flexible Spending Program, an Eligible Employee must enroll in an HDHP and an HSA. An Eligible Employee shall have sixty (60) days following the date the Employee commences work to complete the Salary Reduction Agreement and to deliver the same to Employer’s Plan Administrator. If the Plan Administrator does not receive the Salary Reduction Agreement form within sixty (60) days of employment, the Employee shall not be eligible to participate in the Plan until the next Plan Year.

**3.2 Cessation of Participation Generally.** A Participant shall cease to be a Participant in the Plan as of the earliest of:

- (a) the first day of a Plan Year for which the Participant does not elect to participate in any Benefit Program.

- (b) the date the Participant ceases to be an Eligible Employee and thereafter fails to make required or voluntary contributions under the Plan; or
- (c) the date on which the Plan is terminated.

**3.3 Family Medical Leave.** A Participant who takes an unpaid leave of absence under the Family and Medical Leave Act of 1993 ("FMLA Leave") may revoke his election to participate under any Benefit Program offered under this Plan, for the remainder of the Plan Year in which such leave of absence commences. Such revocation shall be in accordance with such procedures as prescribed by the Plan Administrator. Upon such Participant's return from his or her FMLA Leave, the Participant may elect to be reinstated in the Plan, on the same terms that applied to the Participant prior to his or her taking the FMLA leave, and with such other rights to revoke or change elections as are provided to other Participants under the Plan. Notwithstanding the foregoing, a Participant on FMLA Leave shall have no greater rights to Benefits for the remainder of the Plan Year in which the FMLA Leave commences as other Plan Participants.

## ARTICLE 4

### PARTICIPATION ELECTIONS PROCEDURES

**4.1 Election Rights.** Each Eligible Employee who has satisfied the eligibility requirements of Section 3.1 may elect to participate in any or all of the Benefit Programs made available under the Plan. An Eligible Employee's participation in any Benefit Program shall be subject to the terms and conditions of the Benefit Programs as set forth in the respective Articles of this Plan.

**4.2 Effect of Election.** For each Plan Year, an Eligible Employee may elect with respect to any Benefit Program to have the Employer reduce a portion of his or her Compensation, and to have such elected amount made available under the Benefit Program to pay for Qualified Expenses incurred by or on behalf of the Eligible Employee and his or her Beneficiaries. An election so made by an Eligible Employee shall constitute the Eligible Employee's Salary Reduction Agreement with the Employer allowing for a reduction in the Eligible Employee's Compensation in an amount equal to the amount to be made available under the Benefit Program to cover Qualified Benefits for and on behalf of the Eligible Employee.

**4.3 Election Procedures.**

- (a) At least sixty (60) days prior to the commencement of each Plan Year, the Plan Administrator shall make available to each Eligible Employee a Salary Reduction Agreement in regard to participation in the Plan for the

next Plan Year. In the case of an Employee who first becomes eligible to participate in the Plan after the commencement of a Plan Year, such participation Salary Reduction Agreement shall be made available as prescribed under Section 3.1.

- (b) Each Eligible Employee who desires to participate in a Benefit Program for a Plan Year shall so designate such on the Salary Reduction Agreement, and shall further specify the amount of his or her Compensation to be reduced and allocated to each Benefit Program.
- (c) A Salary Reduction Agreement must be completed and returned to the Plan Administrator at least thirty (30) days prior to the first day of the Plan Year. If an Eligible Employee fails to deliver a Salary Reduction Agreement to the Plan Administrator prior to the first day of a Plan Year, the Eligible Employee shall not be eligible to participate in any Benefit Program for that Plan Year, except as provided in Article 6.
- (d) An Eligible Employee must complete and deliver a Salary Reduction Agreement to the Plan Administrator for each Plan Year for each Benefit Program in which the Eligible Employee desires to participate, except as provided in Article 6.

**4.4 Irrevocable Status of Elections.** Except as otherwise provided in this Article 4 and in Article 6, any election made or deemed to have been made by this Article 4, any election made or deemed to have been made by an Eligible Employee with regard to participating or declining to participate in any Benefit Program offered within the Plan and with respect to any Plan Year shall be irrevocable for the duration of that Plan Year. During Family Medical Leave, a participant may exercise whatever rights such Participant has under the Family Medical Leave Act and regulations promulgated thereunder as more fully set forth in Article 3.3.

#### **4.5 Changes in Family Status Rules.**

- (a) Notwithstanding Section 4.4 above, a Participant may revoke the Salary Reduction Agreement with respect to a Benefit Program in effect for a Plan Year or, alternatively, may modify a prior election to take effect for the remainder of the Plan Year, the revocation and the new election or modification, as the case may be, is on account of and consistent with a change in family status. In this regard, a benefit election revocation or modification shall be deemed to be consistent with a Family Status Change only if the revocation or modification is necessary or appropriate as a result of the Family Status Change.
- (b) For purposes of subsection (a) above, a “change in family status” as with respect to a Participant shall include the following:

- (i) the marriage, divorce or legal separation of the Participant;
- (ii) the death of the Participant's Spouse or Dependent;
- (iii) the birth or adoption of a child of the Participant;
- (iv) the commencement or termination of employment of the Participant's Spouse;
- (v) a change from part-time to full-time employment status (or vice versa) by the Participant or the Participant's Spouse;
- (vi) the taking of an approved unpaid leave of absence by the Participant or the Participant's Spouse which leave shall include entering into or returning from "uniformed service" as defined under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); or the occurrence of a special Enrollment period as defined in Section 9801(f) of the Code); or
- (vii) such other events that the Plan Administrator determines will permit a change or revocation of an election during a Plan Year under regulations and rulings of the Internal Revenue Service.

(c) Any new election made under subsection (a) above shall be effective at such time as the Plan Administrator shall prescribe, but not earlier than the first pay period beginning after the Family Status Change form is completed and returned to the Plan Administrator or its delegate. Family Status Changes must be made within sixty (60) days of when the event occurred. If the Family Status Change form is not received by the Plan Administrator within sixty (60) days of the change in family status, the Family Status Change form shall be invalid.

#### **4.6 Effect of Separation from Service.**

- (a) Except as specifically provided under the Plan, a Participant who separates from service during a Plan Year may revoke all existing benefit elections and terminate the entitlement to the reimbursement of expenses incurred during the Plan Year after the separation of service, except as provided in Article 6.
- (b) To the extent required or permitted under the Plan, a Participant who separates from service may elect to continue to make contributions to the Plan to provide for the funding of Benefits for the remainder of that Plan Year, except as provided in Article 6. If such a Participant fails to

timely make any required contributions, the Participant shall not be entitled to reimbursements under the Plan.

- (c) However, nothing in this Article 4.6 shall prohibit the payment of Benefits for Qualified Expenses with respect to claims arising prior to the Participant's termination of participation. Also, a former Participant who continues to receive Compensation from the Employer and for whom payroll deductions continue to be made shall remain a Participant for all purposes until such Compensation ceases.
- (d) Moreover, a terminated Participant shall be entitled to reimbursement of claims for Qualified Expenses incurred prior to his or her termination of employment, but only if the Participant (or his or her estate) applies for such reimbursement on or before sixty (60) days following the Participant's termination of participation or ninety (90) days following the close of the Plan Year, whichever is applicable, except as provided in Article 6. (Please refer to COBRA for extended coverage under Article 8)
- (e) If a Participant terminates mid-Plan Year, they are not eligible for a Rollover of unused amounts. However, a Participant has a sixty (60) day Run-out period after the date of the mid-Plan termination to submit claims within the dates of service for which they were eligible for reimbursement. (Please refer to COBRA for extended coverage under Article 9)
- (f) Moreover, a terminated Participant shall be entitled to reimbursement of claims for Qualified Expenses incurred prior to his or her termination of employment, but only if the Participant (or his or her estate) applies for such reimbursement on or before sixty (60) days following the Participant's termination of participation or ninety (90) days following the close of the Plan Year, whichever is applicable.
- (g) A Participant whose benefit election(s) for a Plan Year are revoked under either subsection (a) or (b) above shall not be entitled to make any new benefit elections in regard to the remaining portion of that Plan Year of separation, even if the Participant returns to service before the end of that Plan Year. However, a former Participant who returns to service as an Eligible Employee may make a new benefit election for a Plan Year succeeding the Plan Year of the Participant's prior separation from service pursuant to the general rules prescribed in Article 4.3 and 3.1.

**4.7 Payment of Contributions While on FMLA Leave.** A Participant who takes an unpaid leave of absence under the Family and Medical Leave Act of 1993 ("FMLA Leave") and who elects to continue participation under this Plan shall

be responsible for making the required contributions under the Limited Expense Reimbursement Program offered under this Plan during the period of the FMLA Leave. The manner in which such payments are made shall be determined by the Employer in its sole discretion, among the following alternatives:

- (a) Prepayment: The Participant may prepay the contributions due during the FMLA Leave period. Prepayment may not be required as a condition to remaining in the Plan, and prepayment may not be the sole option of making contributions hereunder.
- (b) Pay-As-You-Go: The contributions due during the FMLA Leave period may be paid based on the same schedule as payments would have been due if the Participant had not been on FMLA Leave, on the same schedule as COBRA payments are made, under the Employer's existing rules for payment by Employees on leave without pay, or on any other schedule voluntarily agreed upon by the Plan Administrator and the Participant.
- (c) Catch-Up Option: The Employer may advance the contributions on behalf of the Participant, and may recoup such contributions upon the Participant's return to employment. The "Catch-Up Option" shall be applied in a manner consistent with Prop. Treas. Reg. Sec. 1.125-3.

Prepayments may be made from salary, vacation pay or sick pay, to the extent permitted by applicable law. The Prepayment Option and Catch-up Option may not be offered without also offering the Pay-As-You-Go Option.

**4.8 Uniformed Service Under USERRA.** A Participant who is absent from employment with the Employer on account of being in "uniformed service," as that term is defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), may elect to continue participation in the Plan. The coverage period shall be in accordance with USERRA § 4317 as amended from time to time. The Participant shall be responsible for making the required contributions during the period during which he or she is in "uniformed service." The manner in which such payments are made shall be determined by the Employer in a manner similar to Article 4.7 (regarding the payment of contributions with respect to FMLA Leave). A 2% administrative fee may be charged in accordance with USERRA. A Participant whose coverage under the Limited Expense Reimbursement Program is terminated on account of his or her being in "uniformed service," and is later reinstated, shall not be subject to a new exclusion or waiting period requirement imposed by such Plan, provided that such requirement would not have been imposed if coverage had not been terminated as a result of "uniformed service."

**4.9 Changes by a Plan Administrator.** The Plan Administrator may adopt such rules and take such actions as it deems necessary or desirable to assure that the various statutory or other limitations on Benefits provided to prescribed classes of Participant are satisfied. Such action may include a modification of any election made by a Participant as to the amount of salary reduction contributions to be made by the Participant under the Plan during a Plan Year.

## ARTICLE 5

### LIMITED MEDICAL EXPENSE REIMBURSEMENT PROGRAM

**5.1 Purpose of Program.** The Purpose of the Limited Expense Reimbursement Program as described in this Article 5 is to provide Eligible Employees with the opportunity to elect for each Plan Year to have a portion of their taxable Compensation reduced, and to have such elected amount allocated and made available to reimburse them for qualified vision, dental and post deductible expenses incurred during such Plan Year which are not payable or reimbursable under a Group Medical Plan, or from any other Plan or source.

**5.2 Status as Accident or Health Plan.** It is the intention of the Employer that the Limited Expense Reimbursement Program qualify as an “accident or health Plan” within the meaning of Section 105(e) of the Code, and that Benefits provided under the Limited Expense Reimbursement Program to or on behalf of Eligible Employees, or their Spouses or Dependents, be eligible for exclusion from their gross income pursuant to Sections 105(b), 106 and 125 of the Code.

**5.3 Enrollment in Program.** Each Eligible Employee may elect to enroll in the Limited Expense Reimbursement Program for a Plan Year pursuant to the procedures set forth in Section 4.3 and 3.1. Such election shall specify the amount of the Compensation for that Plan Year which the Eligible Employee directs to have reduced and made available for reimbursement of Qualified Medical Expenses during that Plan Year.

**5.4 Maximum Annual Benefits.** The maximum amount of Compensation which an Eligible Employee may elect to have reduced and set aside on the Eligible Employee’s behalf under the Limited Expense Reimbursement Program for Plan Year, and thus the maximum amount of reimbursements which may be made to the Eligible Employee for Qualified Medical Expenses incurred during the Plan Year is \$2,850. The \$2,850 limit will be indexed for inflation and may increase with each plan year.

**5.5 Spending Accounts.** The Plan Administrator shall establish a separate Limited Expense Spending Account for each Eligible Employee who elects to participate in the Limited Expense Reimbursement Program for a Plan Year. Such Spending Account shall be credited with the salary reduction contribution

which the Eligible Employee has elected to have set aside for the Plan Year under the Limited Expense Reimbursement Program, and shall be charged with all reimbursements and any administrative expenses made from or assessed against such Spending Account for that Plan Year.

**5.6 Conditions to Reimbursement.** A Participant shall be entitled to a reimbursement from his or her Limited Expense Spending Account for a Plan Year only if the following conditions are satisfied:

- (a) The expense to which the reimbursement relates is a Qualified Medical Expense as defined in Section 5.7 below;
- (b) Such expense was incurred during that Plan Year and while the Participant was enrolled in the Limited Expense Reimbursement Program; and
- (c) The Participant has complied with the Expense Reimbursement procedures prescribed under Article 8.

**5.7 Qualified Medical Expenses.** As defined in Section 213 of the Code. For purposes of this Limited Expense Spending Account, "Qualified Medical Expenses" shall be limited to dental, vision, post-deductible expenses, and preventive care of the Participant, or for the Spouse or Dependent of the Participant, and not reimbursable under any other plan.

For purposes of establishing the status of an expense as a Qualified Medical Expense, the term "Dependent" as with respect to a Participant is defined in Article 2. In addition, and solely for purposes of this Limited Expense Reimbursement Program, a child of a divorced Participant shall be treated as a Dependent of the Participant for a Plan Year if more than one-half of the child's support for the year is provided by the Participant. Such status shall exist even if the Participant is not the custodial parent with respect to the child or is otherwise not eligible to claim a personal exemption deduction with respect to such child for income tax purposes.

**5.8 Timing of Expense Incurrence.** A Qualified Medical Expense is reimbursable from a Participant's Limited Expense Spending Account for a Plan Year only if such expense is incurred during that Plan Year and while the Participant is enrolled in the Limited Expense Reimbursement Program. In this regard, an expense is deemed to have been incurred by a Participant on the date the Participant or Beneficiary is provided with medical care that gives rise to the expense, and not when the Participant or individual is billed, charged for or pays for the medical care. Accordingly, an otherwise Qualified Medical Expense is not reimbursable from a Participant's Limited Expense Spending Account if such expense was incurred prior to the date on which the Participant enrolled in the Limited Expense Reimbursement Program. Similarly,

reimbursements may not be made from a Participant's Limited Expense Spending Account for any Plan Year as with respect to any expense incurred prior to the Plan Year or after Run-out Period. However, reimbursements of Qualified Medical Expenses incurred during a Plan Year may be made after the end of the Plan Year.

**5.9 Uniform Availability of Benefit.** A Participant who elects to participate in the Limited Expense Reimbursement Program for a Plan Year shall be entitled at all times during that Plan Year to reimbursements from the Limited Expense Spending Account. The amount of reimbursements to which the Participant is entitled as of any date is an amount equal to the total annual benefit elected by the Participant pursuant to Section 5.4 (or, if the Participant has modified such elected benefit amount, equal to the modified amount), reduced by any prior reimbursement or expenses charged to such Spending Account for that Plan Year. Such right to reimbursement as of any date shall be without regard to the amount of the Participant's Compensation which has been reduced and allocated to the Participant's Limited Medical Expense Spending Account as of that date.

**5.10 State Medicaid Benefits Rights.** Notwithstanding any provision of the Plan to the contrary, the following rules shall apply.

- (a) Payment for Benefits with respect to a Participant under the Limited Expense Reimbursement Program shall be made in accordance with any assignment of rights made by or on behalf of such Participant, or a Beneficiary of the Participant, as required by a State Medicaid Plan.
- (b) The fact that an individual is eligible for or is provided medical assistance under a State Medicaid Plan shall not be taken into account in regard to the individual's Enrollment as a Participant or Beneficiary in the Limited Expense Reimbursement Program, or in determining or making any payments for Benefits of the individual as a Participant or Beneficiary in the Limited Expense Reimbursement Program.
- (c) Payments for Benefits under the Limited Expense Reimbursement Program shall be made to a State in accordance with any State law which provides that the State has acquired the rights with respect to a Participant for items or services constituting medical assistance under a State Medicaid Plan.
- (d) For purposes of this Section 5.10, a "State Medicaid Plan" means a State Plan for medical assistance approved under Title XIX of the Social Security Act.

## ARTICLE 6

### HEALTH SAVINGS PROGRAM

- 6.1 Purpose of Program.** The Purpose of the Health Savings Program as described in this Article 6 is to provide Eligible Employees with the opportunity to elect to have a portion of their taxable Compensation reduced, and to have such elected amount contributed to the Eligible Employee's HSA, to be used as permitted by the Code and regulations thereunder.
- 6.2 Status as Accident or Health Plan.** It is the intention of the Employer that the Health Savings Program qualify as an "accident or health Plan" within the meaning of Section 105(e) of the Code, and that Benefits provided under the Health Savings Program to or on behalf of Eligible Employees, or their Spouses or Dependents, be eligible for exclusion from their gross income pursuant to Sections 105(b), 106 and 125 of the Code.
- 6.3 Enrollment in Program.** Each Eligible Employee may elect to enroll in the Health Savings Program if they have enrolled in a HDHP, are an "eligible individual" as defined in Section 223(c)(1)(A) to make contribution to an HSA, and have established an HSA. Such election shall specify the amount of the Compensation which the Eligible Employee directs to have reduced and contributed to the HSA.
- 6.4 Maximum Contributions.** Total contributions to an HSA are limited by IRS regulations. The Eligible Employee is responsible for monitoring the contributions to their HSA. The Eligible Employee may adjust the salary reduction contributions prospectively from month to month, initiating, increasing, decreasing, or terminating future contributions. All contributions shall be made to the HSA Trustee or its representative.
- 6.5 HSA Accounts.** The Plan Administrator shall establish a separate HSA Account for each Eligible Employee who elects to participate in the Health Savings Program. The Plan Administrator shall coordinate with the HSA Trustee to make the HSA account balance, (all contributions and earnings less fees and disbursements), available to the participant for disbursement through such means as designated by the Plan Administrator.
- 6.6 Conditions to Disbursement.** A Participant shall be entitled to a disbursement from his or her HSA Account upon request.
- 6.7 Availability of Benefit.** A Participant who elects to participate in the Health Savings Program shall be entitled to disbursement of funds from his or her HSA Account up to the balance of that account at the time the request is processed.

**6.8 State Medicaid Benefits Rights.** Notwithstanding any provision of the Plan to the contrary, the following rules shall apply.

- (a) Payment for Benefits with respect to a Participant under the Health Savings Program shall be made in accordance with any assignment of rights made by or on behalf of such Participant, or a Beneficiary of the Participant, as required by a State Medicaid Plan.
- (b) The fact that an individual is eligible for or is provided medical assistance under a State Medicaid Plan shall not be taken into account in regard to the individual's Enrollment as a Participant or Beneficiary in the Health Savings Program, or in determining or making any payments for Benefits of the individual as a Participant or Beneficiary in the Health Savings Program.
- (c) Payments for Benefits under the Health Savings Program shall be made to a State in accordance with any State law which provides that the State has acquired the rights with respect to a Participant for items or services constituting medical assistance under a State Medicaid Plan.
- (d) For purposes of this Section 6.8, a "State Medicaid Plan" means a State Plan for medical assistance approved under Title XIX of the Social Security Act.

## ARTICLE 7

### DEPENDENT CARE ASSISTANCE PROGRAM

**7.1 Purpose of Program.** The purpose of the Dependent Care Assistance Program as described in this Article 7 is to provide Eligible Employees with the opportunity to elect for each Plan Year to have a portion of their taxable Compensation reduced, and to have such elected amount allocated and made available to reimburse them for Qualified Dependent Care Expenses incurred during such Plan Year which are not payable or reimbursable from any other Plan or source.

**7.2 Status as Dependent Care Assistance Program.** It is the intention of the Employer that the Dependent Care Assistance Program qualify as a "Dependent Care Assistance Program" within the meaning of Section 129(d) of the Code, and that reimbursements provided under the Dependent Care Assistance Program to Participants be eligible for exclusion from their gross income pursuant to Section 129(a) of the Code.

**7.3 Enrollment in the Program.** The Plan Administrator shall provide each Eligible Employee with a written notice of the availability of the Dependent Care Assistance Program including the terms and conditions of participation. An Eligible Employee may thereupon elect to enroll in the Dependent Care Assistance Program for a Plan Year pursuant to the procedures prescribed in Section 4.3. Such election shall specify the amount of the Compensation for that Plan Year which the Eligible Employee directs to have reduced and made available for the reimbursement of Qualified Dependent Care Expenses incurred during that Plan Year.

**7.4 Maximum Annual Benefits.**

- (a) Subject to subsection (b) below, the maximum amount of Compensation which a Participant may elect to have reduced and set aside on a Participant's behalf under the Dependent Care Assistance Program for a Plan Year, and thus the maximum amount of reimbursements which may be made to the Participant for Qualified Dependent Care Expenses incurred during the Plan Year, is \$5,000.
- (b) Notwithstanding subsection (a) above, the maximum annual benefit which a Participant may elect for a Plan Year shall be limited to the least of the amounts set forth below:
  - (i) \$2,500 in the case of a married Participant if the Participant and the Participant's Spouse will file a separate federal income tax return for the tax year which coincides with such Plan Year;
  - (ii) the total taxable Compensation and other earned income of the Participant from the Employer, for that Plan Year; and
  - (iii) in the case of a married Participant, the total taxable Compensation and other earned income of the Participant's Spouse for that Plan Year;
  - (iv) the amount Participant elects to set forth pursuant to Article 7.3 above.

Notwithstanding the foregoing, the additional limitations prescribed above shall be imposed with respect to an Eligible Employee for a Plan Year only if at the time of the Eligible Employee's election the Plan Administrator knows or has reason to know that the circumstances giving rise to such limitation in fact exist or will exist with respect to the Eligible Employee for that Plan Year.

- (c) For purposes of subsections (b)(ii) and (iii) above, a Participant shall be deemed to be married with respect to a Plan Year if the Participant is so married to a Spouse on the last day of that Plan Year.

- (d) For purposes of subsection (b)(iii) above, the Spouse of a married Participant shall be deemed to have earned income for any month during a Plan Year in which such Spouse is either physically or mentally incapable of self-care, or is a full-time student during at least five (5) calendar months during that Plan Year. The amount of such deemed earned income for each such month is \$200 if the Participant has one Qualifying Individual (as defined in Section 7.7 below), and \$400 per month if the Participant has more than one Qualifying Individual.
- (e) The Plan Administrator may, in its sole discretion, secure from an Eligible Employee such information as may be appropriate to determine whether any of the special limitations prescribed in subsection (b) above may be applicable to the Eligible Employee for a Plan Year.

**7.5 Spending Accounts.** The Plan Administrator shall establish a separate Dependent Care Spending Account for each Eligible Employee who elects to participate in the Dependent Care Assistance Program for a Plan Year. Such Spending Account shall be credited with the salary reduction contributions which the Eligible Employee has elected to have set aside for the Plan Year under the Dependent Care Assistance Program, and shall be charged with all reimbursements and any administrative expenses made from or assessed against such Spending Account for that Plan Year.

**7.6 Conditions to Reimbursement.** A Participant shall be entitled to a reimbursement from the Dependent Care Spending Account for a Plan Year only if the following conditions are satisfied:

- (a) The Participant has one or more Qualifying Individuals, as defined in Section 7.7 below, with respect to such Plan Year;
- (b) The expense to which the reimbursement request relates is a Qualified Dependent Care Expense as defined in Section 7.8 below;
- (c) The expense to which the reimbursement request relates was incurred (as defined in Section 7.9 below) during that Plan Year while the Participant was enrolled in the Dependent Care Assistance Program (There is no Rollover allowed for the Dependent Care Assistance Spending Program); and
- (d) The Participant has complied with the expense reimbursement procedures prescribed under Article 8.

**7.7 Qualifying Individuals.** For purposes of this Article 7, a person is a "Qualifying Individual" with respect to a Participant as of any date if as of such date such person is:

- (a) a Dependent of the Participant under the age of 13 with respect to whom the Participant is entitled to a personal exemption deduction for income tax purposes; or
- (b) a Dependent or Spouse of the Participant who is physically or mentally incapable of self-care.

## **7.8 Qualified Dependent Care Expenses.**

- (a) Except as may otherwise be provided below, a "Qualified Dependent Care Expense" with respect to a Participant means an expense for Dependent care which is incurred to enable the Participant to be gainfully employed during a period for which there are one or more Qualifying Individuals with respect to the Participant.
- (b) Notwithstanding the foregoing, the following expenses shall not be deemed "Qualified Dependent Care Expenses," and thus shall not be reimbursable under the Dependent Care Assistance Program, these expenses include, but are not limited to:
  - (i) Any expense associated with providing Dependent care to a Participant's Dependent or Spouse who is a Qualifying Individual by reason of being incapable of self-care, if the Plan Administrator knows or has reason to know such person does not regularly spend at least eight (8) hours each day in the Participant's home.
  - (ii) Any expense for services provided by a day care center if the Plan Administrator knows or has reason to know that such center either does not comply with all applicable state and local laws and regulations, or does not provide care to more than six (6) individuals on a regular basis during the Plan Year.
  - (iii) Any expense which the Plan Administrator knows or has reason to know represents the cost of sending a child to an overnight camp.
  - (iv) Any expense which the Plan Administrator knows or has reason to know represents an amount paid to any individual who is:
    - (A) A Dependent of the Participant with respect to whom the Participant can claim a personal exemption deduction for income tax purposes;
    - (B) the Spouse of the Participant; or

- (C) a child of the Participant who is under the Age of 19 as of the last day of the Plan Year.
- (v) Any expense which the Plan Administrator knows or has reason to know has been paid or is reimbursable under any other program or from any source (other than this Plan).
- (vi) Any expense that is excluded by federal regulations including but not limited to food, clothing, or educational services unless these services are minimal or insignificant and inseparable from the portion of the expense that is for care, or for the individual's well being and protection.

(c) For purposes of establishing the status of an expense as a Qualified Dependent Care Expense, the term "Dependent" with respect to a Participant is as defined in Article 2; except that a child of a divorced Participant shall be treated as a Dependent of the Participant for a Plan Year only if the Participant has custody of the child for a longer period during the Plan Year than the other parent. Such status shall exist even if the Participant is not otherwise eligible to claim a dependency exemption deduction with respect to such child for income tax purposes by reason of a written release to such exemption claim made under Code Section 152(e).

**7.9 Timing of Expense Incurrence.** A Qualified Dependent Care Expense is reimbursable from a Participant's Dependent Care Spending Account for a Plan Year only if such expense is incurred during the Plan Year and while the Participant is enrolled in the Dependent Care Assistance Program. In this regard, an expense is deemed to have been incurred by an individual on the date on which the Qualifying Individual to whom the expense relates is provided with the Dependent care that gives rise to the expense, and not when the Participant or Qualifying Individual is billed, charged for or pays for the Dependent care. Accordingly, an otherwise Qualified Dependent Care Expense is not reimbursable from a Participant's Dependent Care Spending Account if such expense was incurred prior to the date on which the Participant enrolled in the Dependent Care Assistance Program. Similarly, reimbursements may not be made from a Participant's Dependent Care Spending Account as with respect to any expense incurred prior to the Plan Year. However, reimbursements of Qualified Dependent Care Expenses incurred during a Plan Year may be made after the end of the Plan Year as prescribed in Article 8. (There is no Rollover allowed for the Dependent Care Assistance Spending Program.) As of July 1, 2019, the Grace Period is no longer available under the Dependent Care Assistance Program.

**7.10 Limited Availability of Benefits.** The amount to which a Participant is entitled as a reimbursement under the Dependent Care Spending Account as of any date during a Plan Year is limited to the total amount of the Participant's elective contributions made to such account for the Plan Year as of such date, reduced by any prior reimbursements and administrative expenses charged to that account for that Plan Year. (There is no Rollover allowed for the Dependent Care Assistance Spending Program.)

As of July 1, 2019, the Grace Period is no longer available under the Dependent Care Assistance Program.

**7.11 Plan Administrator Rules.** The Plan Administrator may adopt such rules as it deems necessary or desirable to impose limitations on the amount of contributions elected to be made by Participants under the Dependent Care Assistance Program for the purpose of assuring that the limitations prescribed under this Article 7 are satisfied.

**7.12 Annual Benefit Statement.** The Plan Administrator or Employer shall provide to each Participant receiving reimbursements from the Dependent Care Assistance Program during a calendar year a written statement setting forth the amounts reimbursed or to be reimbursed to the Participant for such year. Such written statement shall be provided on or before January 31 following the end of the calendar year at issue. In lieu of a separate written statement, the information may be included in the Participant's Form W-2, Wage and Tax Statement, for such year. If as the time such annual benefit statement is being prepared, the Plan Administrator is unable to ascertain the total amount of reimbursement which will be made to a Participant for the year, the Plan Administrator may report in the annual benefit statement a reasonable estimate of the total amount of reimbursements. In this regard, the amount of Compensation which the Participant elected to have set aside under the Dependent Care Assistance Program for the year shall be deemed to be a reasonable estimate of the total amount to be reimbursed to the Participant for the year.

## ARTICLE 8

### EXPENSE REIMBURSEMENT PROCEDURES

**8.1 General Rules.** Reimbursements of Qualified Expenses under the Plan shall be made to a Participant upon the filing of a prior request for such reimbursement with the Plan Administrator or its delegate. The use of a benefit card shall constitute such a request. The reimbursement for use of a benefit card shall be satisfied by the honoring of the charge on the card with a corresponding reduction of the participant's account balance. Any such

request, other than use of a benefit card, shall not be acted upon unless it is (i) made on such form as the Plan Administrator may approve for such purpose, (ii) signed by the requesting Participant; and (iii) timely filed with the Plan Administrator or its delegate. All requests for reimbursements under the Plan shall be subject to, and shall be processed in accordance with the procedures set forth in this Article 8 and such other procedures prescribed from time to time by the Plan Administrator. All such procedures shall be uniformly applied to similarly situated Participants.

**8.2 Timing of Requests.** Requests for reimbursements under the Plan for Qualified Expenses incurred during a Plan Year may be made at any time during the Plan Year, or within 90 days following the end of the plan year in accordance with the Run-out Period.

**8.3 Forfeitures.** Except as allowed in Section 8.4, if the total Qualified Expenses paid or reimbursed to a Participant with respect to any Plan Year are less than the amount set aside for reimbursement by Participant in any Plan Year, the unused portion shall be forfeited sixty (60) days following a Participant's date of termination from plan participation or ninety (90) days after the end of the plan year.

**8.4 Rollover.**

- (a) Up to \$570 of any unused amounts in the Limited Expense Reimbursement Program at the end of the Plan Year may be rolled over for use in the next plan year.
- (b) The following provisions apply to Rollover amounts:
  - (i) A Participant may incur and/or request reimbursement of the Rollover amount until the end of that Plan Year.
  - (ii) A request for reimbursement from any Rollover amounts must be made within ninety (90) days following the end of the Plan year the Rollover occurred (the year following the year in which the deductions were taken); and
  - (iii) A maximum of \$570 may be rolled over from the Limited Expense Reimbursement Program at the end of each Plan Year.

**8.5 Reimbursements.** Reimbursements. Except as provided in any Plan, contract or arrangement established to provide Benefits, reimbursement of Qualified Expenses shall be made at such time and in such amounts as shall be determined by the Plan Administrator in accordance with the law. Except as allowed under Section 8.4, the amounts set aside under a Participant's Salary

Reduction Agreement for any Plan Year shall be used only to reimburse the Participant for Qualified Expenses incurred for such a Plan Year.

**8.6 Minimum Reimbursements.** At the discretion of the Plan Administrator, a request by a Participant for a reimbursement under either the Limited Expenses Reimbursement Program or the Dependent Care Assistance Program shall be accepted and acted upon if the amount of the request is for at least \$50.00 (or, if less, the remaining balance of the Participant's account). The foregoing restriction shall not apply, however, to the final reimbursement to be made to a Participant for a Plan Year.

**8.7 Claims Substantiation.** No expense reimbursement shall be made to a Participant under the Limited Expense Reimbursement Program or the Dependent Care Assistance Program unless the expense is documented directly by the Administrator or the Participant:

- (a) provides an invoice or other written statement from the service provider or other applicable independent third party which evidences that the expense has been incurred and the amount of such expense; and
- (b) attests in writing that the expense at issue has not been reimbursed and is not reimbursable under any other Plan.

**8.8 Processing Fee.** The Plan Administrator may impose upon a Participant a reasonable fee for the processing of a reimbursement under the Plan. Any such fee shall be charged to the Spending Account of the Participant from which such reimbursement is made.

**8.9 Nondiscrimination.** Notwithstanding any provision of the Plan to the contrary, in no event shall the aggregate amount of reimbursements or other Benefits provided to Key Employees under the Plan for a Plan Year exceed twenty-five percent (25%) of the aggregate amount of such reimbursements or other Benefits provided to all Participants for such Plan Year. The Plan Administrator may adopt such rules as it deems necessary or desirable to assure that the foregoing limitation is satisfied, including imposing restrictions on the amount of contributions which a Key Employee may elect to have set aside under the Plan for a Plan Year. Any such rules shall be uniformly applied to similarly situated individuals.

**8.10 Appeals Procedures.**

- (a) Any Participant or other person who believes that a benefit is due to such person under the Plan, including one greater than that initially determined by the Plan Administrator, may file an appeal in writing with the Plan Administrator.

(b) The Plan Administrator shall within ninety (90) days of the receipt of an appeal either allow or deny the claim in writing. A denial of an appeal shall be written in a manner calculated to be understood by the claimant and shall include:

- (i) the specific reason or reasons for the denial;
- (ii) specific references to pertinent Plan provisions on which the denial is based;
- (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (iv) an explanation of the Plan's claim review procedure.

(c) A claimant whose claim is denied (or the claimant's duly authorized representative) may, within sixty (60) days after receipt of the claim denial:

- (i) submit a written request for review to the Plan Administrator;
- (ii) review pertinent documents; and
- (iii) submit issues and comments in writing.

(d) The Plan Administrator shall notify the claimant of its decision on review within sixty (60) days of receipt of a request for review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provision on which the decision is based.

(e) The 90-day and 60-day periods described in subsections (b) and (d), respectively, may be extended at the discretion of the Plan Administrator for a second ninety (90) and sixty (60) day period, as the case may be, provided that written notice of the extension is furnished to the claimant prior to the termination of the initial period, indicating the special circumstances requiring such extension of time and the date by which a final decision is expected.

(f) A claimant may state the reason or reasons forming the basis of the claim to a benefit under the Plan, and may submit written evidence in support of the claim made under and in accordance with the procedures set forth in this Section 7.9. Such action is not required. However, the failure to state a reason or to submit written evidence in support of a

claim shall permanently bar the claimant from raising such reason or submitting such evidence in any forum at a later date.

- (g) Participants and Beneficiaries shall not be entitled to challenge the Plan Administrator's determinations in judicial or administrative proceedings without first complying with the procedures in this Article. The decisions made pursuant to this Section are intended to be final and binding on Participants, Beneficiaries and others.
- (h) Notwithstanding the other sections of this Article 7, if the Public Employees Health Program (PEHP) is the Plan Administrator, the procedure for appealing denied claims shall be administered in accordance with Utah Code Ann. § 49-11-613 as amended.

## ARTICLE 9

### COBRA CONTINUATION RIGHTS

- 9.1 In General.** Any Participant and/or Dependent who experiences a Qualifying Event with respect to the Limited Expense Reimbursement Program shall thereafter be eligible for Benefits under the Limited Expense Reimbursement Program in such amounts and for such periods as may be mandated under the health care continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and this Article 9.
- 9.2 Continuation of Coverage.** To the extent required by Section 9.1 above, a Qualified Beneficiary who would lose coverage under this Plan as a result of a qualifying event is entitled to elect continuation coverage within the election period under this Plan. Coverage provided under this provision is on a contributory basis. No evidence of good health will be required.

Except as otherwise specified in an election, any election by a Qualified Beneficiary who is a Participant or Spouse of the Participant will be deemed to include an election for continuation coverage under this provision on behalf of any other Qualified Beneficiary who would lose coverage by reason of a qualifying event.
- 9.3 Type of Coverage.** Continuation coverage under this provision is coverage which is identical to the coverage provided under this Plan to similarly situated Beneficiaries under this Plan with respect to whom a qualifying event has not occurred as of the time coverage is being provided. If coverage under this Plan is modified for any group of similarly situated Beneficiaries, the coverage shall also be modified in the same manner for all qualified Beneficiaries under the Plan in connection with such group.

**9.4 Coverage Period.** The coverage under this provision will extend for at least the period beginning on the date of a qualifying event and ending not earlier than the earliest of the following:

- (a) in the case of a terminated Participant or a Participant whose hours have been reduced, except as provided in (b) and (c) below, and his or her covered Dependents, the date which is 18 months after the qualifying event;
- (b) in the case of a Qualified Beneficiary disabled during the first sixty (60) days following the covered Participant's termination the date which is 29 months after the qualifying event, provided the Qualified Beneficiary provides the Plan Administrator with notice of Social Security disability determination within sixty (60) days of the disability determination and within 18 months of the qualifying event;
- (c) in the case of a qualifying event which occurs during the 18 months after the date that a Participant is terminated or the date that a Participant's hours are reduced, for the covered Dependents, the date which is 36 months after the date that a Participant is terminated, or the date that a covered Participant's hours are reduced;
- (d) for Plan Years commencing on or prior to June 30, 1997, in the case of a termination or reduction in hours of a Participant and that Participant's subsequent entitlement to Medicare while continuation coverage is in force for the Qualified Beneficiary, the date which is 36 months after the date of the Participant's entitlement to Medicare;
- (e) in the case of any qualifying event except as described in (a), (b), (c) and (d) above, the date which is 36 months after the date of the qualifying event;
- (f) the date on which Employer ceases to provide any flexible spending Plan to any Employee;
- (g) the date on which the Qualified Beneficiary fails to make timely payment of the required contribution pursuant to this provision;
- (h) the date on which the Qualified Beneficiary first becomes, after the date of the election, covered under any other group health Plan as an Employee or Dependent, or otherwise becomes entitled to Benefits under Title XVIII of the Social Security Act (Medicare).

## **9.5 Contribution.**

- (a) A Qualified Beneficiary shall only be entitled to continuation coverage provided such Qualified Beneficiary pays the applicable contribution required under the Plan in full and in advance, except as provided in (b) below. Such contribution shall not exceed the requirements of applicable federal law. A Qualified Beneficiary may elect to pay such contribution in monthly installments.
- (b) Except as provided in (c) below, the payment of any contribution shall be considered to be timely if made within thirty (30) days after the date due, or within such longer period of time as applies to or under this Plan.
- (c) Notwithstanding (a) and (b) above, if an election is made after a qualifying event during the election period, this Plan will permit payment of the required contribution for continuation coverage during the period preceding the election to be made within 45 days of the date of the election..
- (d) A 2% administrative fee may be charged in accordance with COBRA.

## **9.6 Notification by Qualified Beneficiary.** Each Participant or Qualified Beneficiary must notify the Plan Administrator or the Employer of the occurrence of a divorce or legal separation of the Participant from such covered Participant's Spouse, and/or the Participant's Dependent child ceasing to be a Dependent child under the terms of this Plan within sixty (60) days after the date of such occurrence.

## **9.7 Notification to Qualified Beneficiary.**

- (a) Upon receipt of written notice of a Qualifying Event the Plan Administrator shall then provide written notice to each Qualified Beneficiary of his or her right to continuation coverage under this provision as required by federal law.
- (b) The Plan Administrator shall notify any Qualified Beneficiary of the right to elect continuation coverage under this provision as required by federal law. If the qualifying event is the divorce or legal separation of the Participant from the Participant's Spouse or a Dependent child ceasing to be a Dependent child under the terms of this Plan, the administrator shall only be required to notify a Qualified Beneficiary of his or her right to elect continuation coverage if the Qualified Beneficiary notifies the Administrator of such qualifying event occurring within sixty (60) days after the date of such qualifying event.

- (c) Notification of the requirements of this provision to the Spouse of a Participant shall be treated as notification to all other qualified Beneficiaries residing with such Spouse at the time notification is made.

**9.8 Definitions.** The terms used in the text of this Article 8 are defined as follows:

- (a) “Dependents” for the purposes of the Limited Reimbursement Plan, include individuals who are Dependents within the meaning of section 152(a) of the Code.

No person shall be considered a Dependent of more than one Employee.

If both an Employee and an Employee’s Spouse are employed by Employer, Dependent children may be covered by either Spouse, but not by both.

- (b) “Election Period” means the 60-day period during which a Qualified Beneficiary who would lose coverage as a result of a qualifying event may elect continuation coverage. This 60-day period begins not later than the date of termination of coverage as a result of a qualifying event and ends not earlier than sixty (60) days after the later of such date of termination of coverage or the receipt of notice of the right to elect continuation coverage under this Plan.
- (c) “Full-Time Student” means a Dependent child who is enrolled in, regularly attends and is recognized by the Registrar of an accredited secondary school, college or university, institution for the training of registered nurses (RN), or any other accredited or licensed school for the minimum number of credit hours required by that institution in order to maintain Full-time Student status.
- (d) “Medicare” means the Health Insurance for the Aged and Disabled Act, Title XVIII of Public Law 89-97, Social Security, as amended.
- (e) “Qualified Beneficiary” means an individual who, on the day before the qualifying event for a Participant, is a Beneficiary under this Plan as the Spouse or Dependent child of the Participant. In the case of the termination of a Participant or the reduction in hours of the Participant’s employment, the term Qualified Beneficiary, includes the Participant. A child who is born to (or placed for adoption with) a Qualified Beneficiary who is a Participant during the Coverage Period shall also be a Qualified Beneficiary.

Exception – the term Qualified Beneficiary does not include an individual whose status as a Participant is attributable to a period in which such

individual is a nonresident alien who received no earned income from the Employer which constituted income from sources within the United States (within the meaning of code Section 911(d)(2) and Section 861(a)(3)). If an individual is not a Qualified Beneficiary pursuant to this paragraph, a Spouse or Dependent child of such individual shall not be considered a Qualified Beneficiary by virtue of the relationship to such individual.

- (f) “Qualifying Event” means with respect to a Participant, an of the following events which, but for the continuation coverage under this provision, would result in the loss of coverage of a Qualified Beneficiary:
  - (i) the death of the Participant;
  - (ii) the termination (except by reason of such Participant’s gross misconduct) or reduction in hours of the Participant’s employment;
  - (iii) the divorce or legal separation of the Participant from such Participant’s Spouse;
  - (iv) the Participant becoming entitled to Benefits under Title XVIII of the Social Security Act (Medicare);
  - (v) a Dependent child who ceases to be a Dependent child under the terms of this Plan.
- (g) “University/College” means an accredited institution listed in the current publication of accredited institutions of higher education.

## ARTICLE 10

### ADMINISTRATION OF THE PLAN

- 10.1 Plan Administrator.** The Employer may appoint a person, or a committee consisting of more than one person, an entity, or other third party to serve as the Plan Administrator and named fiduciary of the Plan. In the absence of such an appointment, the Employer shall serve as such Plan Administrator and named fiduciary.
- 10.2 Powers and Duties of Plan Administrator.** Except as specifically provided otherwise, the Plan Administrator shall have final and binding discretionary authority to control and manage the operation and administration of the Plan, including all rights and powers necessary or convenient to the carrying out of its functions hereunder, whether or not such rights and powers are specifically

enumerated herein. In exercising its responsibilities hereunder, the Plan Administrator may manage and administer the Plan through the use of agents (who may include Employees of the Employer). Without limiting the generality of the foregoing, and in addition to the other powers set forth in this Article 10, the Plan Administrator shall have the following express authorities:

- (a) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any Benefits hereunder, all in the sole discretion of the Plan Administrator. Any such construction, interpretation, etc., shall be final and binding on Participants, Beneficiaries and all other persons.
- (b) To prescribe procedures to be followed by Participants in filing requests for reimbursements of proper expenses, and to authorize payment of such expense reimbursements.
- (c) To prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, information explaining the Plan.
- (d) To receive from the Employer, and from Participants and Beneficiaries, such information, and to maintain records concerning such information, as shall be necessary for the proper administration of the Plan.
- (e) To furnish the Employer upon request such annual and other reports with respect to the administration of the Plan as are reasonable and appropriate.
- (f) To review and decide claims for Benefits, and the review of the denial of any such claims, pursuant to and to the extent provided in Section 8.9, including any interpretations of the Plan, which decisions and interpretations the Plan Administrator shall have full discretion and authority to make hereunder.

**10.3 Consultation with Advisors.** Except as specifically provided herein, the Plan Administrator (or any other fiduciary designated pursuant to Section 10.5) may employ one or more persons to render advice with regard to any responsibility it may have under the Plan. The Plan Administrator may consult with counsel, actuaries, accountants, physicians or other advisors (who may be counsel, actuaries, accountants, physicians or other advisors for the Employer) and may also from time to time utilize the services of Employees and agents of the Employer in the discharge of its responsibilities.

**10.4 Records and Reports.** The Plan Administrator shall take all such action as it deems necessary or appropriate to comply with governmental laws and regulations relating to the maintenance of records, notifications to Participants, filings with the Internal Revenue Service and U.S. Department of Labor, and all

other such requirements applicable to the Plan. Employer shall be responsible for preparing and filing a Form 5500 with the Internal Revenue Service.

**10.5 Designation of Other Fiduciaries.** The Employer may designate in writing other persons to carry out a specified part or parts of the Plan Administrator's responsibilities hereunder (including the power to designate other persons to carry out a part of such designated responsibility); provided, however, that such designation may not include any power to manage or control assets of the Plan, or to amend the Plan. Any such designation must be accepted by the designated person, who shall acknowledge in writing that such person is a fiduciary with respect to the Plan.

**10.6 Obligations of Plan Administrator and Employers.**

- (a) The Plan Administrator shall make such determinations as are necessary to accomplish the purposes of the Plan with respect to individual Participants or classes of such Participants.
- (b) The Employer shall notify the Plan Administrator of facts relevant to such determinations, including without limitation, length of service, compensation for services, date of death, permanent disability, granting or terminating of leave of absence, age, retirement and termination of service for any reason (but indicating such reason), and termination of participation. The Employer shall also notify the Plan Administrator of all other facts which may be necessary for the Plan Administrator to discharge its responsibilities hereunder.

## **ARTICLE 11**

### **AMENDMENT OR TERMINATION**

**11.1 Amendment or Termination of Plan.**

- (a) The Employer reserves the right at any time and from time to time to amend or terminate in whole or in part any of the provisions of the Plan or Benefit Program.
- (b) Any such amendment or termination shall be effective as of the date specified by the Employer. An amendment may be effected by establishment, modification, or termination of a Benefit Program by Employer. Any such amendment or termination may take effect retroactively or otherwise.

(c) In the event of a termination or reduction of Benefits under the Plan or any Benefit Program, the Plan shall be liable only for benefit payments due and owing as of the effective date of such termination or reduction, and no payments scheduled to be made on or after such effective date shall result in any liability to the Plan, the Plan Administrator, the Employer, or any agent thereof.

**11.2 Form of Amendment or Termination.** Any amendment or termination of the Plan or any part of the Plan shall be made by an instrument in writing, duly certified, reflecting that such change has been authorized by Employer or the Plan Administrator.

## ARTICLE 12

### MISCELLANEOUS

**12.1 Exemption for ERISA.** This Plan is exempt from the Employers Retirement Income Security Act of 1974 pursuant to 29 U.S.C. 1003(b).

**12.2 No Guarantee of Employment, etc.** Neither the maintenance of the Plan nor any part thereof shall be construed as giving any Participant hereunder or other Employees any right to remain in the employ of the Employer and none of the terms hereof shall be construed as an express or implied contract between the Employer and any Participant or Beneficiary. All terms and conditions of this Plan are subject to unilateral modification, or termination by Employer. No commissioner, officer, or Employee of the employer in any way guarantees to any Participant or Beneficiary the payment of any benefit or amount which may become due in accordance with the terms of the Plan.

**12.3 Required Information to be Furnished.**

(a) Each Participant and Beneficiary will furnish to the Plan Administrator such information as the Plan Administrator considers necessary or desirable for purposes of administering the Plan, and the provisions of the Plan respecting any payments hereunder are conditional upon the prompt submission by the Participant or Beneficiary of such true, full and complete information as the Plan Administrator may request.

(b) Any communication, statement or notice to a Participant and Beneficiary addressed to the last post-office address filed with the Plan Administrator, or if no such address was filed with the Plan Administrator, then to the last post-office address of the Participant or Beneficiary as shown on the Employer's records, will be binding on the Participant or Beneficiary for all purposes of this Plan and neither the

Plan Administrator nor the Employer shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary.

- 12.4 Nonalienation.** To the fullest extent permitted by law, Participants and Beneficiaries shall have no right to assign, transfer, hypothecate, encumber, commute or anticipate an interest in any Benefits under the Plan, and the payment of Benefits shall in no way be subject to any legal process to levy upon or attach the same for payment of any claim against any Participant or Beneficiary.
- 12.5 Recovery of Overpayments.** Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator shall be authorized on behalf of the Plan to institute or cause to be instituted action to recover an overpayment of Benefits made pursuant to the Plan to any Participant or Beneficiary as authorized by the Code.
- 12.6 Payment of Benefits to Persons under Legal Disability.** Whenever and as often as any person entitled to payments under the Plan shall be determined to be a minor or under other legal disability or otherwise incapacitated in any way so as to be unable to manage such person's financial affairs, or otherwise incapable of giving a valid receipt and discharge for any payment, the Plan Administrator, in its sole discretion, may direct that all or any portion of such payments be made (i) to such person, (ii) to such person's legal guardian or conservator, or (iii) to such person's Spouse or to any other person, in any manner the Plan Administrator considers advisable, to be expended for the person's benefit. The decision of the Plan Administrator shall, in each case, be final and binding upon all persons. Any payment made pursuant to the power herein conferred shall operate as a complete discharge of the obligations under the Plan in respect thereof of the Plan, the Employer, and the Plan Administrator.
- 12.7 Controlling Law.** To the extent not preempted by the law of the United States of America, the laws of the State of Utah shall be the controlling state law in all matters relating to the Plan and shall apply.
- 12.8 Severability.** If any provisions of the Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced as if said illegal and invalid provisions had never been included herein.
- 12.9 Limitations and Provisions.** The provisions of the Plan and any Benefits provided by the Plan shall be limited as described herein. Any benefit payable under any other Employee benefit Plan maintained by the Employer shall be paid solely in accordance with the terms and provisions of such Plan, and nothing in this Plan shall operate or be construed in any way to modify, amend, or affect the terms and provisions of such other Plan.

**12.10 Gender and Number.** Masculine gender shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, unless the context clearly indicates otherwise.

**12.11 Headings.** All article and section headings in the Plan are intended merely for convenience and shall in no way be deemed to modify or supplement the actual terms and provisions set for thereunder.

**12.12 Counterparts.** This Plan may be executed in several counterparts, and each shall be an original without reference to the others.

IN WITNESS WHEREOF, and as evidence by the adoption of this Plan, **Tooele City** has caused its authorized officers to duly execute this Plan this \_\_\_\_\_ day of

Tooele City

By: \_\_\_\_\_

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

Attest:

Revised 6/2014

# **SECTION 125**

# **INSURANCE PREMIUM PAYMENT PLAN**

**Prepared for**

**Tooele City**

**Effective July 1, 2022**

## INSURANCE PREMIUM PAYMENT PLAN

### ARTICLE I PURPOSE OF PLAN

**1.01 Purpose.** The purpose of the Insurance Premium Payment Plan (the “Plan”) is to permit Employees of the Employer to participate in the Employer’s medical, dental, accident, and other insurance benefit programs allowable under the Code, and to pay the required portion of the eligible premiums, on a basis which is intended to provide to them significant income tax advantages, as permitted by Section 125 of the Internal Revenue Code, (IRC) as amended.

Under the Plan, unless a Participant elects to the contrary, any monthly insurance premiums under the office’s medical and dental benefit program, which are currently payable by the Participant will be paid directly by the office. In return for payment of the premiums by the office, the Participant agrees to have his or her salary adjusted downward to reflect the amount of the premiums so paid. The Plan may provide significant tax advantages to the Participants in that the required premiums will be paid with funds, which will not be subject to federal income tax, and the corresponding amount of the salary reductions of Participants should not be includable in their gross income for federal income tax purposes.

**The tax advantage, which the Plan is intended to provide, is subject to government rulings, regulations and application of the tax laws by the Internal Revenue Service. Although it may anticipate certain tax consequences as being likely, the Employer does not promise or represent to any person that any particular tax consequence will result from participation in this Plan.**

The Plan is intended to qualify as a “cafeteria plan” under Section 125 of the Internal Revenue Code of 1986, as amended, and shall be construed and interpreted consistent with the requirements of that Section.

### ARTICLE II DEFINITIONS

The following words and phrases have the following meanings, unless a different meaning is plainly required by the text:

**2.01 Code.** “Code” means the Internal Revenue Code of 1986, as amended.

**2.02 Effective Date.** “Effective Date” means July 1, 2022.

**2.03 Employee.** “Employee” means an Employee of the Employer who meets the eligibility requirements of the Employer’s accident, medical, and dental benefit programs.

**2.04 Employer.** “Employer” means **Tooele City**.

**2.05 Participant.** “Participant” means an Employee who has elected to participate in the Plan.

**2.06 Plan.** “Plan” means the Insurance Premium Payment Plan.

**2.07 Plan Year.** “Plan Year” means the twelve consecutive month period beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>.

### ARTICLE III ELIGIBILITY AND PARTICIPATION

**3.01 Eligibility.** Each Employee who elects coverage under the Employer’s accident, medical and dental benefit programs is eligible to participate in the Plan.

**3.02 *Participation.*** Unless otherwise elected under section 3.03, each Employee shall be a Participant in the Plan for a Plan Year.

**3.03 *Election not to Participate.*** An Employee who is eligible to participate in the Plan may elect not to participate by completing and filing an appropriate election form before the day the Employee's coverage under the Employer's accident, medical, or dental benefit begin and within the election period established by the Employer.

**3.04 *Changes in Participation Status.***

- (a) An Employee's participation status at the end of a Plan Year shall be automatically continued for the subsequent Plan year unless the employee completes and files an appropriate election form under section 3.03 during the election period established by the Employer.
- (b) A Participant may revoke or amend participation in the Plan during a Plan Year only on account of and consistent with a status change, a change in family status, and/or employment status change. A status includes: marriage, divorce, death of a spouse or child, birth or adoption of a child, or an employment change of the spouse which affects the spouse's eligibility for benefits under another group, medical or dental plan, or such other event allowed under applicable law or regulation. A revocation or amendment or participation must be made within sixty (60) days after the change in family status and will be effective for the balance of the Plan Year in which the election is made, beginning on the first day of the month following the month in which the election is made. The change made must be consistent with the status change, family, or employment status change.

**3.05 *HIPAA/Special Enrollment.*** In the case of a Benefit Plan that provides health coverage, and not for Qualified Health Care Expense accounts, a Participant may revoke participation in a Benefit Plan and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), whether or not the change is permitted under any other section of this Plan.

For Individuals losing other Coverage:

- (1) An Employee may revoke participation in a Benefit Plan and make a new election if the Employee is eligible, but not enrolled, for coverage under the terms of the Benefit Plan (or a Spouse or Dependent Child of such an Employee if the Spouse or Dependent Child is eligible, but not enrolled, for coverage); and
  - (1) The Employee, Spouse or Dependent Child was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the Employee.
  - (2) The Employee's Spouse's or Dependent Child's coverage under a group health plan or health insurance was:
    - Under a COBRA continuation provision and the coverage under such provision was exhausted; or
    - Not under a COBRA continuation provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment) or the employer contributions towards such coverage were terminated.

(2) In this case, a revocation or amendment of participation must be made within 30 days after the date of exhaustion of coverage described in subparagraph f., 1.,(a),(1) or the termination of coverage or employer contribution described in subparagraph f.,1., (a),(3) and will be effective for the balance of the Plan Year in which the election is made, beginning on the first day of the month following the month in which the election is made.

For Acquisitions of a Spouse or Dependent Child:

- (1) A Participant may revoke participation in a Benefit Plan and make a new election if the individual is a Participant under the Benefit Plan (or has met any waiting period applicable to becoming a Participant under the Plan and is eligible to be enrolled under the Plan but for a failure to enroll during a previous enrollment period), and
- (2) A person becomes a Spouse or a Dependent Child of the Participant through marriage, birth, or adoption or placement for adoption, and
- (3) The Participant elects to enroll himself or herself, the Spouse, and/or the Participant's Dependent Child or Children in the Plan, to the extent that the Spouse or Dependent Children are otherwise eligible for coverage.
- (4) In this case, a revocation or amendment or participation must be made within 30 days after the date dependent coverage is made available or the date of the marriage, birth, or adoption or placement for adoption and will be effective for the balance of the Plan year in which the election is made, as follows:
  - (1) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;
  - (1) in the case of a Dependent Child's birth, as of the date of such birth; or
  - (2) in the case of a Dependent Child's adoption or placement for adoption, the date of such adoption or placement for adoption.

A Participant's revocation or amendment of participation during the Plan Year, and new election for the remainder of the Plan Year, is allowable:

- (1) if a judgment, decree, or order (collectively, "Order") results from a divorce, legal separation, annulment, or change in legal custody (including a Qualified Medical Child Support Order defined in Section 609 of ERISA) that requires accident or health coverage for an Employee's Dependent Child, and
- (2) the Employee changes his or her election to provide coverage for the Dependent Child if the Order requires coverage under the Employee's plan; or
- (3) the Employee changes he or her election to revoke coverage for the Dependent Child if the Order requires the former spouse to provide coverage.

**3.06 Medicare / Medicaid Entitlement.** A Participant's revocation or amendment of participation during the Plan Year, and new election for the remainder of the Plan Year, is allowable:

- (a) if the Employee, Spouse, or Dependent Child becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting

solely of the benefits under Section 1928 of the Social Security Act (the program for the distribution of pediatric vaccines); and

(b) the Employee changes his or her election to revoke coverage for that Employee, Spouse or Dependent Child under the Plan.

**3.07 *Termination of Participation.*** Participation during a Plan Year terminates on the date a Participant ceases to be an Employee or fails to meet the eligibility requirements of section 3.01 or revokes participation under section 3.04, or the date the Plan is terminated.

## ARTICLE IV BENEFITS AND SALARY REDUCTION

**4.01 *Benefits.*** The Employer shall pay the entire cost or premium of the medical, dental, and accident insurance benefits selected by a Participant.

**4.02 *Salary Reduction.*** As a Participant in the Plan, each Employee agrees to reduce his or her salary or wage each month by the amount of the Participant's portion of the monthly premium paid by the Employer in section 4.01. The premium amounts paid by the Employer will be adjusted to reflect changes in the cost or insurance premiums of the medical, dental and accident insurance and other benefits. Such changes will automatically be reflected in the amount of a Participant's salary reduction.

## ARTICLE V ADMINISTRATION

**5.01 *Employer Powers and Duties.*** The Employer shall manage and administer the Plan. The Employer shall interpret the Plan and decide all matters arising thereunder, including the right to remedy possible ambiguities, inconsistencies, or omissions. All determinations of the Employer with respect to any matter under the Plan shall be conclusive and binding on all persons. The Employer may:

- (a) Require any person to furnish such information as it may request for the purpose of the proper administration of the Plan and as a condition to receiving any benefits under the Plan.
- (b) Make and enforce administrative rules and prescribe the use of such forms as it considers necessary for the efficient administration of the Plan.
- (c) Decide questions concerning the Plan and the eligibility of any Employee to participate in the Plan, in accordance with the provisions of the Plan.
- (d) Determine the amount of benefits which are payable to any person in accordance with the provisions of the Plan; and provide full and fair review to any Participant whose claim for benefits has been denied in whole or in part.
- (e) Delegate to appropriate third parties the Employer's powers and duties under the Plan.

**5.02 *Expenses.*** All expenses incurred prior to the termination of the Plan that arise in connection with the administration of the Plan, shall be paid by the Employer.

**5.03 *Additional Operating Rules.***

- (a) The amount of all costs of insurance premiums paid by the Employer pursuant

to a Participant's salary reduction election will not be subject to federal or state income tax withholding or Social Security (FICA and FUTA) tax withholding. Salary reduction amounts under this Plan shall not reduce salary or wage amounts for purposes of any other Employer sponsored Employee benefit program unless the terms of the program provides otherwise.

- (b) In no event may the amount of salary reduction under this Plan in any month or pay period exceed the amount of a Participant's net salary for such month or pay period. Further, no salary reduction shall be made when the amount of the salary reduction under this Plan in any month or pay period exceeds the amount of a Participant's net salary for such month or pay period.
- (c) In the event the Participant is on an unpaid leave of absence or other circumstances where the Participant continues to be a member of the accident, medical and dental benefit programs offered by the Employer and the Participant does not receive a salary sufficient to pay the insurance premium, it is the responsibility of the Participant to remit to the Employer funds as to cover the Participant's share of insurance premiums. Such payments shall be made monthly.

## ARTICLE VI CLAIMS PROCEDURE

**6.01 Notice to Employee.** Any person who claims he or she has been denied a benefit under the Plan shall be entitled, upon written request to the Employer to receive, within thirty (30) days of receipt of such request, a written notice of such action, together with a full and clear statement of the specific reasons therefore, citing pertinent provisions of the Plan and statement of the procedure to be followed in requesting a review of his or her claim.

**6.02 Appeal of Denial of Benefit.** If the claimant wishes further consideration of his or her claim, he or she may request a hearing. The Employer shall schedule and hold a full and fair hearing on the issue within sixty (60) days following receipt of the claimant's request for such hearing. The decision following such hearing shall be communicated in writing to the claimant and, if the claim is denied, shall set forth the specific reasons for such denial, citing the pertinent provisions of the Plan. The decision of the Employer as to all claims shall be final. A person may make an appeal under this Section only with regard to benefits that have been denied under this Plan. Benefits provided under other benefit plans are not subject to appeal under this Section.

## ARTICLE VII AMENDMENT OR TERMINATION OF THE PLAN

**7.01 Right to Amend or Terminate.** The Employer reserves the power at any time and from time to time (and retroactively if necessary or appropriate to meet the requirements of the Code) to modify or amend, in whole or in part, any or all of the provisions of the Plan provided, however, that no such modification or amendment shall divest a Participant of a right to a benefit to which he becomes entitled in accordance with the Plan. The Employer reserves the power to discontinue or terminate the Plan at any time. Any such amendment, discontinuance or termination shall be effective as of such date as the Employer shall determine.

## ARTICLE VIII GENERAL PROVISIONS

- 8.01 Employment Rights.** Neither the Plan nor any action taken with respect to it shall confer upon any person the right to continue in the employ of the Employer.
- 8.02 Alienation of Benefits.** No benefit under the Plan is subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, any attempt to do so is void.
- 8.03 Use of Form Required.** All communications in connection with the Plan made by a Participant are effective only when duly executed on forms provided by and filed with the Division of Human Resources of the Employer.
- 8.04 Applicable Law.** The provisions of the Plan shall be construed, administered and enforced according to applicable Federal law and the laws of the State of Utah.
- 8.05 Limitation on Liability.** The Employer does not guarantee benefits payable under any insurance policy or other similar contract described or referred to herein, and any benefits thereunder shall be the exclusive responsibility of the insurer or other entity that is required to provide such benefits under such policy or contract.
- 8.06 Gender and Number.** The masculine pronoun wherever used shall include the feminine, the neuter pronoun shall include both the masculine and the feminine, and the singular may include the plural, and vice versa, as the context may require.

The Employer does hereby establish this Plan for the benefit of its Employees, which shall be known as the Insurance Premium Payment Plan.

The undersigned does hereby certify that this Plan Document was approved and duly adopted on behalf of the Tooele City.

Tooele City

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

Attested:



## TOOELE CITY CORPORATION

### RESOLUTION 2022-40

#### **A RESOLUTION OF THE TOOELE CITY COUNCIL AUTHORIZING THE MAYOR TO UNDERTAKE ALL OF THE NECESSARY ACTIONS TO ENROLL THE CITY IN THE BENEFIT PROGRAMS OF THE FIREFIGHTERS RETIREMENT SYSTEMS OFFERED BY UTAH RETIREMENT SYSTEMS.**

WHEREAS, effective with the 2022-2023 fiscal year budget, Tooele City anticipates adding funding for a full-time Fire Chief to serve as a Mayoral appointed department head, consistent with Section 2-06 of the Tooele City Charter and Section 1-6-4(2) of the Tooele City Code; and,

WHEREAS, the Fire Chief position may qualify for coverage under the Utah Retirement System (URS) Firefighter Retirement System and for benefits associated with the firefighter retirement systems (as opposed to the Public Employees Retirement System); and,

WHEREAS, the costs for participation in a Firefighter Retirement System are less than the costs for participation in the Public Employees Retirement System, and the benefits are more generous;

WHEREAS, the Utah Retirement System requires that a Resolution be adopted authorizing Tooele City's participation in a Firefighter Retirement System if in fact the Fire Chief position is deemed by the URS office to qualify for coverage in that retirement system; and,

WHEREAS, it is the intent of the City Council to approve and authorize coverage under the URS Firefighters Retirement System for Tooele City firefighter personnel who qualify for coverage, including the Fire Chief:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Mayor is authorized to undertake all of the necessary actions to enroll the City in the benefit programs of the Firefighters Retirement Systems offered by Utah Retirement Systems, including the retirement coverage and death benefit coverage for qualified employees under the laws and regulations of the Utah Retirement Systems.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

TOOELE CITY MAYOR

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2022-42

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH MORGAN PAVEMENT MAINTENANCE FOR THE 2022 ROADWAY MAINTENANCE PROJECT - PART 2, BID SCHEDULE "A" - TYPE II SLURRY SEAL.**

WHEREAS, Tooele City has more than 220 lane miles of public roadway located within the City limits for which it has maintenance; and,

WHEREAS, a significant number of those roadways require maintenance in varying levels of effort in order to maintain reasonably safe and convenient public access and to extend the life of those roadways; and,

WHEREAS, the City receives State roadway assistance (Road "C") funds together with additional funding from the State Legislature, which funds are to be used by the City for public roadway pavement maintenance and repair; and,

WHEREAS, the City solicited public bids for construction of the 2022 Roadway Maintenance Project - Part 2 in accordance with the procedures of §11-39-101 et seq. and §72-6-108, Utah Code Annotated, as amended; and,

WHEREAS, the Bid allowed for award of separate bids for completion of the Type II Slurry Seal (Bid Schedule "A") and Light Weight Aggregate Chip Seal (Bid Schedule "B"); and,

WHEREAS, Morgan Pavement Maintenance is the apparent lowest responsive responsible bidder for Bid Schedule "A" - Type II Slurry Seal, with a bid of Three Hundred Ninety Nine Thousand Five Hundred Dollars (\$399,500.00); and,

WHEREAS, a copy of the Bid Tabulation and Agreement are attached as Exhibits A and B, respectively; and,

WHEREAS, the City Administration requests an additional appropriation of 5% in the amount of Twenty Thousand Dollars (\$20,000.00) as contingency for change orders for changed conditions which may arise during the Project, as reviewed and approved by the Mayor:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that

1. the agreement attached as Exhibit B with Morgan Pavement Maintenance is hereby approved, in the amount of Three Hundred Ninety Nine Thousand Five Hundred Dollars (\$399,500.00), for completion of the 2022 Roadway Maintenance Project - Part 2, Bid Schedule A - Type II Slurry Seal; and,

2. an additional Twenty Thousand Dollars (\$20,000.00) contingency is hereby approved, which may be used for changed conditions as reviewed and approved by the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

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(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

## EXHIBIT A

### Bid Tabulation

## EXHIBIT B

Agreement:

Morgan Pavement Maintenance

**2022 Roadway Maintenance Project - Part 2**  
**BID TABULATION**  
May 10, 2022

Item No.	Description	Estimated Quantity	Unit	Morgan Pavement		M&M Asphalt	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$5,750.00	\$5,750.00	\$2,000.00	\$2,000.00
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.1575	\$393,750.00	\$0.175	\$437,500.00
			Total		\$399,500.00		\$439,500.00
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS	\$21,900.00	\$21,900.00		-
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF	\$0.378	\$491,400.00		-
			Total		\$513,300.00		No Bid
<b>COMMENTS</b>							

Item No.	Description	Estimated Quantity	Unit	Asphalt Preservation		Consolidated Paving	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$6,500.00	\$6,500.00	\$6,037.50	\$6,037.50
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.165	\$412,500.00	\$0.170	\$425,000.00
			Total		\$419,000.00		\$431,037.50
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS		-	\$20,856.50	\$20,856.50
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF		-	\$0.36	\$468,000.00
			Total		No Bid		\$488,856.50
<b>COMMENTS</b>							

**2022 Roadway Maintenance Project - Part 2**  
**BID TABULATION (Continued)**  
May 10, 2022

Item No.	Description	Estimated Quantity	Unit	American Pavement Preservation		Intermountain Slurry Seal	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$3,000.00	\$3,000.00	\$14,000.00	\$14,000.00
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.172	\$430,000.00	\$0.192	\$480,000.00
<b>Total</b>				<b>\$433,000.00</b>		<b>\$494,000.00</b>	
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS		-	\$30,000.00	\$30,000.00
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF		-	\$0.46	\$598,000.00
<b>Total</b>				<b>No Bid</b>		<b>\$628,000.00</b>	
<b>COMMENTS</b>							

Item No.	Description	Estimated Quantity	Unit	Staker Parsons			
				Unit Bid Price	Total		
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS		-		
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS		-		
<b>Total</b>				<b>No Bid</b>			
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS	\$7,310.00	\$7,310.00		
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF	\$0.34	\$442,000.00		
<b>Total</b>				<b>\$449,310.00</b>			
<b>COMMENTS</b>							

# DOCUMENT 00 52 00

## AGREEMENT

### PART 1 GENERAL

#### 1.1 CONTRACTOR

- A. Name: Morgan Pavement Management
- B. Address: 625 South Main, Clearfield, Utah 84015
- C. Telephone number: (801) 544-5947
- D. Facsimile number: (801) 416-8061

#### 1.2 OWNER

- A. The name of the OWNER is Tooele City Corporation

#### 1.3 CONSTRUCTION CONTRACT

- A. The Construction Contract is known as

### 2022 Roadway Maintenance Project - Part 2 Bid Schedule "A" - Type II Slurry Seal

#### 1.4 ENGINEER

- A. Paul Hansen Associates, L.L.C. is the OWNER's representative and agent for this Construction Contract who has the rights, authority and duties assigned to the ENGINEER in the Contract Documents.

### PART 2 TIME AND MONEY CONSIDERATIONS

#### 2.1 CONTRACT PRICE

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

B. The Schedules of Prices awarded from the Bid Schedule are as follows.

1. Base Bid.
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

C. An Agreement Supplement [\_\_\_\_\_] is, [X] is not attached to this Agreement.

D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price awarded is: Three Hundred Ninety Nine Thousand Five Hundred Dollars (\$399,500.00).

## 2.2 CONTRACT TIME

A. The Contract time shall be as follows:

1. All slurry seal work shall be completed **prior to September 30, 2022**
- B. Any time specified in work sequences in the Summary of Work shall be a part of the Contract Time. \_\_\_\_\_

## 2.3 PUNCH LIST TIME

- A. The Work will be complete and ready for final payment within 5 days after the date CONTRACTOR receives ENGINEER's Final Inspection Punch List unless exemptions of specific items are granted by ENGINEER in writing or an exception has been specified in the Contract Documents.
- B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER's rights under this Agreement.

## 2.4 LIQUIDATED DAMAGES

A. Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions. CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.

1. **Late Contract Time Completion:**

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.

2. **Late Punch List Time Completion:** 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the CONTRACTOR by certified mail.

3. **Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the ENGINEER's prior written approval. OWNER and CONTRACTOR agree that in the event OWNER suffers damages from such interruption, the amount of liquidated damages stipulated below shall not be deemed to be a limitation upon OWNER's right to recover the full amount of such damages.

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof of any utility interruption caused by the CONTRACTOR without the ENGINEER's prior written authorization.

C. **Survey Monuments:** No land survey monument shall be disturbed or moved until ENGINEER has been properly notified and the ENGINEER's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that CONTRACTOR will pay as liquidated damages the sum of (\$500.00) to cover such damage and expense.

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

## **PART 3 EXECUTION**

### 3.1 EFFECTIVE DATE

A. OWNER and CONTRACTOR execute this Agreement and declare it in effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### 3.2 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGMENT

A. CONTRACTOR's signature: \_\_\_\_\_

B. Please print name here: \_\_\_\_\_

C. Title: \_\_\_\_\_

D. CONTRACTOR's Utah license number: \_\_\_\_\_

## Acknowledgment

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2022.

by \_\_\_\_\_  
(person acknowledging and title or representative capacity, if any).

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Notary's signature

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## Residing at

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My commission expires:

Notary's seal

### 3.3 OWNER'S SUBSCRIPTION AND ACKNOWLEDGMENT

A. OWNER's signature: \_\_\_\_\_

B. Please print name here: Debra E. Winn

C. Title: Mayor

ATTEST:

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Michelle Y. Pitt  
Tooele City Recorder

S E A L

APPROVED AS TO FORM

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Roger Evans Baker  
Tooele City Attorney

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TOOELE CITY CORPORATION

RESOLUTION 2022-43

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH STAKER & PARSON COMPANIES FOR THE 2022 ROADWAY MAINTENANCE PROJECT - PART 2, BID SCHEDULE "B" - LIGHT WEIGHT AGGREGATE CHIP SEAL.**

WHEREAS, Tooele City has more than 220 lane miles of public roadway located within the City limits for which it has maintenance; and,

WHEREAS, a significant number of those roadways require maintenance in varying levels of effort in order to maintain reasonably safe and convenient public access and to extend the life of those roadways; and,

WHEREAS, the City receives State roadway assistance (Road "C") funds together with additional funding from the State Legislature, which funds are to be used by the City for public roadway pavement maintenance and repair; and,

WHEREAS, the City solicited public bids for construction of the 2022 Roadway Maintenance Project - Part 2 in accordance with the procedures of §11-39-101 et seq. and §72-6-108, Utah Code Annotated, as amended; and,

WHEREAS, the Bid allowed for award of separate bids for completion of the Type II Slurry Seal (Bid Schedule "A") and Light Weight Aggregate Chip Seal (Bid Schedule "B"); and,

WHEREAS, Staker & Parson Companies is the apparent lowest responsive responsible bidder for Bid Schedule "B" - Light Weight Aggregate Chip Seal, with a bid of Four Hundred Forty Nine Thousand Three Hundred Ten Dollars (\$449,310.00); and,

WHEREAS, a copy of the Bid Tabulation and Agreement are attached as Exhibits A and B, respectively; and,

WHEREAS, the City Administration requests an additional appropriation of 5% in the amount of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) as contingency for change orders for changed conditions which may arise during the Project, as reviewed and approved by the Mayor:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that

1. the agreement attached as Exhibit B with Staker & Parson Companies is hereby approved, in the amount of Four Hundred Forty Nine Thousand Three Hundred Ten Dollars (\$449,310.00), for completion of the 2022 Roadway Maintenance Project - Part 2, Bid Schedule "B" - Light Weight Aggregate Chip Seal; and,

2. an additional Twenty Two Thousand Five Hundred Dollars (\$22,500.00) contingency is hereby approved, which may be used for changed conditions as reviewed and approved by the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

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(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

## EXHIBIT A

### Bid Tabulation

## EXHIBIT B

Agreement:

Staker & Parson Companies

**2022 Roadway Maintenance Project - Part 2**  
**BID TABULATION**  
May 10, 2022

Item No.	Description	Estimated Quantity	Unit	Morgan Pavement		M&M Asphalt	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$5,750.00	\$5,750.00	\$2,000.00	\$2,000.00
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.1575	\$393,750.00	\$0.175	\$437,500.00
			Total		\$399,500.00		\$439,500.00
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS	\$21,900.00	\$21,900.00		-
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF	\$0.378	\$491,400.00		-
			Total		\$513,300.00		No Bid
<b>COMMENTS</b>							

Item No.	Description	Estimated Quantity	Unit	Asphalt Preservation		Consolidated Paving	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$6,500.00	\$6,500.00	\$6,037.50	\$6,037.50
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.165	\$412,500.00	\$0.170	\$425,000.00
			Total		\$419,000.00		\$431,037.50
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS		-	\$20,856.50	\$20,856.50
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF		-	\$0.36	\$468,000.00
			Total		No Bid		\$488,856.50
<b>COMMENTS</b>							

**2022 Roadway Maintenance Project - Part 2**  
**BID TABULATION (Continued)**  
May 10, 2022

Item No.	Description	Estimated Quantity	Unit	American Pavement Preservation		Intermountain Slurry Seal	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS	\$3,000.00	\$3,000.00	\$14,000.00	\$14,000.00
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS	\$0.172	\$430,000.00	\$0.192	\$480,000.00
<b>Total</b>				<b>\$433,000.00</b>		<b>\$494,000.00</b>	
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS		-	\$30,000.00	\$30,000.00
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF		-	\$0.46	\$598,000.00
<b>Total</b>				<b>No Bid</b>		<b>\$628,000.00</b>	
<b>COMMENTS</b>							

Item No.	Description	Estimated Quantity	Unit	Staker Parsons			
				Unit Bid Price	Total		
<b>Bid Schedule A - Type II Slurry Seal</b>							
A1.	Mobilization	1	LS		-		
A2.	Furnish and Install Type II Slurry Seal, Restripe	2,500,000	LS		-		
<b>Total</b>				<b>No Bid</b>			
<b>Bid Schedule B - Light Weight Aggregate Chip Seal</b>							
B1.	Mobilization	1	LS	\$7,310.00	\$7,310.00		
B2.	Furnish and Install Light Weight Aggregate Chip Seal, Restripe	1,300,000	SF	\$0.34	\$442,000.00		
<b>Total</b>				<b>\$449,310.00</b>			
<b>COMMENTS</b>							

# DOCUMENT 00 52 00

## AGREEMENT

### PART 1 GENERAL

#### 1.1 CONTRACTOR

- A. Name: Staker & Parsons Companies
- B. Address: 2350 South 1900 West, Ogden, Utah 84401
- C. Telephone number: (801) 731-1111
- D. Facsimile number: (801) 409-2687

#### 1.2 OWNER

- A. The name of the OWNER is Tooele City Corporation

#### 1.3 CONSTRUCTION CONTRACT

- A. The Construction Contract is known as

### 2022 Roadway Maintenance Project - Part 2 Schedule "B" - Light Weight Aggregate Chip Seal

#### 1.4 ENGINEER

- A. Paul Hansen Associates, L.L.C. is the OWNER's representative and agent for this Construction Contract who has the rights, authority and duties assigned to the ENGINEER in the Contract Documents.

### PART 2 TIME AND MONEY CONSIDERATIONS

#### 2.1 CONTRACT PRICE

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

B. The Schedules of Prices awarded from the Bid Schedule are as follows.

1. Base Bid.
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

C. An Agreement Supplement [ ] is, [ X ] is not attached to this Agreement.

D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price awarded is: Four Hundred Forty Nine Thousand Three Hundred Ten Dollars (\$449,310.00)

## 2.2 CONTRACT TIME

A. The Contract time shall be as follows:

1. All chip seal work shall be completed **prior to August 31, 2022**
- B. Any time specified in work sequences in the Summary of Work shall be a part of the Contract Time. \_\_\_\_\_

## 2.3 PUNCH LIST TIME

- A. The Work will be complete and ready for final payment within 5 days after the date CONTRACTOR receives ENGINEER's Final Inspection Punch List unless exemptions of specific items are granted by ENGINEER in writing or an exception has been specified in the Contract Documents.
- B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER's rights under this Agreement.

## 2.4 LIQUIDATED DAMAGES

A. Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions. CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.

1. **Late Contract Time Completion:**

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.

2. **Late Punch List Time Completion:** 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the CONTRACTOR by certified mail.

3. **Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the ENGINEER's prior written approval. OWNER and CONTRACTOR agree that in the event OWNER suffers damages from such interruption, the amount of liquidated damages stipulated below shall not be deemed to be a limitation upon OWNER's right to recover the full amount of such damages.

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof of any utility interruption caused by the CONTRACTOR without the ENGINEER's prior written authorization.

C. **Survey Monuments:** No land survey monument shall be disturbed or moved until ENGINEER has been properly notified and the ENGINEER's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that CONTRACTOR will pay as liquidated damages the sum of (\$500.00) to cover such damage and expense.

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

## PART 3 EXECUTION

### 3.1 EFFECTIVE DATE

A. OWNER and CONTRACTOR execute this Agreement and declare it in effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### 3.2 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGMENT

A. CONTRACTOR's signature: \_\_\_\_\_

B. Please print name here: \_\_\_\_\_

C. Title: \_\_\_\_\_

D. CONTRACTOR's Utah license number: \_\_\_\_\_

## Acknowledgment

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2022.

by \_\_\_\_\_  
(person acknowledging and title or representative capacity, if any).

---

Notary's signature

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## Residing at

**My commission expires:**

Notary's seal

### 3.3 OWNER'S SUBSCRIPTION AND ACKNOWLEDGMENT

- A. OWNER's signature: \_\_\_\_\_
- B. Please print name here: Debra E. Winn
- C. Title: Mayor

ATTEST:

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Michelle Y. Pitt  
Tooele City Recorder

S E A L

APPROVED AS TO FORM

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Roger Evans Baker  
Tooele City Attorney

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TOOELE CITY CORPORATION

RESOLUTION 2022-44

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH BROKEN ARROW, INC. FOR THE 2022 SEVENTH STREET ROAD AND UTILITY IMPROVEMENT PROJECT.**

WHEREAS, The Seventh Street (520 East) roadway improvements located between 500 North and 600 North remain incomplete; and,

WHEREAS, with the proposed widening of the road way, the City intends to upgrade the existing culinary water line and to install new storm drain system from 500 North to near 770 North; and,

WHEREAS, funding for the project will be derived by a combination of Road "C", Storm Water, and Culinary Water general revenue funds; and,

WHEREAS, the City solicited public bids for construction of the 2022 Seventh Street Road and Utility Improvement Project in accordance with the procedures of §11-39-101 et seq. and §72-6-108, Utah Code Annotated, as amended; and,

WHEREAS, Broken Arrow, Inc. has submitted a cost proposal of One Million One Hundred Fifty One Thousand Six Hundred Seventeen Dollars and Seven Cents (\$1,151,617.07), which is the lowest responsible responsive bid. A copy of the Bid Tabulation is attached as Exhibit A and,

WHEREAS, the City Administration requests an additional appropriation of 5% in the amount of Fifty Seven Thousand Six Hundred Dollars (\$57,600.00) as contingency for change orders for changed conditions which may arise during the Project, as reviewed and approved by the Mayor:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that

1. the agreement attached as Exhibit B with Broken Arrow, Inc. is hereby approved, in the amount of One Million One Hundred Fifty One Thousand Six Hundred Seventeen Dollars and Seven Cents (\$1,151,617.07), for completion of the 2022 Seventh Street Road and Utility Improvement Project; and,
2. an additional Fifty Seven Thousand Six Hundred Dollars (\$57,600.00) contingency is hereby approved, which may be used for changed conditions as reviewed and approved by the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council  
this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

TOOELE CITY COUNCIL

(For)

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(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

## EXHIBIT A

### Bid Tabulation

## EXHIBIT B

Agreement:

Broken Arrow, Inc.

**2022 SEVENTH STREET ROAD AND UTILITY IMPROVEMENT PROJECT  
BID TABULATION**  
May 10, 2022

Item No.	Description	Estimated Quantity	Unit	Broken Arrow		England Construction	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>GENERAL</b>							
1	Mobilization	1	LS	\$105,840.00	\$105,840.00	\$67,000.00	\$67,000.00
2	Construction Layout	1	LS	\$6,300.00	\$6,300.00	\$8,000.00	\$8,000.00
<b>DEMOLITION</b>							
3	Demolition and Disposal of Existing Curb & Gutter and Subbase	30	LF	\$12.22	\$366.60	\$25.00	\$750.00
4	Demolition and Disposal of Existing Concrete Drive Approach and Subbase	100	SF	\$12.73	\$1,273.00	\$15.00	\$1,500.00
5	Demolition and Disposal of Existing Asphalt and Subbase in Right-of-Way	3,500	SF	\$0.99	\$3,465.00	\$1.25	\$4,375.00
6	Demolition and Disposal of Existing Private Asphalt Drive Approach and Subbase	900	SF	\$6.98	\$6,282.00	\$2.00	\$1,800.00
7	Demolition and Disposal of Existing Storm Drain Pipe and Boxes	1	LS	\$4,804.70	\$4,804.70	\$5,850.00	\$5,850.00
8	Demolition and Disposal of Existing Private Drive Approach Culverts	1	LS	\$2,719.40	\$2,719.40	\$3,800.00	\$3,800.00
<b>CULINARY WATER</b>							
9	Furnish and Install 8" Diameter Waterline	1,350	LF	\$116.46	\$157,221.00	\$102.00	\$137,700.00
10	Furnish and Install 10" Diameter Waterline	40	LF	\$199.87	\$7,994.80	\$190.00	\$7,600.00
11	Mainline Connection	8	EA	\$2,589.08	\$20,712.64	\$3,300.00	\$26,400.00
12	Furnish and Install 8" Gate Valves	14	EA	\$3,955.00	\$55,370.00	\$3,300.00	\$46,200.00

Item No.	Description	Estimated Quantity	Unit	Broken Arrow		England Construction	
				Unit Bid Price	Total	Unit Bid Price	Total
13	Furnish and Install 10" Gate Valves	2	EA	\$5,118.71	\$10,237.42	\$5,000.00	\$10,000.00
14	Remove and Replace Existing 1" Water Service Laterals	12	EA	\$4,246.04	\$50,952.48	\$3,900.00	\$46,800.00
15	Furnish and Install New Fire Hydrant Assembly, Complete	1	EA	\$10,287.82	\$10,287.82	\$8,800.00	\$8,800.00
16	Remove and Salvage Existing Fire Hydrant	1	EA	\$2,265.35	\$2,265.35	\$8,200.00	\$8,200.00
<b>STORM DRAIN</b>							
17	Furnish and Install 15" Diameter NRCP Storm Drain Pipe	150	LF	\$111.27	\$16,690.50	\$160.00	\$24,000.00
18	Furnish and Install 18" Diameter RCP Storm Drain Pipe	80	LF	\$115.67	\$9,253.60	\$175.00	\$14,000.00
19	Furnish and Install 30" Diameter RCP Storm Drain Pipe	1,620	LF	\$152.43	\$246,936.60	\$150.00	\$243,000.00
20	Furnish and Install Single Storm Drain Inlet Box	1	EA	\$4,806.73	\$4,806.73	\$8,500.00	\$8,500.00
21	Furnish and Install Single Storm Drain Inlet Combo Box	1	EA	\$7,512.03	\$7,512.03	\$10,500.00	\$10,500.00
22	Furnish and Install Double Storm Drain Inlet Box	3	EA	\$7,007.99	\$21,023.97	\$10,750.00	\$32,250.00
23	Furnish and Install Double Storm Drain Inlet Combo Box	5	EA	\$8,383.55	\$41,917.75	\$11,000.00	\$55,000.00
24	Furnish and Install 5' Diameter Storm Drain Manhole	4	EA	\$6,872.81	\$27,491.24	\$6,700.00	\$26,800.00
25	Connect to Existing Storm Drain Combo Box	1	LS	\$2,085.50	\$2,085.50	\$2,000.00	\$2,000.00

Item No.	Description	Estimated Quantity	Unit	Broken Arrow		England Construction	
				Unit Bid Price	Total	Unit Bid Price	Total
<b>ROADWAY / CONCRETE</b>							
26	Clear and Grub (6" Depth)	20,000	SF	\$0.50	\$10,000.00	\$1.10	\$22,000.00
27	Full Width Mill Existing Asphalt Roadway	14,000	SF	\$1.27	\$17,780.00	\$2.70	\$37,800.00
28	Excavate and Dispose of Existing Berm and Roadway Materials	1,100	CY	\$7.47	\$8,217.00	\$38.00	\$41,800.00
29	Furnish and Install Compacted Subgrade Material	140	CY	\$29.27	\$4,097.80	\$62.00	\$8,680.00
30	Furnish and Install Type "A" Curb & Gutter and Subbase	875	LF	\$55.65	\$48,693.75	\$50.00	\$43,750.00
31	Furnish and Install New 8" Concrete Waterway and Base	250	SF	\$23.78	\$5,945.00	\$25.00	\$6,250.00
32	Furnish and Install New 3" Asphalt Pavement and 8" Base	18,500	SF	\$3.62	\$66,970.00	\$3.55	\$65,675.00
33	Furnish and Install New 1½" Asphalt Overlay	30,800	SF	\$1.32	\$40,656.00	\$1.35	\$41,580.00
34	Furnish and Install 4" Asphalt Pavement Repair and 8" Base	22,000	SF	\$4.39	\$96,580.00	\$3.95	\$86,900.00
35	Furnish and Install New 3" Asphalt and 6" Roadbase (Private Drives)	200	SF	\$14.96	\$2,992.00	\$15.00	\$3,000.00
36	Furnish and Install New 6" Roadbase (Private Drives)	2,000	SF	\$3.13	\$6,260.00	\$4.00	\$8,000.00
37	Adjust and Collar Existing Storm Drain Inlet	1	EA	\$660.00	\$660.00	\$4,000.00	\$4,000.00
38	Adjust and Collar Existing Sewer Manhole	7	EA	\$660.00	\$4,620.00	\$1,500.00	\$10,500.00
39	Adjust and Collar Water Valves and Monuments	20	EA	\$605.00	\$12,100.00	\$1,400.00	\$28,000.00
40	Remove and Reinstall Stop / Street Sign	1	EA	\$745.13	\$745.13	\$500.00	\$500.00
41	Remove and Reinstall Mail Box	1	EA	\$745.13	\$745.13	\$200.00	\$200.00
42	Remove and Reinstall Stone Sign	1	EA	\$745.13	\$745.13	\$250.00	\$250.00
<b>TOTAL</b>				<b>\$1,151,617.07</b>		\$1,209,710.00	



**DOCUMENT 00 52 00**

**AGREEMENT**

**PART 1 GENERAL**

**1.1 CONTRACTOR**

- A. Name: Broken Arrow Inc.
- B. Address: 8960 Clinton Landing Road, Lakepoint, Utah 84074
- C. Telephone number: (801) 355-0527
- D. Facsimile number: (801) 282-5701
- E. E-Mail: dcummings@brokenarrowusa.com

**1.2 OWNER**

- A. The name of the OWNER is Tooele City Corporation

**1.3 CONSTRUCTION CONTRACT**

- A. The Construction Contract is known as

**2022 Seventh Street Road and  
Utility Improvement Project**

**1.4 ENGINEER**

- A. Paul Hansen Associates, L.L.C. is the OWNER's representative and agent for this Construction Contract who has the rights, authority and duties assigned to the ENGINEER in the Contract Documents.

**PART 2 TIME AND MONEY CONSIDERATIONS**

**2.1 CONTRACT PRICE**

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

B. The Schedules of Prices awarded from the Bid Schedule are as follows.

1. Base Bid.

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

C. An Agreement Supplement [ ] is, [ X ] is not attached to this Agreement.

D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price awarded is: One Million One Hundred Fifty One Thousand Six Hundred Seventeen Dollars and Seven Cents (\$1,151,617.07)

## 2.2 CONTRACT TIME

- A. Substantial Completion of the Work shall occur by October 1, 2022. Final completion shall occur by October 15, 2022.
- B. For any of the work areas included within the project, work shall be substantially completed within 45 days of commencement of work on that particular street.

## 2.3 PUNCH LIST TIME

- A. The Work will be complete and ready for final payment within 5 days after the date CONTRACTOR receives ENGINEER's Final Inspection Punch List unless exemptions of specific items are granted by ENGINEER in writing or an exception has been specified in the Contract Documents.
- B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER's rights under this Agreement.

## 2.4 LIQUIDATED DAMAGES

- A. Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions. CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late

completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.

**1. Late Contract Time Completion:**

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.

**2. Late Punch List Time Completion:** 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the CONTRACTOR by certified mail.

**3. Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the ENGINEER's prior written approval. OWNER and CONTRACTOR agree that in the event OWNER suffers damages from such interruption, the amount of liquidated damages stipulated below shall not be deemed to be a limitation upon OWNER's right to recover the full amount of such damages.

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof of any utility interruption caused by the CONTRACTOR without the ENGINEER's prior written authorization.

**4. Survey Monuments:** No land survey monument shall be disturbed or moved until ENGINEER has been properly notified and the ENGINEER's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that CONTRACTOR will pay as liquidated damages the sum of (\$500.00) to cover such damage and expense.

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

## PART 3 EXECUTION

### 3.1 EFFECTIVE DATE

A. OWNER and CONTRACTOR execute this Agreement and declare it in effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### **3.2 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGMENT**

A. CONTRACTOR's signature: \_\_\_\_\_

B. Please print name here: \_\_\_\_\_

C. Title: \_\_\_\_\_

D. CONTRACTOR's Utah license number: \_\_\_\_\_

## Acknowledgment

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

by \_\_\_\_\_  
(person acknowledging and title or representative capacity, if any).

---

Notary's signature

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## Residing at

---

My commission expires:

Notary's seal

### 3.3 OWNER'S SUBSCRIPTION AND ACKNOWLEDGMENT

A. OWNER's signature: \_\_\_\_\_

B. Please print name here: Debra E. Winn

C. Title: Mayor

ATTEST:

---

Michelle Y. Pitt  
Tooele City Recorder

S E A L

APPROVED AS TO FORM

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Roger Evans Baker  
Tooele City Attorney

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## Tooele City Council Work and Tooele City Redevelopment Agency (RDA) Work Meeting Minutes

**Date:** Wednesday, May 4, 2022

**Time:** 5:30 p.m.

**Place:** Tooele City Hall, Council Chambers  
90 North Main Street, Tooele, Utah

### **City Council Members Present:**

Justin Brady

Tony Graf

Ed Hansen, by phone

Maresa Manzione

Dave McCall

### **City Employees Present:**

Mayor Debbie Winn

Jim Bolser, Community Development Director

Adrian Day, Police Department Chief

Roger Baker, City Attorney

Shannon Wimmer, Finance Director

Jim Bolser, Community Development Director

Paul Hansen, Tooele Engineer

Michelle Pitt, City Recorder

Darwin Cook, Parks and Recreation Director

Holly Potter, Deputy City Recorder

Minutes prepared by Michelle Pitt

### **1. Open City Council Meeting**

Chairman Brady called the meeting to order at 5:30 p.m.

### **2. Roll Call**

Tony Graf, Present by phone for part of the meeting

Ed Hansen, Present by phone

Justin Brady, Present

Maresa Manzione, Present

Dave McCall, Present

### **3. Mayor's Report**

The City has several Certificates of Completion and Acceptance of Public Improvements for: Carvana, Green Rock Minor Subdivision, Overlake Estates 1L Phase 3, and England Ridge Detention Basin and Landscaping. The City has accepted these improvements, and the one-year warranty will now begin.

The one-year warranty has been completed and accepted for Legacy Apartments, Sunset Estates Phase 8, and Allen's Floor Coverings.

The Mayor was able to attend a meeting with Colonel "D" at the Tooele Army Depot with the Mayors of Grantsville City, Stockton City, Vernon, and a Councilman from Erda. They learned about what is done at the army depot and how they deal with ammunition. She learned about the operation, production, storage, surveillance, distribution, and demilitarization of ammunition. One of the things she was able to see and do while there was to go inside a bunker and participate in a controlled demilitarization detonation.

#### **4. Council Member's Report**

Council Member Manzione stated she attended Planning Commission meeting and mentioned that the Planning Commission is working on updating their bylaws. She attended a couple of staff meetings. She also attended the police department banquet. She expressed appreciation for the City police officers.

Council Member McCall stated he attended the Wasatch Front Council meeting and the Spring Training by the Utah League of Cities and Towns.

Council Member Graf stated he attended the training by the Utah League of Cities and Towns, the Library Board Meeting, Mondays with the Mayor, and is half-way through the Citizens Academy through the police department.

Council Member Hansen also attended the police banquet and expressed appreciation for the police officers.

Chairman Brady said he also attended Mondays with the Mayor where they talked about water conservation. He attended the Arbor Day event at the Dow James Park where six new trees were planted. He attended a clean-up event sponsored by Mountain West Medical, as a Council Member and as an employee of Mountain West Medical.

#### **5. Discussion Items**

##### **a. Multi-Family Residential Zoning Districts**

*Presented by Jim Bolser, Community Development Director*

Mr. Bolser stated that he was asked to create a new zoning district that would be in between the current smallest density multi-family zones and another between the two highest density zones. He prepared two examples for the Council, an MR-12 zone in both, a new MR-20 zone in one, and the existing MR-25 zone converted into an MR-20 zone in the other. There were questions from the Council about whether the City needed both the MR-20 and the MR-25. Mr. Bolser said that he provided both possible zones so that the Council could have those tools to work with, if they desired. Mr. Baker added that the Council could put parameters around the MR-25 so that it was only used when and where appropriate.

Mr. Bolser said that this proposed change included a housekeeping item in Table 2 to take out single car garages with single-family units.

The Council decided to bring back this matter with all five choices for further discussion.

**b. Right-of-Way Vacation Request** by Bavarian Properties, LLC for the Portion of 2000 North Located between SR-36 and Progress Way

*Presented by Jim Bolser, Community Development Director*

Mr. Bolser pointed out that this area is across from the hospital on the east side of SR-36. The property owner has submitted a letter to the City to see if the Council is willing to vacate the portion of 2000 North west of Progress Way. This area is currently not being used for anything beyond additional parking and access to LEC Cabinets. The right-of-way falls in to two subdivisions. The applicant has been working with the other property owner and says they are also agreeable to this vacation.

Mr. Baker stated that one reason not to vacate is if one of the landowners needs the access to their property. This is not the case in this instance.

**c. Resolution 2022-28** A Resolution of the Tooele City Council Approving a Lease Agreement with the Bit N' Spur Riding Club

*Presented by Roger Baker, City Attorney*

Mr. Baker said that the City has had a relationship with the Bit N' Spur Riding Club since 1946. This new agreement eliminates past difficulties and simplifies the conditions between the City and the Bit N' Spur. The Bit N' Spur will have exclusive use of the property and the City retains ownership of the property. This matter will be brought back to the Council in two weeks for a formal vote.

**d. Resolution 2022-29** A Resolution of the Tooele City Council Revising Its Policy on Payment Made in Lieu of Water Rights Conveyance

*Presented by Roger Baker, City Attorney*

Mr. Baker presented that in 1998 he brought an Ordinance to the Council that would require water rights to be conveyed as a condition of development so that the City had the water to provide to those developments. That Ordinance has been amended numerous times over the years. It now allows someone to pay a fee in lieu of conveying water rights. That is to be done by policy established by the Council. In 2007 the Council established a policy for a limited number of water rights to be available to non-residential developments at \$15,000 per acre foot. At that time, the amount was near the higher end of the market value for water rights. Now it is at the lower end. The Council has suggested that that rate should be raised, and in this Resolution it is proposed at a cost of \$35,000 per acre foot. If the lot is smaller, e.g., only  $\frac{1}{4}$ -acre, and does not require a full acre-foot of water rights, then the amount would be prorated to whatever fraction is required. This amount is not meant to be market competitive or to represent market value because the City wants to encourage others to buy water rights on the market rather than from the City, as explained in the Resolution recitals. The funds obtained from selling

water rights go towards developing more water rights, water expenses, and water source development.

The Council agreed to bring this matter back before them in two weeks at the proposed amount of \$35,000.

Council Member Graf joined the meeting at this point, at 6:10 p.m.

**e. Resolution 2022-30** A Resolution of the Tooele City Council Approving an Interlocal Agreement Between Tooele City and Tooele County for Solid Waste Disposal  
*Presented by Roger Baker, City Attorney*

Mr. Baker stated that Tooele County operates a landfill and refuse that is picked up from Tooele City and dumped at the landfill. The County assesses a per ton fee. The agreement formalizes that the fee will be \$40/ton with an escalator of no more than \$1.50 per ton per year. The agreement is for a 10-year term.

**f. Resolution 2022-31** A Resolution of the Tooele City Council Approving an Agreement with Tooele County for Dispatch Services for Fiscal Year 2022-2023  
*Presented by Adrian Day, Police Chief*

Chief Day stated that this matter would go before the Council at the next meeting for formal vote. The agreement is with Tooele County for a term of July 1, 2022 through June 30, 2023 for \$321,459.00 for dispatch services. The fee is based on population, incident numbers and traffic stops. Tooele City is the biggest agency in the County, and is charged the most. The amount has actually decreased from last year. One of the possible reasons that the amount decreased, is that citizens can now go online to make reports in non-emergency situations.

**g. Resolution 2022-35** A Resolution of the Tooele City Council Ratifying a Contract with VanCon Inc. for Construction of the 2022 Red Del Papa Park Well House and Waterline, Bid Schedule "A"-Well House  
*Presented by Paul Hansen, City Engineer*

AND

**h. Resolution 2022-36** A Resolution of the Tooele City Council Ratifying a Contract with Broken Arrow Inc. for Construction of the 2022 Red Del Papa Park Well House and Waterline, Bid Schedule "B"-Waterline  
*Presented by Paul Hansen, City Engineer*

Mr. Hansen presented Items G and H together. The City is developing an additional water source, with Schedule A for the wellhouse and Schedule B for the waterline. The Red Del Papa wellhouse was awarded to VanCon Inc. for \$1,033,000, plus \$51,650 contingency. Mr. Hansen explained that the reason for the contingency is that there may be supply issues.

Broken Arrow was the lowest responsive responsible bidder, at \$1,343,623.68, with \$66,200 contingency. Mr. Hansen said that the reason for the contingency is to help cover costs that may come up when working underground, in case they discover some issues that were never mapped. He added that if a contractor goes over the 5%, they show the cost escalation and the reason why and then the City would work with them to either approve it or make some other choice. The contingency allows the City to make a quick decision and to move forward without time constraints. This project should be done in the Fall.

**i. Resolution 2022-37** A Resolution of the Tooele City Council Ratifying a Contract with VanCon Inc. for Construction of the Berra Well 1 Million Gallon Reservoir

*Presented by Paul Hansen, City Engineer*

Mr. Hansen stated that this is also a ratification of a contract. This construction project was put out to bid, and four bidders bid. VanCon was the lowest responsive responsible bidder at \$1,833,000 with a contingency of \$91,650. The intent is not to have to use the contingency amount, but it is in the City's benefit to have it if it becomes necessary. The wellhouse portion of this project has not yet been put out to bid.

**j. Resolution 2022-38** A Resolution of the Tooele City Council Ratifying a Contract with Broken Arrow Inc. for the 2022 Roadway Improvement Project

*Presented by Paul Hansen, City Engineer*

Mr. Hansen said that this is Part 1 of the road improvement projects. This is reconstruction of Sunset and Oak Hill, and the entrance of the Deer Hollow subdivision. The City received three bids with Broken Arrow as the lowest responsive responsible bidder at \$809,541.40, with \$41,000 contingency.

**k. RDA Resolution 2022-04** A Resolution of the Redevelopment Agency of Tooele City, Utah Approving an Agreement with Cache Valley Electric for the Utah Avenue and Lodestone Way Intersection Signal Project

*Presented by Paul Hansen, City Engineer*

Mr. Hansen said that this is a milestone project because this will be the City's first signalized intersection that the City will own and operate. All other signals are owned by the State. The project has been designed and placed out for bid. There are three components to the installation of this project: procurement of materials, installation of the structure, and roadway improvements. The City is requesting materials through UDOT because they cost less and we receive the parts sooner. Tonight, we are talking about the installation of the structure, which was been put out for bid. The City received two bids with the lowest responsive responsible bidder being Cache Valley Electric at \$82,430.23, plus \$4,100 for contingency. Easements are in place. Completion is scheduled for this summer.

Council Member Manzione stated she received a letter from a citizen in favor of roundabouts instead of lights being installed. Mr. Hansen stated that this area is better for a light rather than a

roundabout because it is at an entrance in to the depot which brings big trucks. It is difficult for big trucks to go through a roundabout.

## **6. Closed Meeting**

*~Litigation, Property Acquisition, and/or Personnel*

**Council Member Manzione motioned to go in to a closed meeting.** Council Member McCall seconded the motion. The vote was as follows: Council Member Hansen, "Aye," Council Member Graf, "Aye," Chair Brady, "Aye," Council Member Manzione, "Aye," Council Member McCall, "Aye." The motion passed.

The meeting closed at 6:32 p.m.

No minutes were taken during the closed meeting.

## **7. Adjourn**

Chairman Brady adjourned the meeting at 6:55 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.*

Approved this \_\_\_\_ day of May, 2022

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Justin Brady, City Council Chair



**Redevelopment Agency of Tooele City  
Business Meeting**

Date: Wednesday, May 4, 2022

Time: 7:00 p.m.

Place: Tooele City Hall, Council Chambers  
90 North Main St., Tooele, Utah

**Board Members Present:**

Chair Maresa Manzione

Justin Brady

Ed Hansen, by phone

Tony Graf

Dave McCall

**City Employees Present:**

Executive Director Debbie Winn

Shannon Wimmer, Finance Director

Michelle Pitt, City Recorder

Roger Baker, City Attorney

Paul Hansen, City Engineer

Darwin Cook, Parks & Recreation Director

Jim Bolser, Community Development Director

Chief Adrian Day, Police Chief

Stacy Smart, CTC Supervisor

Holly Potter, Deputy Recorder

Minutes prepared by Michelle Pitt

**1. Open RDA Meeting**

Chair Manzione called the meeting to order at 7:01 p.m.

**2. Roll Call**

Maresa Manzione, Present

Justin Brady, Present

Tony Graf, Present

Ed Hansen, Present by phone

Dave McCall, Present

**3. Resolution 2022-03** A Resolution of the Redevelopment Agency of Tooele City, Utah Tentatively Adopting a Tentative Budget for Fiscal Year 2022-2023, and Establishing the Time and Place of a Public Hearing to Consider its Adoption

*Presented by Executive Director Debbie Winn*

Executive Director Winn presented the Board with the tentative RDA budget for Fiscal Year 2022-2023. She said that budget meetings would be held with the RDA Board soon to discuss the budget in detail. The public hearing will be held June 15<sup>th</sup>, at 7:00 p.m.

**RDA Board Member Brady** motioned to approve Resolution 2022-03. RDA Board Member Graf seconded the motion. The vote was as follows: RDA Board Member Hansen, "Aye," RDA Board Member Graf, "Aye," RDA Board Member Brady, "Aye," Board Member McCall, "Aye," and RDA Board Chair Manzione, "Aye.". The motion passed.

**4. Resolution 2022-04** A Resolution of the Redevelopment Agency of Tooele City, Utah Approving an Agreement with Cache Valley Electric for the Utah Avenue and Lodestone Way Intersection Signal Project

*Presented by Paul Hansen, City Engineer*

Mr. Hansen stated that this will be the City's first intersection signal to be installed on a City road. The other signals are owned and operated by UDOT. The signal at this location meets traffic warrants. The design has been completed by Jones & DeMille. The City received two bids for this project, with the lowest responsible responsive bidder being Cache Valley Electric at \$82,430.23. A 5% contingency was requested.

**RDA Board Member Graf** motioned to approve Resolution 2022-04. RDA Board Member McCall seconded the motion. The vote was as follows: RDA Board Member Hansen, "Aye," RDA Board Member Graf, "Aye," RDA Board Member Brady, "Aye," Board Member McCall, "Aye," and RDA Board Chair Manzione, "Aye.". The motion passed.

**5. Minutes**

**RDA Board Member Brady** motioned to approve the October 20, 2021 minutes. RDA Board Member Graf seconded the motion. The vote was as follows: RDA Board Member Hansen, "Aye," RDA Board Member Graf, "Aye," RDA Board Member Brady, "Aye," and RDA Board Chair Manzione, "Aye.". Board Member McCall abstained. The motion passed.

**6. Invoices**

Ms. Pitt presented one invoice for approval, to Utah Department of Transportation for traffic signal parts for the signal at Utah Avenue and Lodestone in the amount of \$75,246.44.



90 N. Main St.  
Tooele UT 84074

**RDA Board Member Brady** motioned to approve the invoice. RDA Board Member Graf seconded the motion. The vote was as follows: RDA Board Member Hansen, “Aye,” RDA Board Member Graf, “Aye,” RDA Board Member McCall, “Aye,” RDA Board Member Brady, “Aye,” and RDA Board Chair Manzione, “Aye.” The motion passed.

**7. Adjourn**

Chair Manzione adjourned the meeting at 7:07 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief outline of what occurred at the meeting.*

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022

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Maresa Manzione, RDA Chair

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## Tooele City Council Business Meeting Minutes

**Date:** Wednesday, April 6, 2022

**Time:** 7:10 p.m.

**Place:** Tooele City Hall, Council Chambers  
90 North Main Street, Tooele, Utah

### **City Council Members Present:**

Ed Hansen, via phone

Justin Brady

Maresa Manzione

Tony Graf

Dave McCall

### **City Employees Present:**

Mayor Debbie Winn

Adrian Day, Police Department Chief

Roger Baker, City Attorney

Shannon Wimmer, Finance Director

Michelle Pitt, City Recorder

Jim Bolser, Community Development Director

Paul Hansen, City Engineer

Darwin Cook, Parks and Recreation Director

Holly Potter, Deputy City Recorder

Stacy Smart, Communities That Care Supervisor

Minutes prepared by Holly Potter

Chairman Brady called the meeting to order at 7:07 p.m.

### **1. Pledge of Allegiance**

The Pledge of Allegiance was led by Police Chief Adrian Day

### **2. Roll Call**

Maresa Manzione, Present

Tony Graf, Present

Ed Hansen, Present via phone

Dave McCall, Present

Justin Brady, Present

### **3. Mayor's Youth Recognition Awards**

*Presented by Debbie Winn, Mayor & Stacy Smart, Communities That Care Supervisor*

Mayor Winn, Stacy Smart, and Chief Day presented the Mayor's Youth Recognition Awards to the following students:

Sophia Mamales

Tanner Stephenson

Riley Pocock

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#### 4. Public Comment Period

No one came forward. The public comment period was closed.

#### 5. Public Hearing & Motion on Ordinance 2022-17 An Ordinance of Tooele City Amending Section 7-11a-18 of the Tooele City Code Regarding Multi-Family Residential Design Standards

*Presented by Jim Bolser, Community Development Director*

Mr. Bolser explained, in December, 2021, this application went to the Planning Commission, with a request to amend this section of the City Code 7-11a-18, specifically regarding exterior building materials, subsection 1, within the multi-family design standards. Following the proposal in December, the applicant requested some time to revise some language, and come back at a later time. That language was proposed to the Planning Commission, which would result in the amendment shown. It would create the existing language as a subsection "a", and then propose new language as subsection "b", and subsection "c". Through discussions with City staff, and the applicant it was discovered that there was a hole in the existing language. Right now, subsection "a" has a minimum amount of a specific set of building materials to be used on the front elevation of a building. Based on the area of all four sides, it makes a mathematically possibility where the minimum requirement is greater than the area of the front elevation, which means we have one material for the entire elevation, which is potentially the opposite of what we were hoping to address with this application. It became clear that even if the Planning Commission and Council chose to stick with our existing language, we would probably still have an issue to be addressed.

Through our discussion with the applicant, we proposed this alternate language as a third option to the Planning Commission which very cleanly removes the ties to the "all four" elevations being the basis for the minimum requirements of the front elevation and specifically calls out a minimum percentage for the front elevation. It was proposed to the Planning Commission that that minimum percentage be 60%. One of the reasons why that number was proposed as a starting point for discussion was that already there is a minimum requirement of 50% on all four sides. For example, if the side elevations drop below the minimum standards for all four sides, it would mean that another elevation would have to increase in order to maintain that 50% balance. That would then potentially have the emphasis of the aesthetic of the building away from the public facing side. One of the things we discussed in the proposal was if we already have a slightly higher percentage on the front, we keep that emphasis on the aesthetic and building on the front façade and the flexibility for the designers to work with the other elevations. The Planning Commission held a public hearing and forwarded this third alternative for your consideration, with a positive recommendation with a six to one vote.

Mr. Graf expressed his appreciation for the simplification of the text.

Chairman Brady opened the public hearing.

Mr. Charles Akerlow, the applicant, expressed concerns that he felt the change in text would create further confusion and make it more, not less, difficult to comply with the City's requirements.

Mr. Bolser then explained the changes requested again, and Mr. Akerlow said he had misunderstood and now is in favor of the proposed changes.

With no further comments from the public, Chairman Brady closed the public hearing.

**Council Member Manzione motioned to approve Ordinance 2022-17.** Council Member McCall seconded the motion. The vote was as follows: Council Member Manzione "Aye", Council Member Graf "Aye", Council Member Hansen "Aye", Council Member McCall "Aye", Chairman Brady "Aye". The motion passed.

**6. Public Hearing & Motion on Ordinance 2022-18** An Ordinance of the Tooele City Council Creating a Planned Unit Development Zoning Overlay on 33.82 Acres of Property Located at Approximately 1200 North Franks Drive

*Presented by Jim Bolser, Community Development Director*

Mr. Bolser explained, typically as we see PUDs, or Planned Unit Developments, often they are prior to development planning. The purpose of a PUD is to look at configuration, a PUD designation does not change allowable uses, and does not change allowable densities. So over the scope of a project you're not allowed a single additional unit by a PUD designation, you have to go through other means to do that. All it does is change allowances in configuration. A common phrase for this is clustering. Increasing in one area but reducing in another. In most cases, a PUD request is for when a particular area cannot be developed due to things like a stream bed or other sensitive area, so they cluster the buildings in another area that is part of the same project.

This request is different in that we have a planned development, but the same principle is still applied. This request is only for the multi-family portion of the Lexington Greens Development. This project still conforms to the Land Use Map and Zoning Map as is. The zone would remain the same, but we would add the PUD designation to it. This PUD designation is proposing to apply to the existing eight lot subdivision, which has been approved by the City Council and is recorded with the County Recorder's office. These master lots do not contain any development entitlements, and each lot would have to come back for their individual approvals of multi-family projects. Of these eight lots, six of them either have already received approval for construction and are underway, or are in our office for review. The only two that are not are the two lots on the far west. Within these eight lots, the two lower center lots, lots 103 and 108, have been sold to another individual and is under construction currently. Those two lots have been combined into a single lot. The PUD designation proposal, is only in the multi-family portion. It does not change any of the existing uses or density of this portion of the development. What it intends to do very specifically, is assign a number of dwelling units to each of those eight lots. Lots 102a & 102b which are currently a single lot, would increase the allowable dwelling units on those, while decreasing amongst the other seven lots. There are four lots that have been sold to two other entities. The applicant has offered to the City, as a part of those sales, they had written into the private agreements how many dwelling units they would have allowed on those lots. What they have represented does match what the PUD designation is proposing. Those lots that have development plans submitted to the City also match the number of dwelling units proposed in the PUD.

The Planning Commission has heard this proposal and held their own public hearing and are recommending approval of this proposal with a six to one vote.

Chairman Brady said he'd watched the public hearing and saw that there were several concerns from the public and confirmed that the concerns were addressed and clarified that this area was always going to be apartments, and all this is doing is redistributing multi-family dwellings.

Council Member Manzione confirmed that the higher density would be moved closer to the park. There was concern from one neighbor concerning lot 101. Mr. Bolser said that is one lot that is under application currently, shown for 72 apartment units. The buildings for that application have all the

buildings to be out against Frank's Drive. The only building that would be back towards the development to the east is a club house building in the lower right hand, or south east corner.

Chairman Brady opened the public hearing.

Charles Akerlow, the applicant, described some of the amenities that are planned for the development as well as mentioned that the City only has an easement on Frank's Drive and that his company has gladly improved Franks Drive and given it to the City. Mr. Akerlow expressed his appreciation of working with the City.

With no further comment from the public, Chairman Brady closed the public hearing.

**Council Member Manzione motioned to approve Ordinance 2022-18.** Council Member McCall seconded the motion. The vote was as follows: Council Member Manzione "Aye", Council Member Graf "Aye", Council Member Hansen "Aye", Council Member McCall "Aye", Chairman Brady "Aye". The motion passed.

**7. Preliminary Plan Request** for the Bryant Subdivision by Clint Bryant to Create a New 1.00 Acre Platted Lot at Approximately 426 North Coleman Street in the RR-1 Residential Zoning District  
*Presented by Jim Bolser, Community Development Director*

Mr. Bolser presented the Preliminary Plan Request explaining that the property is a 1 acre section of a much larger parcel. The applicant desires to carve out a 1 acre lot for a new home off of the larger property. The three existing buildings on the property will need to be relocated or removed, which the applicant is purposing to do. The Planning Commission has heard the request and has forwarded a unanimous positive recommendation.

**Council Member McCall motioned to approve the Bryant Subdivision Preliminary Plan Request.** Council Member Graff seconded the motion. The vote was as follows: Council Member Manzione "Aye", Council Member Graf "Aye", Council Member Hansen "Aye", Council Member McCall "Aye", Chairman Brady "Aye". The motion passed.

**8. Ordinance 2022-10** An Ordinance of Tooele City Reconsidering Amending Tooele City Code 7-24 Regarding Annexation

*Presented by Roger Baker, City Attorney*

Chairman Brady explained this is the ordinance that was discussed in the previous City Council meeting. It went to the Mayor and was vetoed, so is back to the Council to vote on the original motion, and that it has to pass with four or five votes to be approved.

**Chairman Brady made the motion to approve Ordinance 2022-10.** Council Member Manzione seconded the motion. The vote was as follows: Council Member McCall questioned that this is just for the amount of votes it takes to approve. Chairman Brady confirmed. Council Member McCall voted "Nay". Council Member Hansen "Aye", Council Member Graf "Nay", Council Member Manzione "Aye", Chairman Brady "Aye". Without the four votes, the ordinance did not pass.

Mr. Baker explained that the original motion now does not carry, and that the Council has the opportunity to make another motion. The motion that would be the most expected would be a motion on the ordinance as originally presented, and if that did not pass, then it would be status quo with the way the code is written.

Chairman Brady asked that besides the super majority vote, does the ordinance change other things in the code.

Mr. Baker said the ordinance that he presented to the Council had significant amendments as to procedure, and things that would be required from a developer. The four-fifths vote in the amendment was included because two-thirds fraction of a five member body doesn't work very well. The motion Mr. Baker would suggest, would be on the motion as originally presented, with the four-fifths vote.

Council Member Graff questioned, if he wanted to make a motion, keeping the original language of the ordinance, but adopting, as it relates to the majority, the 2/3, but adopting the remaining changes, that aren't dealing with going from 2/3 to 4/5, how would he best state that.

Mr. Baker clarified that if Mr. Graf wanted to make a motion based on how it was originally presented, with all of the red lines, including the 4/5 change?

Mr. Graf explained that he doesn't want to make a motion that would fail solely because of the 4/5 change. He wanted to make a motion that would pass with all of the other changes, and that he feels the rest of the Council Members are in agreement on. So if he wished to purpose a motion, with 2/3, even though it's a mathematically impossibility, but keeping the rest of the changes. Mr. Graf clarified that even with the 2/3 language in the ordinance, the reality would be 4/5. Mr. Baker confirmed.

**Council Member Graf made a motion to pass Ordinance 2022-10**, keeping the original 2/3 language, and adopting the remainder of the purposed changes. Council Member McCall seconded the motion. The vote was as follows: Council Member McCall "Aye", Council Member Hansen "Nay", Council Member Graf "Aye", Council Member Manzione "Nay", Chairman Brady "Aye". The motion was passed with the edited text.

**9. Resolution 2022-30** A Resolution of the Tooele City Council Approving an Interlocal Agreement Between Tooele City and Tooele County for Solid Waste Disposal  
*Presented by Roger Baker, City Attorney*

This is an agreement between Tooele County and Tooele City for the county to accept garbage from the city at the landfill, and establishes a ten year term and the tipping fee of \$40/ton. That fee could be increased annually up to a maximum of an additional \$1.50/ton/year. The Mayor commented that while it is a 10 year contract, at any time we can give 180 days' notice if the city decides to go with another company.

**Council Member Manzione motioned to approve Resolution 2022-30.** Council Member McCall seconded the motion. The vote was as follows: Council Member Manzione "Aye", Council Member Graf "Aye", Council Member Hansen "Aye", Council Member McCall "Aye", Chairman Brady "Aye". The motion passed.

**10. Resolution 2022-31** A Resolution of the Tooele City Council Approving an Agreement with Tooele County for Dispatch Services for Fiscal Year 2022-2023  
*Presented by Adrian Day, Police Chief*

Tooele County will provide public safety dispatch services to the City for fiscal year 2022-2023 for the amount of \$321,459.00. The county uses a formula, by having all public safety users pay their fair share to cover the running cost of dispatch services.

**Council Member Graf motioned to approve Resolution 2022-31.** Chairman Brady seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**11. Resolution 2022-32** A Resolution of the Tooele City Council Tentatively Adopting the Budget Officer’s Tentative Budget for Tooele City Fiscal Year 2022-2023, and Establishing the Time and Place of a Public Hearing to Consider its Adoption

*Presented by Debbie Winn, Mayor*

The Mayor explained the two different formats of the tentative budget. The first being the traditional format used, the second being a simplified version that would be easier for the citizens of Tooele City to read and understand. The tentative budget is a balanced budget, as required by state law. The requested public hearing time and place is the 15<sup>th</sup> of June, 2022 at approximately 7:10 p.m. The budget will also be posted to the Tooele City’s website and available for anyone who wants to go over it.

Chairman Brady commented that he would like to have a special budget meeting and would be contacting those required to be there to determine the date and time. The public is encouraged to attend as it will be a public meeting.

**Council Member Graf motioned to approve Resolution 2022-32.** Council Member McCall seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**12. Resolution 2022-35** A Resolution of the Tooele City Council Ratifying a Contract with VanCon Inc. For Construction of the 2022 Red Del Papa Park Well House and Waterline, Bid Schedule “A” – Well House

*Presented by Paul Hansen, City Engineer*

Mr. Hansen explained the bidding process and why the well house from this resolution, and the waterline from the following resolution, were awarded to different bidders. Finding it in the City’s best interest to award the contracts separately.

Schedule “A”, the well house would be funded through culinary water impact fees. The City put the project out for bid in accordance with state law. The City received two bids. VanCon is the apparent lowest responsive, responsible bidder. The city has worked with them in the past. Mr. Hansen recommended the Council ratify the contract as awarded. He explained the need for ratification due to the Council not meeting two weeks ago and the need to award the contract, per council approval at the April 6<sup>th</sup> meeting to avoid higher associated costs. The contract awarded to VanCon for \$1,330,000.00, with an additional 5% contingency funds, to account for unanticipated conditions that may arise, in the amount of \$51,650.00.

**Chairman Brady motioned to approve Resolution 2022-35.** Council Member Manzione seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf

“Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”.  
The motion passed.

**13. Resolution 2022-36** A Resolution of the Tooele City Council Ratifying a Contract with Broken Arrow Inc. for Construction of the 2022 Red Del Papa Park Well House and Waterline, Bid Schedule “B” - Waterline

*Presented by Paul Hansen, City Engineer*

This is the second component as explained by Mr. Hansen in the previous resolution. The recommendation is to award the waterline contract to Broken Arrow. This will also be funded by impact fees. It was also put out for public bid. There were three bidders. The cost proposal from Broken Arrow is \$1,343,623.68 with a contingency fund of \$67,200.00. The contingency funds would only be used with authorization by the Mayor.

**Council Member Manzione motioned to approve Resolution 2022-36.** Council Member McCall seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**14. Resolution 2022-37** A Resolution of the Tooele City Council Ratifying a Contract with VanCon Inc. for Construction of the Berra Well 1 Million Gallon Reservoir

*Presented by Paul Hansen, City Engineer*

This is also a water improvement project, a second well that the City is in the process of developing. There are significant differences in the two projects. One having a well house and this one having a reservoir. This was deemed best due to the location and available yield of the well, to avoid sudden or extreme pressure surges. There will be a future request for the well house and pump station associated with this project. The reservoir is being done first because it takes a considerable amount of land and resources to complete. This was also put out for public bid. This project will be funded by water impact fees. Four bids were submitted, VanCon being the lowest responsive, responsible bidder. Mr. Hansen is recommending the ratification of the resolution and awarding the contract in the amount of \$1,833,000.00 with a contingent fund of \$91,650.00.

The City is also adjusting the lot line along this project in conjunction with the property owner that gives both parties better utilization of their property. This is for information only as it will formally come back to the Council at a later date as a platt.

**Council Member Manzione motioned to approve Resolution 2022-37.** Chairman Brady seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**15. Resolution 2022-38** A Resolution of the Tooele City Council Ratifying a Contract with Broken Arrow Inc. for the 2022 Roadway Improvement Project

*Presented by Paul Hansen, City Engineer*

This is part 1 of the Roadway Improvement Project; phase 2 will be presented at the next Council meeting. This project involves the reconstruction of three of the roadway sections in town. Namely Sunset, Oak Hill, and the entrance to Deer Hollow. The road projects involve reconstruction of the road base and asphalt and several sections of curb and gutter among other improvements. As a result,

this project will be funded through a combination of road “C” funds, a portion of culinary water revenue funds, and a portion of the storm water funds. This project was put out for public bid with three responses. Broken Arrow was the apparent lowest responsive, responsible bidder. Their contract is in the amount of \$809,541.40 with a 5% contingency of \$41,000 which would only be used with the authorization of the Mayor.

**Council Member McCall motioned to approve Resolution 2022-38.** Council Member Manzione seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**16. Resolution 2022-39** A Resolution of the Tooele City Council Adopting the Fire Department Analysis Report Prepared by The Center for Public Safety Management LLC

*Presented by Debbie Winn, Mayor*

On April 6th 2022 The Center for Public Safety Management presented the City Council with their Fire Department Analysis Report. The document gives the City direction on how to proceed with regards to how to best assist the Tooele City Fire Department with the increased number of calls, ageing fleet and equipment, and administrative needs. There will be further budget discussions on how to best go about this process. A copy of this fire study will be made available on the City’s website for those in the community interested. One of the recommendations made was the creation of a Career Paid Fire Chief position. The position has been opened internally and not to the public in an effort to give our Volunteer Firefighters an opportunity to apply for the position.

**Chairman Brady motioned to approve Resolution 2022-39.** Council Member Manzione seconded the motion. The vote was as follows: Council Member Manzione “Aye”, Council Member Graf “Aye”, Council Member Hansen “Aye”, Council Member McCall “Aye”, Chairman Brady “Aye”. The motion passed.

**17. Minutes**

*~Wednesday, April 6, 2022 City Council Work Meeting*  
*~Wednesday, April 6, 2022 City Council Business Meeting*  
There are no changes to the minutes.

**Council Member Manzione motioned to approve Minutes.** Council Member McCall seconded the motion. The vote was as follows: Council Member Hansen, “Aye,” Council Member Graf, “Aye,” Council Member McCall, “Aye,” Council Member Manzione, “Aye,” Chairman Brady, “Aye.” The motion passed.

**18. Invoices**

Ms. Pitt presented the following invoices:

Ken Garff Ford West Valley for a 2020 F150 for Public Works in the amount of \$41,106.00  
Wheeler Machinery for a CAT Generator for the Berra Well House in the amount of \$207,508.52  
Wheeler Machinery for a CAT Generator for the Red Del Papa Well House in the amount of \$107,479.00  
Motorola Solutions for radios for the Fire Department in the amount of \$36,297.96

**Council Member Graf motioned to approve the invoices.** Council Member Manzione seconded the motion. The vote was as follows: Council Member Hansen, “Aye,” Council Member Graf,



“Aye,” Council Member McCall, “Aye,” Council Member Manzione, “Aye,” Chairman Brady, “Aye.” The motion passed.

#### 19. Adjourn

Chairman Brady adjourned the meeting at 8:26 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.*

Approved this \_\_\_\_ day of May, 2022

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Justin Brady, City Council Chair

**TOOELE CITY CORPORATION  
FISCAL NOTE TO PROPOSED EXPENDITURE**

05/06/22

**DESCRIPTION OF EXPENDITURE:**

**VENDOR: CORE & MAIN**

## METERS

EXPENDITURE LINE ITEM	ACCOUNT NUMBER	ADJUSTED BUDGET	Y. T. D. EXPENSES	PROPOSED EXPENSE	BUDGET BALANCE
WATER METERS	51 5120 742510	200,000.00	99,911.47	71,730.00	28,358.53
<b>TOTAL:</b>				<b>71,730.00</b>	

\*Will need line item adjustment from 51-5100-255000

REQUESTED S. Wimmer DEPARTMENT HEAD

REVIEWED Shannon Wimber FINANCE DIRECTOR

APPROVED \_\_\_\_\_

APPROVED \_\_\_\_\_ COUNCIL CHAIRMAN \_\_\_\_\_



## Bid Proposal for TOOKEE CITY SONATA METER QUOTE

TOOKEE CITY CORPORATION

Bid Date: 12/31/2022 12:00 pm

Core & Main 2315932

Core & Main

4052 West 8380 South

West Jordan, UT 84088

Phone: 801-280-8485

Fax: 801-280-8446

Seq# Qty	Description	Units	Price	Ext Price
DUE TO CURRENT SUPPLY CHAIN DISRUPTIONS, MATERIALS ARE SUBJECT TO PRICING AT TIME OF SHIPMENT. MATERIAL AVAILABILITY AND TIMELINESS OF SHIPMENTS CANNOT BE GUARANTEED. THIS TERM SUPERSEDES ALL OTHER CONTRACTUAL PROVISIONS.				
10	5/8X3/4 SONATA METER PRICING	EA	177.24	177.24
20 1	MM 5/8X3/4 SONATA POLY BODY USG W/ 5' NICOR S112-B00-A11-A1-05A	EA	53.67	53.67
30 1	MM 994-138-22 6' TOUCH PAD AT W/ CA1285-020-2-15-AR 2' NICOR FEMALE END CONN ATTACHED	EA	8.19	8.19
40 1	DIALOG PIT LID MODULE			<b>239.10</b>
50	1" SONATA METER PRICING			
60 1	MM 1 SONATA POLY BODY USG W/ 5' NICOR S116-B00-A11-A1-05A	EA	270.28	270.28
70 1	MM 994-138-22 6' TOUCH PAD AT W/ CA1285-020-2-15-AR 2' NICOR FEMALE END CONN ATTACHED	EA	53.67	53.67
80 1	DIALOG PIT LID MODULE	EA	8.19	8.19
			<b>332.14</b>	
			<b>Sub Total</b>	<b>571.24</b>
			Tax	0.00
			<b>Total</b>	<b>571.24</b>

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>

Need 300 meters (3/4")  
@ \$ 239.10 each.

TOTAL = \$71,730

\* Quote only - Do NOT pay \*