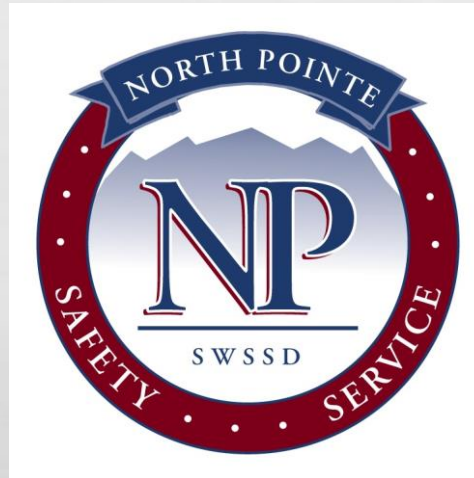


NORTH POINT SOLID WASTE DISTRICT

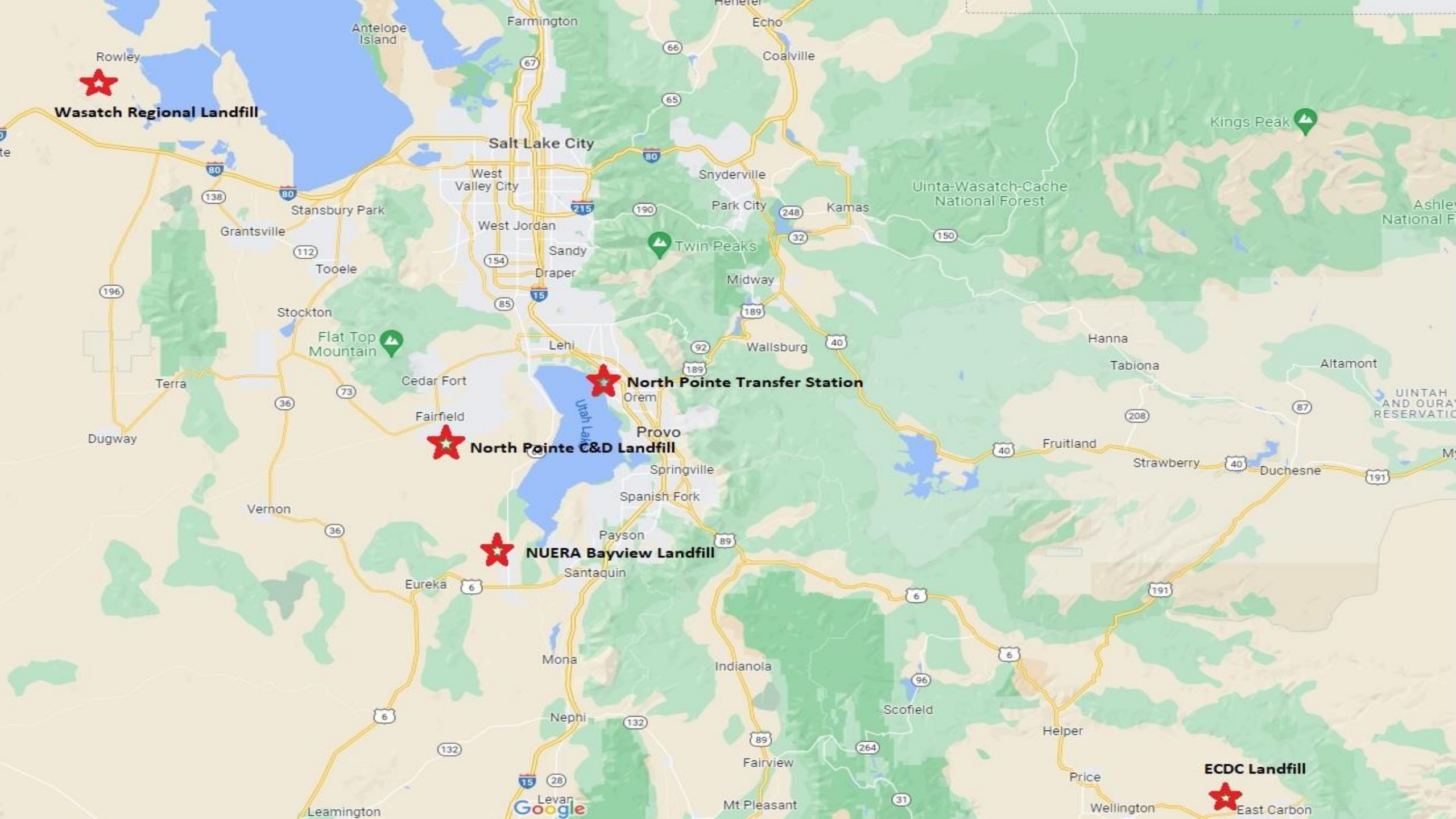
TALKING TRASH – GARBAGE IN NORTHERN UTAH COUNTY



NORTH POINTE HISTORY

- **1976 – DISTRICT CREATED (UTAH COUNTY SOLID WASTE SPECIAL SERVICE DISTRICT)**
- **1984 – SPRINGVILLE, SPANISH FORK, SALEM, MAPLETON, ELK RIDGE, & WOODLAND HILLS (SUVSWD)**
- **1993 – TRANSFER STATION BUILT & LANDFILL CLOSED**
- **WASTE HAULED BY RAIL TO ECDC LANDFILL IN CARBON COUNTY**
- **2001- NAME CHANGED TO NORTH POINTE SOLID WASTE SPECIAL SERVICE DISTRICT**
- **2006 – SWITCHED FROM RAIL TRANSPORT TO TRUCK TRANSPORT
– WASTE DELIVERED TO WASATCH REGIONAL LANDFILL IN TOOELE COUNTY**

- **2012 – DISTRICT PURCHASED CEDAR VALLEY CONSTRUCTION & DEMOLITION (C&D) LANDFILL IN FAIRFIELD**
- **2013 – DISTRICT UPDATED INTER-LOCAL AGREEMENT CONSISTING OF AMERICAN FORK, CEDAR HILLS, HIGHLAND, LEHI, LINDON, OREM, PLEASANT GROVE, SARATOGA SPRINGS AND VINEYARD.**
- **2014 – DISTRICT JOINS NUERA (NORTHERN UTAH ENVIRONMENTAL RESOURCE AGENCY)**
- **2016 – NUERA MEMBERS PURCHASED BAYVIEW LANDFILL IN ELBERTA**
- **2018 – BEGIN SHIPPING WASTE MUNICIPAL SOLID WASTE (MSW) TO BAYVIEW**
- **2020 – RODGER HARPER RETIRES, I TAKE OVER AS GENERAL MANAGER**



Wasatch Regional Landfill

Salt Lake City

West Valley City

West Jordan

Sandy

Draper

Stansbury Park

Grantsville

Tooele

Stockton

Flat Top Mountain

Terra

Dugway

Vernon

Fairfield

Cedar Fort

North Pointe C&D Landfill

Provo

Springville

Spanish Fork

Payson

Santaquin

Eureka

Mona

Nephi

Leamington

Levan

Google

Mt Pleasant

Fairview

Indianola

Scofield

Helper

Price

Wellington

ECDC Landfill

East Carbon

Kings Peak

Uinta-Wasatch-Cache National Forest

Ashley National Forest

UINTAH AND OURAGU RESERVATION

Altamont

Tabiona

Hanna

Fruitland

Strawberry

Duchesne

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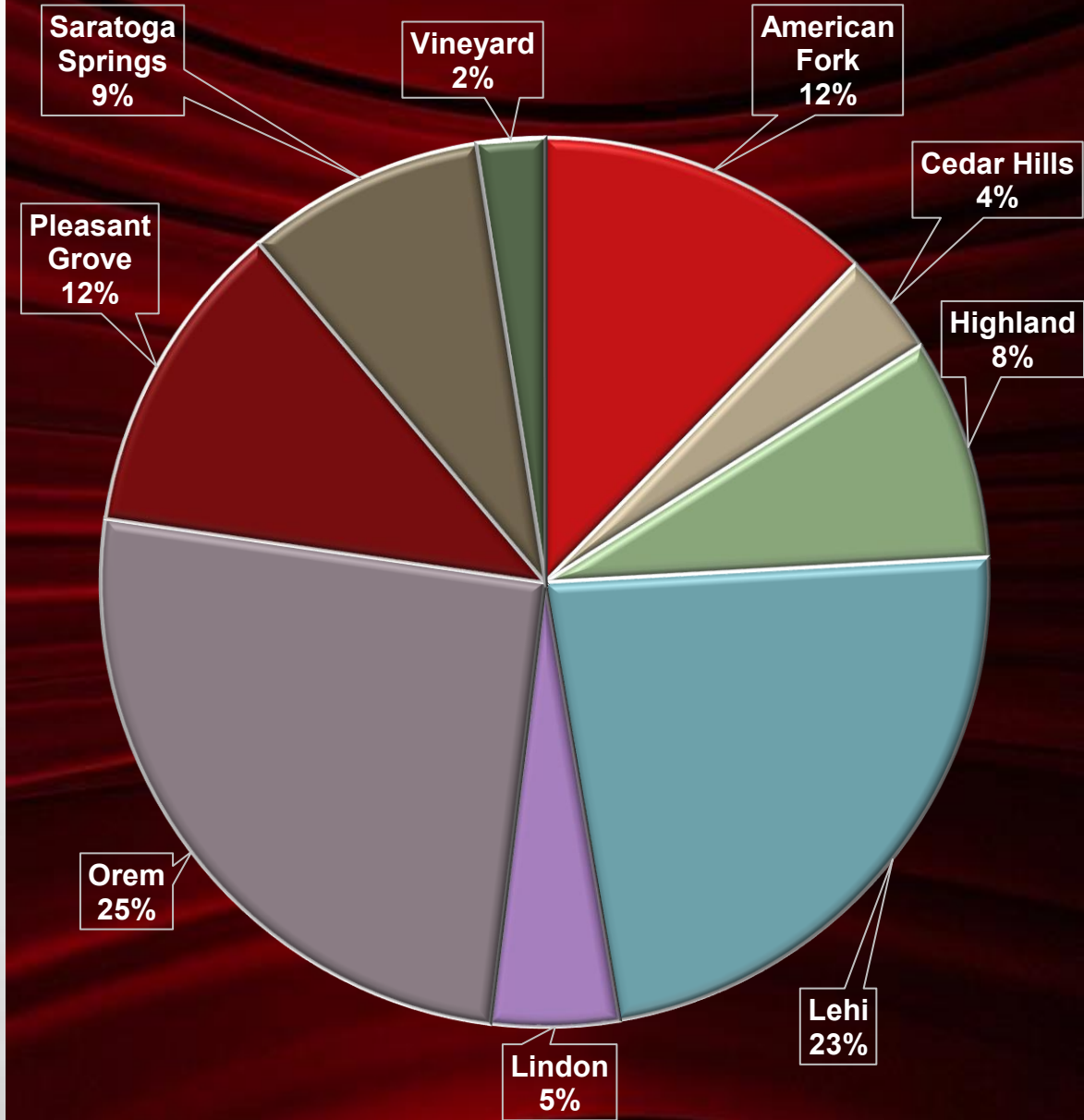
SERVICES/OPERATIONS

- **MUNICIPAL SOLID WASTE (MSW) – RESIDENTIAL CURBSIDE, COMMERCIAL FRONT LOAD, ROLL-OFF, SMALL COMMERCIAL & PUBLIC SELF HAUL**
- **CONSTRUCTION & DEMOLITION WASTE (C&D) – MOSTLY COMMERCIAL ROLL – OFF, SMALL COMMERCIAL & PUBLIC SELF HAUL**
- **GREEN WASTE – MOSTLY SMALL COMMERCIAL & PUBLIC SELF HAUL**
 - **AGREEMENT W/CONTRACTOR TO CHIP/GRIND GREENWASTE AND TURN IT INTO COMPOST**
- **CLEAN CONCRETE – AGREEMENT WITH CONTRACTOR TO CRUSH INTO ROAD BASE AND DRAIN ROCK**
- **HOUSEHOLD HAZARDOUS WASTE (HHW) – RESIDENTS ALLOWED TO DROP OFF HAZARDOUS WASTE SUCH AS PAINTS, CHEMICALS, CLEANERS, BATTERIES, ETC.**
- **RECYCLING – TIRES, METALS, ELECTRONICS ETC.**

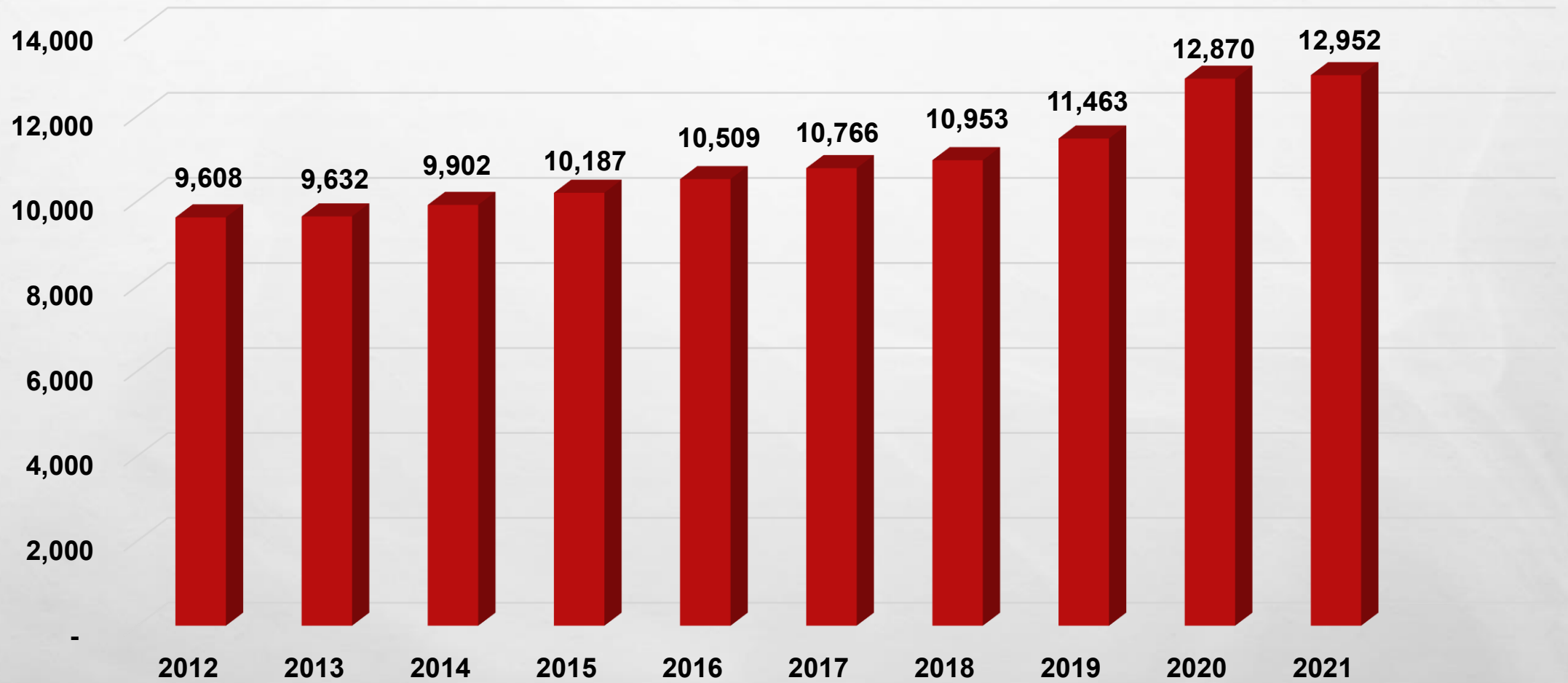
AMERICAN FORK - 2021

- **RESIDENTIAL CURBSIDE WASTE – 12,953 TONS**
- **PUBLIC SELF HAUL – 12,388**
- **CITY VEHICLES – 872**
- **COUPON CUSTOMERS – 4,021**
- **DIRECT GREENWASTE CUSTOMERS – 856**

Residential Curbside Tons



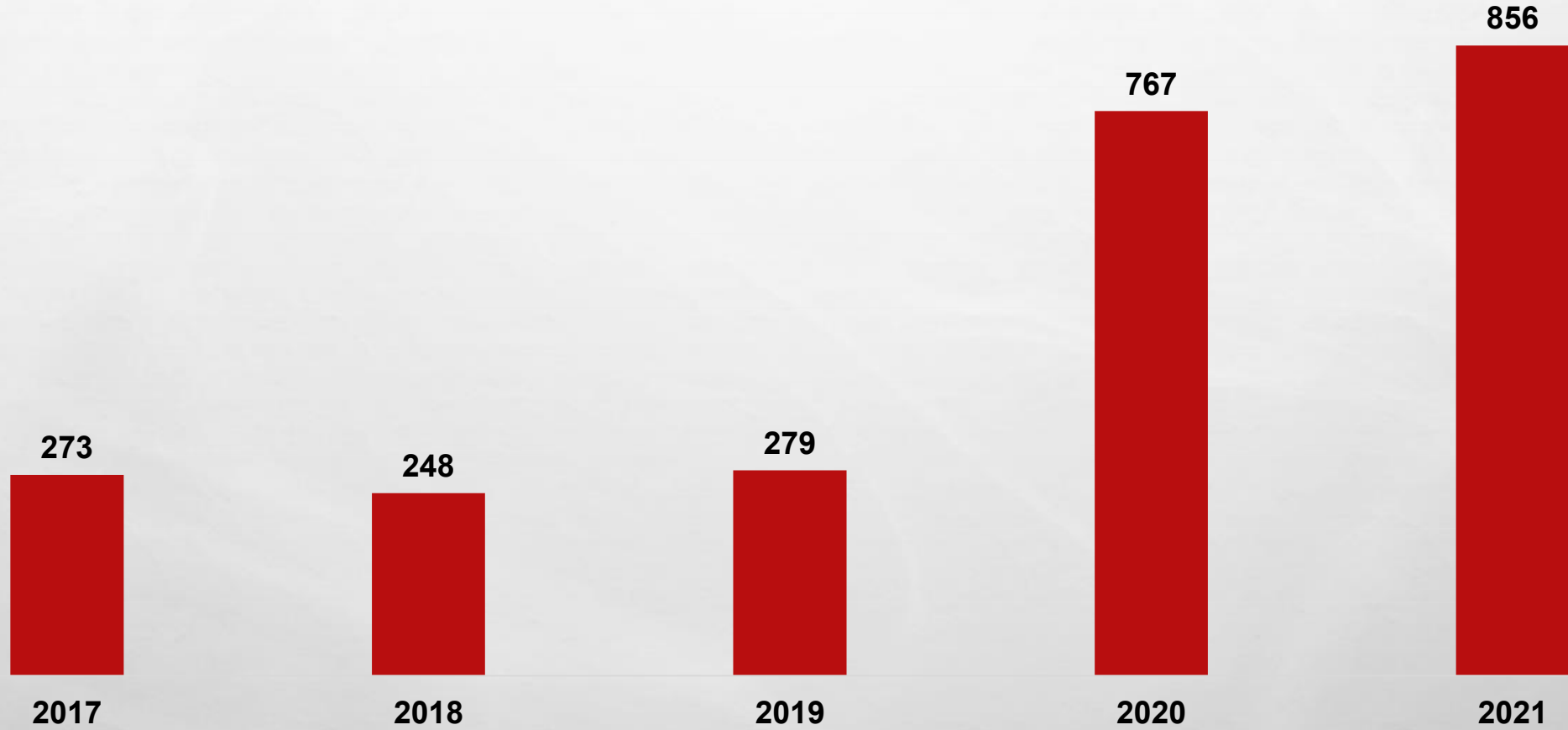
CURBSIDE TONS



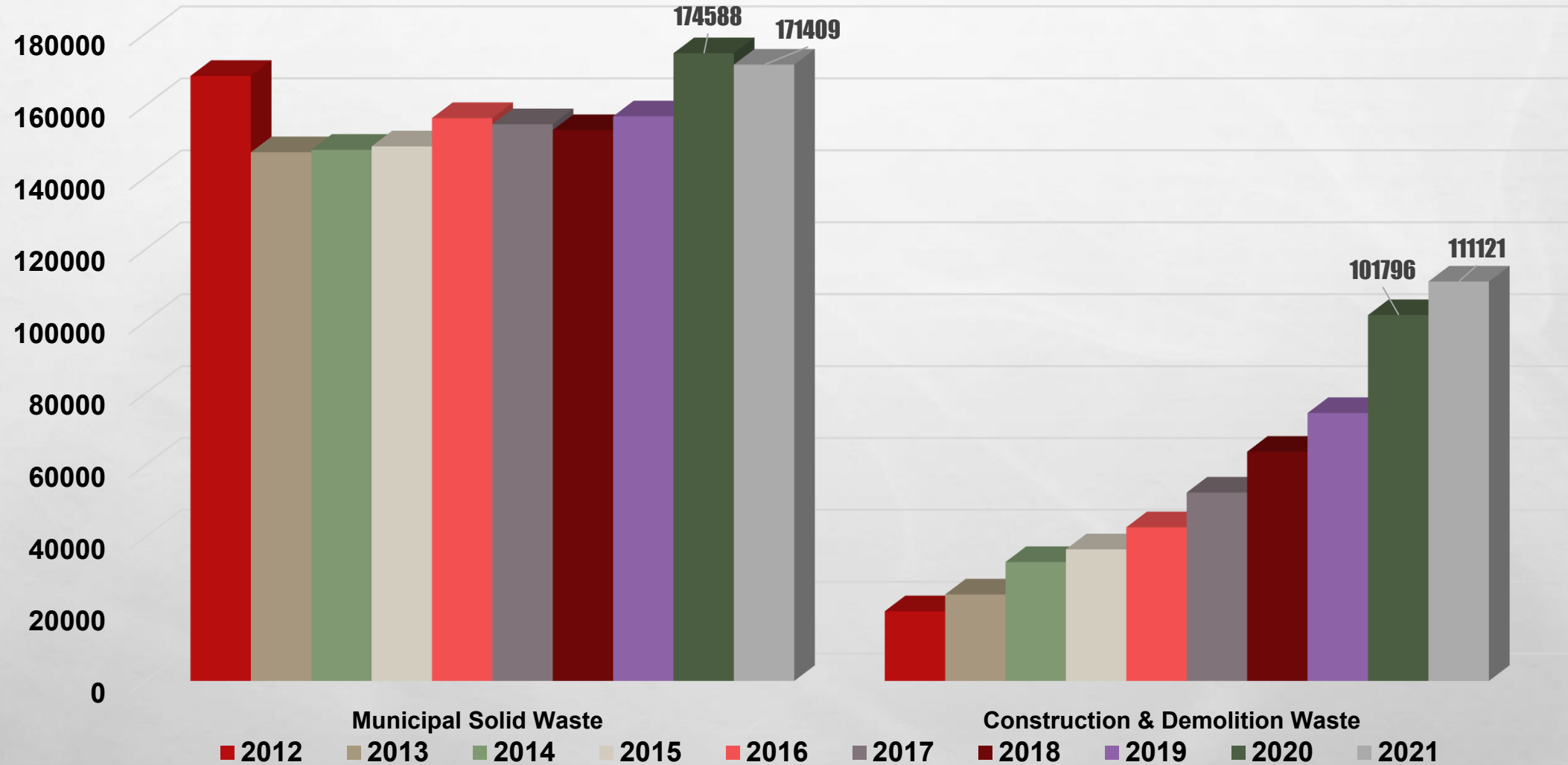
Coupons



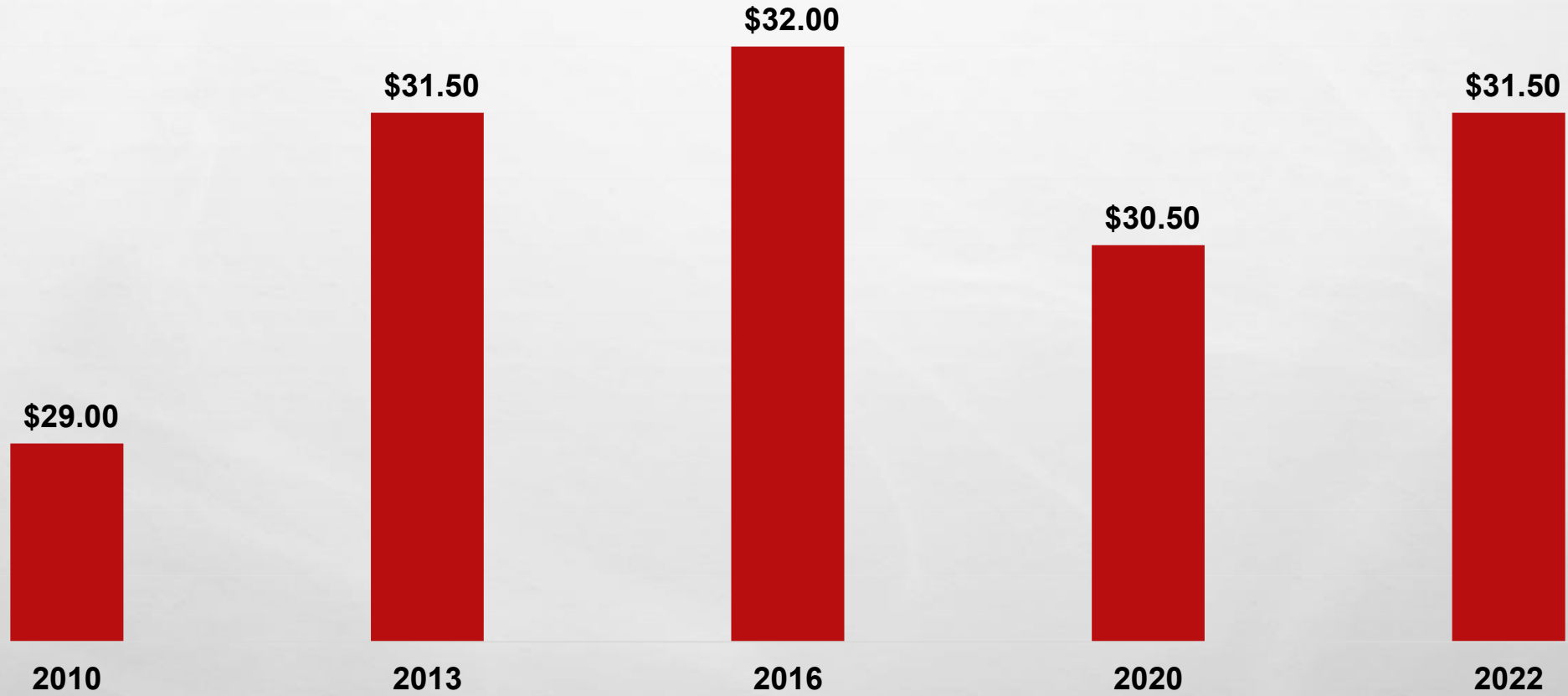
DIRECT GREEN WASTE CUSTOMERS



TRANSFER STATION TONS



RESIDENTIAL CURBSIDE FEE HISTORY



WHAT IS OUR FUTURE?

- **2021 – DISTRICT STARTED UPDATING MASTER PLAN**
- **2022 – MASTER PLAN COMPLETED**
 - **MASTER PLAN SCOPE**
 - **DETERMINE THE FEASIBILITY TO EXPAND CURRENT LOCATION IN LINDON VS. BUILDING A SECOND TRANSFER STATION WITHIN THE DISTRICT**
 - **IF FEASIBLE TO EXPAND CURRENT FACILITY – PROVIDE RECOMMENDATIONS ON EXPANSION**
 - **DETERMINE THE CONDITION OF THE FACILITY AND RECOMMEND IMPROVEMENTS**
 - **PROVIDE ESTIMATES ON ALL ASPECTS OF THE MASTER PLAN**

MASTER PLAN FINDINGS

- **INSTALLATION OF NEW STORMWATER INFRASTRUCTURE AND PAVING REPAIRS**
- **REPLACE DAMAGED SIDING TO THE TRANSFER STATION BUILDINGS**
- **REPAIR STRUCTURAL ISSUES IN TRANSFER STATION BUILDINGS**
- **ENGINEERING ASSESSMENT OF CONCRETE TIPPING FLOOR IS NEEDED**
- **SITE OPERATIONAL IMPROVEMENTS TO IMPROVE WORKFLOW & CUSTOMER SERVICES**
 - **RELOCATE HHW FACILITY ON-SITE**
 - **RELOCATE COMPOST BUNKER**
 - **ADD PUSH WALL IN PUBLIC BUILDING**
- **TWO VIABLE OPTIONS EXIST TO EXPAND CURRENT FACILITY TO HANDLE PROJECTED VOLUMES FOR THE NEXT 25YRS**
- **EXPANDING THE CURRENT SITE REMAINS THE MOST COST-EFFECTIVE OPTION**



WHAT COULD THE TRANSFER STATION LOOK LIKE?



NUERA

- **2022 LINING A NEW CELL WHICH IS 26 ACRES AND SHOULD LAST APPROXIMATELY 5 YEARS BEFORE ANOTHER CELL WILL NEED TO BE LINED**
- **2022 – INSTALLING A GAS COLLECTION SYSTEM WHICH WILL COMPRISE OF 19 WELLS**
- **RECENTLY ACQUIRED AN ADDITIONAL 140 ACRES WITH THE SITLA LEASE FOR THE BAYVIEW LANDFILL**
- **SITLA LEASE EXTENDED THROUGH DECEMBER 31, 2082, THE LEASE WILL LIKELY BE EXTENDED AT THAT TIME AS THERE WILL STILL BE CAPACITY.**
- **CURRENT ESTIMATED LIFE OF THE LANDFILL IS 99+ YEARS**

SUMMARY

- **THE ESTIMATED COSTS OF THE TRANSFER STATION EXPANSION IS IN THE RANGE OF 7 TO 9 MILLION DOLLARS**
- **CIP HAS BEEN DEVELOPED TO ESTIMATE FUTURE FUNDING SOURCES**
- **DISTRICT BOARD IS IN PROCESS OF EVALUATING TIMING FOR EXPANSION IMPROVEMENTS**
- **BAYVIEW LANDFILL'S CAPACITY ALLOW US (NUERA) TO CONTROL OUR DISPOSAL RATES FOR THE FORESEEABLE FUTURE - \$10.50/TON**
- **THANK YOU TO CITY STAFF ON A GREAT RELATIONSHIP. THANK YOU TO ROB FOR HIS TIME AND EFFORT SPENT ON THE BOARD.**

Modern Transfer Station and Recycling Facilities

Transfer Station and Recycling Facility



**Pomona Valley Transfer Station,
Pomona, CA**

Modern Transfer Station and Recycling Facilities

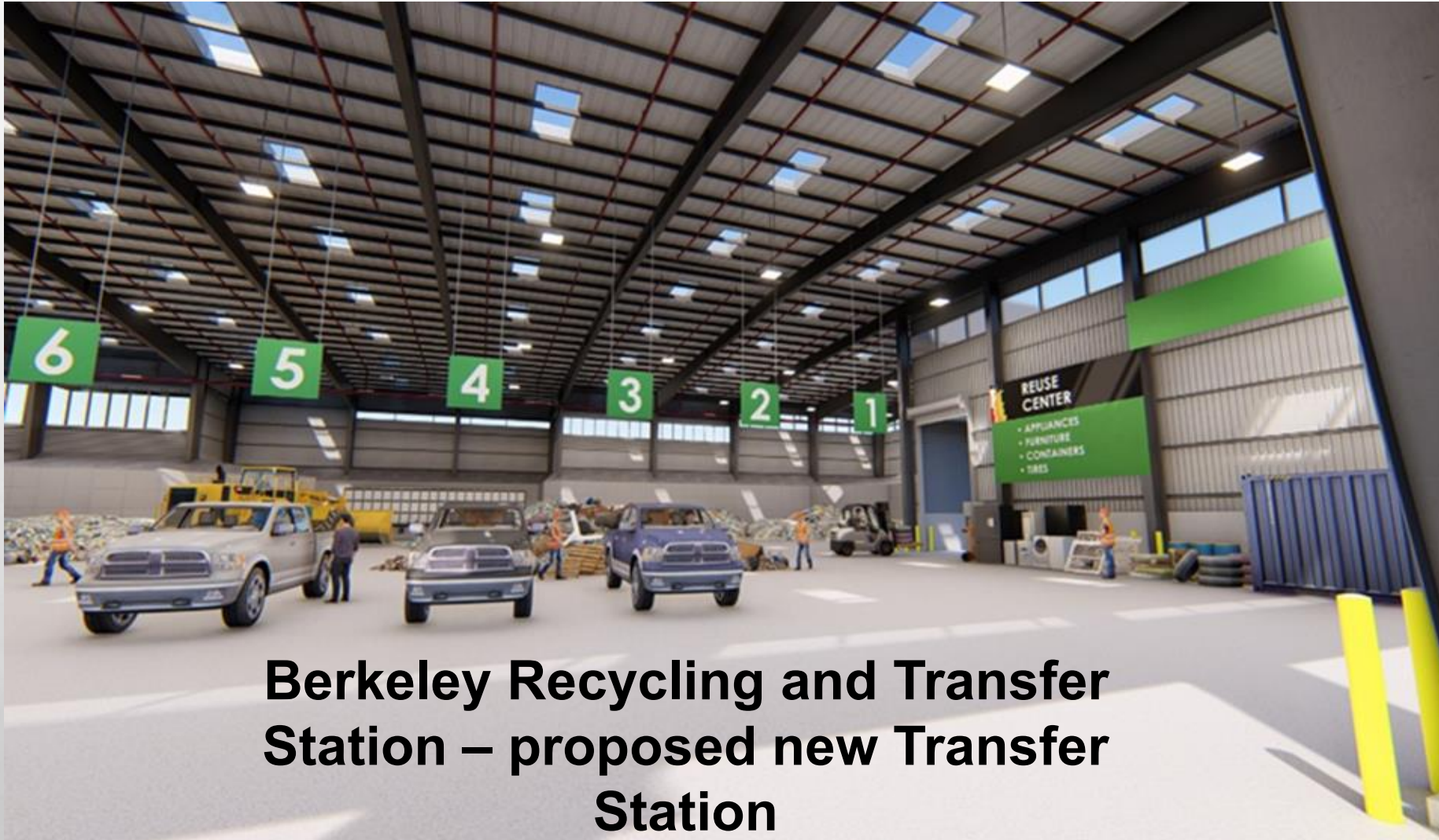
Transfer Station and Recycling Facility



**Factoria Recycling & Transfer
Station
Bellevue, WA**

Modern Transfer Station and Recycling Facilities

Transfer Station



Modern Transfer Station and Recycling Facilities

Transfer Station and Recycling Facility



Berkeley Recycling and Transfer Station – proposed new Transfer Station

Terilyn Lurker

From: Brad Frost
Sent: Wednesday, November 2, 2022 8:54 AM
To: Terilyn Lurker
Subject: Fwd: November 1st Work Session | Egg Farm EDA Discussion
Attachments: 2001.09.25_EggFarmADL.pdf; 2006.04.12_EggFarmADL_FirstAmendment.pdf; 2013.04.18_EggFarmADL_SecondAmendment_FullyExecutedOn2013.05.31.pdf; Memo_Scenario2_(5%Through2013-2.5%Thereafter)V2_2020.07.14.pdf; 2020.06.19_EggFarmMemo_v4_DRAFT.pdf

Can you place this information on our website as part of the council packets for our work session yesterday.

Brad Frost | Mayor

American Fork City

P (801) 763-3000

F (801) 763-3004

51 E Main St., American Fork, UT 84003

----- Forwarded message -----

From: "Bromley, Reed" <Reed.Bromley@colliers.com>

Date: Oct 28, 2022 6:07 PM

Subject: November 1st Work Session | Egg Farm EDA Discussion

To: Brad Frost <mayor@americanfork.gov>, Kevin Barnes <kbarnes@americanfork.gov>, Staci Carroll <scarroll@americanfork.gov>, Ryan Hunter <rhunter@americanfork.gov>, Robert Shelton <rshelton@americanfork.gov>, Clark Taylor <ctaylor@americanfork.gov>

Cc: "Dan Van Woerkom (dan@vwlegalcounsel.com)" <dan@vwlegalcounsel.com>

Mayor and Council Members,

Just a quick note expressing appreciation for the opportunity to share my thoughts regarding the Egg Farm EDA and collaborate during Tuesday's Work Session. This meeting has been anticipated for quite a while but the timing just hasn't been right until now. I have visited briefly with each of you so I believe you have a general idea of my request. A few of you have been in a capacity where you are more familiar with the project and referenced agreements. The purpose of the meeting is for everyone to get an idea of the Egg Farm EDA and the impact it has had on the community and BTSAF (me).

A couple of you asked me to send information when a work session was scheduled. Informational outline follows (with back up information attached):

EGG FARM ADL SUMMARY

Thank you for letting me share my thoughts. By way of outline:

- INITIAL ADL (Attachment 1)

The initial ADL (**Section 1.18(A)**) deal reads as follows:

“the total amount of all payments of Tax Increment Subsidy to the Developer shall not exceed THREE MILLION TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$3,245,944) (the “Not to Exceed Amount of Tax Increment Subsidy”), plus interest at the rate of five percent (5%) per annum . . .”

- FIRST AMENDED ADL (Attachment 2)
- SECOND AMENDED ADL (Attachment 3)

In August of 2010 Rod Despain sends a memo to the RDA. Mr. Despain makes several concerning statements in this memo. Of particular note is the third paragraph:

“Attached is preliminary worksheets (handwritten) providing the runout results of the future payout assuming no change in the current budget and ADL. ***The major concern here is the impact of the 5% interest factor.*** While this alternative also includes a reduction factor for failure to meet the goals early (\$395,790) the interest overcomes any benefit to the City very quickly, with the end result that in the year 2020 we would have paid the developer a total of \$2,640,088) and walked away from an outstanding balance of \$2,618,782. The option of continuation of the existing agreements seems to be to be unrealistic and I believe some amendment of the agreement(s) is required.” (emphasis added)

I disagreed with Rod Despain’s premise, but continued disagreement seemed pointless and headwinds seemed to strengthened with the then current Mayor taking over the discussions. The discussions continued as I did my best to respond to many new suggestions, statements, claims, and actions. After this extended process, I agreed to the Second Amended ADL. The Second Addendum alters Section 1.17 of the original ADL by modifying the Tax Increment Subsidy Period to 2002 – 2027. The Second Addendum also amends Section 1.17 of the original ADL by adjusting the interest rate stated therein down to 2.5%.

RESULT:

The Second Addendum lowered what I received significantly. It also has left the city with excess funds. This result was caused by Rod Despain's faulty analysis.

Of note, is the fact that the project area has been as successful as projected in a MEMO to the Agency on **October 3, 2020** (Can Provide If Necessary); which success occurred without the Agency being required to construct necessary roadways as outlined in its **October 24, 2013** meeting with the Taxing Entity Committee (Can Provide If Necessary).

REQUEST:

I am here to ask the Agency to acknowledge Rod's error, the immense pressure imposed and find a fair resolution for both parties.

My proposal is to keep interest at 5% up to 2nd Amendment and go with 2.5% thereafter (Attachment 4).

I tried to limit the wording and attachments for simplicity. I have given this much thought and am appreciative of the chance to discuss my thoughts collectively with you.

My request is fostered by learning of a line item entitled "excess funds for Agency use". I looked at the spreadsheet and saw that the 50% that had been paid to the developer was now being paid to the Agency's line items. In addition to the 50% the Agency ALSO receives the "excess funds" line item. As I recall the years of effort I was put through to get the Agency to collect the entire available tax increment (instead of paying it back) and the result of those efforts essentially led to interest reduction to me it was unsettling, especially considering that the decision to enter into the 2nd amendment was influenced greatly by the faulty information provided to me by city staff. I reached out to you the Agency Members, and "others", to discuss the matter.

In closing I share a MEMO (Attachment 5) from one of the "others" I refer to at the end of the previous paragraph above who I approached for help and clarity. He gave his thoughts based upon his experience. I share his thoughts more to express that I have not approached this without weighty thought and expense. My proposal stays within the spirit of the commitments I feel I made just prior to the 2nd Amendment of the ADL. Noting and highlighting that the commitment was made when faced with a lot of opposition by Agency staff as well as facing the erroneous information provided by them.

I look forward to our conversation.

AGREEMENT FOR PRIVATE DEVELOPMENT OF LAND
(A.D.L.)

Dated this 25th day of September 2001

By and Between the Redevelopment Agency of American Fork City, a public entity (Agency),
and B TSAF, LLC, a Utah limited liability company, (Developer),
and Reed Bromley and Scott McQuarrie as Guarantors (Guarantors)

ECONOMIC DEVELOPMENT PROJECT AREA:

Egg Farm Economic Development Project Area
located in American Fork City, Utah

AGREEMENT FOR PRIVATE DEVELOPMENT OF LAND (A.D.L.)

**EGG FARM ECONOMIC DEVELOPMENT PROJECT AREA
AMERICAN FORK CITY, UTAH**

THIS AGREEMENT (the "Agreement") is entered into as of the 25th day of September 2001, between the REDEVELOPMENT AGENCY OF AMERICAN FORK CITY, a governmental entity organized under the laws of the State of Utah (the "Agency"), and B TSAF, LLC, a Utah limited liability company (the "Developer"), and REED BROMLEY and SCOTT McQUARRIE, jointly and severally as guarantors (the "Guarantors"). The aforementioned are sometimes referred to in this Agreement as a "Party," or collectively as the "Parties."

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Utah Neighborhood Development Act, Utah Code Ann. §17A-2-1201, et seq., as amended, and any successor law or amendments, including the Redevelopment Agencies Act, Utah Code Ann. §17B-4-101, et. seq. (collectively the "Act"), the Agency has undertaken a program for the development of a certain geographic area located in American Fork City known as the "Egg Farm Economic Development Project Area" located in American Fork City, Utah County, Utah (the "Project Area"); and

WHEREAS, the Agency has prepared and the City Council through the adoption of an Ordinance No. 2000-20-33 dated October 17, 2000 and published October 25, 2000, has approved an economic development plan (as hereinafter defined, the "Economic Development Plan") providing for the development of real property located in the Project Area and the future uses of such land, which Economic Development Plan has been filed with both American Fork City and the Agency; and

WHEREAS, the Agency has prepared a Project Area Budget known as the "Egg Farm Economic Development Project Area Budget" (the "Project Area Budget"), and the Agency and the Taxing Agency Committee for the Project Area have approved the Project Area Budget providing a multi-year financial budget for the development of the Project Area.

WHEREAS, the Developer owns or has owned certain real property located within the Project Area containing approximately 40 acres which is described in the Site Legal Description, Attachment No. 1 (the "Site"); and

WHEREAS, to enable the Agency to achieve the objectives of the Economic Development Plan, and particularly to make a portion of the land in the Project Area available for development by private enterprise for and in accordance with the uses specified in the Economic Development Plan, the Agency desires to enter into this Agreement; and

WHEREAS, the Agency believes that the development of the Site pursuant to the provisions of the Economic Development Plan and this Agreement is in the vital and best interests of the Agency and in the best interest of the health, safety, and welfare of City residents, and in accord with the public purposes and provisions of the applicable State laws and requirements under which the Project

Area and its development is undertaken and is being assisted by the Agency; and

WHEREAS, on the basis of the foregoing, the conditions set forth in this Agreement, and the undertakings of the Developer pursuant to this Agreement, and to enable the Agency to achieve the objectives of the Economic Development Plan, the Agency is willing, in the manner set forth herein, to assist the Developer in the development of the Site for the purpose of accomplishing the provisions of the Economic Development Plan, and the provisions of this Agreement; and

WHEREAS, the development of the Site shall be in accordance with the provisions of applicable local laws and requirements.

NOW, THEREFORE, each of the Parties for and in consideration of mutual promises and other good and valuable consideration, does covenant and agree as set forth herein. The obligations and liabilities of Reed Bromley and Scott McQuarrie as Guarantors under this Agreement shall be joint and several.

CONDITION PRECEDENT TO AGREEMENT

As a condition precedent to this Agreement becoming effective and to any and all obligations of the Agency under this Agreement, the Developer must have first reimbursed to the Agency all of the Agency's costs and expenses incurred relating to the establishment of the subject Project Area and relating to this Agreement, by paying to the Agency said expenses in an amount not to exceed SIXTY THOUSAND DOLLARS (\$60,000).

ARTICLE 1 - - DEFINITIONS

The following capitalized terms have the meanings and content set forth in this Article 1, wherever used in this Agreement.

1.01 Agency

The term "Agency" means the Redevelopment Agency of American Fork City, a public body, exercising its functions and powers and organized and existing under the former Utah Neighborhood Development Act, the Redevelopment Agencies Act or any successor or replacement law or act (the "Act"), including any successor public agency designated by or pursuant to law. The principal office of the Agency is located at 31 North Church Street, American Fork, Utah 84003.

1.02 Assessed Taxable Value

Assessed Taxable Value means, for any Tax Increment Year, with respect to the Site the assessed taxable value of the Site and the portion of the Improvements and all personal property located on the Site, and as to a parcel of the Site the assessed taxable value of the parcel and the portion of the Improvements and all personal property located on the parcel, as shown on the records

of the Utah County Assessor's Office for that Tax Increment Year.

1.03 Available Tax Increment

The term "Available Tax Increment" means only the portion of the tax increment monies which the Agency actually receives from parcels of the Site which have been improved with and contain a completed commercial building of at least 30,000 square feet, except for the Plat B, Lot 2 parcel which may be improved with a building of less than 30,000 square feet, which buildings are in compliance with the City's zoning and development ordinances and regulations (the "Qualified Portions of the Site"), which tax increment monies the Agency receives pursuant to the Project Area Budget and the provisions of Section 17B-4-1003(2)(a)(i) of the Redevelopment Agencies Act which became effective June 1, 2001 (Section 17A-2-1247(2)(f) of the Utah Neighborhood Development Act), less any negative tax increment from the Project Area which reduces the amount of the base year or the base tax amount pursuant to the provisions of the Act. The base tax year as that term is defined or used in the Act and applied to the Economic Development Plan is calendar year 1999. "Negative tax increment" results when the current year assessed valuation for the Project Area falls below the base year assessed valuation of property in the Project Area. "Available Tax Increment" does not include any tax increment monies which the Agency may receive from real or personal property within the Project Area, but lying outside the geographic boundaries of the Site, or from real or personal property in other project areas, or from parcels of the Site that have not been improved with a commercial building of at least 30,000 square feet. The Agency reserves the right to waive the 30,000 square foot building requirement per parcel upon its finding that the character of the use of a parcel resulted in New Jobs with an average of annual salary and benefits substantially higher than \$36,000 per year, or in an assessed valuation substantially higher than normal, for example because of installation and maintenance on the parcel of an extraordinary amount and value of personal property.

1.04 City

The term "City" means the City of American Fork, a political subdivision of the State of Utah.

1.05 County

The term "County" means Utah County, Utah.

1.06 Developer

The term "Developer" means B TSAF, LLC, or its such successors or assigns with respect to this Agreement. Developer has previously conveyed portions of the Site to Morinda, Inc. and to Rocky Mountain Development, LLC (Label Express). It is contemplated that the Developer will convey the remaining portion of the Site to Castendyck & Castendyck, LLC simultaneously with or prior to the execution of this Agreement, which conveyance the Agency hereby approves. "Developer" does not mean successor owners of the Site; however, timely performance of an

obligation of the Developer, or satisfaction of a required condition, by successor owners of the Site shall be deemed sufficient under this Agreement.

1.07 Economic Development Plan

The term "Economic Development Plan" means the Economic Development Plan entitled the "Egg Farm Economic Development Plan," adopted by the City Council through the adoption of an Ordinance 2000-10-33 dated October 17, 2000 and published October 25, 2000.

1.08 Final Construction Documents

The term "Final Construction Documents" shall mean and include all drawings, specifications, conditional use permits, and other related documents approved by the City necessary or required for the construction and completion of the Improvements on the Site in accordance with the conditions of this Agreement and the ordinances of the City.

1.09 Improvements

The term "Improvements" means all of the improvements to be constructed and installed by the Developer or its successors with respect to ownership of the Site, including but not limited to the commercial buildings and other improvements the proposed minimum and cumulative size of which are described or referred to in Attachment No. 1 and elsewhere in this Agreement, together with all necessary and required infrastructure and related landscaping as approved by the City and parking of sufficient spaces to meet the City of American Fork parking code and regulations. The Improvements also shall include any needed sewer, water, storm sewer, curbs, gutters, sidewalk, and landscaping on the Site required by City codes, rules and regulations. To qualify as Improvements, all buildings, roads, utilities, landscaping, parking, etc. must comply with the City's zoning, building, parking, sign and other ordinances and regulations.

1.10 New Jobs

(A) As used in this Agreement, the term "New Jobs" means full-time employment positions within the Site that did not exist on the Site or within the State of Utah prior to the adoption of the Project Area Plan whose total annual salary, benefits and other compensation, determined as an average of all New Jobs, is not less than \$36,000 ("2000 Base Average").

(B) As of December 31, 2001, and on December 31st each year thereafter, the 2000 Base Average shall be adjusted by taking the annual average U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index Wages (for urbanized areas) (the "Index") in the United States for the end of the current year and comparing it with the said Index for the immediate preceding year. The percentage difference between the two shall be the percentage of increase or decrease to be applied to the 2000 Base Average for the total annual salary, benefits and other compensation for the New Jobs within the Site for the year ending December 31st. If the Index figure for the current year

exceeds the Index for the previous year figure, the 2000 Base Average within the Site shall be increased by the percentage of the increase in the Index. If the Index figure for the current year is less than the Index for the previous year figure, the 2000 Base Average within the Site shall be decreased by the percentage of the decrease in the Index.

For example, the Parties have agreed that the 2000 Base Average for the Site as of December 31, 2000 is \$36,000. If the Index for calendar year ending December 31, 2001 has increased 2.0% since December 31, 2000, then the 2000 Base Average for the year 2001 shall be increased by 2% or the amount of \$720, resulting in the average being raised to \$36,720.

This calculation shall be made each year during the Tax Increment Subsidy Period.

(C) The term "New Jobs" shall include persons working on the Site as employees of the owners and/or lessees of the Site as well as employees working on behalf of said lessees even though they are legally employees of an entity other than the lessee. Those employed in the construction of the Improvements and any off-Site improvements shall not be counted in the computation of New Jobs. The jobs relocated to the Site from within the State of Utah shall not be counted in the computation of New Jobs.

1.11 Permitted Uses

The term "Permitted Use" or "Permitted Uses" shall be limited to the uses permitted by the City code, zoning ordinance and regulations of the City for the Site, which are currently for general commercial (GC-2) and planned industrial (PI-1).

1.12 Project Area

The term "Project Area" means the Egg Farm Economic Development Project Area, as more fully described in the Economic Development Plan.

1.13 Project Area Budget

The term "Project Area Budget" means the Project Area Budget prepared by the Agency and adopted October 17, 2000 by the Egg Farm Economic Development Project Area Taxing Agency Committee, and by the Agency, as said Project Area Budget may be amended from time to time as permitted by law. A copy of the Project Area Budget is attached hereto as Attachment No. 4.

1.14 Required Infrastructure Development

The term "Required Infrastructure Development" means the roads, water and sewer line and other improvements to the Site necessary for the commercial development of the Site which are listed on Attachment No. 5 attached hereto.

1.15 Site

The term "Site" means those parcels of real property situated in the Project Area that are shown on the Site Map dated 9/25/01 consisting of one (1) page, included in Attachment No. 1 hereto, and described in the Site Legal Description, Attachment No. 2 hereto.

1.16 Site Map

The term "Site Map" means the Site Map included as part of Attachment No. 1. The Site Map illustrates the portion of the Project Area within which the contemplated building Improvements, required under this Agreement as a prerequisite to the Developer receiving Tax Increment Subsidy, are contemplated to be constructed.

1.17 Tax Increment Subsidy Period

The term "Tax Increment Subsidy Period" means the nineteen (19) year period that the Agency may be required under the terms of this Agreement to pay the Developer all or a portion of the Tax Increment Subsidy, subject to the Agency Conditions, the Not To Exceed Amount Of Tax Increment Subsidy and the other provisions of this Agreement. Unless amended by a written amendment to this Agreement, the Tax Increment Subsidy Period commences with Tax Increment Year 2002, and continues through and including Tax Increment Year 2020.

1.18 Tax Increment Subsidy

(A) The term "Tax Increment Subsidy" means a portion of the Available Tax Increment which the Agency receives only from the Qualified Portions of the Site, located within the Project Area, and which the Agency may be required to pay to the Developer under the terms of this Agreement. The "Tax Increment Subsidy" which may be paid to Developer shall not exceed FIFTY PERCENT (50%) of the Available Tax Increment which the Agency receives from the Qualified Portions of the Site pursuant to the Project Area Budget under Section 17B-4-1004(2)(a) of the Act (17A-2-1247.5(4)(b) of the Utah Neighborhood Development Act) during any given Tax Increment Year between 2002 through 2020, the Tax Increment Subsidy Period, as more fully described in Article 5, Agency's Undertakings. The Tax Increment Subsidy also shall be limited by, and may be reduced in accordance with, Section 5.05 of Article 5, "Limitations On Making Payments." In any event whatsoever, the total amount of all payments of Tax Increment Subsidy to the Developer shall not exceed THREE MILLION TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$3,245,944) (the "Not To Exceed Amount Of Tax Increment Subsidy"), plus interest at the rate of five percent (5%) per annum on the Not To Exceed Amount of Tax Increment Subsidy, as that amount is adjusted pursuant to Sections 2.03 and 2.04(F), interest to accrue from the date this Agreement becomes effective. Said Not To Exceed Amount Of Tax Increment Subsidy is subject to downward adjustments pursuant to other terms and provisions of this Agreement depending upon performance of certain requirements by the Developer or satisfaction of certain conditions.

(B) The following sums of money shall not be considered part of the Tax Increment Subsidy: (1) Five percent (5%) of any tax increment monies which the Agency receives from the Project Area, including from the Site, for the Tax Increment Years 2002 through 2020, which shall be paid to and retained by the Agency and is shown in the Project Area Budget to be used for Agency administration; (2) an additional twenty-five percent (25%) of any tax increment monies which the Agency receives from the Project Area, including from the Site, for Tax Increment Years 2002 through 2020, which is contemplated to be used by the Agency for other obligations incurred or to be incurred including for infrastructure benefitting the Project Area and obligations to the City for repayment of infrastructure costs or other funds advanced by the City for the Project Area; (3) Twenty percent (20%) of any tax increment monies which the Agency receives from the Project Area, including from the Site, for the Tax Increment Years 2002 through 2020, which is to be used by the Agency for income targeted housing as required by the Act; (4) any tax increment monies which the Agency receives at any time from areas within the Project Area other than the Site or from portions or parcels of the Site that are not yet Qualified Portions of the Site; (5) any tax increment monies which the Agency receives at any time from other project areas which the Agency and the City have previously established, or which they may hereafter establish other than the Project Area; (6) the ad valorem property taxes paid on the Site prior to tax increment year 2002; (7) the ad valorem property taxes paid on the Site after tax increment year 2020; (8) any tax increment monies which the Agency receives pursuant to or as a result of other provisions of the Act or successor law, or additional approvals obtained from the Taxing Agency Committee, or an amended Project Area Budget providing additional tax increment not set forth in the current Project Area Budget. The tax increment monies described in the above Subparagraphs (1), (2), (3), (4), (5), (6), (7) and (8) are reserved by the Agency for other uses and purposes.

1.19 Tax Increment Year

The term "Tax Increment Year" means a calendar year beginning January 1 (the "tax lien-date" when real property is deemed to be assessed for purposes of taxation by the Office of the Utah County Assessor pursuant to law), through and including the next November 30 (the "tax payment-date" when property taxes are due and payable to the County by Developer or its successor owners) and ending December 31 of the same calendar year.

ARTICLE 2 - CONDITIONS PRECEDENT TO THE PAYMENT OF THE TAX INCREMENT SUBSIDY BY THE AGENCY TO THE DEVELOPER

The Tax Increment Subsidy shall be paid by the Agency to the Developer only during the Tax Increment Subsidy Period, and, subject to the provisions of Section 2.04, Proportionate Payments, in order for the Developer to be eligible to receive the Tax Increment Subsidy for the Tax Increment Subsidy Period, all of the conditions precedent described in Subparagraphs (1), (2), (3) and (4) of Section 2.01, the other conditions and requirements of this Agreement relating to Developer being eligible or entitled to receive Tax Increment Subsidy, and each of the other terms and conditions of this Agreement, must have been met and satisfied.

2.01 Conditions Precedent

As express conditions precedent to the Agency's obligation to pay the Tax Increment Subsidy to the Developer each year, as more fully described in Article 5, each of the following conditions precedent must have been met and satisfied:

(1) New Jobs Within the Site. During the Tax Increment Subsidy Period, the agreed upon number of New Jobs, measured at the close of each year of the Tax Increment Subsidy Period as more fully described in Section 3.02, must have been provided and maintained within the Site.

(2) Building Permit(s). Building permits from the City for construction of the Improvements which are required under this Agreement to be constructed as a condition precedent to the Developer receiving Tax Increment Subsidy, in conformance with the requirement of meeting the Schedule of Performance, Attachment No. 3, must have been obtained and issued, and the provisions of the Ordinances of the City and the Uniform Building Code and the requirements of the City Building Department must have been complied with.

(3) Satisfaction of All Requirements of Article 3 and Other Terms and Conditions of this Agreement. Each of the conditions and requirements set forth in this Agreement, including but not limited to those set forth in Article 3 below, performance in accordance with the Schedule of Performance, Attachment No. 3, and the timely payment of all ad valorem taxes on or relating to the Site when due, shall have been met, satisfied and performed.

(4) Minimum Assessed Taxable Value of the Site. The Assessed Taxable Value of the Site must be at least FIFTEEN MILLION DOLLARS (\$15,000,000).

2.02 Developer's Failure to Meet the Conditions Precedent. Subject to the provisions of Section 2.04, Proportionate Payments, in the event that any term, covenant or condition precedent described in Subparagraphs (1), (2), (3) and (4) of Section 2.01 is not performed or satisfied, then the Agency shall have no obligation to pay the Developer the annual Tax Increment Subsidy available each year during the Tax Increment Subsidy Period, and the Agency shall be relieved of all obligation to pay any Tax Increment Subsidy to the Developer whatsoever.

2.03 Reduction of the Total Amount of Tax Increment Subsidy In Years Where the Developer Fails to Satisfy the Conditions Precedent or Other Eligibility Requirements.

(A) Subject to the recapture provisions of Section 2.04, in the event of a failure to meet or satisfy a condition precedent or other eligibility requirement (other than Section 2.01(4) during the years 2002-2004), if the Agency has not terminated this Agreement, then the Tax Increment Subsidy shall be reduced as follows:

In any Tax Increment Year during the Tax Increment Subsidy Period (i.e., years 2002 to 2020) in which any of the conditions precedent or other requirements set forth in this Agreement (including in the Attachments) for eligibility to receive the Tax

Increment Subsidy payment(s) has not been met or satisfied, then the amount of the tax increment which would have been paid to the Developer as the Tax Increment Subsidy for that year shall be subtracted from the THREE MILLION TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$3,245,944), the "Not To Exceed Amount Of Tax Increment Subsidy" (which is the possible maximum amount to be paid to the Developer) and the difference shall be the new or reduced "Not To Exceed Amount Of Tax Increment Subsidy." For example, if there was \$100,000 of tax increment money available to pay the Developer as the Tax Increment Subsidy payment for Tax Increment Year 2004, but the Developer was not eligible to receive payment of the Tax Increment Subsidy because one or more of the terms, covenants and conditions precedent described in Subparagraphs (1), (2), (3) and (4) of Section 2.01, or some other term or condition of this Agreement, had not been met, then the "Not To Exceed Amount Of Tax Increment Subsidy" of \$3,245,944 would be reduced by subtracting the sum of \$100,000 (the amount of tax increment available to pay the Tax Increment Subsidy) from the "Not To Exceed Amount Of Tax Increment Subsidy" of \$3,245,944, and the new or reduced "Not To Exceed Amount Of Tax Increment Subsidy" shall be the sum of \$3,145,944 (i.e., $\$3,245,944 - \$100,000 = \$3,145,944$). Under this example, the sum of \$3,145,944 would be the new "Not To Exceed Amount Of Tax Increment Subsidy" for purposes of this Agreement. Each year during the Tax Increment Subsidy Period that the Developer is not eligible to receive the Tax Increment Subsidy, the "Not To Exceed Amount Of Tax Increment Subsidy" shall be similarly reduced by subtracting the amount of tax increment available to pay the Tax Increment Subsidy from the "Not To Exceed Amount Of Tax Increment Subsidy" as originally determined, or as the amount may have been reduced pursuant to the provisions of this Paragraph.

(B) The Agency shall have no obligation to pay to the Developer any amount of Tax Increment Subsidy in excess of the amended or reduced "Not To Exceed Amount Of Tax Increment Subsidy". The Agency shall have no obligation to pay to the Developer the Tax Increment Subsidy other than during the Tax Increment Subsidy Period, subject, of course, to Developer's eligibility pursuant to the terms and provisions of this Agreement.

(C) The Agency shall notify the Developer in writing each time the "Not To Exceed Amount Of Tax Increment Subsidy" has been reduced below the previous "Not to Exceed Amount of tax Increment Subsidy" because terms or conditions have not been met or satisfied. Failure of the Agency to give such notice shall not stop the "Not To Exceed Amount Of Tax Increment Subsidy" from being reduced.

2.04 Proportionate Payments

(A) In the event that the number of New Jobs on the Site are not provided as described in Article 3 in any year during the Tax Increment Subsidy Period, then the Agency shall only be required

to pay the Developer a proportionate amount of the Tax Increment Subsidy based upon the following calculation of the percentage difference between the projected number of New Jobs on the Site as described in Section 3.02(C) and the number of actual New Jobs for such year as determined in accordance with Section 3.02(D). For example, the Developer is required to provide 250 New Jobs on the Site by December 31, 2004. If the Developer only provides 225 New Jobs -- or 90% of the required number of New Jobs by December 31, 2004 -- assuming the Developer was otherwise entitled and eligible under this Agreement, the Agency would pay the Developer only 90% of the amount of the Tax Increment Subsidy for tax increment year 2004.

(B) The tax increment money received by the Agency, but not paid to the Developer and withheld pursuant to the provisions of Subparagraph (A) above, shall be held by the Agency for a period of one year and shall be separately accounted for under the designation: "Agency's Tax Increment Subsidy Contingency Account" or the "Contingency Account". During the next tax increment year immediately following the year in which the required number of New Jobs was not met, the Developer shall be given the opportunity to "recapture" all or a portion of the principal amount of money held in the Agency's Contingency Account. The Developer may do this if a greater number of New Jobs than the number of New Jobs required on the Site during the next Tax Increment Subsidy Year as described in Section 3.02(C) are provided. The "recapture" shall be calculated as follows:

(C) In the event that the annual quotas of New Jobs as described in Section 3.02(C) are not met for a given year, then the Tax Increment Subsidy shall be reduced by the same percentage as the percentage deficit in the quota of New Jobs. If for example, only 90% of the New Jobs required for the year were provided, the Developer would only be paid 90% of the Tax Increment Subsidy and the remaining 10% would be paid into the Agency's Contingency Account as described in subparagraph (B).

(D) In the event that in the next tax increment year there are provided annual New Jobs in excess of the annual New Jobs quota for that year, then the Developer would be entitled to recapture a percentage of the principal amount in the Agency's Contingency Account, in addition to having no reduction in the Tax Increment Subsidy for the current Tax Increment Year. The percentage of the amount in the Agency's Contingency Account, up to 100% as a maximum, to which the Developer shall be entitled is the percentage equal to a fraction, the numerator of which is the number of New Jobs over the quota for the recapture year, and the denominator of which is the number of New Jobs under the quota for the prior year. For example, in the event that the number of New Jobs on December 31, 2004 was 219 (i.e. 31 under the quota), and the number of New Jobs on December 31, 2005 was 395 (i.e. 22 above the quota), the Agency would pay to the Developer a recapture amount equal to 71% (i.e. 22/31) of the principal amount in the Agency's Contingency Account. The 29% amount remaining in the Agency's Contingency Account, after payment of the 71% recapture sum to the Developer, plus interest, would be cleared from the Agency's Contingency Account and would be available for other uses by the Agency in accordance with the provisions of the Act.

(E) In the event that all or part of the number of New Jobs necessary to recapture part of the

principal amount in the Agency's Tax Increment Subsidy Contingency Account are created and maintained, then the Agency shall pay the Developer the portion of the principal amount of the Agency Contingency account earned or recaptured. The remaining principal balance, together with interest, would be available for other uses by the Agency in accordance with the provisions of the Act.

(F) To the extent that any portion of the Agency's Tax Increment Subsidy Contingency Account is not recaptured by the Developer, the Not To Exceed Amount of Tax Subsidy shall be reduced by an amount equal to the principal amount of the Agency's Tax Increment Subsidy Contingency Account not paid to the Developer during the recapture year.

ARTICLE 3 – DEVELOPER'S CONTEMPLATED IMPROVEMENTS, ETC.

It is contemplated that the Developer or its successors in the ownership of the Site will perform and complete, or will cause to be performed or completed, each of the items listed in this Article 3. As referred to in Article 2, as express conditions precedent to the Agency's obligation to pay the Tax Increment Subsidy to the Developer each year, as more fully described in Article 5, the Developer must have timely performed or completed or caused to be performed or completed each of the items listed in this Article 3. Subject to the provisions of Section 2.04, Proportionate Payments, in the event the Developer does not timely perform or complete or cause to be performed or completed any of the items set forth in this Article 3, the Agency may terminate this Agreement at its sole option and discretion, and upon such termination the Agency shall be relieved of any and all obligations to the Developer, including the obligations regarding the payment of Tax Increment Subsidy. The items set forth in this Article 3 do not constitute affirmative obligations of the Developer, but constitute conditions which must be met in order for the Developer to be eligible to receive Tax Increment Subsidy payments. Where, in this Article 3, Developer is to do or perform any item, it shall be sufficient if the item is done or performed by the Developer or Developer's successors in interest regarding the Site.

3.01 Demolition, Construction, Improvements, etc.

(A) Construction of Improvements. The Developer or its successors in ownership of the Site, in compliance with the dates specified in the Schedule of Performance, Attachment No. 3, shall construct the minimum Improvements as described in Attachment No. 1. The Developer may construct said minimum Improvements on the Site sooner, but not later than the dates shown in the Schedule of Performance, Attachment No. 3. The Developer shall prepare the Site for construction of the Improvements, and construct the Improvements, in such a manner that each portion of the development shall stand independent in meeting applicable parking, landscaping and other requirements of the City's laws and regulations. Certificates of Occupancy shall have been issued by the City for such Improvements.

(B) City Permits and Agency Certificate of Completion. Developer shall complete the minimum Improvements and apply for and obtain from the Agency a Certificate of Completion for

the Improvements on or before December 31, 2004.

(C) Drawings and Construction Documents. Final Construction Documents for the Improvements to be constructed on the Site, shall be prepared by a person licensed in and by the State of Utah to practice engineering and/or architecture, as applicable. The Final Construction Documents shall be in conformity with this Agreement, including any limitations established in Section 1.09 Improvements, Section 1.11 Permitted Uses, and all applicable Federal, State and local laws, regulations, ordinances, and City building codes. The Improvements shall be constructed in strict compliance with all applicable local, State and federal laws and regulations and building codes.

(D) Times for Construction. The Developer understands and agrees that time is of the essence of this Agreement. Unless the Improvements are timely constructed and completed and become part of the County's final assessment tax roll, the Available Tax Increment necessary to pay the Agency obligations and indebtedness, will not materialize and the Agency would be unable to receive and pay its obligations.

3.02 Creation of Jobs Resulting From the Economic Development Project On the Site

In order for the Developer to qualify to receive Tax Increment Subsidy, there must have been provided and maintained within the Site, during the Tax Increment Subsidy Period, the agreed upon number of New Jobs, measured at the close of each year of the Tax Increment Subsidy Period, as more fully described below.

(A) As required by law, one of the specific goals of the Economic Development Plan is the creation of new jobs and employment to the State of Utah within the Project Area. The number of New Jobs will be measured by the Agency through monitoring program measures included as part of a performance standard in this Agreement.

(B) The Parties agree that in order to evaluate the creation of New Jobs and determine whether or not the Developer is entitled to receive the Tax Increment Subsidy, the Parties have agreed for the need to have: (1) a definition of the term "New Jobs"; (2) a method of measurement for determining whether or not the Developer has provided the required "New Jobs"; and (3) a method of resolving any disputes regarding the number of New Jobs.

(C) An increasing number of New Jobs on the Site as shown herein are required to be provided and maintained as a condition to the Developer being eligible to receive the Tax Increment Subsidy. The Agency and the Developer agree that, as a condition of the Developer being eligible receive the Tax Increment Subsidy, 373 New Jobs need to be created and maintained within the Site during the Tax Increment Subsidy Period. The New Jobs must be created and maintained within the Site in accordance with the following schedule and during the following time period:

On or before December 31, 2002: No requirement

On or before December 31, 2003: 125 New Jobs

On or before December 31, 2004: 250 New Jobs

On or before December 31, 2005
and continuing through
December 31, 2020: 373 New Jobs

The number of New Jobs set forth above is cumulative (i.e., the number of New Jobs for the year 2004 is 250 with a cumulative total to date of 250, and not 375) and shall be the average of the number of New Jobs within the Site during each applicable calendar year as determined by the information kept by the State of Utah Department of Workforce Services.

(D) For purposes of determining the number of New Jobs, the Parties agree as follows:

(1) The definition of the term "New Jobs" as agreed upon by the Parties is set forth in Section 1.10.

(2) The Parties have agreed that the method of measurement for determining whether or not the required "New Jobs" have been provided will be determined by statistics information kept or compiled by the State of Utah Department of Workforce Services, or any successor agency having the responsibility for compiling official State employment and wage records.

(3) In the event there is a dispute between the Parties as to whether or not the New Job requirements has been met for any given year, the American Fork City Council, using statistical information kept or compiled by the State of Utah Department of Workforce Services, and after considering the Developer's position as submitted to the Agency, shall determine the issue as to whether or not the New Jobs requirement has been met. Notice shall be given by the Agency to the Developer of the City Council's decision which shall be final.

(4) The Parties have agreed that the following are examples of what do not constitute New Jobs:

(a) None of the full-time or part-time construction jobs involved in the construction of the Improvements or off-Site Improvements shall be considered a New Job.

(b) None of the jobs filled by employees of Developer or of lessees, assignees or successors of the Site or any portion thereof, which jobs existed in Utah prior to the adoption of the Project Area Plan, shall be deemed to be New Jobs.

3.03 Restriction Against Parcel Splitting

During the period from the date hereof through Tax Increment Year 2020, Developer, or any

successor in interest, shall not, without the prior written approval of the City and the Agency: (a) convey the Site, or a portion of the Site, or any real property acquired within the Project Area, in such a way that the parcel of real property would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property; (b) construct or allow to be constructed any building or structure on the Site, or on any portion of the Project Area, in such a way that the building or structure would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property. Developer understands that the purpose and intent of this prohibition is to avoid the "splitting" or "joining" of any parcels of real property within the Project Area with those outside the Project Area, or construction of buildings, in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area boundary described in the Plan, or the buildings or structures included within the Project Area, and would be required to "apportion" tax increment monies between a parcel of real property, or a building or structure, located in part within the Project Area and located in part outside the Project Area. Developer understands the importance of honoring the Project Area boundaries and Developer and its successors shall take no action in the construction of buildings or structures or in the conveyance of real property located within the Site or the Project Area that would result in the "splitting" of a parcel of real property or the improvements thereon, or would make it difficult for the County Assessor or County Auditor to calculate the amount of tax increment in the Project Area.

3.04 Deannexation

Neither Developer nor any of its successors shall cooperate with any person, group, or municipality in any effort to remove, deannex or disincorporate the Site or any portion thereof from the municipal boundaries of the City during the period from the date hereof through Tax Increment Year 2020. Developer and its successors shall use their best efforts to resist any efforts to remove, deannex or disincorporate the Site in whole or in part from the City by any existing or future municipality or county so long as the Agency has any outstanding obligation to pay the City or any other party or until the end of Tax Increment Year 2020, whichever is later.

3.05 Payment of Taxes And Assessments

(A) Subject to the right to protest or appeal as provided below, for each Tax Increment Year through Tax Increment year 2020, all ad valorem taxes and assessments levied or imposed on the Site, any of the Improvements, and any personal property on the Site shall be paid annually by Developer or its successors on or before the due date which is currently set by law as November 30th.

(B) Developer or its successor, as applicable, shall have the right to protest or appeal the amount of Assessed Taxable Value and taxes levied against the Site by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site, the Improvements, personal property on the Site, or any portion thereof in the same manner as any other taxpayer as provided by law. Developer, however, shall notify the Agency in writing promptly upon becoming aware of the filing of any protest or appeal to such assessment

determination or taxes. The Agency shall have the right, without objection by Developer or its successor, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment or taxes which should or should not be assessed against the real or personal property of the Site and the amount of the Agency's Project Area indebtedness outstanding.

ARTICLE 4 - ADDITIONAL AGREEMENT PROVISIONS

4.01 Warranty Regarding Assignment and Transfers

Developer represents and warrants that:

(A) It is currently the sole owner and holder of all rights to receive payment or reimbursement from the City or the Agency for or in relation to the Required Infrastructure Development or other construction or installations within or benefitting the Project Area which were constructed or installed by the Developer or any of its affiliated persons or entities;

(B) The consideration received by or payable to Developer or others for the conveyance of the Site to their purchasers, does not exceed an amount representing the actual costs and expenses incurred by and due to Developer or others under generally accepted accounting principles, for Developer's or others' costs of acquiring the Site, carrying charges, development costs, and reasonable return on investment (not exceeding 12%) to Developer and the cost of Improvements, if any, theretofore made on the Site by Developer, less \$3,245,944, the maximum Tax Increment Subsidy amount Developer could receive under this Agreement. It is the intent of this provision to preclude assignment of this Agreement or transfer of the Site or any parts thereof for a profit, and to preclude the Developer from receiving payment for its infrastructure costs and expenses in whole or in part from the sales price of the Site and then in addition from the Tax Increment Subsidy provided by this Agreement or by assignment of this Agreement.

(C) In addition, Developer hereby covenants and agrees to indemnify, defend and hold the City and the Agency harmless from any and all claims of all persons and entities whatsoever for payments or reimbursements, whether from tax increment from the Project Area or otherwise, relating to work, designs, plans, construction, and other costs related to improvements within or benefitting the Project Area which were constructed or installed by the Developer or any of its affiliated persons or entities, including but not limited to the Required Infrastructure Development.

4.02 Permits

Developer or its successors in the ownership of the Site shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Improvements and shall make application for such permits and approvals directly to the City Building Department and other appropriate agencies and departments.

4.03 Relocation Costs

As between the Parties hereto, the Developer agrees, at its sole expense, to be responsible for the relocation of any existing owners or tenants on the Site and all costs related thereto. This provision does not create an obligation of Developer to pay relocation costs to an owner or tenant where none already exists by law or agreement, and there is no intent to create any benefit under this provision to any third party.

4.04 Developer's Understanding

(A) The Developer understands that the Agency has or will incur legal obligations to use portions of the Available Tax Increment received from the Site and tax increment from the Project Area to pay to the Agency or third parties.

(B) The Developer understands that in order for Improvements being constructed on the Site during calendar year 2001 to be included on the final tax assessment rolls of Utah County for Tax Increment Year 2002, and to generate a tax increment for Tax Increment Year 2002, the Improvements on the Site must be constructed and completed on or before December 31, 2001. Improvements constructed and completed during calendar year 2002 will appear on the 2003 tax assessment roll having a tax lien date of January 1, 2003. Tax increment resulting from property taxes paid on November 30, 2002, will be received by the Agency from the County in the spring of 2003, when the County Treasurer pays to the Agency the tax increment monies which are available for distribution.

ARTICLE 5 – AGENCY OBLIGATIONS AND UNDERTAKINGS

5.01 Tax Increment Subsidy

The Agency hereby acknowledges that the Required Infrastructure Development has been satisfactorily completed, and the Agency hereby acknowledges that it has reviewed the invoices with respect to the costs that Developer incurred in connection therewith, which total \$3,245,944. In consideration of the conditions of this Agreement being met, including but not limited to the timely construction of the minimum Improvements described in Attachment No. 1, and in consideration of the completion of the Required Infrastructure Development, and subject to the conditions, terms and limitations set forth in this Agreement, including those set forth in Section 5.05, Limitations On Making Payments, below, and contingent on the Developer otherwise being eligible and entitled under this Agreement, and only to the extent Developer is entitled and eligible under the conditions, terms and provisions of this Agreement to receive Tax Increment Subsidy payments, the Agency agrees to pay to the Developer the Tax Increment Subsidy payments in accordance with the terms of this Agreement. The Agency agrees, based upon representations made by the Developer and conditional upon the timely construction of the Improvements by the Developer upon the Site, that the Agency will "trigger" or commence the taking of tax increment monies from the Site for the first time for the 2002 Tax Increment Year (commencing January 1, 2002 and ending December 31, 2002), which is

following the date for the Developer's completion of all or a portion of the Improvements. -The Agency reserves the right to amend the Project Area Budget for any reason, provided that the amendment does not reduce the amount of Tax Increment Subsidy required by this Agreement to be paid to the Developer during the Tax Increment Subsidy Period. The Agency's payments to the Developer of the Tax Increment Subsidy shall be made to the Developer, or at the Developer's direction and assignment, to an escrow agent designated by the Developer, or to Developer's assignee in accordance with written notice of the assignment received by the Agency from the Developer. The tax increment payments received each year by the Agency from the ad valorem taxes paid by taxpayers to the County Treasurer on November 30 each year on the Site, to the extent required under this Agreement to be paid to the Developer as Tax Increment Subsidy, shall be paid to the Developer within thirty (30) calendar days following receipt of said funds by the Agency. The Agency anticipates receipt of these funds in the spring each year from the ad valorem taxes paid by property owners which are due the prior November 30th.

It is understood and agreed by the Developer that the Agency makes no representation to the Developer, or to any other party, person or entity, to any effect that:

(A) the Agency is absolutely entitled to or will actually receive the contemplated Available Tax Increment from the Site; or

(B) the portion of the anticipated Available Tax Increment monies to be received by the Agency from the Site for the Tax Increment Subsidy Period (i.e., 2002 through 2020) will be an amount large enough to pay the Developer the Tax Increment Subsidy or any amount Developer expects or anticipates to receive. The Agency has not computed, nor can it compute the exact amount of anticipated Available Tax Increment monies which may be available from the Site for the Tax Increment Subsidy Period. The Agency has relied upon the representations made to the Agency by the Developer that the Developer or its successors in the ownership of the Site will construct and install Improvements on the Site which will create sufficient Available Tax Increment monies to be received by the Agency.

5.02 Priority of Payment of the Available Tax Increment.

The Agency and the Developer agree, that the Available Tax Increment monies received by the Agency shall be paid out according to a schedule of priorities. Each year that the Agency receives Available Tax Increment money from the Site commencing with the Tax Increment Year 2002 and ending with the Tax Increment Year 2020 the Agency shall be entitled to use the Available Tax Increment money in accordance with the following order of priority of payments:

First: First, the Agency shall have, receive and retain 5% of all tax increment received by the Agency each year from the Site, to pay the Agency's administrative, consulting, legal and other Agency costs and expenses, and other obligations incurred or to be incurred.

Second: Second, the Agency shall have, receive and retain 20% of all tax increment received by the

Agency from the Site, for income targeted housing as required by the Act.

Third: Third, the Agency shall have, receive and retain 25% of all tax increment received by the Agency from the Site for the Agency's other obligations and proposed eligible uses other than payment of the Tax Increment Subsidy to the Developer.

Fourth: Fourth, from the remaining Available Tax Increment received by the Agency from the Qualified Portions of the Site only the Agency will then pay the Tax Increment Subsidy to the Developer to the extent Developer is entitled under this Agreement.

5.03 Tax Increment Monies Are Sole Source of Agency's Funding.

The Developer understands and agrees that the only source of monies available to the Agency to pay the Tax Increment Subsidy is the Available Tax Increment monies actually received by the Agency from the Qualified Portions of the Site based upon the value of the Improvements to be constructed by the Developer on the Site. Only the Available Tax Increment monies from the Qualified Portions of the Site, less any negative tax increment from the Project Area deducted by the County Assessor's office will be available to the Agency to meet any obligations of the Agency under this Agreement to the Developer.

5.04 Contingencies of Tax Increment Payments; Assumption of Risks By Developer:

The Developer understands and agrees that:

(A) Based upon the Act, the Agency anticipates to be the recipient of certain tax increment monies from the Site which are expected to be paid to the Agency by Utah County, the collector of ad valorem taxes, conditional upon several factors, one of which is the completion of the Improvements upon the Site by the Developer or its successors in the ownership of the Site in a timely manner and having a sufficient amount of assessed valuation. It is anticipated that the construction or installation of the Improvements will cause the assessed value of the Site to increase to a point which is greater than the assessed value of the Site for the 1999 "base year" established at the time of the adoption of the Economic Development Plan. The Developer further understands that the Available Tax Increment monies can become available to the Agency only if and when the Improvements to be constructed by the Developer or its successors on the Site are completed and have a current year assessed value which is greater than the "base year" assessed valuation of the Site.

(B) The Developer further understands and agrees that:

(1) The Agency is not a taxing entity under Utah law;

(2) The Agency has no power to levy a property tax on real or personal property located within the Site;

(3) The Agency has no power to set a mill levy or rate of tax levy on real or personal property;

(4) The Available Tax Increment monies shall become available to the Agency only if and when the Improvements to be constructed and installed by Developer or its successors on the Site are completed and have sufficient Assessed Taxable Value;

(5) The Agency is only entitled to receive tax increment funds from the Site for the period established by law pursuant to the provisions of the Act;

(6) The Developer has investigated the provisions of Utah laws governing tax funds, redevelopment agencies and tax increment and assumes all risk regarding whether:

(a) the Economic Development Plan and Project Area and Project Area Budget were properly approved and adopted;

(b) the anticipated tax increment monies derived from the Improvements to be constructed and installed by Developer on the Site and in conformance with the Economic Development Plan will actually be paid to the Agency, and if paid, whether the amount of tax increment funds will be sufficient to pay the obligations or indebtedness of the Agency, according to the terms and conditions contained in this Agreement;

(c) the Available Tax Increment from the Site will be paid to the Agency during the entire Tax Increment Subsidy Period from Tax Increment Year 2002 through 2020; and

(d) changes or amendments will be made by the Utah State Legislature in the provisions of the Act which would affect or impair:

(i) the Agency's right to receive tax increment monies and to pay the Agency's obligations;

(ii) the length of time said tax increment monies can be received by the Agency; or

(iii) the percentage or the amount of tax increment monies received or anticipated to be received by the Agency based upon the current statutes; and

(7) The Utah State Legislature considers proposals which reduce the taxes which the State of Utah imposes on all real and personal property within the State. Such proposals, if enacted, could materially reduce the amount of tax increment generated

within the Project Area or from the Site and anticipated to be paid to the Agency. In that event of such reduction, the amount of the Tax Increment Subsidy to be paid to the Developer automatically shall likewise be reduced by the amount of such reduction.

5.05 Limitations on Making Payments

The following additional provisions regarding limitations and reductions and regarding Developer's entitlement to and eligibility to be paid or to receive the Tax Increment Subsidy shall govern and shall be applied in addition to any other term or provision of this Agreement:

(A) It is the intention of the parties that the Developer shall only be paid the Tax Increment Subsidy from the tax increment monies resulting from Qualified Portions of the Site, if any, which are paid to the Agency as a direct result of the value of the improvements (including the value of both the real property and personal property) constructed or installed on a parcel of the Site by the Developer or its successors (less any negative tax increment regarding the Site). If, for any reason, the tax increment monies anticipated to be received by the Agency as a direct result of the Improvements to be constructed by the Developer or its successors on the Site are reduced, curtailed, or limited in any way by enactments, initiative referendum, or judicial decree or other reasons, the Agency's obligation to pay the Tax Increment Subsidy to the Developer as described in this Agreement, shall likewise be reduced, curtailed, or limited. The Agency shall have no obligation to pay the Tax Increment Subsidy to the Developer from other sources or monies which the Agency has or might hereafter receive from other portions of the Project Area, or from project areas or from sources other than from the tax increment monies which the Agency actually receives from the Qualified Portions of the Site.

(B) Subject to the limitations in this Agreement, the Tax Increment Subsidy shall be paid by the Agency to the Developer only during the Tax Increment Subsidy Period, conditional, however, upon the Developer being eligible and entitled thereto under the provisions of this Agreement and Developer having met all of the applicable conditions.

(C) The Tax Increment Subsidy payments to be made by the Agency to the Developer are secured solely by a pledge of the Agency of the tax increment monies received by the Agency from the Qualified Portions of the Site. The Developer shall have no other recourse to the Agency or the City and no recourse whatever to any other party for payment of the Tax Increment Subsidy other than the Agency's pledge.

(D) No interest shall be paid by the Agency to the Developer on the Tax Increment Subsidy.

(E) Regarding any parcel of the Site which does not become a Qualified Portion of the Site on or before December 31, 2004 (i.e., parcels regarding which the Developer or its successors in the ownership of the Site has failed to complete construction of a commercial building of 30,000 square feet or more, or with respect to the Plat B, Lot 2 parcel, failed to complete construction of a

commercial building regardless of the square footage), Developer shall receive no Tax Increment Subsidy payment from tax increment received by the Agency from those portions or parcels, even if the commercial buildings of adequate size are later constructed or completed on those parcels of the Site, and any and all tax increment from said parcels shall be excluded from Available Tax Increment as that term is used in this Agreement. Furthermore, if the Assessed Taxable Value of the Site is less than FIFTEEN MILLION DOLLARS (\$15,000,000) as of January 1, 2005, then the Agency shall have the right, at its sole option and discretion, to: (a) terminate this Agreement and have no obligation to pay the Tax Increment Subsidy; or (b) determine that the obligation of the Agency to pay the Tax Increment Subsidy to the Developer shall be voidable at the option of the Agency until such time as the Assessed Taxable Value of the Site is FIFTEEN MILLION DOLLARS (\$15,000,000) or more.

ARTICLE 6 – LAND USES

6.01 Covenants in Agreement

Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that Developer, and such successors and assigns, during the period commencing on the date hereof and ending on December 31, 2025, the Site shall not be developed in a manner inconsistent with the provisions and standards set forth in Sections 4D (Subsection 3 only), 4E, 4F (Subsections 1, 2, and 3 only), 4G and 4H of the Economic Development Plan, true and correct copies of which are attached hereto as Attachment No. 6.

6.02 Enforcement of Covenants

(A) It is intended and agreed that the agreements provided in this Article 6 shall be covenants running with the land and without regard to technical classification or designation, legal or otherwise, and shall be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency against Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that the Agency shall be deemed a beneficiary of the agreements and covenants provided in Section 6.01 of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided.

(B) The covenants and agreements contained in Section 6.01 shall terminate on December 31, 2025, except that the termination shall in no way be construed to release the Developer, or its successors, from the obligation to comply with the applicable zoning or other ordinances or regulations of the City.

ARTICLE 7 – REMEDIES

7.01 Default and Remedies

In the event of any default or breach by the Developer of this Agreement or any of its terms, covenants or conditions, Developer or its successors hereunder shall, upon written notice, proceed immediately to cure or remedy such default or breach, and in any event, do so within thirty (30) calendar days after receipt of such notice or if such default or failure is of a type that cannot reasonably be cured within such thirty (30) day period, within sixty (60) days provided that such cure is commenced within a thirty (30) day period and diligently pursued to completion, unless a longer period of time is agreed to by the Parties pursuant to Section 7.03. If: (1) Developer defaults or breaches any of its obligations contained in this Agreement and does not timely cure such default or breach as provided above; or (2) any one or more of the conditions to be met in order for the Developer to be entitled to receive Tax Increment Subsidy payments are not met for four (4) consecutive Tax Increment Years; or (3) the Certificate(s) of Occupancy and Certificate(s) of Completion as described in this Agreement are not obtained and issued because the applicable portions of the Improvements are not timely completed; then in addition to any other remedy provided for elsewhere in this Agreement, the Agency shall no longer be obligated to pay to the Developer any additional payments of Tax Increment Subsidy, and the Agency, at its sole option and discretion, may terminate this Agreement. Any delay by the Agency in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.

7.02 Enforced Delay Beyond Party's Control

For the purposes of any of the provisions of this Agreement, neither the Agency nor the Developer, nor any successor in interest, shall be considered in breach of or default in its obligations hereunder, including but not limited to, with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of delay in the performance of such obligations without its fault or negligence due to acts of God, or of the public enemy, wrongful acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Developer with respect to the construction of the Improvements, as the case may be, can be extended for the period of the delay: Provided, that in order to obtain the benefit of the provisions of this Section, a Party, within fifteen (15) calendar days after becoming aware of any such delay, shall have: (1) notified the other Party thereof in writing stating the cause or causes for the delay; and (2) requested a written extension for the period of the delay.

7.03 Extensions by Agency

The Agency may in writing extend the time for Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of Developer's obligations nor constitute a waiver of the Agency's rights with respect to any other term, covenant

or condition of this Agreement or any other default in, or breach of, this Agreement.

7.04 Remedies Cumulative/Non-Waiver

The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party or Parties. No waiver made by any Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or Parties or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or Parties or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party or Parties making the waiver or any other obligations of the other Party or Parties.

ARTICLE 8- MISCELLANEOUS PROVISIONS

8.01 Conflict of Interest – Agency

No member, official, employee, consultant, or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

8.02 No Personal Liability - Agency

No member, official, employee, consultant, agent or representative of the Agency shall be personally liable to Developer or any successor in interest in the event of any default or breach by the Agency for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

8.03 Notices

A notice or communication under this Agreement, by a Party to another Party, shall be sufficiently given or delivered, if given in writing by personal service, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

(A) In the case of a notice or communication to the Agency, Executive Director, Redevelopment Agency of American Fork City, 31 North Church Street, American Fork, UT 84003, with a copy to Randall S. Feil, 201 South Main Street, 6th Floor, Utah City, UT 84111;

(B) In the case of a notice or communication to Developer, addressed to Developer at 1442

E. 820 N. Orem, UT 84097, Attention: President, with a copy to Jones, Waldo, Holbrook & McDonough, 170 S. Main Street, #1500, Salt Lake City, UT 84101, Attention: Tom Berggren;

In the case of a notice or communication to Guarantors, addressed to Scott McQuarrie, 1442 E. 820 N. Orem, UT 84097 and to Reed Bromley, P.O. Box 972, American Fork, Utah 84003;

or addressed in such other way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this Section.

8.04 Attachments/Recitals

All Attachments referred to in this Agreement as being attached or to be attached hereto, whether or not in fact attached, the Parties being satisfied that the correct documents can be supplied from the records of the Parties, and Recitals, are incorporated herein and made a part hereof as if set forth in full and are binding upon the Parties to this Agreement.

8.05 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.

8.06 Successors and Assigns of Developer

This Agreement shall be binding upon and shall inure to the benefit of Developer and its successors and assigns with respect to this Agreement, but not the successors of the Developer with respect to the ownership of the Site except as provided in Article 6.

8.07 Attorneys Fees

In the event of a default hereunder, the defaulting Party agrees to pay all costs incurred by the other Party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house counsel or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

8.08 Governing Law

This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

8.09 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

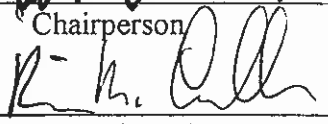
8.10 Time

Time is of the essence of this Agreement and its Attachments.

IN WITNESS WHEREOF, the Agency has caused this Agreement to be duly executed in its behalf; and Developer has caused the same to be duly executed in their behalf; and Guarantors, jointly and severally, have executed the same, on or as of the day and year first above written.

REDEVELOPMENT AGENCY OF
AMERICAN FORK CITY

By 
Chairperson

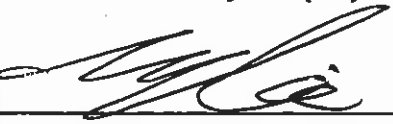
By 
Executive Director

Approved as to form:


Randall S. Feil, Agency Counsel

DEVELOPER

BTSAF, LLC,
a Utah limited liability company

By 

Its BTS Inc., Manager

Guarantors, jointly and severally, hereby personally guarantee performance of all of the Developer's obligations, warranties and indemnifications under Section 4.01 of this Agreement, including but not limited to all liability and obligations to make payments to the Agency, and agree to be immediately, fully and directly liable on all liability, obligations and indemnifications of the Developer under Section 4.01 of this Agreement in the event of any default, breach or failure of the Developer thereunder, and without any requirement that the Agency first seek any remedy of Developer. Provided, however, at the option of Guarantors, Guarantors may request that the Agency

conduct, at the sole cost and expense of Developer or Guarantors, an audit of all relevant documents and records to prove to the Agency that the representations of the Developer set forth in Section 4.01(B) of this Agreement are true, and upon the satisfactory completion of said audit as indicated by an audit report acceptable to the Agency to the effect that the 4.01(B) representations are true, the Guarantors shall be released from their obligations under this Agreement relating to Section 4.01(B) only. The Agency shall not be required to conduct said audit unless funds therefor are provided by Developer or Guarantors in advance.

GUARANTORS, jointly and severally,

Reed Bromley
Reed Bromley, an individual

Scott McQuarrie
Scott McQuarrie, an individual

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

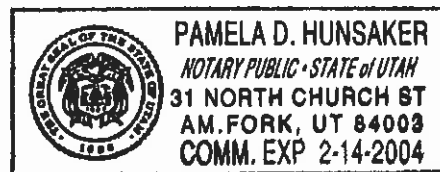
On the 25 day of Sept, 2001, personally appeared before me Ted B. Barratt and Richard M. Colborn who being by me duly sworn did say, each for themselves that he, the said Ted B. Barratt is the Chairperson and he, the said Richard M. Colborn is the Executive Director of the Redevelopment Agency of American Fork City and that the within and foregoing instrument was signed in behalf of said Agency by authority of a motion or resolution of its board of directors and said Ted B. Barratt and Richard M. Colborn each duly acknowledged to me that said Agency executed the same.

My Commission Expires:

2-14-04

Pamela D. Hunsaker
Notary Public
Residing at:

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)



On the 28 day of September, 2001 personally appeared before me Scott McQuarrie, who being by me duly sworn did say, that he is the manager of BTSAF, LLC,

a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company, and duly acknowledged to me that said company executed the same pursuant to proper company authority.

My Commission Expires:

Glen W. Roberts

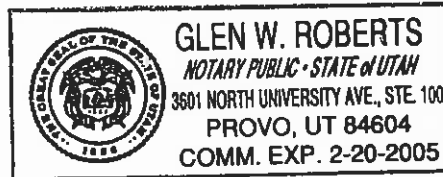
Notary Public

Residing at: Provo UT

STATE OF UTAH)

:SS.

COUNTY OF UTAH)



On the 3 day of October, 2001 personally appeared before me Reed Bromley, who being by me duly sworn did say, that he, the said Reed Bromley executed the within and foregoing instrument as a Guarantor.

Glen W. Roberts

Notary Public

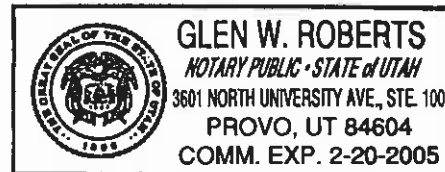
My Commission Expires:

Residing at:

STATE OF UTAH)

:SS.

COUNTY OF UTAH)



On the 28 day of September, 2001 personally appeared before me Scott McQuarrie, who being by me duly sworn did say, that he, the said Scott McQuarrie executed the within and foregoing instrument as a Guarantor.

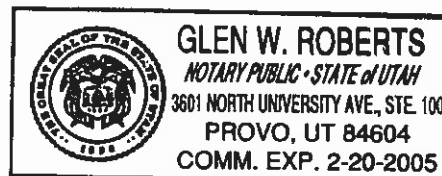
Glen W. Roberts

Notary Public

My Commission Expires:

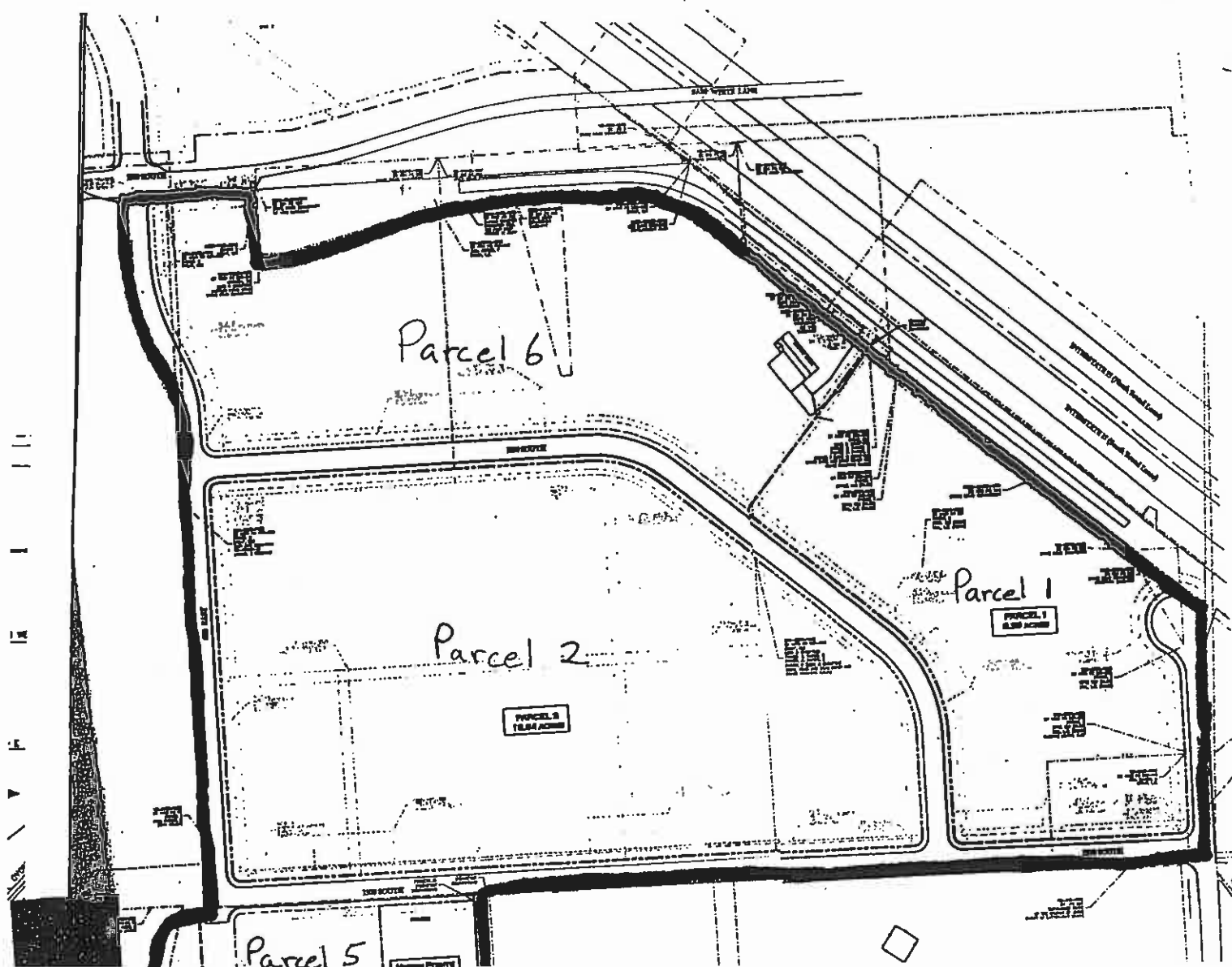
Residing at:

Provo UT



Title: BLSAT, LLC Site Map

Dated 9/25/01



ATTACHMENT NO. 2
SITE LEGAL DESCRIPTION

LEGAL DESCRIPTION

Parcel 1

Commencing at a point located South 00°25'09" East along the section line 414.09 feet and West 1003.37 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 49°38'50" East along an existing fence line 197.26 feet; thence South 50°06'16" East along an existing fence line and a fence line extended 561.31 feet; thence along the right-of-way line of North Pointe Business Park Street Dedication Plat the following calls: along the arc of a 60.00 foot radius curve to the left 181.11 feet (chord bears South 23°30'39" West 119.77 feet); along the arc of a 50.00 foot radius curve to the right 54.95 feet (chord bears South 31°28'56" East 52.22 feet); South 275.99 feet; along an arc of a 15.00 foot radius curve to the right 23.61 feet (chord bears South 45°05'19" West 21.25 feet); North 89°49'22" West 420.00 feet; along an arc of a 15.00 foot radius curve to the right 23.52 feet (chord bears North 44°54'41" West 21.18 feet); North 192.70 feet; along the arc of a 260.00 foot radius curve to the left 226.27 feet (chord bears North 24°55'53" West 219.20 feet); North 49°51'47" West 352.44 feet to the East boundary of Morinda, Inc. Property; thence North 40°08'13" East along Morinda, Inc. East boundary line as described in book 4836, at Page 239-241, 389.97 feet to the point of beginning.

Parcel 2

Commencing at a point located South 00°25'09" East along the section line 1345.63 feet and West 974.77 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence along the right-of-way line of North Pointe Business Park Street Dedication Plat: North 89°49'22" West 823.46 feet; North 89°44'48" West 462.94 feet; along an arc of 15.00 foot radius curve to the right 23.50 feet (chord bears North 44°52'24" West 21.17 feet); North 706.10 feet; along an arc of a 15.00 foot radius curve to the right 23.56 feet (chord bears North 45°00'00" East 21.21 feet); East 706.12 feet; along an arc of a 200.00 foot radius curve to the right 140.10 feet (chord bears South 69°55'54" East 137.26 feet); South 49°51'47" East 517.01 feet; along an arc of a 200.00 foot radius curve to the right 174.05 feet (chord bears South 24°55'53" East 168.61 feet); South 192.42 feet; along arc of a 15.00 foot radius curve to the right 23.61 feet (chord bears South 45°05'19" West 21.25 feet) to the point of beginning.

Parcel 3

Lot 2, Plat "B", North Pointe Business Park Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel 4

Commencing at a point located South 00°25'09" East along the section line 1395.08 feet and West 1798.69 feet from the East Quarter of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°40'37" West along an existing fence line 1303.54 feet to a fence corner; thence North 37°01'17" West along an existing fence line of the Rio Grande Railroad 1169.23 feet; thence along an existing fence line as follows: North 32°09'53" East 22.85 feet; North 17°17'56" East 108.37 feet; North 14°11'41" East 132.95; North 15°23'52" East 76.63 feet; thence North 30°35'47" East 35.14; thence North 68°05'08" East 27.57 feet; thence North 82°29'14" East

25.53 to the end of the fence; thence North $73^{\circ}15'53''$ East 9.96 feet to the Northwest corner of North Pointe Business Park, Plat "B"; thence along the boundary of North Pointe Business Park, Plat "B", the following calls: South 238.01 feet; along an arc of a 350.00 foot radius curve to the right 12.45 feet (chord bears South $01^{\circ}01'10''$ West 12.45 feet); along an arc of a 65.00 foot radius curve to the right 137.53 feet (chord bears South $62^{\circ}39'04''$ West 113.27 feet); South $33^{\circ}15'49''$ West 45.00 feet; along an arc of a 395.00 foot radius curve to the left 201.75 feet (chord bears South $71^{\circ}22'05''$ East 199.56 feet); thence South $86^{\circ}00'00''$ East 300.00 feet; along an arc of a 385.00 foot radius curve to the right 142.37 feet (chord bears South $75^{\circ}24'23''$ East 141.56 feet); North $25^{\circ}11'15''$ East 45.00 feet; North 417.46 feet to the South right-of-way line of 1300 South Street; thence South $89^{\circ}44'48''$ East along the South right-of-way line of 1300 South Street 24.77 feet to the point of beginning.

PARCEL 5

North Pointe Business Park Plat "B", Lot 1 Boundary Description:

Commencing at point located South 00-25-09 East along the section line 1408.17 feet and West 2002.06 feet from the East Quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 362.64 feet; thence North 86-00-00 West 198.85 feet; thence along an arc of a 83.80 foot radius curve to the right 132.94 feet (chord bears North 40-33-07 West 119.43 feet); thence along an arc of a 416.00 foot radius curve to the left 35.55 feet (chord bears North 02-26-53 East 35.54 feet); thence North 208.66 feet; thence along an arc of a 15.00 foot radius curve to the right 23.63 feet (chord bears North 45-07-36 East 21.26 feet); thence South 89-44-48 East 259.43 feet to the point of beginning.

Area 2.20 Acres

PARCEL 6

Commencing at a point located South 00-25-09 East along the section line 78.94 feet and West 2148.10 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 00-00-14 West 111.05 feet; thence North 89-23-22 East 47.38 feet; thence North 77-58-05 East 285.69 feet; thence North 76-13-17 East 68.01 feet; thence North 89-54-38 East 354.90 feet; thence South 64-27-14 East 110.95 feet; thence South 50-05-30 East 127.84 feet; thence South 49-38-50 East 264.15 feet; thence South 40-08-13 West 389.97 feet; thence North 49-51-47 West 164.57 feet; thence along an arc of a 260.00 foot radius curve to the left 182.14 feet (Chord Bears North 89-55-54 West 178.43 feet); thence West 706.12 feet; thence along an arc of a 15.00 foot radius curve to the right 23.56 feet (Chord Bears North 45-00-00 West 21.21 feet); thence North 53.19 feet; thence along an arc of a 233.00 foot radius curve to the left 93.53 feet (Chord Bears North 11-30-00 West 92.91 feet); thence North 23-00-00 West 81.28 feet; thence along an arc of a 350.00 foot radius curve to the right 140.50 feet (Chord Bears North 11-30-00 West 139.55 feet); thence North 79.06 feet; thence along an arc of a 15.00 foot radius curve to the right 23.47 feet (Chord Bears North 44-49-37 East 21.15 feet); thence North 89-39-14 East 181.93 feet to the point of beginning.

Acres = 11.96 Acres

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE

The minimum Improvements (consisting of the construction or installation of the Improvements on the Site as described in Attachment No. 1) shall be constructed by the Developer or its successors in compliance with the following time schedule:

Label Express Commercial Building

- | | |
|---|---|
| 1. Completion of construction | On or before December 31, 2002 |
| 2. Issuance certificate of completion
completion by the Agency | Within 20 days of completion
and issuance of certificate of occupancy
by City |

Additional Commercial Buildings Increasing Assessed Taxable Value of the Site To \$15,000,000

- | | |
|---|---|
| 1. Completion of construction | On or before December 31, 2004 |
| 2. Issuance certificate of completion
completion by the Agency | Within 20 days of completion of
Improvements and issuance
of certificate of occupancy by City |

ATTACHMENT NO. 4
PROJECT AREA BUDGET

A copy of the "Egg Farm - Economic Development Project Area Budget is attached.

EGG FARM ECONOMIC DEVELOPMENT PROJECT AREA
REDEVELOPMENT AGENCY OF AMERICAN FORK
PRELIMINARY MULTI-YEAR BUDGET

	YE 11	YEAR 15 2013	YEAR 16 2014	YEAR 17 2015	YEAR 18 2016	SUBTOTAL
PROJECT REVENUES						
Property Tax (Base Year Taxable Value)	\$10 388	\$19,084 \$1,072,082	\$19,180 \$1,077,442	\$19,275 \$1,082,830	\$19,372 \$1,088,244	\$327,383 \$18,781,588
Projected Tax Increment ROA TOTAL - 75% - 24 YEARS						
Agency						
Eligible Project Area Expenditures	\$	\$268,754	\$268,084	\$269,420	\$270,763	\$3,930,157
Housing	\$	\$71,135	\$71,489	\$71,845	\$72,204	\$1,048,042
Administration	\$	\$17,784	\$17,872	\$17,981	\$18,051	\$262,010
	\$	\$355,873	\$357,445	\$359,227	\$361,018	\$4,240,209
Taxing Agency Flow-thru						
Alpine School District	\$	\$78,209	\$78,589	\$78,970	\$77,354	\$1,141,945
Utah County	\$	\$13,101	\$13,168	\$13,232	\$13,297	\$198,308
American Fork City	\$	\$24,470	\$24,582	\$24,715	\$24,838	\$368,673
Central Utah Water Conservancy	\$	\$4,339	\$4,361	\$4,383	\$4,404	\$65,021
Northern Utah County Water Conservancy	\$	\$438	\$441	\$443	\$445	\$6,573
	\$	\$118,558	\$119,148	\$119,742	\$120,339	\$1,778,517
Total Tax Increment	\$	\$474,230	\$478,594	\$478,970	\$481,357	\$7,018,728
PROJECT EXPENDITURES						
CAPITAL COSTS & RELATED EXPENSES						
Land Acquisition						
Moinda - 11.98 Acres	\$	\$0	\$0	\$0	\$0	\$2,749,645
Spec Buildings - 8.8 Acres	\$	\$0	\$0	\$0	\$0	\$1,724,978
Computer Software Co. - 8.7 Acres	\$	\$0	\$0	\$0	\$0	\$1,828,820
Label Express - 2.2 Acres	\$	\$0	\$0	\$0	\$0	\$375,417
Remaining Acreage - 18.42 Acres	\$	\$0	\$0	\$0	\$0	\$3,933,900
Total Land Acquisition	\$	\$0	\$0	\$0	\$0	\$10,813,458
Off-site Improvements						
Road Improvements						
Demolition	\$	\$0	\$0	\$0	\$0	\$108,004
Curbs, Gutter & Sidewalk	\$	\$0	\$0	\$0	\$0	\$208,300
Clear, Grub & Paving	\$	\$0	\$0	\$0	\$0	\$703,968
Street Lighting and Traffic Control	\$	\$0	\$0	\$0	\$0	\$21,800
Storm Drain Improvements	\$	\$0	\$0	\$0	\$0	\$474,660
Utility Water Improvements	\$	\$0	\$0	\$0	\$0	\$198,500
Sewer Improvements	\$	\$0	\$0	\$0	\$0	\$283,300
Landscaping & Secondary Water	\$	\$0	\$0	\$0	\$0	\$142,000
Total Off-site Improvements	\$	\$0	\$0	\$0	\$0	\$2,116,519
On-site Improvements						
Moinda -	\$	\$0	\$0	\$0	\$0	\$0
Spec Buildings - (Bldgs. A & B), 45,500 sq. ft. @ \$3.00/sq. ft.	\$	\$0	\$0	\$0	\$0	\$273,000
Computer Software Co. - (Bldgs. C & D), 180,720 sq. ft. @ \$3.00/sq. ft.	\$	\$0	\$0	\$0	\$0	\$842,160
Label Express - (Bldg. E), - 30,000 sq. ft. @ \$3.00/sq. ft.	\$	\$0	\$0	\$0	\$0	\$90,000
Total On-site Improvements	\$	\$0	\$0	\$0	\$0	\$905,160
Building Costs						
Moinda - 124,000 sq. ft.	\$	\$0	\$0	\$0	\$0	\$11,116,000
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$	\$0	\$0	\$0	\$0	\$8,867,040
Tenant Improvements	\$	\$0	\$0	\$0	\$0	\$1,720,000
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$	\$0	\$0	\$0	\$0	\$8,865,022
Tenant Improvements	\$	\$0	\$0	\$0	\$0	\$1,577,100
Label Express - (Bldg. E) - 30,000 sq. ft.	\$	\$0	\$0	\$0	\$0	\$1,580,000
Total Building Expenses	\$	\$0	\$0	\$0	\$0	\$30,215,162
Capital Equipment Expense						
Moinda - 124,000 sq. ft.	\$	\$0	\$0	\$0	\$0	\$372,000
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$	\$0	\$0	\$0	\$0	\$288,000
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$	\$0	\$0	\$0	\$0	\$372,800
Label Express - (Bldg. E) - 30,000 sq. ft.	\$	\$0	\$0	\$0	\$0	\$90,000
Total Capital Equipment Expense	\$	\$0	\$0	\$0	\$0	\$1,122,800
Indirect Development Costs						
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$	\$0	\$0	\$0	\$0	\$790,863
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$	\$0	\$0	\$0	\$0	\$1,759,160
Infrastructure Improvements	\$	\$0	\$0	\$0	\$0	\$868,091
Total Indirect Development Costs	\$	\$0	\$0	\$0	\$0	\$3,248,944
TOTAL CAPITAL AND RELATED EXPENSES	\$	\$0	\$0	\$0	\$0	\$48,218,843
EXPENDITURES REIMBURSABLE FROM TAX INCREMENT						
Operating Expenses						
Redevelopment Agency - 5%	\$	\$17,784	\$17,872	\$17,981	\$18,051	\$262,010
Housing	\$	\$71,135	\$71,489	\$71,845	\$72,204	\$1,048,042
Tax increment for off & on site improvements, land acquisition & write-down and other eligible expenditures	\$	\$268,754	\$268,084	\$269,420	\$270,763	\$3,930,157
Property Tax Payable	\$	\$118,558	\$119,148	\$119,742	\$120,339	\$1,778,517
Other Taxing Agencies	\$	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES REIMBURSABLE FROM TAX INCREMENT	\$	\$474,230	\$478,594	\$478,970	\$481,357	\$7,018,728
TOTAL PROJECT EXPENDITURES	\$	\$474,230	\$478,594	\$478,970	\$481,357	\$55,235,569

	YEAR 201
PROJECT REVENUES	
Property Tax (Base Year Taxable Value)	\$19,4 \$1,000
Projected Tax Increment RDA TOTAL -75% - 24 YEARS	
Agency	
Public Infrastructure Improvements	\$272,1
Housing	\$72,5
Administration	\$18,9
	\$363,5
Taxing Agency Flow-thru	
Alpine School District	\$77,7
Utah County	\$13,3
American Fork City	\$24,9
Central Utah Water Conservancy	\$4,42
Northern Utah County Water Conservancy	\$446
	\$120,9
Total Tax Increment	\$483,8
PROJECT EXPENDITURES	
CAPITAL COSTS & RELATED EXPENSES	
Land Acquisition	
Morinda - 11.98 Acres	\$0
Spec Buildings - 6.9 Acres	\$0
Computer Software Co. - 6.7 Acres	\$0
Label Express - 2.2 Acres	\$0
Remaining Acreage - 18.42 Acres	\$0
Total Land Acquisition	\$0
Off-site Improvements	
Road Improvements	
Demolition	\$0
Curb, Gutter & Sidewalk	\$0
Clear, Grub & Paving	\$0
Street Lighting and Traffic Control	\$0
Storm Drain Improvements	\$0
Outfurn Water Improvements	\$0
Sewer Improvements	\$0
Landscaping & Secondary Water	\$0
Total Off-site Improvements	\$0
On-site Improvements	
Morinda -	\$0
Spec Buildings - (Bldgs. A & B), 45,500 sq. ft. @ \$3.00/sq. ft.	\$0
Computer Software Co. - (Bldgs. C & D), 180,720 sq. ft. @ \$3.00/sq. ft.	\$0
Label Express - (Bldg. E) - 30,000 sq. ft. @ \$3.00/sq. ft.	\$0
Total On-site Improvements	\$0
Building Costs	
Morinda - 124,000 sq. ft.	
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$0
Tenant Improvements	\$0
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$0
Tenant Improvements	\$0
Label Express - (Bldg. E) - 30,000 sq. ft.	\$0
Total Building Expense	\$0
Capital Equipment Expense	
Morinda - 124,000 sq. ft.	\$0
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$0
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$0
Label Express - (Bldg. E) - 30,000 sq. ft.	\$0
Total Capital Equipment Expense	\$0
Indirect Development Costs	
Spec Bldgs. - (Bldgs. A & B) 48,000 sq. ft. each	\$0
Software Computer Co. - (Bldgs. C & D) 124,200 sq. ft.	\$0
Infrastructure Improvements	\$0
Total Indirect Development Costs	\$0
TOTAL CAPITAL AND RELATED EXPENSES	\$0
EXPENDITURES REIMBURSABLE FROM TAX INCREMENT	
Operating Expenses (5% - payable from tax increment)	\$18,148
Housing (NPV - , Discounted @ 5%)	\$72,581
Tax increment for off & on site improvements, land acquisition & writedown and other eligible expenditures	\$272,150
Other Taxing Agencies	\$120,889
	\$483,878
TOTAL PROJECT EXPENDITURES	\$483,878

ATTACHMENT NO. 5
REQUIRED INFRASTRUCTURE DEVELOPMENT

630 East
Site Grading
Sewer Mains and lot lines
Storm Drain Mains and collectors
Water main and lot lines-fire hydrants
sub base
road base
asphalt
Curb-Gutter and Sidewalk
Sprinkler system and landscaping
Detention basins and collection system

1160 South (Bromley Drive)
Site Grading
Sewer Mains and lot lines
Storm Drain Mains and collectors
Water main and lot lines-fire hydrants
sub base
road base
asphalt
Curb-Gutter and Sidewalk
Sprinkler system and landscaping
Detention basins and collection system

1300 South
Site Grading
Sewer Mains and lot lines
Storm Drain Mains and collectors
Water main and lot lines-fire hydrants
sub base
road base
asphalt
Curb-Gutter and Sidewalk
Sprinkler system
Detention basins and collection system

860 East
Site Grading
Sewer Mains and lot lines
Storm Drain Mains and collectors
Water main and lot lines-fire hydrants
sub base
road base
asphalt
Curb-Gutter and Sidewalk
Sprinkler system and landscaping
Detention basins and collection system

Stream feature and landscaping
Entrance Monument

Demolition
Chicken Farm
Coops/ processing building/storage buildings/houses

ATTACHMENT NO. 6
SECTIONS OF ECONOMIC DEVELOPMENT PLAN

Sections 4D (Subsection 3 only), 4E, 4F (Subsections 1, 2 and 3 only), 4G and 4H of the Economic Development Plan.

4 D 3. Specific Design Objectives and Controls

(a) Building Design Objectives

- (i) All new buildings shall be of design and materials which will be in compliance with applicable zoning regulations.
- (ii) The design of buildings shall take optimum advantage of the topography.

(b) Open Space Pedestrian Walks and Interior Drive Design Objectives

- (i) All open spaces, pedestrian walks and interior drives shall be designed as an integral part of an overall site design, properly related to proposed buildings.
- (ii) Attractively landscaped open spaces shall be provided, which will offer maximum usability to occupants of the building for which they are developed.
- (iii) Landscaped, paved, and comfortably graded pedestrian walks should be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings on the same site.
- (iv) The location and design of pedestrian walks should afford maximum safety and separation from vehicular traffic, and should recognize desirable views of new and existing development in the area and surrounding community.
- (v) Materials and design of paving, retaining walls, fences, curbs and benches shall be of good appearance, easily maintained, and indicative of their purpose.

(c) Parking Design Objectives

- (i) Parking areas shall be designed with careful regard to orderly arrangement, topography, relationship to view, ease of access, and as an integral part of overall site design.
- (ii) It is desirable that parking areas be level or on terraces as determined by the slope of the land.

(d) Landscape Design Objectives

(i) A coordinated landscaped design over the entire project area incorporating landscaped treatment for open space, roads, and parking areas into a continuous and integrated design shall be a primary objective.

(ii) Primary landscape treatment shall consist of non-deciduous shrubs, ground cover, and shade trees as appropriate to the character of the project area.

(e) Project Improvement Design Objectives

(i) Public rights-of-way. All streets, sidewalks and walkways within public rights-of-way will be designed or approved by the City and will be consistent with all design objectives.

(ii) Street lighting and signs. Lighting standards and signs of pleasant appearance and modern illumination standards shall be provided as necessary.

(iii) Rough grading. Any existing structures, retaining walls, underbrush, pavement, curb and gutters will be removed and the site graded in conformance with the final project design.

4 E. Description of Land Uses

The permitted land uses within the project area shall be those uses permitted by the officially adopted zoning ordinances of the City, as those ordinances may be amended from time to time.

4 F. Planning Criteria

In order to provide owner participants and developers maximum flexibility in the economic development of land located within the project area and to encourage and obtain the highest quality design and development, specific development controls for the land uses identified above are not set forth herein. Each economic development proposal may be considered subject to: (1) appropriate elements of the City's master or general plan; (2) the planning and zoning code of the City; and (3) other applicable building codes and ordinances of the City.

4 G. Review of Economic Development Proposals

Each economic development proposal by an owner participant or a developer shall be accompanied by site plans, development data and other appropriate material that clearly describes the extent of economic development proposed, including land coverage, setbacks, heights and bulk

proposed, off-street parking and loading to be provided, use of public transportation, and any other data determined to be necessary or requested by the City.

4 H. Retail Sales

The development of retail sales is not an objective of the project area. Incidental or subordinate development of retail sales are permitted in the project area and shall not disqualify the project area from receiving tax increment financing under Section 1247.5 of the Act.

Reed

3-14-06
City Council Approved

FIRST ADDENDUM TO AGREEMENT TO DEVELOP LAND

This First Addendum to Agreement For Private Development of Land ("A.D.L."). Hereafter referred to as ("First Addendum") is made and entered this 12th Day of APRIL, 2006, by and between The Redevelopment Agency of American Fork City, Utah (hereafter referred to as "Agency") and BTSAF, LLC, a Utah, a limited liability company (hereafter referred to as "Developer") and, Reed Bromley and Scott McQuarrie, jointly and severally (hereafter referred to as "Guarantors") is based on the following:

RECITALS

WHEREAS, on December 14, 2004, Agency, Developer and Guarantors entered into an agreement (hereafter referred to as "Original Agreement"), pursuant to the provisions of The Utah Neighborhood Development Act, Utah Code Ann. Section 17A-2-1201, et seq., as amended, and any successor law or amendments, including the Redevelopment Agencies Act, Utah Code Ann., Section 17B-4-101, et. seq. (hereafter referred to collectively as the "Act"), providing for the allocation of property taxes paid to Agency by lands located within the Egg Farm Economic Development Project Area, located in American Fork City, Utah (hereafter referred to as "Project"), as reimbursement to Developers for certain costs incurred in the design and construction of water, sewer, storm water, street and landscape improvements located within public street rights-of-way and public utility easements located within and adjacent to Project and intended to be owned by American Fork City (hereafter referred to as "Required Infrastructure Development"); and

WHEREAS, the terms of the Original Agreement were based on a combination of factors, including: (1) projections of cost and time of construction of the Required Infrastructure Improvements, and (2) assumptions regarding the extent and timing of construction of buildings within the Project area; and

WHEREAS, the Required Infrastructure Improvements intended for reimbursement under the Original Agreement have now been completed and actual costs determined and the 15 million dollar minimum threshold valuation requirement for the Project has been met; and

WHEREAS, Agency, Developers and Guarantors mutually desire to modify certain of the terms of the Original Agreement as to what constitutes a Qualified Portion of the Site and also the terms for payment of Tax Increment Subsidy to the Developer.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual benefits and promises of the parties to this Agreement, the parties agree as follows:

SECTION 1. The recitals set forth above are hereby incorporated as the factual predicate to this First Addendum as if fully set forth herein.

SECTION 2. Sub-section C of Section 3.02 is hereby amended to read as follows:

An increasing number of New Jobs on the Site as shown herein are required to be provided and maintained as a condition to the Developer being eligible to receive the Tax Increment Subsidy. The Agency and the Developer agree that, as a condition of the Developer being eligible to receive the Tax Increment Subsidy, 373 New Jobs need to be created and maintained within the Site during the Tax Increment Subsidy Period. The New Jobs must be created and maintained within the Site in accordance with the following schedule and during the following time period:

On or before December 31, 2004:	No requirement
On or before December 31, 2005	125 New Jobs
On or before December 31, 2006	250 New Jobs
On or before December 31, 2007 and continuing through December 31, 2020	373 New Jobs

The number of New Jobs is cumulative (i.e., the number of New Jobs for the year 2006 is 250 with a cumulative to date of 250, and not 375) and shall be the number of New Jobs within the Site as of December 31 of each calendar year, as determined by the information kept by the State of Utah Department of Workforce Services or as provided by the human resources departments of each of the firms occupying space within the Project, as determined to be applicable by Agency.

SECTION 3. The date, set forth in line 2 of Sub-section E of Section 5.05, after which a parcel of the Site is no longer eligible to become a Qualified Portion of the Site, is hereby amended to December 31, 2010.

SECTION 4. Notwithstanding the provisions of this First Addendum, the amount of any Tax Increment Subsidy Payment shall conform with the terms of the Project Area Budget, as approved by the Egg Farm Taxing Agency Committee by Resolution of the Committee, dated October 17, 2000, or any amendment thereto, as may be subsequently approved by action of the Committee.

SECTION 5. Developers and Guarantors hereby agree that in the event that any changes authorized by this First Addendum are determined by the Taxing Agency Committee to be in violation of the terms of State Law or conditions of approval of the Egg Farm Economic Development Plan, Agency shall have no duty to make Tax Increment Subsidy Payments as set forth under this First Addendum.

SECTION 6. The basis for extending the time for extending the time for developers performance, as set forth in this First Addendum is authorized pursuant to the provisions of Section 7.03 of the Original Agreement.

SECTION 7. To the extent that provisions of the Original Agreement have not been modified by this First Addendum, such provisions shall remain in full force and effect and shall continue to constitute the binding obligations of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this First Addendum as of the day and year first above stated.

REDEVELOPMENT AGENCY OF
AMERICAN FORK CITY

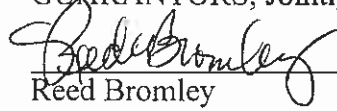
By: 
Chairperson

DEVELOPER

BTSFA LLC

By: 
Its: Manager

GUARANTORS, Jointly and severally


Reed Bromley


R. Scott MaQuarrie

SECOND ADDENDUM TO AGREEMENT TO DEVELOP LAND

This Second Addendum to Agreement For Private Development of Land ("A.D.L.") (referred to herein as this "Second Addendum") is made and entered this 18 day of April, 2013, by and between The Redevelopment Agency of American Fork City, Utah (hereafter referred to as "Agency"); and BTSAF, LLC, a Utah, a limited liability company (hereafter referred to as "Developer"); and Reed Bromley and Scott McQuarrie, jointly and severally ("Guarantors), as follows:

RECITALS

WHEREAS, on December 14, 2004, Agency, Developer and Guarantors entered into the Agreement For Private Development of Land ("A.D.L.") (referred to herein as the "Original Agreement"), pursuant to the provisions of The Utah Neighborhood Development Act, Utah Code Ann. Section 17A-2-1201, et seq., as amended, and any successor law or amendments, including the Community Development and Renewal Agencies Act, Title 17C of the Utah Code (hereafter referred to collectively as the "Act"), providing for the allocation of tax increment paid to the Agency by lands located within the Egg Farm Economic Development Project Area, located in American Fork City, Utah (hereafter referred to as "Project Area"), as reimbursement to Developer for certain costs incurred in the design and construction of water, sewer, storm water, street and landscape improvements located within public street rights-of-way and public utility easements located within and adjacent to Project and intended to be owned by American Fork City (hereafter referred to as "Required Infrastructure Improvements"); and

WHEREAS, the terms of the Original Agreement were based on a combination of factors, including (1) projections of cost and time of construction of the Required Infrastructure Improvements and (2) assumptions regarding the extent and timing of construction of buildings and improvements within the Project Area; and

WHEREAS, because of economic conditions beyond the control of the Developer the collection of tax increment from the Project Area was delayed in its start; and

WHEREAS, the Agency and Developer mutually desire to modify certain of the terms of the Original Agreement as to what constitutes the Tax Increment Subsidy Period as defined in the Agreement.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual benefits and promises of the parties to this Agreement, the parties agree as follows:

SECTION 1. The recitals set forth above are hereby incorporated as the factual predicate to his Second Addendum as if fully set forth herein.

SECTION 2. Sections 1.17 and 1.18 of the Agreement are hereby amended to read as follows:

1.17 Tax Increment Subsidy Period

The term "Tax Increment Subsidy Period" means the time period that the Agency may be required under the terms of this Agreement to pay the Developer all or a portion of the Tax Increment Subsidy, subject to the Agency Conditions, the Not To Exceed Amount Of Tax Increment Subsidy and the other provisions of this Agreement. Unless amended by a written amendment to this Agreement, the Tax Increment Subsidy Period commences with the Tax Increment Year 2002, and continues through and including Tax Increment Year 2027.

1.18 Tax Increment Subsidy

(A) The term "Tax Increment Subsidy" means a portion of the Available Tax Increment which the Agency receives only from the Qualified Portions of the Site, located within the Project Area, and which the Agency may be required to pay to the Developer under the terms of this Agreement. The "Tax Increment Subsidy" which may be paid to Developer shall not exceed FIFTY PERCENT (50%) of the Available Tax Increment which the Agency receives from the Qualified Portions of the Site pursuant to the Project Area Budget under Section 17C-1 of the current version of the Act (17A-2-1247.5(4)(b) of the Utah Neighborhood Development Act in effect at the time of the execution of the Original Agreement) during any given Tax Increment Year between 2002 through 2027, the Tax Increment Subsidy Period, as more fully described in Article 5, Agency's Undertakings. The Tax Increment Subsidy also shall be limited by, and may be reduced in accordance with, Section 5.05 of Article 5, "Limitations On Making Payments." In any event whatsoever, the total amount of all payments of Tax Increment Subsidy to the Developer shall not exceed THREE MILLION TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$3,245,944) (the "Not To Exceed Amount Of Tax Increment Subsidy"), plus interest at the rate of TWO and ONE HALF PERCENT (2.5%) per annum on the Not To Exceed Amount of Tax Increment Subsidy, as that amount is adjusted pursuant to Sections 2.03 and 2.04(F), interest to accrue from the date this Agreement becomes effective. Said Not To Exceed Amount Of Tax increment Subsidy is subject to downward adjustments pursuant to other terms and provisions of this Agreement depending upon performance of certain requirements by the Developer or satisfaction of certain conditions.

(B) The following sums of money shall not be considered part of the Tax Increment Subsidy (for purposes of clarification, the following constitute the 50% of Available Tax Increment that the Agency will retain and not pay to the Developer; the remaining 50% of Available Tax Increment is intended to be paid to the Developer as described above): (1) Five percent (5%) of any tax increment monies which the Agency receives from the Project Area, including from the Site, for the Tax Increment Years 2002 through 2027, which shall be paid to and retained by the Agency and is shown in the Project Area Budget to be used for Agency administration; (2) an additional twenty-five percent (25%) of any tax increment monies which

the Agency receives from the Project Area, including from the Site, for Tax Increment Years 2002 through 2027, which is contemplated to be used by the Agency for other obligations incurred, or to be incurred including for infrastructure benefitting the Project Area and the obligations of the for repayment of infrastructure costs or other funds advanced by the City for the Project Area; (3) Twenty percent (20%) of any tax increment monies which the Agency receives from the Project Area, including from the Site, for the Tax Increment Years 2002 through 2027, which is to be used by the Agency for income targeted housing as required by the Act; (4) any tax increment monies which the Agency receives at any time from areas within the Project Area other than the Site or from portions or parcels of the Site that are not yet Qualified Portions of the Site; (5) any tax increment monies which the Agency receives at any time from other project areas which the Agency and the City have previously established, or which they may hereafter establish other than the Project Area; (6) the ad valorem property taxes paid on the Site prior to tax increment year 2002; (7) the ad valorem property taxes paid on the Site after tax increment year 2027; (8) any tax increment monies which the Agency receives pursuant to or as a result of other provisions of the Act or successor law, or additional approvals obtained from the Taxing Entity Committee (fka Taxing Agency Committee), or an amended Project Area Budget providing additional tax increment not set forth in the current Project Area Budget (other than any Taxing Entity Committee approval or a Project Area Budget amendment, if any, relating to clarification that there is no annual maximum or cap in the original Project Area Budget). The tax increment monies described in the above Subparagraphs (1), (2), (3), (4), (5), (6), (7) and (8) are reserved by the Agency for other uses and purposes.

SECTION 3. Developer and Guarantors hereby agree that in the event that any changes authorized by this Second Addendum are determined by the Taxing Entity Committee (fka Taxing Agency Committee) to be in violation of the terms of State Law or conditions of approval of the Egg Farm Economic Development Project Area Budget, the Agency shall have no duty to make Tax Increment Subsidy Payments as set forth under this Second Addendum.

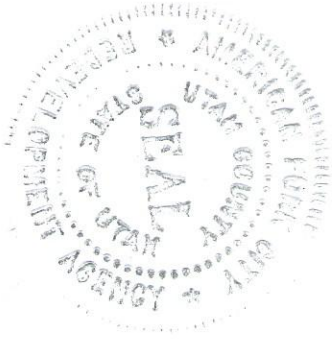
SECTION 4. To the extent that provisions of the Original Agreement and its First Addendum have not been modified by this Second Addendum, such provisions shall remain in full force and effect and shall continue to constitute the binding obligations of the parties hereto.

SECTION 5. The Agency will use its best efforts to clarify with the Utah County Offices of the Auditor and/or Treasurer, and if needed the Taxing Entity Committee, that the Agency is entitled to receive 75% of all tax increment revenues generated in the Project Area until 2027, without any annual cap or maximum on the amount of tax increment revenues the Agency may receive in any single year.

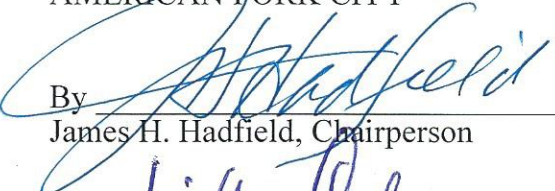
IN WITNESS WHEREOF, the parties have executed this First Addendum as of the day and year first above stated.

[signature blocks on following pages]

IN WITNESS WHEREOF, the Agency has caused this Addendum to be duly executed in its behalf, and Developer has caused the same to be duly executed in its behalf; and Guarantors, jointly and severally, have executed the same, on or as of the day and year first above written.



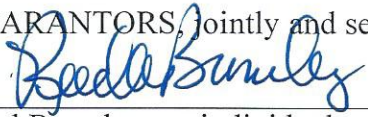
REDEVELOPMENT AGENCY OF
AMERICAN FORK CITY

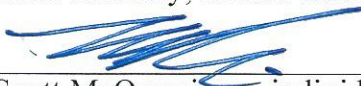
By 
James H. Hadfield, Chairperson

By 
Richard M. Coburn, Executive Director

DEVELOPER,
BTSAP, LLC
A Utah limited liability company

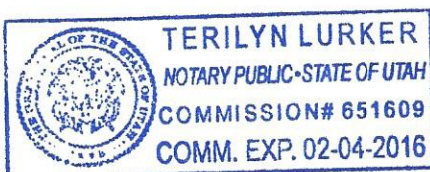
By 
Its Manager

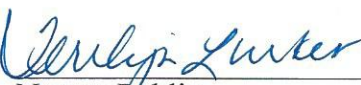
GUARANTORS, jointly and severally,

Reed Bromley, an individual


Scott McQuarrie, an individual

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 31 day of May 2013, personally appeared before me James H. Hadfield and Richard M. Coburn who being by me duly sworn did say, each for themselves that he, the said James H. Hadfield is the Chairperson and he, the said Richard M. Coburn, is the Executive Director of the Redevelopment Agency of American Fork City and that the within and foregoing instrument was signed in behalf of said Agency by authority of a motion or resolution of its board of directors and said James H. Hadfield and Richard M. Coburn each duly acknowledged to me that said Agency executed the same.




Notary Public

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 29th day of May 2013 , personally appeared before me Scott McQuarrie who being by me duly sworn did say, that he is the manager of the BTSAF, LLC, a Utah limited liability Company and that the within and foregoing instrument was signed in behalf of said company and duly acknowledged to me that said company executed the same pursuant to proper company authority.

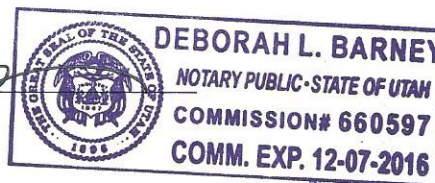

Notary Public



STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 29th day of May 2013 , personally appeared before me Reed Bromley who being by me duly sworn did say, that he, the said Reed Bromley executed the within and forgoing instrument as a Guarantor.


Notary Public



STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 29th day of May 2013 , personally appeared before me Scott McQuarrie who being by me duly sworn did say, that he, the said Scott McQuarrie executed the within and forgoing instrument as a Guarantor.


Notary Public



“DRAFT”



LEGAL COUNSEL

06/19/2020

MEMORANDUM

TO: BTSAF / Reed Bromley
RE: Egg Farm Project Case Analysis
******WORK PRODUCT PRIVILEGE******

SUMMARY

In 2000, BTSAF and the American Fork Redevelopment Agency entered into an agreement intended to carry out the RDA's economic development plan. Over time, based on representations made by the RDA, the Developer agreed to amendments that as calculated today have resulted in a loss to him of over \$1 million from the original bargained-for amount. Because of those same amendments, the RDA has realized a windfall in a similar amount. We have reviewed the history of the parties' agreements and discussions in an effort to determine whether there exists a legal theory that would support an effort by the Developer to re-capture the benefit of his original bargain. It appears Utah's legal doctrines of "mistake" and/or "material misrepresentation" make one or more of the Developer's agreements with the RDA voidable and/or reformable, thus making it possible for the Developer to re-capture its loss.

DETAILED FACTUAL REVIEW

ADL

On or about September 8, 2000, the Egg Farm Economic Development Plan and Report¹ was prepared. On October 17, 2000, the City Council of American Fork enacted an ordinance formally adopting the Egg Farm Economic Development Project Economic Area Plan.

That same day², members of the American Fork Redevelopment Agency and city staff met with members of the Taxing Entity Committee ("TEC") to discuss the budget it would adopt for the Egg Farm Project. Multiple budget alternatives were suggested, including a 24-year budget that permitted the agency to take 75% of the available tax increment ("ATI") over 24 years with the remaining 25% flowing through to the taxing entities. Committee Member Newton noted the downside to this option was the "time cost of money and it would cost everyone more dollars due to that factor"; he later estimated that cost to be \$800,000. The minutes state, "Rod Despaigne noted that if excess tax increment was distributed to the Agency, it would be assumed that the Agency would pay off its indebtedness earlier." Randall

¹ We have not reviewed this document.

² It is unclear whether AF City enacted the ordinance before or after the meeting of Taxing Committee.

Feil stated the “Taxing Agency Committee would have to meet and amend the budget to allow the Agency to receive excess tax increment in order to pay it off early.” He reiterated later in the meeting that the Committee could meet again and “authorize an amendment to the budget to take all of the increment to pay it off early and shorten the years.” Committee Member Newton summarized the discussion as “it was possible to pretty much eliminate the \$800,000 of the time cost of money if the Committee adopted the philosophy that they would pay it off as quickly as possible by applying additional amounts to the budget if it was available.” Feil responded “there were two ways to do that. 1) Meet and amend the budget and if there was excess they could allocate it. Or, 2) do a budget now that had no yearly limitations just a total for the whole budget.” Accordingly, the Committee approved the resolution agreeing to the with the specific stipulation, as proposed by Despain, that the Taxing Agency Committee would meet annually “to review the budget to determine whether excess tax increment should be applied to debt as opposed to passing it through for the purpose of retiring debt early.” In reviewing the minutes, the 75% / 25% budget option was the most expensive option because of the “time cost of money.” As noted by Committee Member Newton, the “Committee would impress upon the RDA the importance of being up front with the Committee about what was contractual debt.”

Almost a year later³, on September 25, 2001, the Redevelopment Agency of American Fork City (the “RDA” or “Agency”) and BTSAF, LLC (“Developer”) entered into an Agreement for Private Development of Land (“ADL”). The ADL indicates that the Developer had submitted receipts of costs for specified development efforts totaling \$3,245,955. Through the ADL, the Developer was to be reimbursed those costs plus interest through payment of a Tax Increment Subsidy. Specifically, Section 1.18(A) of the ADL provides:

“the total amount of all payments of Tax Increment Subsidy to the Developer shall not exceed THREE MILLION TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$3,245,944) (the “Not to Exceed Amount of Tax Increment Subsidy”), plus interest at the rate of five percent (5%) per annum on the Not to Exceed Amount of the Tax Increment Subsidy, as that amount is adjusted pursuant to Sections 2.03 and 2.04(F), interest to accrue from the date this Agreement becomes effective. Said Not to Exceed Amount Of Tax Increment Subsidy is subject to downward adjustments pursuant to other terms and provisions of this Agreement depending upon performance of certain requirements by the Developer or satisfaction of certain conditions.”

The ADL contains multiple ambiguities:

- The ADL states, “The Agency reserves the right to amend the Project Area Budget for any reason, provided that the amendment does not reduce the amount of Tax Increment Subsidy required by this Agreement to be paid to the Developer during the Tax Increment Subsidy Period.” See Article 5.01. This provision creates confusion,

³ We do not have any documentation evidencing any discussions or other issues that may have been addressed during this one-year period.

because it is the Taxing Agency Committee, not the RDA, that holds the power to amend the Project Area Budget.

- Despite the requirement to pay 5% interest recited in Section 1.18(A), Section 5.05(D) of the ADL states “No interest shall be paid by the Agency to the Developer on the Tax Increment Subsidy.” According to memos written in 2010 by Rod Despain to the RDA and to the TEC, no tax increment subsidy was paid to the Developer in 2002 or 2003. Presumably this is because certain threshold eligibility requirements were not met until the 2004 tax year. However, Section 1.18(A) of the ADL provides that interest accrues on the Not To Exceed Amount of the Tax Increment Subsidy from the date the ADL became effective, which was September 25, 2001. Mr. Despain’s handwritten memorandum demonstrating the RDA’s calculations reveal the RDA failed to account for interest accumulating for the balance of 2001, 2002 or 2003.
- The itemized project budget attached to the ADL indicates a budget beginning in 1999 projecting through the year 2027. But the Tax Increment Subsidy Period defined in the ADL commenced in 2002 and progressed only through the year 2020.

First Addendum to ADL

The project grew as many developments do, slow at first and gaining momentum as construction begins. The Developer experienced a lag in the project attributable to the “dotcom” bubble bursting and the 9/11 attacks, not dissimilar to that experienced by the entire Nation. In early 2005, the Developer began petitioning for corresponding adjustments to some of the ADL’s provisions. The suggested adjustments included moving the ADL timelines related to the available tax increment to begin in 2005, adjusting the method for calculating real property values, and accelerating reimbursements to the developer by re-appropriating some of the tax increment earmarked for the RDA to use in further development of the project to instead reimburse the Developer.

On February 7, 2006, Despain sent a memo to the RDA regarding the project and the Developer’s requests. Despain stated: “Development and job growth has not occurred at the rate anticipated in the ADL. Compliance with the terms of the ADL, as written, will result in a maximum reimbursement in the range of \$80,000 per year and a maximum over the life of the EDA of about \$1,400,00”, though he did not disclose how he came to those calculations. He then confusingly stated, “The original developers have requested an amendment to the ADL which would increase the reimbursement amount.” While the Developers had requested the amendments outlined in the previous paragraph, the Developers had not requested an increase in the amount of the reimbursement proscribed by the ADL.

Despain’s memo suggests possible ADL amendments in addition to those requested by the Developer that Despain felt could be made “without referring the matter to the Project Budget Committee.” Despain then stated “However, any proposed amendments to extend the end period beyond 2020, would require their approval, which may not be easily gained.” This sentiment is confusing in light of the TEC’s discussions held in 2000 and in which Despain participated. Despain additionally stated: “It should be noted that the Agency’s portion of the Tax Increment is not dependent on the developer meeting the threshold

requirements. We get our portion regardless. So any option to facilitate the applicant has no direct bearing on us . . .” Despain’s sudden reluctance to send the matter to the budget committee stands in direct opposition to his stance in the year 2000 that the taxing committee should review the budget annually, and the TEC’s general request for transparency from the Agency.

The Developer followed Despain’s memorandum with a letter dated 3/3/2006 to the RDA. This letter repeated the request for modifications made in his 2005 letter and added a fourth request to revise the minimum annual salary threshold on new jobs. Presumably in response to this letter, Despain prepared a memo to the RDA dated 3/8/2006 indicating he had prepared a possible amendment to the ADL that incorporated some of the Developer’s requests.

The actual First Addendum to the ADL was signed on March 12, 2006.⁴ The addendum lengthened the threshold years by which the Developer needed to meet the job creation requirements to 2007. Despain noted that for this amendment “The practical effect would be that the funds withheld in 2005 because of a failure to meet the 2005 threshold of 373 new jobs would be eligible for recapture. This amounts to a one-shot payment to the developer of about \$25,000. Also, it would reduce the threshold for full payment in 2006 from 373 to 250 new jobs. It is my understanding that the proposed number has been met.” This First Addendum also extended the date for qualified buildings to 2010.

The First Addendum also added Section 4, which reads, “Notwithstanding the provisions of this First Addendum, the amount of any Tax Increment Subsidy Payment shall conform with the terms of the Project Area Budget.” This Section 4 overtly limits or “caps” the amount of Tax Increment Subsidy available to both the RDA and the Developer at whatever amount was anticipated by the approved budget. According to Despain, this provision was added “to limit the possible negative impact to the City.” He noted that the current approved budget “anticipated an available Tax Increment amount of about \$350,000 per year for the life of the Project Plan.” This statement in 2006 is problematic and makes clear perhaps for the first time a key problem in the ADL. If the project budget anticipated approximately \$350,000 per year, and the Developer is only entitled to 50% of that, then even had the project fully funded as budgeted, the maximum available reimbursement to the Developer for the years 2002 through 2020 would have been \$3,325,000 ($\$350,000 / 2 = \$175,000 \times 19$). This amount is far below what the Developer should have received pursuant to the ADL including the full 5% interest amount required by the ADL. In short, from the very beginning, the ADL coupled with the approved budget kept the Developer from ever receiving its benefit of the bargain.

Second Addendum to ADL

Each year, the Egg Farm project generated an increasing amount of tax increment, and in 2009, the project collected excess tax increment monies. In June of 2010 Rod Despain sent a memo to the AF Taxing Entity Committee (the “TEC”) providing a “status report on the

⁴ Confusingly, the Addendum recites the date for the original ADL as December 14, 2004.

Egg Farm EDA.” Here, Rod states that “by agreement with the American Fork Redevelopment Agency, the official start date for the plan was determined to be June 1, 2001, thus the scheduled end date would be June 1, 2024.” Rod noted that the ADL final tax increment year was set for 2020 – “4 years shorter than the maximum allowed under the law and the EDA Plan” though he does not say why it was drafted that way. He further acknowledged the obligation to pay a reimbursement amount to the Developer plus interest at the rate of 5% per annum. He noted that threshold requirements under the ADL were met, and that “beginning in 2009, the reimbursement amount from the Qualified Area reached the full fifty percent of the project budget amount.”

Rod lays out what has been paid to the developer thus far on the project. Importantly, he notes “it is anticipated that the available tax increment amount for 2010 and all subsequent years will exceed the amount set forth in the adopted budget. Unless there is an amendment to the budget, any excess tax increment would be passed through the other taxing agencies.” He then proceeds to say “Assuming that the annual subsidy reimbursement payment to the developers remains constant for the remainder of the reimbursement period set forth in the ADL (2020), the cumulative total of reimbursement paid to the developers will be approximately \$2,750,000 which is less than the maximum amount of \$3,245,944 authorized by the ADL and the adopted budget, and will not provide any interest amounts.” He notes on page 4 that “the amount of tax increment available for both the City and developer is limited to the amount set forth in the approved project budget, which for 2009 is \$251,980.” These comments by Despain are troubling when set against the TEC’s discussion back in 2000 that the taxing committee should be meeting to review the budget annually and determine how much excess increment could be used to pay off the developer more quickly. In other words, Despain knows, as a member of both groups, that the TEC would be appraised of the excess increment in its annual meeting and the philosophy of the TEC was to get the developer paid off as quickly as possible by amending the budget; yet, Despain behaves as if it is impossible for the Developer to ever recover the full benefit of its bargain under the ADL.

In August of 2010 Despain sends a memo to the RDA. Despain makes a number of concerning statements in this memo. Of particular note is the third paragraph:

“Attached is preliminary worksheets providing the runout results of the future payout assuming no change in the current budget and ADL. The major concern here is the impact of the 5% interest factor. While this alternative also includes a reduction factor for failure to meet the goals early (\$395,790) the interest overcomes any benefit to the City very quickly, with the end result that in the year 2020 we would have paid the developer a total of \$2,640,088) and walked away from an outstanding balance of \$2,618,782. The option of continuation of the existing agreements seems to be to be unrealistic and I believe some amendment of the agreement(s) is required.”

This paragraph raises flags because of Despain’s sudden concern over the 5% interest – as noted above, the entire 5% interest was never allotted for in the area budget by the year

2020. He noted that the project had reductions early on, but he never provided notice of the reduction calculations to the Developer, and further, has not provided any recapture calculations. Further, the notation that interest “overcomes any benefit to the city very quickly” reveals a bias in the City against the Developer’s success, as shortfalls by the Developer appear to be retained by the City. It is additionally unclear why he finds continuing the agreement is “unrealistic” because in the very next paragraph he notes that if the developer is unwilling to “waive the interest feature”, continuation of the existing agreement to 2020 would be the appropriate option. And again, the reluctance or resistance to involve the taxing committee seems contrary to his representations in the year 2000 and the desires of the taxing committee, which anticipated this very situation and indicated a willingness to amend the budget to pay off the Developer as quickly as possible.

Despain proposed three ways to amend the ADL. None of them were ultimately adopted. It should be noted that while all three amendments had the effect of getting additional money to the Developer, by virtue of the 50/50 split between the Developer and the RDA, both the Developer and the RDA benefit.

In February 2011, the mayor turned the matter over to legal counsel.

The Developer wrote a letter to the RDA on March 28, 2011. He notes that as a developer, “We initially believed that any excess should have been equally shared (as per “ADL”) between Agency and developer; we still hold that belief but understand that there is another credible point of view. We believe a meeting with the Taxing Entity Committee (“TEC”) to discuss budget adjustments as well as the excess “ATI” would have been appropriate.” He also notes “We are confident that we can resolve some of the inconsistencies in the agreements that arose from the last minute changes from an RDA to an EDA as well as the swift change from 100% pass through to 75%”

In May of 2011 Despain, jointly with the Mayor, sends a memo to the RDA suggesting another option – increasing the term of the ADL by one year past 2020. In this memo, the City emphasizes that it is limited by the budget, with no reference to the ability to work with the TEC.

In a confusing letter on February 29, 2012, the Mayor tells the Developer, “Please be advised that our records show a contracted reimbursement to BTSAF in the amount of \$1,116,519 and indirect development costs in the amount of \$689,091. The RDA Board is prepared to adjust the terms of the ADL in order to accommodate this number. However, if BTSAF intends to seek pay-out in excess of this number, the City must request documentation of any expenses incurred that would justify the greater request.” The City seems to be telling the Developer that they will not honor the agreed-upon interest in the ADL. Otherwise, it seems unclear why the ADL would need to be adjusted to accommodate that figure.

In an RDA meeting held April 5, the meeting minutes reflect the following comments by Randy Feil, AF City’s legal counsel, clarifying the City’s intent and interpretation of the ADL. Importantly, the minutes state:

- “If things were built soon enough and big enough then the cap would be increased by an interest amount. The total amount cap would then be \$3.245 million with the interest. There was no obligation to pay any interest at all.”
- “In the projections when the ADL was signed, and what was in the ground and what was expected when they sold the property . . . there was no way they were ever going to get any interest. The projections were not enough to pay the \$3.245 million when they signed the document, but they were always wishful thinking.”
- Mr. Feil also stated it was never the intent to pay interest. “That was a calculation of how much the cap increased every year. It was a cap calculation and it was not an obligation to pay interest. There is a provision in the document that says that no interest shall be paid on the obligation.”

When a board member (Dale Gunther) challenged Mr. Feil’s interpretation, his responded by indicating that if the board member would read the entire document, he would be “convinced of [Feil’s] point of view.” A major problem with Feil’s interpretation, however, is that it renders the ADL valueless to the Developer. Without interest, the ADL would only work to reimburse the Developer’s for project expenses, including the possibility of deductions to the reimbursement – there would be no profit component for the Developer.

In May of 2012 the RDA holds a special meeting. These meeting minutes reflect frustration with the Developer by Despain and Mayor Hadfield. They once again note that significant interest to the Developer was never really possible. They claim deficiencies in the early project, yet still do not provide an accounting of any recapture. They attach the original budget which shows the maximum budget numbers do not appear to even fully reimburse the Developer if the agreement ends in 2020. The Board ultimately voted on a provision that would allow the Developer to receive “some” interest.

At another special session of the RDA in August of 2012, the City’s bias (or at least the City Attorney’s bias) against the Developer is evidenced with Mr. Feil’s statement “later on the development exceeded expectation, but not early on. Just because something exceeded expectation did not mean you had to pay the other side more.” (page 8)

Finally, a special session of the RDA is held on April 18, 2013. The confusion surrounding interpretation of the budget and its interplay with the ADL is discussed – the minutes read in a way that seem to blame changes in interpretation regarding the issue on shifting personnel in city/county staff. The new attorney replacing Mr. Feil, David Church, made it clear the issue would be taken up with the TEC, but wanted the amendment finalized before addressing the TEC. The City felt they were doing the developer a favor, and that they “would gain nothing from these amendments,” that “[t]here was no argument that could be made that these amendments changes add money to the City’s RDA. The changes talked about today were to help Mr. Bromley be made whole. At 2020 he was nowhere near being made whole.” This determination to enact the modification before discussing the issue with

the TEC is concerning, as the outcome of the TEC's determination directly impacts the timing and amount of payment to the Developer. Nevertheless, the parties, including Bromley, agreed to amend the ADL to extend until 2027 and reduce the interest rate therein to 2.5%.

Thus, a second addendum to the ADL is executed on April 18, 2013.⁵ The Second Addendum alters Section 1.17 of the original ADL by modifying the Tax Increment Subsidy Period to 2002 – 2027. The Second Addendum also amends Section 1.17 of the original ADL by adjusting the interest rate stated therein down to 2.5%. No other substantive modifications are made.

For this reason, the Second Addendum to the ADL does not truly clear up any of confusion that has bubbled up in the years since the original ADL execution:

- It does not indicate what will happen with when available tax increment amounts exceed the amounts projected in the budget, which at this point in time is regarded as a future certainty.
- It continues to proscribe a reduction of the not-to-exceed amount despite the fact that the discussion surrounding the amendment was that a reduction will not be made.
- It does not indicate whether, even with the extension, a full recovery of the not-to-exceed amount, even with the reduced interest can be actually be realized. (In fact, it appears it cannot be realized from the approved budget).

So, after years of negotiating, the Addendum itself reflects little, if any, of the discussion held, and clarifies almost nothing in and of itself. A notable exception is the Addendum does contain a provision requiring the RDA to clarify some of the issue regarding the cap with the Utah County Offices and “if needed” the Taxing Entity Committee; however, as mentioned previously, waiting to clarify these points until after execution of the addendum is itself highly problematic.

Four months later, the TEC discusses these concepts. The TEC specifically notes that two questions regarding interpretation of the ADL remain outstanding, namely, was the budget to be viewed in dollar cap amounts or just split 75/25? And, what was trigger year for the project? The TEC minutes specifically states, “The documents are ambiguous on these questions”. One TEC member specifically states that the intent was to reimburse for costs plus interest.

In October of 2013, the TEC votes and clarifies that the budget is not an annual dollar cap, but instead serves as projections of a 75/25 flow through percent formula. They clarify that the trigger date is 2004. They note that the repayment to the Developer is controlled by the ADL terms, not the budget. There is some discussion that the point of the second addendum was to save the taxing entities money, which is concerning, since at the time of negotiation the stated purpose was to find a way to make the Developer whole. Ultimately, a Resolution is signed officially stating that the trigger year is 2004, amending the project

⁵ The Second Addendum repeats the mistake of reciting the original ADL date as 12/14/2004.

area budget to reflect the 75/25 flow through without caps, and removing the necessity for an annual meeting of the taxing committee.

With the Second Addendum and the 2013 Resolution of the TEC, the Developer has/will recover the full reimbursement and 2.5% interest by the taxing year 2020. Additionally, the RDA will now receive \$1.2 million of excess tax increment that apparently cannot lawfully flow through to the taxing entities. Specifically, the Second Addendum has/will result in the Developer losing over \$1 million of the original bargained-for amount. Meanwhile, the RDA has realized a windfall in a similar amount. Recognition of this “new reality” puts the RDA’s insistence on the amendments and spurious supporting calculations in a different light.

LEGAL ANALYSIS

Mistake

“Mistake” is a theory of contract law that appears relevant to the facts set forth above. A mistake can be unilateral or mutual. A mutual mistake occurs when both parties, at the time of contracting, share a misconception about a basic assumption or vital fact upon which they based their bargain.” See Bergmann v. Bergmann, 428 P. 3d 89 (UT App. 2018) (internal citations omitted). This can exist even when the contract appears on its face to be an integrated agreement. See Red Bridge Capital LLC v. Dos Lagos LLC, 381 P. 3d 1147 (UT App. 2016). A unilateral mistake is where one party makes a mistake either as the result of the other party's fraud or with the knowledge of the other party who then attempts to take advantage of the mistake. See Guardian State Bank v. Stangl, 778 P.2d 1, 5-7 (Utah 1989). If proven by clear and convincing evidence, including extrinsic evidence, either a mutual or unilateral mistake create a basis upon which a contract can be either rescinded or reformed. Reformation, in this case, would permit the parties to adjust the documents to permit additional payments to the Developer.

Potential “mistakes” abound in this case, including:

- Recovery of interest: According to Feil, the RDA / AF City never intended for the Developer to collect any sizeable amount of interest, while the Developer fully depended on interest recovery as its only benefit under the ADL.
- Calculation of Interest: No party has ever calculated interest on the not-to-exceed amount as beginning to accrue in the year 2000 as dictated by the ADL.
- Budget caps / amendments: The TEC indicated a willingness and intention in 2000 to amend the budget in favor of paying obligations to the Developer in the event there was excess tax increment, but once there was excess tax increment, the RDA represented the budget as firm and actively pursued methods to avoid taking the issue to the TEC.

- Trigger date: The RDA, Developer and TEC all seemed uncertain regarding the trigger date for the ADL.
- Urgent need to amend ADL: In 2012 – 2013, David Church represented that the ADL needed to be modified quickly and without waiting for the TEC to determine whether it intended to amend the project budget in order to make the developer whole, but was later viewed as an action to save money.
- Calculation of reduction in Not-To-Exceed-Amount: the RDA may have improperly calculated a reduction in the not-to-exceed amount and also failed to calculate any corresponding recapture. As the Developer ultimately recovered the full Not-To-Exceed-Amount, this may not end up relevant.

Material Misrepresentation

Another analysis involves the legal theory of “material misrepresentation.” Material misrepresentation occurs when (1) “there is a misrepresentation” by one party, (2) the misrepresentation was “fraudulent or material,” (3) “the misrepresentation induced the recipient to make the contract,” and (4) the “recipient was justified” to rely on the misrepresentation. See First Guaranty Bank v. Republic Bank, Inc., (D. Utah 2019) citing Miller v. Celebration Mining Co., 29 P.3d 1231, 1235 (Utah 2001) (quoting Restatement (Second) of Contracts § 164(1) (1981)). A material misrepresentation can be made negligently, knowingly, or even inadvertently, so long as the misrepresentation is, in fact, “material.” Id. A misrepresentation is deemed “material” if “it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.” See Restatement (Second) of Contracts § 162(2).

Where there is a material misrepresentation, a contract is voidable. In the instant case, some of the events that constitute mistakes enumerated above may also be viewed as material misrepresentations. This could result in rescission of the original ADL (and subsequent Addendums), and thereby a need to assert an “unjust enrichment” claim. Alternatively, material misrepresentation could result in rescission of the Second Addendum only. This could return the interest rate in Article 1.18 to the original 5% among other consequences.

**MEMORANDUM**

TO: REED BROMLEY, BTSAF
FROM: LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.
DATE: 7/14/2020
RE: EGG FARM EDA

According to the Second Addendum to Agreement for Development of Land dated April 18, 2013, BTSAF LLC is to receive an obligated payment from the American Fork Redevelopment Agency annually up to an amount sufficient to fully amortize \$3,245,944 including interest carry at 2.50% per annum. The original Agreement for Private Development of Land dated December 14, 2004 contemplated that BTSAF LLC received 5% per annum on the construction cost amount related to public infrastructure improvements. The scenario that we show in this memorandum models the 5.00% from the original date (2004) to the amended date (2013) and then 2.50% thereafter. The provision in the agreement that the developer be reimbursed 50% of the tax increment until the payment is fulfilled remained the same.

Below is the adjusted amortization schedule based on a premise that BTSAF LLC was entitled to receive 5.00% per annum from the Original Agreement up until the Amended Agreement was put in place in 2013 at which time the interest rate was amended to 2.50%. Using this understanding, it shows that the reimbursement could be extended until tax year 2022 with a final payment amount of \$40,098 (which includes an estimated \$978 of interest accrual at 2.50%). See **Table 1** below.

Table 1: Amortization Schedule (5.00% 2004-2013; and 2.50% 2013 until repaid in full)

DEVELOPER CONSTRUCTED INFRASTRUCTURE AND IMPROVEMENTS -- AGREEMENT TO DEVELOPMENT LAND					
(5% Through 2013) (2.5% Through Remaining Years) Annual Growth Assumption					
Tax Year	Beginning Balance	Principal	Interest	Total P+I	Ending Balance
2004	3,245,944	(86,160)	162,297	76,137	3,332,104
2005	3,332,104	(81,205)	166,605	85,400	3,413,309
2006	3,413,309	(84,532)	170,665	86,133	3,497,842
2007	3,497,842	(85,765)	174,892	89,127	3,583,607
2008	3,583,607	(38,630)	179,180	140,550	3,622,237
2009	3,622,237	(5,122)	181,112	175,990	3,627,359
2010	3,627,359	(4,995)	181,368	176,373	3,632,354
2011	3,632,354	(4,873)	181,618	176,745	3,637,227
2012	3,637,227	(4,740)	181,861	177,121	3,641,967
2013	3,641,967	69,967	182,098	252,065	3,572,000
2014	3,572,000	309,472	89,300	398,772	3,262,528
2015	3,262,528	283,756	81,563	365,319	2,978,773
2016	2,978,773	314,670	74,469	389,140	2,664,102
2017	2,664,102	384,216	66,603	450,819	2,279,886
2018	2,279,886	426,295	56,997	483,292	1,853,591
2019	1,853,591	427,913	46,340	474,253	1,425,678
2020	1,425,678	444,946	35,642	480,588	980,732
2021	980,732	464,994	24,518	489,512	515,738
2022	515,738	476,619	12,893	489,512	39,120
2023	39,120	39,120	978	40,098	-
TOTALS:		3,245,944	2,251,001	5,496,946	

Below in **Table 2** is the amortization schedule sent out earlier this year that reflects a 2.50% interest rate since the beginning tax year 2004. The schedule accurately reflects the amortization from 2004 through and including 2019 (applying the 2.50% interest rate per annum). Accordingly, the last reimbursement payment is intended to be in tax year 2020 in the total amount of \$291,273.

Table 2: Amortization Schedule (2.50% 2004 until balance is paid in full)

DEVELOPER CONSTRUCTED INFRASTRUCTURE AND IMPROVEMENTS -- AGREEMENT TO DEVELOPMENT LAND					
2% Annual Growth Assumption					
Tax Year	Beginning Balance	Principal	Interest	Total P+I	Ending Balance
2004	3,245,944	(5,012)	81,149	76,137	3,250,956
2005	3,250,956	4,126	81,274	85,400	3,246,829
2006	3,246,829	4,962	81,171	86,133	3,241,867
2007	3,241,867	8,080	81,047	89,127	3,233,787
2008	3,233,787	59,705	80,845	140,550	3,174,082
2009	3,174,082	96,638	79,352	175,990	3,077,444
2010	3,077,444	99,437	76,936	176,373	2,978,007
2011	2,978,007	102,295	74,450	176,745	2,875,712
2012	2,875,712	105,228	71,893	177,121	2,770,484
2013	2,770,484	182,803	69,262	252,065	2,587,681
2014	2,587,681	334,080	64,692	398,772	2,253,600
2015	2,253,600	308,979	56,340	365,319	1,944,622
2016	1,944,622	340,524	48,616	389,140	1,604,098
2017	1,604,098	410,716	40,102	450,819	1,193,381
2018	1,193,381	453,458	29,835	483,292	739,924
2019	739,924	455,755	18,498	474,253	284,169
2020	284,169	284,169	7,104	291,273	-
2021	-	-	-	-	-
2022	-	-	-	-	-
TOTALS:		3,245,944	1,042,565	4,288,509	

The variation in the two scenarios (as reflected in **Table 1** and **Table 2**) is \$1,208,437.

AMERICAN FORK CITY EGG FARM EDA

— RAILROAD
 ■ AMERICAN FORK EGG FARM EDA BOUNDARY
 ■ UNDEVELOPED PROPERTY

0 250 500 1,000 Feet

LEWIS ROBERTSON & BURNINGHAM, INC.