

CITY COUNCIL AGENDA

Notice is hereby given that the Draper City Council will hold a **Business Meeting** on **Tuesday, March 18, 2014**, in the City Council Chambers at 1020 East Pioneer Road, Draper, Utah.

The Agenda will be as follows:

5:00 P.M. STUDY SESSION

1.0 Dinner

5:30 P.M. BUSINESS MEETING

2.0 **Call to Order:** Mayor Troy Walker

3.0 **Consent Items:**

- a. Approval of March 4, 2014, Minutes
- b. **Agreement #14-24**, Authorizing the Mayor to sign an Agreement with Tyler Technologies to Furnish, Deliver, Install, and Implement the Software outlined in Exhibit A.
- c. **Agreement #14-25**, Authorizing the Mayor or City Manager to sign an Agreement with Lewis Young Robertson and Burningham (LYRB) to Provide Full financial Advisory Services for the City.
- d. **Resolution #14-19**, Authorizing the Mayor to Sign an Agreement with Salt Lake County Parks & Recreation to Connect to City's Electrical Power, including Construction Staging, at Rotary Park, for the Jordan River Parkway Trail Re-Alignment Under the 12600 South Bridge.
- e. **Resolution #14-23**, Accepting Salt Lake County Performance Bond as Security for Land Disturbance Permit Issuance for the Jordan River Trail Realignment Under 12400 South (SR-71).
- f. **Agreement #14-20**, Approving the Communities that Care Program Interlocal Agreement.
- g. **Amending Agreement #13-97**, by Changing the SunCrest Lessee from Tod Wadsworth to Calvin Wadsworth.
- h. **Resolution #14-24**, Appointing Mayor Tory Walker to Serve as a Member of the Unified Fire Authority Governing Board.

4.0 **Action Item: Resolution #14-21**, Authorizing the Use of Eminent Domain for Properties located on 13200 South. Staff report by Doug Ahlstrom. Comments will be taken from affected parties.

5.0 **Public Hearing: Resolution #14-22**, Approving the Allocation of Community Development Block Grant Monies Beginning July 1, 2014. **This item will be continued to March 25, 2014.**

PUBLIC HEARING PROCEDURE AND ORDER OF BUSINESS

In compliance with the American with Disabilities Act, any individuals needing special accommodations including auxiliary communicative aides and services during this meeting shall notify Rachelle Conner, MMC, City Recorder at (801) 576-6502 or rachelle.conner@draper.ut.us, at least 24 hours prior to the meeting. Meetings of the Draper City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone and the meeting will be conducted pursuant to Draper City Municipal Code 2-1-040(e) regarding electronic meetings.

- 6.0 **Public Hearing: Resolution #14-18, Approving Budget Amendments. This item will be continued to March 25, 2014.**
- 7.0 **Adjourn to a Redevelopment Agency Meeting.**

SALT LAKE COUNTY/UTAH COUNTY, STATE OF UTAH

I, the City Recorder of Draper City, certify that copies of the agenda for the **Draper City Council** meeting to be held the **18th day of March, 2014**, were posted on the Draper City Bulletin Board, Draper City website www.draper.ut.us, the Utah Public Meeting Notice website at www.utah.gov/pmn, and sent by facsimile to The Salt Lake Tribune, and The Deseret News.

Date Posted:
City Seal




Rachelle Conner, MMC, City Recorder
Draper City, State of Utah

Return to Agenda

CONSENT
ITEM #A

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, FEBRUARY 18, 2014, IN THE DRAPER CITY COUNCIL CHAMBERS, 1020 EAST PIONEER ROAD, DRAPER, UTAH.

“This document, along with the digital recording, shall constitute the complete meeting minutes for this City Council meeting.”

PRESENT: Mayor Troy Walker, and Councilmembers Bill Colbert, Bill Rappleye, Jeff Stenquist, Alan Summerhays, and Marsha Vawdrey

STAFF PRESENT: David Dobbins, City Manager; Russ Fox, Assistant City Manager; Doug Ahlstrom, City Attorney; Rachelle Conner, City Recorder; Keith Morey, Community Development Director; Glade Robbins, Public Works Director; Bryan Roberts, Police Chief; Garth Smith, Human Resource Director; and Bob Wylie, Finance Director

Study Meeting

1.0 Dinner

2.0 Council/Manager Reports

6:00:00 PM

2.1 Councilmember Rappleye noted he would like a study done for the area of 13800 South from Bangarter to 600 East to determine the land use for that area.

Councilmember Rappleye then advised the City had received a letter from OSHA indicating the Park School was a liability. He recommended placing construction fencing around the building to prohibit entry to the building. The Draper Arts Council uses the building to store costumes, so those would have to be removed. He stated the City might be able to fund a storage shed for the costumes for one year if needed.

6:07:29 PM

2.2 Councilmember Colbert said the wood light poles owned by the Traverse Ridge Special Service District need to be stained.

Councilmember Colbert then indicated in March the SunCrest Owner’s Association is having an information meeting for the salt substation.

Russ Fox, Assistant City Manager, indicated staff will bring information boards and be there to answer questions for the residents.

Councilmember Colbert advised at the last Mountainland Association of Governments (MAG) meeting, they talked about Bus Rapid Transit (BRT). Utah County is so different than Salt Lake County. The cities do most things for themselves, and the County does very little.

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- 2.3 Councilmember Stenquist stated he attended the Association of Municipal Council, and they talked about the prison relocation. They were able to answer a lot of questions and address a lot of concerns. By the end of the meeting, the members were very enthusiastic about it.

Councilmember Stenquist then expressed his opinion that the Utah League of Cities and Towns should have stayed neutral on Senator Adams' bill in reference to air quality. There are a lot of bills this year that will not be heard because of the budget talks and lack of time.

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- 2.4 Councilmember Rappleye noted the Legislature has pulled the \$100,000 funding for the DARE Program out of the Public Safety bill.

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- 2.5 David Dobbins, City Manager, indicated the City has sold all of the plots in the cemetery. Staff suggested placing more lots in between the rows on the walkways. Mr. Dobbins said he is not recommending they do this.

Councilmember Summerhays noted years ago many people bought plots for everyone in their family, and then the family has moved away. The City has no contact information for these people to see if they are interesting in keeping their plots. He recommended staff find out how many plots are like this, and advertise that the City of Draper is looking for the owners and if no one comes forward, the City could sell the plots. Councilmember Summerhays noted there is still a need for more cemetery space. He asked whether staff has identified any other areas such as by the dog park.

Mr. Dobbins said staff will work on identifying how many plots there are like that and areas that could possibly be used for a cemetery.

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- 2.6 Mayor Walker indicated he attended the ground breaking of the new Rock Church on Sunday.

Mayor Walker noted he attended the Lone Peak Hospital Board meeting the other day. They are excited about being in the community.

Mayor Walker then advised that Johnny Anderson is having an event tomorrow to promote the transit tax bill. The Salt Lake Conference of Mayors voted unanimously with one abstention to support the transit tax. The event is at noon tomorrow, and they will have the electric bus and the hybrid bus on site. Mayor Walker then indicated they have a wave bus up and operating. That is amazing technology that will change the world.

Mayor Walker then briefed those present on the BRT funding that was proposed for the Orem/Provo line. The Utah Transit Authority is prepared to walk away from the funding if the Provo residents continue to fight the 900 East route.

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2.7 Jim Bacon, Unified Fire Authority, invited the Council to attend their banquet on Saturday night. On March 22, 2014, they will be having a Fire School 101. It is an informational opportunity that runs approximately six hours. He then introduced Jeremy Robertson as a new fire captain at Station 114. He is also the Union President.

Jeremy Robertson introduced Heather Vest and Tyler Livingston who are paramedics at Station 114. Captain Robertson expressed appreciation to Chief Bacon for allowing them to come to this meeting to deliver invitations for Fire School 101. He then explained the purpose of the fire school is to give the elected officials the chance to see what the fire fighters do.

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2.8 Mayor Walker noted he picked Tracie Gunderson as the newest Planning Commission member. He recommended the alternates get paid the same amount as the Planning Commission Members if they attend the meeting. He asked staff to amend the ordinance to allow for this.

Business Meeting

1.0 Call to Order

[7:04:01 PM](#)

1.1 Mayor Walker called the meeting to order and welcomed those in attendance. He excused Councilmember Vawdrey from the meeting.

2.0 Comment/Prayer and Flag Ceremony

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2.1 The prayer was given by Pastor Lee Mashburn of the Hidden Valley Presbyterian Church.

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2.2 The Pledge was led by Yael Amaya.

3.0 Citizen Comments

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3.1 Mary Chidsey, 1244 East Spring Ridge Drive, noted her comments are about the minutes the City Council is about to approve regarding 13200 South from February 18, 2014. In those minutes, Councilmember Stenquist stated that the Council discussed the proposal in

an open meeting, and he is not sure how the meeting was noticed or communicated to the residents, but the Council had that discussion and provided direction to the staff. Ms. Chidsey noted the meeting Councilmember Stenquist is referencing is the meeting of December 3, 2013, and on the agenda, the discussion took place in the closed session held prior to the business meeting. None of the residents on 13200 South were noticed or knew that it would be discussed in that meeting. The minutes from that meeting do not have comments from the residents because not one person from 13200 South was there. She expressed her opinion that it should be noted in the minutes that a decision was made that night in the public meeting, but no one was noticed, and no one knew that it would be part of the public meeting. They thought it was part of the closed meeting and what the three neighborhood representatives had talked about with City officials would be presented in the closed meeting and then the neighbors would be noticed.

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4.0 Presentation: Mayor and Council Recognition of Kenzie Hall, American Idol Contestant

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4.1 The Mayor and Council presented Kenzie Hall with an award to recognize her efforts as a contestant on American Idol. Miss Hall represented the City of Draper very well.

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4.2 Kenzie Hall then performed a song for those present.

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5.0 Consent Items

- a. Approval of February 18, 2014, Minutes
- b. Approval of February 21-22, 2014, Retreat Minutes
- c. **Resolution #14-12**, Appointing Tracie Gunderson to the Planning Commission
- d. **Agreement #14-23**, Assessment-in-Lieu, Oliverson's 13370 S. Fort Street
- e. **Resolution #14-20**, Deed of Dedication, Oliverson's – 13370 S. Fort Street
- f. **Agreement #14-07**, Assessment-in-Lieu, Dana Subdivision
- g. **Warranty Deed and Agreement #14-27**, Acknowledgement and Satisfaction of Planned Development Agreement – Steep Mountain Church

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5.1 Councilmember Stenquist moved to pull Item A off the consent calendar in order to discuss it. Councilmember Rappleye seconded the motion.

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5.2 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

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5.3 Councilmember Stenquist moved to approve consent items B through G. Councilmember Summerhays seconded the motion.

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5.4 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

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5.5 Councilmember Stenquist stated since the issue regarding item A was raised in the Citizen comments; he wanted to clarify the process for the record. The minutes accurately stated what he said but he wanted to clarify that the 13200 South discussion was held during the public meeting. It was not a noticed action item, but it was discussed during the Council/Manager reports. It is common practice for the Council and staff to discuss items, and the Council will give staff direction at that time. It is important to keep in mind that the Council approves the written minutes; the official record of the meeting is the actual recording. The written minutes are a summary of the meeting, and the residents can listen to an actual recording of what was said. He recommended Ms. Chidsey listen to the recording from the meeting so she could get an accurate picture of what was said. There were no public comments received that day, which is not a surprise. There were none solicited, and there was not an open forum available at that meeting. It was just a discussion amongst the Councilmembers.

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5.6 Mayor Walker noted that item was not discussed in a closed meeting. The City had public hearings on that item many times. The City took as much input as they could from the residents in that area, and then they made their decision based on what the Council felt was best for the entire community. That decision had already been made, and the meeting with the citizens group was to see if the Council could be convinced to change their mind. The residents were not successful in doing that. It was not discussed in a closed meeting.

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5.7 Councilmember Stenquist moved to approve the minutes of February 18, 2014. Councilmember Summerhays seconded the motion.

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5.8 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

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6.0 Action Item: Ordinance #1084, For Approval of a Zoning Map Amendment from RA1 Residential to OR Office Residential Located at 309 East 13800 South. This application is otherwise known as the Miller Rezone

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6.1 Keith Morey advised the City Council heard this item at the last Council meeting. He noted the current land use is Residential Low Density. There was some discussion in the past about the density request and whether it was appropriate. Staff felt that it did meet the design guidelines for the Town Center area. The Planning Commission gave it a positive recommendation as well. The Council has taken the time to collect and review the information to prepare themselves to make a decision this evening.

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6.2 Councilmember Rappleye stated they spent a lot of time going over this request.

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6.3 Councilmember Rappleye moved to deny Ordinance #1084. Councilmember Colbert seconded the motion.

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6.4 Councilmember Rappleye noted as he looked at that area, there is commercial to the west, but he is concerned about commercial moving further east. There is a nature park planned across the street from the proposal. There is a successful residential development across the street there. It looks like it would be imprudent to allow commercial going east. He expressed his opinion that the property is viable as a residential use. He noted this use is not appropriate for a commercial zone.

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6.5 Councilmember Colbert stated it is premature to allow commercial on that lot because it is contrary to the position the City has taken for a number of years. He recommended the City revisit this entire area and look at the appropriate uses. There may be some need to increase the density for residential for better transition from commercial to residential.

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6.6 A roll call vote was taken with Councilmembers Colbert, Rappleye, and Stenquist voting in favor. Councilmember Summerhays seconded the motion. The motion passed unanimously.

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6.7 Councilmember Summerhays noted the OR zone is a great zone, and it provides a good buffer between residential and commercial.

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7.0 Action Item: Agreement #14-26, For Approval of an Assessment-in-Lieu Agreement with Sunny and Tyler Leggett for Property Located at 12368 South 1700 East

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7.1 Glade Robbins, Public Works Director, stated the Leggetts have built a home on 1700 East, and they are ready to occupy it. This item is for an assessment-in-lieu

agreement for the improvements along the street. He displayed the estimate for the costs of the improvements from the City and from the contractor. Right before the meeting, the City Engineer received a new break down from the contractor, and the difference in cost is \$15.

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7.2 Councilmember Summerhays asked Mr. Robbins to explain what the difference in the cost was prior to this new figure. Mr. Robbins advised the contractor left some of the required items and the flare of the drive was not considered.

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7.3 Sunny Leggett noted they have already paid \$1,600 for engineering to get to this point. The City's bid has that down for \$994. Mr. Wolverson has agreed to allow the Leggett's to install the tree and the sod, so that should be removed from the amount. She also asked the City to provide a timeline for the installation of the improvements. If the City decides not to put in the improvements, she would like to get her money back.

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7.4 Councilmember Colbert noted there is about \$1,000 in engineering. He asked what that was for. Mr. Robbins explained the engineering they had done was for the home. This engineering is to lay out the curb, gutter, and staking the ground.

Councilmember Colbert then questioned whether the City would have a problem with the homeowner installing the tree and the sod. Mr. Robbins stated no as long as it was done according to the plans.

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7.5 Mayor Walker indicated the Leggetts have built a new home on this lot, which triggered the requirement for curb, gutter, and sidewalk on this section of the road. The staff has advised that the improvements for this area should be installed by 2015. He explained for the public that when someone builds a home, they can put in their own curb, gutter, and sidewalks as long as it is done according to City standard. They can also pay the City money in lieu, and the City will install the improvements when they do it on the rest of the road. The Leggetts do not want to pay the money to the City, and they do not want to put in improvements that will not connect anywhere. This discussion is how they will handle the assessment-in-lieu.

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7.6 Councilmember Colbert noted the ordinance requires this. He said he understands the Council needs to look at changing the ordinance in the future regarding reimbursement of funds if the City does not install the improvements within a specific amount of time. The reason they are having this discussion is because the City thought the property owner had a much lower estimate for the installation of the improvements. It looks like the City's estimate was just validated. He said he is not sure the Council has the freedom to do much other than potentially waive the sod and tree installation.

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7.7 Councilmember Stenquist asked whether they can include in the motion that they approve the agreement at an amount not to exceed the engineering estimate and allow the staff to discount certain line items.

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7.8 Councilmember Stenquist moved to approve Agreement #14-26, approving an Assessment-in-Lieu agreement with Sunny and Tyler Leggett for property located generally at 12368 South 1700 East for an amount not to exceed the Engineering estimate. He directed staff to reduce fees as they see appropriate. Councilmember Colbert seconded the motion.

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7.9 Councilmember Summerhays stated the ordinance does not allow the City to give back funds, so that is not a part of this motion.

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7.10 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[7:45:27 PM](#)

8.0 Action Item: Agreement #14-14, Right-of-Way Purchase Agreement with Jaxarr, LLC for Property Located Generally at 13460 South 1300 East

[7:45:49 PM](#)

8.1 Mr. Robbins noted this is another request for an assessment-in-lieu. The property in question is on 1300 East. Mr. Carr has built a home there, and the cost of the improvements is \$12,700. The City would require a future construction easement when 1300 East is widened. That is valued at \$500, which would reduce the improvements to \$12,200. The right-of way the City would need to acquire from Mr. Carr is valued at \$3,966, and he would get credit for some thickened asphalt and landscape in the amount of \$766. The total of that comes to \$4,732, and the difference between the two costs that Mr. Carr would have to pay the City is \$7,468.

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8.2 Mayor Walker noted this is an action item, and the Council normally does not take public comments on action items. However, since he allowed it on the last item he will allow it on this one. He cautioned that he does not want to get in the habit of allowing public comments on items that have not been noticed as public hearings. Tonight is the last night he will allow it.

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8.3 Jamie Carr, resident, indicated the plans are to widen the road at 1300 East, and the schedule to do this is five years down the road. He said he will put in the improvements on his property; however, the improvements will be torn out when they widen the road.

He said he is willing to trade the four-feet of land needed for the widening in lieu of putting in the improvements.

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8.4 Councilmember Stenquist stated he understands where Mr. Carr is coming from; however, he believes it is based on the assumption that the road will not get widened. The City has already widened a portion of the street last year. This summer the City will widen 1300 East from 13200 South to the roundabout, and he does not think it is that far off before the City finished off the widening of the last section. He said he is particularly concerned about that area because there is no curb, gutter, and sidewalks for the students walking to the middle school. This is a project the City is going to want to complete. If the City can complete the section of sidewalk from 13400 South to the end of Mr. Carr's property, they will have contiguous sidewalk all the way from Waynes World Drive up 1300 East. Councilmember Stenquist advised he is willing to take whatever approach is the best one whether it is an assessment-in-lieu or the resident putting in the improvements. He said he does not have a preference.

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8.5 Mr. Robbins indicated Mr. Carr has the two options. They can put in the improvements themselves, or they can pay the money for the assessment-in-lieu.

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8.6 **Councilmember Stenquist moved to approve Agreement #14-14, approving a Right-of-Way Purchase Agreement with Jaxarr, LLC. for property located generally at 13460 South 1300 East. Councilmember Summerhays seconded the motion.**

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8.7 **A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.**

[7:52:30 PM](#)

9.0 **Action Item: Agreement #14-13, Assessment-in-Lieu with Jaxarr LLC for Property Located Generally at 13460 S. 1300 E**

[7:52:50 PM](#)

9.1 Councilmember Colbert indicated it is his understanding that the homeowner does not want to do the assessment-in-lieu.

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9.2 Mayor Walker noted they have passed the motion to purchase the right-of-way for whatever the price is. This item is approving an assessment-in-lieu.

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9.3 Councilmember Rappleye stated it sounds like Mr. Carr would rather put his own infrastructure in. He guessed that would mean that Mr. Carr would not agree to this assessment-in-lieu.

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9.4 Councilmember Stenquist advised this is a two-party agreement. The Council can always approve it, but Mr. Carr does not have to sign it.

[7:54:07 PM](#)

9.5 Councilmember Rappleye asked Mr. Ahlstrom if Mr. Carr could just put the improvements in himself if he does not want to sign the agreement. Mr. Ahlstrom agreed that he would have to install the improvements himself. However, the City would probably be ripping them out when the road is widened.

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9.6 Mr. Robbins and Mr. Dobbins reiterated that the first item the Council approved was a right-of-way agreement the City needs to complete the road widening. The City agreed to pay \$4,732. This item is the assessment-in-lieu. Mr. Carr is asking that the amount in that agreement for what he would have to pay in the future would be equal to what the right-of-way was. The agreement is for the larger amount, but the property owner would like the two amounts to be equal. If the Council approves what is in the packet, it is for the higher amount. If they approve what the gentleman is asking for, it is a different amount. If they want to do this, the motion would have to reflect that change.

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9.7 Councilmember Colbert stated the City is already going to give him \$4,732 for the right-of-way purchase. The assessment-in-lieu would be for \$12,200 for a difference of \$7,468. If Mr. Carr does not sign the agreement, he will have to put in the improvements.

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9.8 Councilmember Colbert moved to approve Agreement #14-13, approving an Assessment-in-Lieu Agreement with Jaxarr, LLC. for property located generally at 13460 South 1300 East. Councilmember Stenquist seconded the motion.

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9.9 Councilmember Colbert noted he hopes that both parties can get together to make this work.

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9.10 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[7:58:34 PM](#)

10.0 Public Hearing: Providing Local Consent for an Off Premise Alcohol License for Ridge at Lone Peak

[7:59:00 PM](#)

10.1 Mr. Morey noted the Wadsworth's have entered into an agreement with the City to lease the SunCrest Market building and turn it into the Ridge at Lone Peak. They have some plans to do a unique café/restaurant, and they desire to have the alcohol licenses made available to them. The off premise alcohol license permits a convenience store to sale beer, and the beer sales cannot exceed twenty percent of the sales. The Code requires the business to be a certain distance from open space, public schools, and churches. This location meets the distance requirements.

[8:01:35 PM](#)

10.2 Councilmember Colbert indicated the street located in front of this building is used for a school bus stop. He asked whether that is an issue. Mr. Morey noted it is not a problem.

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10.3 Mayor Walker opened the public hearing.

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10.4 Brett Shields, 1774 Lone Oak Drive, noted the two hundred foot distinction for the park is a concern for him because there are children playing there. He is also concerned about the location of the bus stop. There are sixteen buses that come and go between 6:00 a.m. and 4:00 p.m. In the summertime, the community has events in the open space every weekend. He expressed concern that the restaurant will be serving alcohol, and the community members walk in the area with their families. There are also a lot of after school activities that occur in the community center, which is within the 200 foot radius of the restaurant. He said as a community member and father of five kids, he does not see the wisdom of approving an alcohol license at this location. He is opposed to this request and will fight against it.

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10.5 Mayor Walker closed the public hearing.

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10.6 Patrick Bowler, 1767 Longbranch Court, said he appreciates the comments about the bus stop and everything. He said he moved to SunCrest to get away from things and appreciates that SunCrest is different from other areas and has a lot of diversity. There was a market and a school bus stop there before, and the market sold alcohol at the time. He said he was not aware of any problems that had occurred there.

[8:07:50 PM](#)

10.7 Councilmember Colbert indicated there is a difference between what these licenses provide. One allows for beer sales. This is not a bar that is being proposed. As a resident, he would be concerned with that. This is not a place for people to just go and drink beer. He is on the Owners Association (OA) Board, and he saw the plans for this establishment. The plans look interesting and exciting.

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10.8 Councilmember Stenquist clarified that the off premise license is for the market portion. He has been on the Council for eight years, and he has never had anyone come to protest an alcohol license. This is not a typical commercial center; however, it is something that the residents of SunCrest have been wanting for a long time. They want the market to reopen, and there has been a lot of clamor for that.

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10.9 Councilmember Colbert said he understands the concern. The OA has the ability to prohibit alcohol consumption on any of the properties. As far as he is aware, it has never been a problem.

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10.10 Councilmember Colbert moved to provide local consent for an Off Premise Alcohol License for Ridge at Lone Peak. Councilmember Summerhays seconded the motion.

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10.11 Councilmember Colbert stated this is similar to what the City allows throughout the town. People generally do not consume the alcohol on premise with this type of license.

[8:12:00 PM](#)

10.12 A roll call vote was taken with Councilmembers Colbert, Rapple, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[8:12:10 PM](#)

11.0 Public Hearing: Providing Local Consent for a Full Service Alcohol License for Ridge at Lone Peak

[8:12:09 PM](#)

11.1 Mr. Morey stated this request is for the full service alcohol license. This license allows the establishment to sell alcohol with food only. Alcohol sales cannot exceed 30 percent of the gross sales of food. The State limits the license to 1 per 4,534 population. The City of Draper has issued 8 of these licenses. The City does not monitor the percentages. The State does a thorough job, and they are very rigid about auditing the figures and making sure the restaurant comply with the percentages.

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11.2 Calvin Wadsworth, 2151 East Iron Horse Place, noted he is the developer. The Wadsworths conducted a survey of the SunCrest residents. They are trying to satisfy the needs of the residents in SunCrest as well as running a viable business. Their concept consists of a market place. Over 1,000 of the survey respondents, all from Suncrest, noted that they want a market. The Wadsworth's also want to develop a family-friendly restaurant, and it needs to be a destination kind of a place in order to survive. The only way they believe to get people from all around to come to the restaurant is to offer as many options as they can. That is why they are requesting a full service alcohol license. The survey was clear that over fifty percent of the respondents indicated the alcohol would be important to them. This is not a bar. This is a place for people to bring their family, and if they want to have a glass a wine with their dinner, they can. They cannot just come up there and drink. The law is quite clear on this. The Wadsworth's are just trying to bring something to the community that is beneficial and will provide something to increase the market value of the area.

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11.3 Mayor Walker opened the public hearing.

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11.4 Lisa Holcomb, 1884 East Vista Ridge Court, noted she is a SunCrest resident, and she took the survey. She supports the liquor license. She is excited about bringing her children and grandchildren to the restaurant and enjoying a glass of wine with her meal. She is looking forward to having that uniqueness in the area to draw people up to this area.

[8:18:08 PM](#)

11.5 Neal Roberts, 15139 Auburn Ridge, advised Mr. Wadsworth indicated this will be a family business. Mr. Roberts expressed his opinion that there is not one person here this evening that would bring their child into a place where there is liquor. That is not a family event. This is a small residential area, and this would not bring anything good in.

[8:19:18 PM](#)

11.6 Steven Clarke, 14764 Haddington Road, stated he has twenty-two years of public school education, and he understands the concerns about children. As with most public educators, he has always had a second job in the restaurants. A restaurant atmosphere is rarely a problem with children and alcohol due to the State regulations. As a SunCrest resident, this is a great opportunity. This is a pace they can walk to and enjoy each other's company. Throughout most of the day, this is an athletic community with the trails. The market will be a great place to go for a Gatorade, espresso, or bike repair items. He sees the busses every day, and there is probably a twenty minute maximum transition and then the kids are gone. He encouraged the Council to allow this license.

[8:22:15 PM](#)

11.7 Brett Shields, 1774 Lone Oak Drive, stated selling beer at the market is fine because it is against the law for the alcohol to be consumed on the premises. It has been duly noted that 600 feet is the space requirement set by the State, and it is because there are children. He thinks the restaurant would be great without alcohol being served openly. The market will be wonderful, and it will be an asset to the community. This is a tough place to do business because there are not enough residents to support it. He suggested the City lower the market rent in order to make it feasible for Mr. Wadsworth to do business. If this is a destination, many people will be driving down the hill. He noted it is not a good idea to have impaired drivers on the road. If there is even one accident, it is too many. The liability on the hill is higher than it is down in the city.

[8:25:33 PM](#)

11.8 Patrick Bowler, 1767 Longbranch Court, stated he is in favor of this. The restaurant will be open at a different time than the buses, so he does not see this as an issue. He said he will walk there, and he is glad they are bringing it in. This will be a great thing for the community. As far as drunk driving, the police can beef up patrol if they find there is a problem.

[8:26:47 PM](#)

11.9 Julie Hall, 1787 Walnut Grove Drive, stated she is against this because she has children, dogs, and she is a runner. She loves running on the trails and roads. There is something so special about being up there and not having through traffic and feeling safe. Adding alcohol is not something she is interested in. She asked the Council to consider keeping that down in the city. She loves the idea of the market but not the restaurant.

[8:28:13 PM](#)

11.10 Steve Hall, 1787 Walnut Drive, noted he is also against this item. He is fine with them selling beer in the convenience store, but he does not want alcohol served in the restaurant. In the summertime, the community center is full of kids. In the wintertime, no one would be walking to the restaurant. They will be driving. He lives a mile away from the pool and he drives to that as well. Introducing alcohol to drivers on the road is a bad choice, and the liability is great for the City.

[8:29:25 PM](#)

11.11 Mayor Walker closed the public hearing.

[8:29:46 PM](#)

11.12 Mr. Wadsworth stated if the community does not want them there, he does not want to be there. He is not going up there to make money. He does not need it.

[8:30:08 PM](#)

11.13 Councilmember Stenquist asked the applicant to clarify the hours of operation for the restaurant. Mr. Wadsworth indicated the restaurant will open at 5:00 p.m. and close whenever the last patron leaves.

Councilmember Stenquist noted this is a dinner oriented restaurant. Mr. Wadsworth stated yes, it is a family brasserie. The market concept was designed to benefit people who wanted breakfast and lunch. The market will be open at 6:30 a.m. On weekends, the restaurant will be open earlier for breakfast.

[8:31:15 PM](#)

11.14 Councilmember Rappleye asked how many chairs they will have in the restaurant. Mr. Wadsworth replied there will be about seventy.

[8:31:29 PM](#)

11.15 Councilmember Summerhays stated he owns a restaurant and has the same license that Mr. Wadsworth is requesting. The highest his alcohol sales have been is one and one half percent of his food/alcohol gross.

[8:32:12 PM](#)

11.16 Mayor Walker noted Utah has a unique set of alcohol laws. Sometimes it is helpful to understand what the various alcohol licenses allow. The first license approved tonight was for beer sales similar to convenience stores. This application is a restaurant license similar to Applebee's or Goodwood.

[8:32:59 PM](#)

11.17 Councilmember Colbert advised he knows there is a lot of fear and concern; however, he sees this as being no different than Applebee's. The residents in SunCrest are interested in having this market open up, and it needs to have a business plan that makes sense. The rent on this building is very affordable because the City had very little interest in this facility. The Wadsworth's have a reputation for doing things right, and the plans are very exciting. He expressed his opinion that this will be very good for the community. Utah has a lot of control over the liquor licenses, and there are very little problems with the restaurants. The Wadsworth's performed a survey and they have taken the results into consideration while forming their business plan.

[8:35:45 PM](#)

11.18 Councilmember Colbert moved to provide local consent for a Full Service Alcohol License for Ridge at Lone Peak. Councilmember Summerhays seconded the motion.

[8:36:04 PM](#)

11.19 Councilmember Colbert stated the applicant is putting his personal resources into this business, and he understands what it takes to be successful. Councilmember Colbert indicated he does not think people will be inebriated when leaving this facility. The City allows this in other facilities in the community, so he is not sure why they would not allow it here.

[8:36:38 PM](#)

11.20 Councilmember Stenquist expressed appreciation to those that came out to speak on this item. The City does not get many comments of these applications. Councilmember Stenquist stated he has four children, and his family has been personally impacted by the affects of alcohol. He understands the concerns; however, he is inclined to support this application because he does not see this being different from other restaurants. If it is a problem, the City can take another look at it.

[8:37:32 PM](#)

11.21 Mayor Walker asked Mr. Morey about the distance to the swimming pool. Mr. Morey noted that State law only applies to public spaces. If the City owned or managed a park up there, that would be an issue. However, the facilities up there are not public spaces.

[8:38:55 PM](#)

11.22 Russ Fox, Assistant City Manager, advised the State Code does allow for a variance, so the local consent could still be given in certain circumstances.

Councilmember Stenquist noted on the flip side they could also deny the local consent if they wanted to.

[8:39:38 PM](#)

11.23 Mayor Walker noted with respect to going forward, if this application passes tonight, if there is a problem or issue with the license or the way it is being used, the City Council has the right to revoke an alcohol license. Mr. Morey stated that is correct.

[8:40:14 PM](#)

11.24 **A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.**

[8:40:26 PM](#)

12.0 **Public Hearing: Ordinance #1085, On the Request of Draper City for Approval of a Text Amendment Modifying Definitions and the Permitted and Conditional Use Charts in Several Zoning Districts in Relation to Vehicle and Equipment Rental or Sales. The application is otherwise known as the City Initiated Vehicle and Equipment Rental or Sales Text Amendment Request**

[8:41:03 PM](#)

12.1 Jennifer Jastremsky, City Planner, noted the Planning Commission and City Council reviewed a text amendment last November to allow vehicle equipment rental or sales in the Community Commercial zoning district. At the time, the City Council had concerns with the equipment rental or sales in that zone, so they asked staff to come back with some text amendments to modify the definitions and clean it up a little. In December the City Council approved a moratorium to prohibit that use until this text amendment came through. Staff created five new definitions, and separated commercial vehicle and

equipment from standard vehicles, so it is easier to control. This led to changes in the actual zoning districts themselves. She then reviewed the various zones.

[8:44:31 PM](#)

12.2 Mayor Walker opened the public hearing. No one came forward to speak, so Mayor Walker closed the public hearing.

[8:44:39 PM](#)

12.3 Councilmember Rappleye moved to suspend the rules. Councilmember Colbert seconded the motion.

[8:45:14 PM](#)

12.4 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[8:48:09 PM](#)

12.5 Councilmember Rappleye moved to approve Ordinance #1085, approving a text amendment modifying definitions and the permitted and conditional use charts in several zoning districts in relation to vehicle and equipment rental or sales. Councilmember Colbert seconded the motion.

[8:49:12 PM](#)

12.6 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[8:49:40 PM](#)

13.0 Action Item: Ordinance #1086, GRAMA Text Amendments

[8:49:51 PM](#)

13.1 Doug Ahlstrom, City Attorney, noted the State passed the Government Records Access Management Act many years ago. The City enacted their own ordinance, which makes those State provisions effective within the city and added to them in 1998. State law has changed numerous times; however, the Draper City Code has not been updated to reflect those changes. The action tonight is to make the changes to bring it into compliance with State law.

[8:51:13 PM](#)

13.2 Councilmember Rappleye moved to approve Ordinance #1086. Councilmember Summerhays seconded the motion.

[8:51:42 PM](#)

13.3 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[8:52:01 PM](#)

2.0 Council/Manager Reports – Continued

[8:52:01 PM](#)

2.9 Mr. Robbins noted that on March 26, the Draper Irrigation Company will hold their annual stock holders meeting. As part of that meeting, there are Board of Director votes that will take place. There are four people running, of which two are current board members. He recommended Stephen L. Tripp and Kent S. Ware be voted back in.

[8:52:56 PM](#)

2.10 Mr. Fox advised the Wadsworths are interested in buying the market from the City. He asked whether the City Council is interested in selling. Councilmember Summerhays recommended they wait for a bit and give the City time to think about it.

Councilmember Rappleye noted they can order the appraisal in order to see what it is worth. Councilmember Summerhays agreed to that.

Councilmember Colbert noted that Wadsworths are making a large investment in the facility, and they do not want to lose that. Mr. Fox stated the Wadsworths have the first right to refusal to purchase the building.

[8:57:16 PM](#)

14.0 Adjournment

[8:57:18 PM](#)

14.1 A motion to adjourn was made by Councilmember Summerhays and seconded by Councilmember Stenquist.

[8:57:25 PM](#)

14.2 A roll call vote was taken with Councilmembers Colbert, Rappleye, Stenquist, and Summerhays voting in favor. The motion passed unanimously.

[Return to Agenda](#)

CONSENT

ITEM #B

REQUEST FOR COUNCIL ACTION

To:	Mayor & City Council
From:	Bob Wylie, Finance Director
Date:	March 18, 2014
Subject:	Tyler Technologies Contract Agreement
Applicant Presentation:	None
Staff Presentation:	Bob Wylie, Finance Director

RECOMMENDATION:

Authorize the Mayor to sign Agreement #14-24 with Tyler Technologies to furnish, deliver, install and implement the software outlined in Exhibit A.

BACKGROUND AND FINDINGS:

Staff has recognized the need to replace current software to adequately process and prepare daily, monthly and yearly transactions. The replacement and implementation of the new software would be for: permitting, inspections, code, planning, business licensing, work orders, citizen access web portal, financial system (general ledger, budget, accounts payable purchasing, fixed assets, reporting), personnel management (payroll, human resources, position control/budgeting), employee self service portal, utility billing and accounts receivable and document imaging. The cost associated with this agreement includes the software cost for licenses, professional services (implementation, data conversion, travel). In May 2013 an RFP was issued for new software and Tyler Technologies was selected for these services. Tyler-Incode and Tyler EnerGov will be the software that will be installed.

PREVIOUS LEGISLATIVE ACTION:

Resolution 14-16 3rd quarter budget amendment appropriating \$578,900 for software purchase and install.

FISCAL IMPACT: Finance Review: BW

- Money has been appropriated for this capital purchase of \$578,900.

SUPPORTING DOCUMENTS:

- Agreement #14-24 Tyler Technologies Agreement



AGREEMENT

This agreement ("Agreement") is made this _____ day of _____, 2014 ("Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 5519 53rd Street, Lubbock, Texas 79414 ("Tyler") and Draper City, UT, with offices at 1020 East Pioneer Road, Draper, Utah 84020 ("Client").

WHEREAS Client selected Tyler to furnish, deliver, install and implement the products and services set forth in the investment summary attached hereto as Exhibit 1 ("Investment Summary");

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Tyler and Client agree that Tyler shall provide products and services, and Client shall pay prices, as set forth in this Agreement.

1. SOFTWARE LICENSE AGREEMENT

1.1. License Grant.

- 1.1.1. Upon the Effective Date, Tyler hereby grants to Client a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler software products set forth in the investment summary attached hereto as Exhibit 1 ("Investment Summary") and related interfaces (collectively, the "Tyler Software Products") and documentation provided in or with the Tyler Software Products ("Documentation") for Client's internal business purposes only and otherwise subject to the terms and conditions of this Agreement. This license is revocable by Tyler if Client fails to comply with the terms and conditions of this Agreement, including without limitation, Client's failure to timely pay the Software fees in full. Upon Client's payment in full for the Tyler Software Products, this license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.
- 1.1.2. Tyler shall retain ownership of, including all intellectual property rights in and to, the Tyler Software Products and Documentation.
- 1.1.3. The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the Effective Date.
- 1.1.4. The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. Client shall pay Tyler for the cost of new media or any required technical assistance to accommodate the transfer. Client shall provide advance written notice to Tyler of any such transfer.
- 1.1.5. Client acknowledges and agrees that the Tyler Software Products and Documentation are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. Client shall use best efforts to keep the Tyler Software Products and Documentation confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of

the Tyler Software Products or Documentation by any party.

- 1.1.6. The Tyler Software Products may not be modified by anyone other than Tyler. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on, and the warranty for, the Tyler Software Products will be void. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products.
 - 1.1.7. Client may make copies of the Tyler Software Products for archive purposes only. Client shall repeat any and all proprietary notices on any copy of the Tyler Software Products. Client may make copies of the Documentation for internal use only.
 - 1.1.8. Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source code of each major release of the Tyler Software Products. At Client's request, Tyler will add Client as a beneficiary to such escrow agreement. Client will pay the annual beneficiary fee and is solely responsible for maintaining its status as a beneficiary.
- 1.2. Limited Warranty. For the purposes of this Agreement, a "Defect" is defined as a failure of the Tyler Software Products to substantially conform to the then-current specifications and the functional descriptions of the Tyler Software Products in Tyler's written proposal to Client. In the event of conflict between the afore-mentioned documents, the then-current specifications will control. A Tyler Software Product is "Defective" if it contains a Defect. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will not contain Defects. If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with Tyler's then-current support call process.
- 1.3. Intellectual Property Infringement Indemnification.
- 1.3.1. Tyler's Obligations. Tyler shall defend and indemnify Client against any claim by an unaffiliated third party of this Agreement that a Tyler Software Product, if used within the scope of this Agreement, directly infringes that party's registered United States patent, copyright or trademark issued and existing as of the Effective Date or as of the distribution date of a release to the Tyler Software Product, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement made by Tyler in writing.
 - 1.3.2. Client's Obligations. Tyler obligations in this section are contingent on the Client performing all of the following in connection with any claim as described herein:
 - a. Promptly notifies Tyler in writing of any such claim;
 - b. Gives Tyler reasonable cooperation, information, and assistance in connection with the claim; and
 - c. Consents to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim.

1.3.3. Exceptions to Tyler's Obligations. Tyler will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from:

- a. Client's use of a previous version of a Tyler Software Product and the claim would have been avoided had Client used the current version of the Tyler Software Product;
- b. Client's combining the Tyler Software Product with devices or products not provided by Tyler;
- c. Use of a Tyler Software Product in applications, business environments or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such application, environment or business process would not have given rise to the claim;
- d. Corrections, modifications, alterations or enhancements that Client made to the Tyler Software Product and such correction, modification, alteration or enhancement is determined by a court of competent jurisdiction to be a contributing cause of the infringement;
- e. Use of the Tyler Software Product by any person or entity other than Client or Client's employees; or
- f. Client's willful infringement, including Client's continued use of the infringing Tyler Software Product after Client becomes aware that such infringing Tyler Software Product is or is likely to become the subject of a claim hereunder.

1.3.4. Remedy.

- a. In the event a Tyler Software Product is, by a court of competent jurisdiction, finally determined to be infringing and its use by Client is enjoined, Tyler will, at its election:
- b. Procure for Client the right to continue using the infringing Tyler Software Products; or
- c. Modify or replace the infringing Tyler Software Products so that it becomes non-infringing.
- d. The foregoing states Tyler's entire liability and Client's sole and exclusive remedy with respect to the subject matter hereof.

2. PROFESSIONAL SERVICES AGREEMENT

2.1. Services. Tyler shall provide the services set forth in the Investment Summary at Client's election, including Consulting, Training, Conversion, and other miscellaneous Services.

2.2. Expenses. Expenses shall be billed in accordance with the then-current Tyler Business Travel

Policy, based on Tyler's usual and customary practices, plus a 10% travel agent processing fee. The current Tyler Business Travel Policy is attached hereto as Exhibit 2. Copies of receipts shall be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee shall be incurred. Receipts for mileage and miscellaneous items less than twenty-five dollars (\$25) are not available.

2.3. Cancellation of Services. In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) hourly fees associated with the canceled services if Tyler is unable to re-assign its personnel.

2.4. Additional Services.

2.4.1. The Investment Summary contains a good faith estimate of service fees and travel expenses. Training and/or consulting services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at Tyler's then-current rates, plus travel expenses incurred in accordance with Section 2.2.

2.4.2. Programming and/or interface quotes are estimates based on Tyler's understanding of the specifications supplied by Client. In the event Client requires additional work performed above the specifications provided, Tyler will submit to Client an amendment containing an estimate of the charges for the additional work. Client will have thirty (30) calendar days from the date the estimate is provided to approve the amendment.

3. MAINTENANCE AGREEMENT

3.1. Maintenance Services. This Maintenance Agreement is effective on the earlier of (i) ninety (90) days after use of a Tyler Software Product in live production, or (ii) one hundred eighty (180) days from the date Tyler made the Tyler Software Products available to Client for downloading; and will remain in force for an initial one (1) year term, which will renew automatically for additional one (1) year terms unless terminated in writing by either party at least fifteen (15) days prior to the end of the then-current term. Fees for subsequent years are subject to change.

3.2. Maintenance Services Terms, Conditions, Limitations and Exclusions.

3.2.1. For as long as a current Maintenance Agreement is in place, Tyler shall, in a professional, good and workmanlike manner, perform its obligations in accordance with Tyler's then current support call process in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products shall be void. Tyler reserves the right to suspend maintenance services if Client fails to pay undisputed maintenance fees within sixty (60) calendar days of the due date. Tyler will reinstate maintenance services upon Client's payment of the overdue maintenance fees.

- 3.2.2. For as long as a current Maintenance Agreement is in place Tyler shall provide Client with all releases Tyler makes to the Tyler Software Products that Tyler makes generally available without additional charge to customers possessing a current Tyler annual Maintenance Agreement. Third Party Products and installation, consulting and training services related to the new releases will be provided to Client at Tyler's then-current rates. Client acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the Tyler Software Products as they exist without Client customization or modification. Tyler shall support prior releases of the Tyler Software Products in accordance with Tyler's then-current release life cycle policy.
- 3.2.3. Maintenance fees do not include installation or implementation of the Tyler Software Products, onsite support (unless Tyler cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, and support outside Tyler's normal business hours.
- 3.3. Client Responsibilities.
- 3.3.1. Client shall provide, at no charge to Tyler, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.
- 3.3.2. Tyler currently utilizes "Go To Assist" as a secure commercial PC to PC remote connectivity tool to provide remote maintenance services. Client shall maintain for the duration of the Agreement a high-speed Internet connection capable of connecting to Client's PC's and server. As a secondary connectivity tool to the Tyler Servers, Tyler will install a third party secure unattended remote connectivity program, which is currently Bomgar. Client will need to provide Tyler a login account with local administrative privileges to the Tyler Servers. Tyler requires that Client also maintain an alternate remote connectivity method (including VPN, if necessary) for backup connectivity purposes. Tyler, at its option, will use the connections to assist with problem diagnosis and resolution.
- 3.4. Support Terms for Clients Not Participating in Annual Maintenance Agreement. The Software License Agreement includes ninety (90) days free maintenance. If Client elects not to participate in the Annual Software Maintenance Agreement, Client shall receive support on a Time and Materials basis following ninety (90) days after the Tyler Software is verified in accordance with the following terms.
- 3.4.1. Such Clients:
- a. will receive the lowest priority for Software Support,
 - b. will be required to purchase new releases of the Software. New releases will include fixes, enhancements, and updates, such as Tax Tables, W/2 reporting formats, 1099 changes, etc.,

- c. will be charged \$175 per hour with a two-hour minimum for all software support calls,
 - d. will not be granted access to Tyler's software support web-site,
 - e. are subject to higher rates for training and continuing education performed by Tyler employees. This is due to the fact that the Client may not be utilizing the most current version of our software.
- 3.4.2. Tyler will not guarantee a program fix to a documented bug for software versions that are not the currently released version. If a Client decides to discontinue the Software Maintenance Agreement and later chooses to reinstate the Software Maintenance Agreement, the Client will be required to pay the portion of annual software support maintenance fees for the Enhancement and Software Updates (27%) dating back to the date when the Client discontinued the Software Maintenance Agreement.

4. THIRD PARTY PRODUCT AGREEMENT

- 4.1. Agreement to License or Sell Third Party Products. For the price set forth in the Investment Summary, Tyler agrees to license or sell and deliver to Client, and Client agrees to accept from Tyler the hardware ("Hardware") and third party software ("Third Party Software") set forth in the Investment Summary (collectively, the "Third Party Products").
- 4.2. Third Party Product Warranties. Client acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the Third Party Products. Tyler hereby grants and passes through to Client any warranty adjustments that Tyler may receive from the developer, manufacturer or supplier of the Third Party Products ("Developer").
- 4.3. Third Party Software Maintenance. In the event Client elects not to purchase through Tyler maintenance services on the Third Party Software, it shall be the responsibility of Client to repair and maintain the Third Party Software and purchase enhancements as necessary after installation.
- 4.3.1. In the event Client elects to purchase through Tyler maintenance services on the Third Party Software, Tyler will facilitate resolution of a defect in Third Party Software with the Developer.
- 4.3.2. In the event the Developer charges a fee for future Third Party Software release(s), Client shall be required to pay such fee.

5. GENERAL TERMS AND CONDITIONS

- 5.1. Taxes. The fees set forth in the Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by Client to Tyler. In the event Client possesses a valid direct-pay permit, Client will forward such permit to Tyler on the Effective Date, in accordance with Paragraph 5.21. In such event, Client will be responsible for remitting all

applicable taxes to the proper authorities. If tax-exempt, Client will provide Tyler with Client's tax-exempt certificate.

- 5.2. Force Majeure; Client Assistance. "Force Majeure" is defined as an event beyond the reasonable control of a party, including governmental action, war, riot or civil commotion, fire, natural disaster, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party. Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.

5.2.1. Force Majeure will not be allowed unless:

- a. Within ten (10) business days of the occurrence of Force Majeure, the party whose performance is delayed thereby provides the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the Force Majeure events.
- b. Within ten (10) business days after the cessation of the Force Majeure event, the party whose performance was delayed provides the other party written notice of the time at which Force Majeure ceased and a complete explanation of all pertinent events pertaining to the entire Force Majeure situation.

5.2.2. Either party will have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph will not relieve Client of its responsibility to pay for services and goods provided to Client and expenses incurred on behalf of Client prior to the effective date of termination.

5.2.3. In addition, Client acknowledges that the implementation of the Tyler Software Products is a cooperative process requiring the time and resources of Client personnel. Client shall, and shall cause Client personnel to, use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to meet the project deadlines and other milestones agreed to by the parties for implementation. Tyler shall not be liable for failure to meet such deadlines and milestones when such failure is due to Force Majeure (as defined above) or to the failure by Client personnel to provide such cooperation and assistance (either through action or omission).

5.3. Indemnification.

5.3.1. Tyler shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from Tyler's negligence or willful misconduct.

5.3.2. Client shall indemnify and hold harmless Tyler and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and

expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from Client's negligence or willful misconduct.

- 5.4. Limitation of Liability. In no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Tyler Software Products, Services, or Third Party Products. Tyler's liability for damages and expenses arising from the Tyler Software Products or Services, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the Fees set forth in the Investment Summary related to the defective product or service. Tyler's liability for damages and expenses arising from the Third Party Products, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the license fee/purchase price of the Third Party Products. Such fees reflect and are set in reliance upon this limitation of liability.
- 5.5. Disclaimer. THE RIGHTS, REMEDIES, AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION, WHICH ARE HEREBY DISCLAIMED BY TYLER.
- 5.6. Dispute Resolution. The parties agree to notify each other within fifteen (15) business days of becoming aware of a dispute under this Agreement ("Dispute Notice Date").
- 5.6.1. The parties further agree that, before resorting to any formal dispute resolution process, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. Party principals agree to participate directly in these negotiations. Unless otherwise agreed in writing, the parties shall have fifteen (15) business days from the Dispute Notice Date to begin these negotiations, and thirty (30) days from the Dispute Notice Date to complete these negotiations. All such negotiations will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Civil Procedure 408 and/or any similar applicable state rule.
- 5.6.2. In the event the parties fail to resolve the dispute as set forth above, the dispute will be referred to non-binding mediation. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction.
- 5.6.3. Nothing in this Article will prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.
- 5.7. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Tyler and Client. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.

- 5.8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Client's state of domicile.
- 5.9. Severability. If any term or provision of this Agreement or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.
- 5.10. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by Tyler or Client, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent Tyler or Client from enforcing each and every term of this Agreement thereafter.
- 5.11. Amendment. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.
- 5.12. Termination.
- 5.12.1. Termination for Cause. Client may terminate this Agreement for cause in the event Tyler does not cure a material breach of this Agreement within thirty (30) days of receiving notice of such breach from Client. Upon such termination, Client shall pay Tyler for all services and expenses not in dispute and non-Defective Tyler Software Products which were delivered or incurred prior to the date Tyler received Client's notice of termination. Payment for services and expenses in dispute will be determined in accordance with the dispute resolution process.
- 5.12.2. Termination for Non-appropriation. If Client should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, Client may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler. Upon termination, Client shall remit payment for all products and services delivered to Client and all expenses incurred by Tyler prior to Tyler's receipt of the termination notice. Client will not be entitled to a refund or offset of previously paid license and other fees.
- 5.13. No Assignment. Client may not assign its rights and responsibilities under this Agreement without Tyler's prior written permission, not to be unreasonably withheld.
- 5.14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.
- 5.15. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Each party agrees that it shall not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The

confidentiality covenants contained herein will survive the termination or cancellation of this Agreement for a period of two (2) years.

5.15.1. This obligation of confidentiality will not apply to information that:

- a. At the time of the disclosure is in the public domain;
- b. After disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party;
- c. A party can establish by reasonable proof was in that party's possession at the time of disclosure;
- d. A party receives from a third party who has a right to disclose it to that party; or
- e. Is subject to Freedom of Information Act requests, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law, provided, however, that that receiving party shall give prompt notice of the service of process or other documentation that underlies such requirement and use its best efforts to assist the disclosing party if the disclosing party wishes to obtain a protective order or otherwise protect the confidentiality of such confidential information. The disclosing party reserves the right to obtain protective order or otherwise protect the confidentiality of its confidential information.

5.16. Shipping. Delivery shall be F.O.B. shipping point.

5.17. Payment Terms.

5.17.1. Tyler shall invoice Client \$80,521.50 upon the Effective Date. Such amount equals 25% of the license fees for the Tyler Software Products.

5.17.2. Tyler shall invoice Client \$193,251.60 when Tyler has made the Tyler Software Products available to Client for downloading. Such amount equals 60% of the license fees for the Tyler Software Products.

5.17.3. Tyler shall invoice Client \$48,312.90 upon the earlier of (i) the first use of a Tyler Software Product in live production, or (ii) one hundred eighty (180) days from the date Tyler made the Tyler Software Products available to Client for downloading. Such amount equals 15% of the license fees for the Tyler Software Products.

5.17.4. The Hosted Applications set-up fee in the amount of \$800.00 is due upon the availability of such services.

5.17.5. The year one (1) Hosted Applications annual fee of \$3,180.00 is due upon the availability of such services.

5.17.6. Tyler shall invoice Client fees for services, plus expenses, if and as provided/incurred.

5.17.7. Tyler shall invoice a 50% deposit for modifications upon delivery of specifications and 50% upon delivery of modification. Tyler will perform a modification upon receipt of

written notice to proceed from Client. Client will have thirty (30) days from delivery of a modification to test such modification. In the event Client does not report an issue with such modification to Tyler within such thirty (30) day period, the modification will be deemed in compliance with the specifications.

5.17.8. Prices do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

5.17.9. Payment is due within thirty (30) days of the invoice date. If payment is not made within thirty (30) days of the invoice date, a one and one half percent (1.5%) per month interest charge shall be assessed until date of payment.

5.17.10. Maintenance fees are waived through the earlier of (i) ninety (90) days after use of a Tyler Software Product in live production, or (ii) one hundred eighty (180) days from the date Tyler made the Tyler Software Products available to Client for downloading. Subsequent annual Maintenance fees are subject to change and will be due on the anniversary of such date.

5.18. Electronic Payment. Tyler prefers to receive payments electronically. Tyler's electronic payment information is as follows:

Bank: Wells Fargo Bank, N.A.
420 Montgomery
San Francisco, CA 94104

ABA: 121000248

Account: 4124302472

Beneficiary: Tyler Technologies Inc. – Operating

5.19. Entire Agreement. This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement.

5.20. Multiple Originals and Signatures. This Agreement may be executed in multiple originals, any of which shall be independently treated as an original document. Any electronic, faxed, scanned, photocopied or similarly reproduced signature on this Agreement or any amendment hereto shall be deemed an original signature and shall be fully enforceable as if an original signature.

5.21. Notices.

5.21.1. All notices or communications required or permitted as a part of this Agreement will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

- a. Actually received,
- b. Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- c. Upon receipt by sender of proof of email delivery, or
- d. If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

5.21.2. Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Draper City, UT	Tyler Technologies, Inc.
1020 East Pioneer Road	5519 – 53 rd St.
Draper, Utah 84020	Lubbock, TX 79419
Attention: Bob Wylie	Attention: Albert Mendoza

5.22. Independent Contractor. This is not an agreement of partnership or employment of Tyler or any of Tyler's employees by Client. Tyler is an independent contractor for all purposes under this Agreement.

5.23. Tyler Products and Services. Client may purchase additional Tyler products and services at then-current list price, pursuant to the terms of this Agreement, by executing a mutually agreed addendum.

IN WITNESS WHEREOF, persons having been duly authorized and empowered enter into this Agreement.

Draper City, UT

Tyler Technologies, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Investment Summary

Bob Wylie
Draper City, UT



Prepared for:	Draper City, UT	Contract ID # :	2014-0013
Contact Person:	Bob Wylie	Issue Date:	1/15/14
Address:	1020 East Pioneer Road Draper, UT 84020 (801) 576-6318	Salesman:	C. Dixon
Phone:		Tax Exempt:	Yes / No
Fax:			
Email:	bob.wylie@draper.ut.us		

Product, Service & Equipment	Milestone # 1	Milestone # 2	Milestone # 3	As Progress Occurs	Totals	Maintenance
Total Applications Software	80,521.50	193,251.60				76,845.00
License Fees - INCODE Financial Suite			7,088.10		53,254.00	
License Fees - INCODE Personnel Management Suite			3,511.20		23,408.00	
License Fees - INCODE Customer Relationship Management Suite			6,868.55		45,777.00	
License Fees - INCODE Document Management Suite			4,303.65		28,691.00	
License Fees - INCODE TCM			5,130.00		34,200.00	
License Fees - EherGov			20,513.40		136,756.00	
Total Professional Services						1,000.00
Incode On-Site Services				63,500.00	63,500.00	
Incode Final Implementation				8,000.00	8,000.00	
Incode Project Management				2,500.00	2,500.00	
Incode Data Conversion & Assistance				45,804.00	45,804.00	
EherGov Implementation Services				103,000.00	103,000.00	
Tyler Online Training Center						1,000.00
Totals	80,521.50	193,251.60	48,312.90	222,804.00	544,890.00	77,845.00

Please Note: Travel expenses will be billed as incurred.

	Initial Fees	Monthly Fees**
Total Monthly Services	800	265
Internet Services and Products		
**Please note this is not an Annual agreement, the fees listed herein are monthly fees.		
Totals	800	265

Software Modules: Tyler-EnerGov, On Premise

Bob Wylie, Finance Director
 City of Draper
 January 15, 2014



Application Software

	Software Costs	Unit Costs	Notes
EnerGov – Enterprise Server <i>Permit & Land Management</i> Permitting, Plan, Project, Code, Inspections, & Requests	\$51,282	\$2,849	17 named users
EnerGov – Enterprise Server <i>Licensing and Regulatory Management</i> Business, Trade, Rental, Tax Licensing & Enforcement Processes	\$11,396	\$2,849	4 named users
EnerGov – Enterprise Server <i>Asset Management Suite</i> Infrastructure Mgmt, Work Orders & Maintenance Mgmt	\$37,037	\$2,849	13 named users
EnerGov GIS	\$15,199	\$15,199	1 Server License
EnerGov Citizen Access Web Portal (Land Management)	\$15,199	\$15,199	1 Server License
iG Workforce Apps	\$6,643	\$949	7 Named Users
Grand Total Software	<u>\$136,756</u>		

Professional Services

** Estimated Implementation Services – for BMP Templates	Year 1 Purchase	Resources	Rate
Implementation Resources	\$80,250	535 hours	\$150 / hr
End User Training	\$18,750	150 hours	\$125 / hr
Report /Forms Development	\$4,000	32 hours	\$125 / hr
Grand Total Professional Services	<u>\$103,000</u>	-	-

Total Software & Services	Year 1	Costs Year 2	Costs Year 3
EnerGov Enterprise Server	\$136,756	-	-
Professional Services	\$103,000	-	-
Annual Support & Maintenance	\$27,351	\$27,351	\$27,351
TOTAL PURCHASE PRICE	<u>\$267,107</u>	<u>\$27,351</u>	<u>\$27,351</u>

Other EnerGov applications for later purchase (3-year guaranteed pricing)

EnerGov eReviews	\$15,999	\$15,999	1 Server License
EnerGov Citizen Access Web Portal (License Management)	\$15,999	\$15,999	1 Server License

EnerGov Enterprise Server Details:

- BMP (Best Management Practice) Templates will be utilized for implementation process
- Tyler financial integrations are provided "free of charge"
- Blueprince data is converted "free of charge" if presented in acceptable format (comma delimited, SQL, access, etc.)

Software Modules: Tyler-Incode, On Premise

Bob Wylie
 Draper City, UT
 January 15, 2014



Application Software

	QTY	License Fee	Annual Fee
Incode Financial Management Suite	1	53,254	13,314
Core Financials (General Ledger, Budget Prep, Bank Recon, Accounts Payable) GASB MSDE Module with Adjustments and Reporting Positive Pay Purchasing Fixed Assets			
Incode Personnel Management Suite	1	23,408	9,227
Personnel Management (Payroll & Human Resources, FMLA Leave Tracking, Benefits Administration, Position Control/Budgeting) Employee Self Service (Number of FTE Employees) 150 (Employee Portal) ESS Time & Attendance (Number of FTE Employees) 75 ESS Benefits Administration (Number of FTE Employees) 75			
Incode Customer Relationship Management Suite	1	45,777	11,444
Utility CIS System Utility Handheld Meter-Reader Interface Third Party Printing Interface Fee Miscellaneous Accounts Receivable Cashiering (Supports Credit/Debit Cards via ETS, PCI Compliant)			
Incode Content/Document Management Suite	1	28,691	7,134
V.X Report Writing Standard Forms Package (4 Overlays for Financials, 5 Overlays for CRM, 1 Logo) Custom Form Service (pricing per form) 1 Enhanced Utility Bill Form Service (Laser Bill 8.5"x11", up to 2 graphs) Secure Signatures (includes 2 signatures) Each Signature (scan and prepare for use) 1 Output Director (Base Engine, Print Output Channel, Email Output Channel) Tyler Content Manager Standard Edition (TCM SE) (Unlimited Full & Retrieval Licenses, Multiple Scan Stations, Advanced OCR, Content Manager for Incode Applications)			
Incode Application Subtotal		151,130	41,119
Incode Application Total		\$151,130	\$41,119

Professional Services (Incode)

Bob Wylie
 Draper City, UT
 January 15, 2014



Application Professional Services - Summary	Estimated Hours	Estimated Services
Implementation Services		
Financial Suite	152	19,000
Personnel Management Suite	164	20,500
Customer Relationship Management Suite	136	17,000
Content Management Suite	56	7,000
Conversion Services		
Financial Suite	70	26,270
Customer Relationship Management Suite	44	13,234
Tyler Content Manager		6,300
INCODE Professional Services		
Project Management		2,500
Final Implementation Services	64	8,000
Professional Services Total	686	119,804

Implementation Services - Breakdown	Estimated Hours	Estimated Services
Incode Financial Suite		
Core Financials	72	9,000
GASB Reporter	20	2,500
Purchasing	32	4,000
Fixed Assets	16	2,000
Financial Consulting Services	12	1,500
Financial Suite Subtotal	152	19,000
Incode Personnel Management Suite		
Personnel Management	100	12,500
Employee Self Service	20	2,500
ESS Time & Attendance	16	2,000
ESS Benefits Administration	16	2,000
Personnel Management Consulting Service	12	1,500
Personnel Management Suite	164	20,500
Incode Customer Relationship Management Suite		
Utility CIS System	96	12,000
Miscellaneous Accounts Receivable	24	3,000
Cashiering	16	2,000
Customer Relationship Management Suite Subto	136	17,000
Incode Content Management Suite		
V.X Report Writing	16	2,000
Output Director	8	1,000
Tyler Content Manager Standard Edition (TCM SE)	32	4,000
Content Management Suite Subtotal	56	7,000
Professional Services		
Project Management		2,500
Final Implementation	64	8,000
Professional Services Subtotal	64	10,500

Software Licenses

Draper City
 Bob Wylie, Finance Director
 January 15, 2014



Application Software	QTY	Hours	License Fee	Estimated Services	Annual Maintenance
Tyler Content Manager Enterprise Edition			34,200	8,375	6,818
Tyler Content Manager Enterprise Edition		40			
Full Use License (Concurrent License)	4	8			
Retrieval License (Concurrent License)	15	15			
Scan Station (6 pack)	6	6			
Tyler Web Services API	1	16			
Application and Software Total			34,200	8,375	6,818
Tyler Content Manager Software Total			34,200	8,375	6,818

Conversion Services (Incode)

Bob Wylie
 Draper City, UT
 January 15, 2014



Conversion Services	Conversion Programming Fee	Estimated Hours	Estimated Services	Conversion Services
Financial Applications				
General Ledger				
Chart of Accounts	2,118	4	500	2,618
Budgets	908	4	500	1,408
Detail History (current year)	1,738	4	500	2,238
History (Previous Years COA & Detail) per year	550	2	250	800
Encumbrances	N/A			N/A
Accounts Payable				
Vendor File	2,118	4	500	2,618
Detail History (current year)	1,738	4	500	2,238
Additional History per year	550	2	250	800
Payroll				
Employee Static Information	2,736	24	3,000	5,736
Current Year Check History	1,738	8	1,000	2,738
Accruals	908	4	500	1,408
History (Previous Year Employee & Check History) per year	550	2	250	800
Fixed Assets				
Master File	1,318	6	750	2,068
Depreciation History	550	2	250	800
CRM Applications				
Utility CIS - SMS				
Account/Address Master (includes contacts & properties)	2,538	12	1,500	4,038
Current & Past Service/Meter Information	1,388	8	1,000	2,388
Current Year Transactions (bill, payment, late charge, etc)	1,388	8	1,000	2,388
History Transactions (4 additional years)	1,210	8	1,000	2,210
Consumption History - readings, dates & usage (4 additional years)	1,210	8	1,000	2,210
Deposits			incl	
Notes (occupant & address)			incl	
Content Management Applications				
Tyler Content Manager (TCM)				
TCM EE	6,300			6,300
Conversion Services Subtotal				
	31,554	114	14,250	45,804
Conversion Services Total				
	31,554	114	14,250	45,804

Note:

Financial data conversion consists of current year plus 3 years history.
 Utility Billing conversion data consists of current year plus 4 years history.

Hosted Applications (Incode)

Bob Wylie
 Draper City, UT
 January 15, 2014



Service	QTY	Charges	Initial Year	Annual Fee
Citizen Portal				
One Time Setup Fee	1	800	800	
<ul style="list-style-type: none"> - Hardware Configuration - DNS registration 				
Monthly fee to support and host Web site		25 /month	300	300
INCODE Utility Billing On-Line Component				
Utility Billing Online (4 cents per bill, per month)	<u>6,000</u>	0.04 /month	2,880	2,880
<ul style="list-style-type: none"> - Data extraction and storage - Display of: <ul style="list-style-type: none"> • Current status (late, cut off etc) • Action needed to avoid penalty • Current Balance • Deposits on file (optional) • Last payment date • Last payment amount • Payment arrangements on file • Last bill amount • Last bill date • Bill due date • Contracts on file and status • Transaction history - Online Payments <ul style="list-style-type: none"> • Payment packet is created to be imported to Utility System 				
<ul style="list-style-type: none"> - Address information including <ul style="list-style-type: none"> • Mapping • Legal description* • Precinct* • School district* • Services at address * - Subject to data availability - Consumption history by service, including graphs - Request for service (optional) - Information change request (optional) - Security - SSL (Secure Socket Layer) 				
<p><i>NOTE: Customer pays \$1.25 fee per transaction for payment on-line.</i></p>				
Hosted Applications Total			3,980	3,180

Tyler OnDemand - Tyler Online Training Center

Bob Wylie
Draper City, UT
January 15, 2014



Service

Annual Fee

Tyler OnDemand - Tyler Online Training Center

Tyler Online Training Center	1,000
<ul style="list-style-type: none">- Open for ALL Employees during subscription period- Unlimited Access to Live Webinars and Archived Webinars- Unlimited Access to Self Study Courses- Available 24/7- Continuing Professional Education Credit with NASBA Standards- Live Webinars conducted monthly with an estimated 60 webinars annually- Over 45 Online Self Study Courses- General business knowledge and Microsoft Office software based courses- Courses cover a variety of topics that span the entire suite of INCODE applications<ul style="list-style-type: none">o Financialso Payrollo Human Resourceso Utility Billingo CRMo EnerGov - New Webinars and Self Study Courses added throughout the year	

Tyler Technologies, Inc. is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN, 37219-2417. Web site: www.nasba.org

Tyler Online Training Center Total

1,000

Exhibit 2

Tyler Business Travel Policy

1. Air Travel

A. Reservations and Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make reservations far enough in advance to take full advantage of discount opportunities. A seven-day advance booking requirement is mandatory. When booking less than seven days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is scheduled to exceed six hours, only economy or coach class seating is reimbursable.

B. Baggage Fees

Reimbursement of personal baggage charges are based on the trip duration as follows:

- Up to five days = one checked bag
- Six or more days = two checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance-Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience

and the specific situation require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking and Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates range from \$46 to \$71. A complete listing is available at www.gsa.gov/perdiem.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00* p.m.	Breakfast, lunch and dinner

*7:00 is defined as direct travel time and does not include time taken to stop for dinner

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

- Breakfast 15%
- Lunch 25%
- Dinner 60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00* p.m.

5. Entertainment

All entertainment expenses must have a business purpose; a business discussion must occur either before, after or during the event in order to qualify for reimbursement. The highest-ranking employee present at the meal must pay for and submit entertainment expenses. An employee who submits an entertainment expense for a meal or participates in a meal submitted by another employee cannot claim a per diem for that same meal.

6. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

Effective April 1, 2012

Exhibit 3

The Data Conversion Process

Purpose

One of the most difficult aspects of software transition revolves around data conversion. This process takes place in one of two ways:

1. The manual method - In the manual mode the Client enters data from the existing system into the new Tyler system.
2. The automated method - In the automated mode a software program is written or coded in order to facilitate moving information from the existing system to the new Tyler system.

This document is provided to aid the Client in understanding the automated conversion process and to provide clear direction as to the responsibility and the scope of the process.

Who should read this document?

The obvious answer to this question is the individual at the Client site that is most responsible for the transition. Specifically, it should be:

1. The individual responsible for extracting and providing data from the old system to the Tyler system.
2. Any individuals responsible at a department level.
3. Any individual that would benefit from understanding the conversion process

The Conversion Process

The process itself has a predefined set of steps that must take place for a successful conversion:

1. Initial data extraction - The Client must perform the preliminary extraction and transmission of data.
2. Data Evaluation - Tyler will then be responsible for evaluating the information that has been transmitted. Upon a successful evaluation, the Client will be contacted for further scheduling.
3. Conversion scheduling - Once a schedule has been decided upon, Tyler will proceed in development of the conversion programs. During the development step, the Client will be

responsible for providing knowledge and insight into the information from its current system.

4. On-Site Conversion - Upon Tyler's arrival at the Client's site for the conversion, the Client will be responsible for a final extraction of the data. In most situations the Client will not have to transmit the final extraction to Tyler. The Tyler trainer on site will assist the Client in preliminary Tyler application setup that is required for the conversion as well as execute the conversion programs and assist in the verification of the converted information's integrity.

Even though the Tyler trainers possess a great deal of knowledge in the area of conversion, it is ultimately the Client's responsibility to validate any converted data. The sections that follow clearly outline and describe each of the above steps.

Data Extraction and Transmission of Data

The Client must supply data in ASCII file format with unpacked data fields. The ASCII (pronounced as AS-key) is an abbreviation that represents the American Standard Code for Information Interchange. This standard was established in 1967 and still represents one of the most important standards in the computer industry. Vendors also use compression techniques in their data structures to pack numeric fields and dates. Since these techniques are not standard and vary from vendor to vendor, we are unable to process this information. In the simplest of terms, the Client's data that is transmitted to the Tyler system should be legible in a standard text processing program such as Windows textpad or wordpad. The characters that you view on screen should be the same characters that are on your computer keyboard.

File Descriptions and layout

The Client must supply sufficient file descriptions and layout information for the data. Sometimes file descriptions will be referenced as data definitions. Normally data files have one row after another. Each row represents a record or grouping of information. As an example, a vendor file would normally have a row for each vendor in the system. The rows then have to be broken down further into columns or fields. An example of a field in the vendor file could be vendor name. The file description provides the information needed to know exactly what position each field starts and stops in each row. In all cases, file descriptions are absolutely necessary for any type of conversion.

Media Type

Unless the Client's existing system has a unix operating system, the most desirable media to transmit the data would be a cd. In situations where a writable cd is not available, the Client can submit the information on a zip disk or 4mm tape. If a 4mm tape is used then the Client should transfer the information to the tape using the standard Windows backup software. The Client may also submit the data via email when the Client has a compression utility such as winzip and a fast and reliable internet connection. When the Client's existing system has a unix operating system, the Client may use any of the methods mentioned above with the additional transmittal method of a 4mm tape with the maximum capacity of 4gb or a ¼ inch

tape with the maximum capacity of 1gb. The Client should include the Data Transmission Form with the media. If the Client is using email to transmit the data, include the information from the Data Transmittal Form in the email as text or an attachment. In situation where none of the above options are available to the Client, arrangements should be made with Tyler as to viable alternatives. These alternatives may involve additional fees.

There are certain vendors that Tyler has had considerable conversion experience and has developed processes to extract the information from their proprietary data files. Other vendors store their data in Microsoft Access or Microsoft SQL Server database. It is possible in these situations that the Client can provide their existing data files in their current state without data extraction. In this scenario the Client would only be responsible for providing a backup of their current data.

The first data extraction is for the sole purpose of developing the conversion software. This extraction should contain all the tables or files that are to be converted along with the appropriate record layouts. An incomplete extraction can produce time delays and undesirable results during the actual conversion.

Final Data Extraction

The final data extraction will be performed on the day of or a day very close to the final conversion. This extraction will be coordinated with Tyler's conversion personnel and implementation coordinator.

Data Extraction Assistance

In almost all instances the Client owns its data, but the current software provider's file descriptions will be considered proprietary information. There will be scenarios where the software provider will not provide file descriptions or will provide the descriptions for a fee. Any fees required by the vendor are the responsibility of the Client and are not included in the contract. In many situations the data will have proprietary fields with no easy solution for extraction. Tyler's years of experience with data conversions has lead to many innovative techniques for data extraction. When the Client has exhausted its available options, Tyler can assist with the data extraction for additional fees. The Client will have the responsibility of contacting their sales representative for a quote for additional services. Upon receipt of a purchase order from the Client, Tyler will proceed with this assistance.

Conversion Scheduling

Once Tyler has received the data from the Client a three-stage evaluation process will be implemented. Media will be evaluated as to its readability. Each data file transmitted will be reviewed as to its format, file description, and estimated complexity. When these two stages have been successfully completed, Tyler's implementation coordinator will schedule with the Client a time for the data conversion, conversion assistance, and training. The third stage of the evaluation is more detailed and will follow in approximately 3 weeks. During this stage the data will be evaluated for its completeness, validity, and mandatory fields needed in the conversion. If problems arise during this process, Tyler will communicate to the Client the

problems. The Client will be responsible for resolving the problems in a timely a manner as possible so that the schedule is not affected. If no problems arise then the Client can assume that Tyler is on schedule.

Timing is an important element during a data conversion. Scheduling of the conversion will revolve around the most advantageous cutoff dates. For example, if a Client bills their utility customers at the end of each month, the best time to do the conversion would be during the last two weeks of the month. Financial conversions will be easier to validate if performed after a period has been closed. The implementation coordinator will discuss all of these elements with the Client during scheduling.

Conversion Program Development

After Tyler receives and validates the Client's data, the development of the conversion program will begin. During the development process, questions about the Client's current data or application may be raised. The Client is responsible for providing contact information for staff member(s) that are capable of responding to questions for each module being converted.

It is important for the Client to understand that Tyler has a minimal amount of experience with the Client's current application. Questions raised by Tyler will be the result of analyzing data. There are a significant number of times when the data being analyzed does not correspond with the information that the Client views on the screen in their current application. Providing staff members that have an in depth knowledge of the Client's current application is a key element of a successful conversion.

Part of the development process will be testing the program with the data provided in the first extraction. This testing will take place at Tyler's facilities. Any potential problem areas will be communicated to the Client.

Conversion Assistance

As part of the contract, a Tyler trainer will be at the Client location during the actual conversion. The trainer will provide conversion assistance in the areas of preliminary setup, conversion program execution and data validation. Even though the primary focus of the trainer is a successful completion of the conversion process, the trainer will be providing a limited amount of training in certain areas. In a majority of cases, the trainer responsible for the conversion assistance will also be responsible for the training that will occur either before or after the conversion.

It is important to note that the trainer will not be the programmer responsible for the creating or modifying conversion program. The trainer will be responsible for conveying to the programmer discovery of Client specific information before the final conversion and any mistakes found after the conversion. The Client will need to facilitate the trainer by providing a comfortable place to work, access to facilities before and after normal work hours and telephone communications.

Data Validation

The final step in the conversion process is the data validation. Much attention will be given to data integrity during the testing phase by the program developers. The conversion assistant will also spend time testing the integrity of the information. Balances and the output of processes will be tested after the conversion. A visual inspection of different modules will be performed by choosing different records on a random base. But data validation is ultimately the responsibility of the Client.

Conclusion

After over 20 years and several hundred conversion experiences, Tyler has determined that there are several key factors in a successful conversion. The Client needs to have a realistic expectation of what is going to happen. The Client must understand that there are no pleasant conversions; therefore a successful conversion is one that provides the least amount of displacement and discomfort. More than likely, the Client will have to change their schedules and prepare for a heavier workload during the conversion. The Client has to realize that the data on the system being converted is exactly how the data will be on the new system. The conversion process does not clean up or correct any information during the conversion process. The old adage "garbage in, garbage out" is very relevant during the conversion process. One example would be a general ledger conversion where the current system's ledger is out of balance. After the conversion, the Tyler general ledger will be out of balance. And finally, to have a successful conversion, there must be a team approach by all those involved.

Exhibit 4

WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT

THIS AGREEMENT is effective as of the date of acceptance set forth at the end hereof, and is by and between Tyler Technologies, Inc., hereinafter referred to as "Tyler" and the party signing this agreement as the "Subscriber".

1. DEFINITIONS

Tyler Web Services Tyler Web Services are designed to enable Subscriber to easily establish a presence on the Internet. Tyler Web Hosting and Design is composed of the Tyler Web Hosting and Design Publishing Component and other miscellaneous components. These components may be used independently or in conjunction with each other.

Tyler Utility Billing On-Line The Tyler Utility Billing On-Line Component allows the Subscriber to make available certain information from their Tyler Utility Billing System to citizens with Internet access. This information is posted to Subscriber's web site, which is hosted on Tyler's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Consumption information, service level information, requests for service, accounting information and the opportunity to pay their Utility Bill over the Internet using a credit card.

2. AGREEMENTS

- 2.1. TERM. Subscriber must return an executed copy of this Agreement to Tyler within 90 days from the issue date. Thereafter, the Agreement will be voided and is subject to change. Subject to the limitations of this Section 1, and unless otherwise provided for in this Agreement, the term of this Agreement shall commence as of the effective date and shall continue for three (3) years. The term shall thereafter be automatically extended in separate consecutive periods of twelve (12) months duration unless either party gives written notice to terminate. Notice to terminate must provide at least sixty (60) day notice of said intent. In the event that the Subscriber fails to pay any amount payable to Tyler hereunder, when due, or fails to comply with any other provision of this Agreement, Tyler may terminate the Subscriber's rights by written notice to that effect to the Subscriber. Tyler may, by written notice to the Subscriber, terminate its obligations under this Agreement in the event that Tyler, for whatever reason, ceases to host Subscriber's Web Site. A termination of the Subscriber's rights under this Agreement shall not terminate any of the parties' rights under this Agreement to receive or hold amounts rightfully owing to the respective party pursuant to the terms of this agreement or to enforce the intellectual and proprietary rights in the Tyler concept, web site, software, and technology. Upon termination or non-renewal of this agreement, the parties shall each promptly account for all due but unpaid amounts hereunder. If Subscriber wishes to terminate before the stated term expires, Subscriber must give sixty (60) days written notice in order not to incur termination costs of \$795.00. Please also see section entitled "TERMINATION" in this Agreement.

2.2. Nature of Web Site. Tyler shall maintain a web site accessible over the Internet, for Subscriber. This web site shall contain both static information pages, non-static interactive pages as well as payment function pages. The web site shall allow a citizen with Internet access to view relevant data provided by Subscriber. This data may include certain data elements from Subscriber's Tyler Software System. This web site shall be equipped to accept payment of amounts owed to Subscriber, via Secured Socket Layer (SSL) encryption and credit card or debit card charge.

2.3. Data Procurement. Tyler must host the components and services listed in the Investment Summary of this Agreement. The Subscriber will be required to setup a merchant account with Electronic Transaction System Corporation or authorized.net for the sole use of Tyler Web Service transactions. The merchant account must be setup to fund to the Subscriber bank account. All fees for the merchant account will be paid by Subscriber.

Subscriber will be required to install and run Tyler Web Services in order for the Tyler On-Line application to access and transfer the necessary data from the Subscriber's primary software system, to Tyler's web server. The transfer will occur on a real time basis. Additionally, certain information, such as payment information, must be conveyed to Subscriber. Tyler will assume responsibility for transferring such information back to Subscriber on a regular basis. Tyler Web Services requires a dedicated IP address. Assignment of dedicated IP address is the sole responsibility of Subscriber.

2.4. LICENSED SOFTWARE OWNERSHIP. Subscriber agrees that Tyler possesses exclusive title to and ownership of the Tyler Software.

a. Subscriber agrees that Subscriber acquires neither ownership nor any other interest in the Tyler Software, except for the right to use and possess the Tyler Software in accordance with the terms and conditions of this Agreement.

b. All rights not expressly granted to Subscriber in this Agreement are retained by Tyler.

c. Subscriber agrees that Tyler Software including, but not limited to, systems designs, programs in source and/or object code format, applications, techniques, ideas, and/or know-how utilized and/or developed by Tyler are and shall remain the exclusive property of Tyler. Subscriber agrees that the Tyler Software consists of Tyler's trade secrets. Tyler shall retain all copyrights in the Tyler Software, whether published or unpublished.

d. Tyler agrees that all data provided to Tyler for the purposes of generating the web site shall remain the property of Subscriber. Should Subscriber terminate the Internet Services in good standing and in accordance with the termination provisions of this Agreement, Tyler agrees to return to Subscriber, all graphics, text documents, and data files held by Tyler.

2.5. Subscriber MEMBERSHIP FEES. For establishing new Tyler Web Services, the Subscriber shall pay to Tyler the amounts as stated in the Investment Summary.

2.6. INSITE FEES. Tyler may increase the INSITE per-transaction fee for online payment no more than once per year with prior written notice.

- 2.7. NOT ASSIGNABLE. The rights of the Subscriber under this Agreement are not assignable without the prior written consent of Tyler. Any attempt to sublicense, assign, encumber or transfer any of the rights, duties or obligations under this Agreement by the Subscriber is void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 2.8. SOFTWARE MAINTENANCE. This SUBSCRIPTION AGREEMENT includes unlimited telephone support, support by communication modem, and all software upgrades, enhancements and new releases. Tyler reserves the right to change the functionality of future releases of its software and Subscriber understands that Tyler is not obligated to include specific functionality in future releases unless provided for herein.
- 2.9. PARTIAL INVALIDITY. Should any provision or clause of this Agreement be held to be invalid, such invalidity shall not affect any other provision or clause hereof, which can be given effect without such invalid provision or clause.
- 2.10. RESPONSIBILITY OF DATA. Tyler will assume responsibility for all data transfer, but not responsible for data accuracy.
- 2.11. SITE REQUIREMENTS.
- a. Subscriber shall maintain a high speed internet connection (1.5mbps download AND 512kbps upload) with a static IP address and must be able to provide Tyler with IP connection to Subscriber's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. Tyler shall use the connection to assist with problem diagnosis and resolution. Tyler is not responsible for purchase of VPN client software license or configuration of Subscriber's firewall settings. No wireless Internet connections allowed.
 - b. Tyler shall provide Subscriber with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If Subscriber will not allow access through GotoAssist, Tyler cannot guarantee support standards will be met.
- 2.12. PROPRIETARY INFORMATION.
- a. Distribution of Tyler Software. Subscriber may not sell, assign, transfer, disclose, or otherwise make available, either directly or indirectly, any object code, documentation or other material relating to the Software, in whole or in part, or any copy of the same in any form, to any other person or entity.
 - b. Software as Trade Secret. Subscriber shall maintain the confidentiality of the Software and unless specifically authorized by Tyler or except for ordinary and necessary backup purposes, Subscriber may not make or have made any copies of the Software or any part thereof. Subscriber shall include Tyler's proprietary notice or other legend on any copies made by Subscriber as permitted hereunder.
- 2.13. WARRANTY, DISCLAIMER, LIMITATION ON LIABILITY. Tyler warrants that the Software will substantially conform to current specifications delivered by Tyler to Subscriber pursuant to this Agreement, including Tyler's response to the Request for Proposal for six (6) months following installation; provided, however, that Tyler's warranty hereunder shall not cover or apply to any software or part thereof that is not developed or designed by Tyler. In the event

that the Software is found to be defective in such respect and Subscriber notifies Tyler in writing within six (6) months after its receipt of the Software of any substantial non-conformity of the Software with such specifications, Tyler's sole obligation under this warranty is to remedy such defect within a reasonable time. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS MADE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TYLER SHALL IN NO EVENT BE LIABLE FOR DAMAGES THAT EXCEED THE AMOUNT OF THE CHARGES PAID BY SUBSCRIBER HEREUNDER FOR THE DEVELOPMENT AND LICENSE OF THE SOFTWARE. IN NO EVENT SHALL TYLER BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS, REVENUES OR DATA, EVEN IF TYLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 2.14. HOLD HARMLESS. Subscriber agrees that it will hold Tyler harmless against any claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of or relating to
- a. Subscriber's failure to implement any corrections, improvements and new releases relating to the Software, or any part thereof,
 - b. Subscriber's unauthorized alterations to or use of the Software, or
 - c. Subscriber's breach of any of its obligations to maintain the confidentiality of the Software or Subscriber's unauthorized copying thereof.
- 2.15. TERMINATION. This Agreement or any license referenced hereunder may be terminated by Tyler upon written notice to Subscriber if Subscriber performs any breach of the terms of this Agreement. At the date of termination of this Agreement, Subscriber shall promptly return to Tyler any Software, related documentation, materials and other property of Tyler then in its possession, and any copies thereof wherever located. Notwithstanding the foregoing, all provisions hereof relating to confidentiality of the Software shall survive the termination of this Agreement.
- 2.16. GENERAL.
- a. This Agreement shall be governed by the laws of Subscriber's state of domicile and constitutes the entire Agreement between the parties hereto with respect to the Software described herein, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to the matters set forth herein.
 - b. All acceptances by Tyler of purchase orders and all sales by Tyler are expressly limited to and made on the basis of the terms and conditions set forth herein, notwithstanding receipt or acknowledgment of Subscriber's order forms or specifications containing additional or different provisions, or conflicting oral representations by an agent, representative or employee of Tyler. Any such additional or different terms are hereby objected to. All acceptances by Tyler are expressly conditional on Subscriber's assent to the additional or different terms and conditions set forth in this Agreement. If these terms and conditions are not acceptable, Subscriber should notify Tyler at once.

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CONSENT ITEM #C

REQUEST FOR COUNCIL ACTION

To:	Mayor & City Council
From:	Bob Wylie, Finance Director
Date:	March 18, 2014
Subject:	Financial Advisor Contract Agreement with Lewis Young Robertson & Burningham
Applicant Presentation:	None
Staff Presentation:	Bob Wylie, Finance Director

RECOMMENDATION:

Authorize the Mayor ^{or City Manager} to sign Agreement #14-25 with the firm of Lewis Young Robertson & Burningham (LYRB) to provide full financial advisory services for the City.

BACKGROUND AND FINDINGS:

Staff has recognized the need to have a financial advisor on contract with the City to provide full financial advisory services. These services include financing and/or refinancing capital projects, analyzing current outstanding long-term debts, assisting with credit rating policies/strategies and other financing activities as needed. Services may be extended to the Municipal Building Authority of Draper City (MBA) and the Redevelopment Agency of Draper City (RDA).

A Request for Proposal (RFP) was issued on October 23, 2013 in accordance with Draper City's procurement policy. Three companies submitted proposals for evaluation and scoring. Lewis Young Robertson & Burningham was selected by the RFP committee to be awarded the contract.

PREVIOUS LEGISLATIVE ACTION:

None

FISCAL IMPACT: Finance Review: _____

- N/A

SUPPORTING DOCUMENTS:

- Agreement #14-25

**AGREEMENT FOR FINANCIAL CONSULTING SERVICES
FOR CITY OF DRAPER, UTAH**

THIS AGREEMENT for Financial Consulting Services (the "Agreement") is made as of _____, (the "Effective Date"), by and between the City of Draper, a body corporate and politic of the State of Utah (the "City"), and Lewis Young Robertson & Birmingham, Inc., a Utah corporation having its corporate offices at the address of 41 North Rio Grande, Suite 101, Salt Lake City, Utah 84101 (the "Financial Consultant").

WHEREAS, the Financial Consultant is an experienced and fully qualified firm that provides financial and consulting services, as more fully set forth herein, to and for local governmental entities; and

WHEREAS, the City wishes to engage the Financial Consultant to provide the Services defined below and for the purposes set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the City and the Financial Consultant agree as follows:

1. *General Scope of Services.*

During the Term of this Agreement, the Financial Consultant will perform and provide the services needed, required or desired by the City, which may include, but are not limited to, providing the following services (collectively, and combined with the detailed services set forth in Section 2 below, the "Services"):

- (a) information and analysis regarding the best methods of issuing debt and all related matters including, but not limited to, rating agency presentations, debt structuring, market conditions, comparable interest rates, quantitative analysis, investment of bond proceeds, etc.
- (b) bond election consulting;
- (c) formulation of debt policies and procedures for the City;
- (d) financial modeling and preliminary feasibility of capital projects;
- (e) other financial and consulting services as requested by the City.

2. *Detailed Scope of Services—Particular to Debt Issuance*

During the Term hereof, with respect to any particular debt issuance by the City, the Financial Consultant will provide the following particular Services, as appropriate and necessary, for the issuance and placement or sale of each such debt issue;

- (a) consult with and advise the City regarding the recommended size, structure and other specifications of the particular issue;
- (b) furnish information and advice concerning current market conditions for the particular type of debt to be issued;
- (c) assist in the formulation of a coordinated plan and schedule for the authorization, issuance and placement or sale of the debt;

- (d) prepare, as necessary, a detailed quantitative analysis of the debt issue;
- (e) assist the City in selecting other professional services necessary to complete debt transaction(s) which could include bond counsel, disclosure counsel, trustee, paying agent, financial printing, feasibility consultant, CPA verification, and title services, as applicable;
- (f) consult with and work with the bond attorneys and other consultants selected by the City as necessary and appropriate;
- (g) attend “due diligence” meetings with City officials and others and assist the City in compiling financial and demographic information related to the particular debt issue;
- (h) mail or otherwise distribute the offering information prepared in connection with the debt issue in accordance with instructions provided by the City;
- (i) advise the City regarding the method of placement or sale of the particular debt issue and assist in identifying potential purchasers;
- (j) attend all meetings as necessary or as requested by the City and attend the closing of the particular debt issue;
- (k) advise City officials regarding any presentations to be made to any of the credit rating services or bond insurers for the purpose of obtaining credit rating services or bond insurance for the debt issue, assist in compiling the required information and financial data for the presentations and, upon request, accompany the City’s representatives to the rating agencies’ or insurers’ offices to present the required information and financial data;
- (f) advise and assist City officials as requested regarding the potential availability of private, state and federal funding for the project being financed and assist, as requested, in applying for such funding; and
- (g) advise and assist the City regarding appropriate investments for bond proceeds.

3. Detailed Scope of Services—Particular to General Financial Consulting

With respect to any Services which do not lead to the issuance of debt, a detailed statement of work for each Service will be agreed upon in advance in writing between the parties and will be incorporated as an addendum to this agreement once signed by both parties.

4. Term of Financial Consultant Agreement

The City and the Financial Consultant agree that the initial term of this Agreement will be for five (5) years (from the Effective Date of this Agreement unless otherwise terminated as set forth herein.

5. Representations of the City.

The City represents and warrants that, in connection with any issuance of debt or request for the Financial Consultant to proceed with any other services as provided for under the provisions of this Agreement, the City will take the following actions, among other actions as may be appropriate and necessary, to accomplish the authorization, issuance and sale of a particular debt issue, or to facilitate the timely processing and completion of other services requested by the City.

- (a) cooperate with the Financial Consultant in all respects and provide the Financial Consultant with all information and data the City may have in its possession or under its control which is reasonably required by the Financial Consultant and is considered material to the transaction;
- (b) pass all required resolutions and take all other reasonable legislative or administrative actions as necessary or as advised by counsel to authorize, issue and sell any particular debt issue, or to allow for completion of other services, and to assure compliance with all constitutional provisions, laws, ordinances, rules and regulations pertaining thereto;
- (c) furnish the Financial Consultant with certified copies of the minutes of all meetings and other proceedings taken in connection with a particular debt issue or other service related matters, all affidavits of publication relating thereto and all other certificates and documents required to successfully market a debt issue and make delivery thereof, or complete other requested services;
- (d) authorize the preparation and distribution of all documentation related to the particular service, including but not limited to, offering information provided to prospective purchasers of any particular debt issue;
- (e) review and approve all offering information or other documentation related to other financial services prior to its distribution;
- (f) if a credit rating or bond insurance will be applied for on a particular debt issue, the City will contract directly with the rating agency for the rating, or the bond insurer for the insurance, and will make available to the rating agency or bond insurer all information and financial data reasonably requested;
- (g) select and retain other professionals as needed for each issue of debt and as may be needed in connection with the completion of other services under this contract (such as issuer's counsel, bond counsel, engineers, appraisers, feasibility consultants, etc.) and pay the agreed fees and expenses of those contracts; and
- (h) compensate the Financial Consultant for all Services rendered under this Agreement and any amendments hereof in accordance with Paragraph 6 below; and

6. *General Payment of Compensation, Costs and Expenses.*

The City shall compensate the Financial Consultant for the Services rendered under this Agreement as follows:

- (a) for Services rendered in accordance with this Agreement, compensation will be as mutually agreed by the parties at the time the Services are initiated, as documented in a statement of work or other similar document. For Services of the Financial Consultant that do not lead to the actual issuance of debt, compensation will be determined based upon the scope of work performed, as documented in a statement of work or other similar document. Compensation will be mutually agreed upon as the scope of work is defined, and may be in the form of either agency commission or an agreed-to fee for

Services. The compensation arrangement for a particular debt issue will be described in a separate statement of work or other similar document, approved by both parties;

- (b) certain expenses that may be incurred by the Financial Consultant such as mailing or shipping costs of offering information, printing of bond or note instruments, special computer services, advertising, out-of-state travel, closing expenses and actual costs of copying or printing any offering information shall be borne by the City. However, in the event any such expense exceeds the sum of \$500.00, such expense shall be approved by the City before it is incurred;
- (c) with respect to the costs and expenses of a particular transaction that are not specifically mentioned or provided for in this Section 6, the City and the Financial Consultant will agree on and arrange for their payment, as the requirements of the particular transaction or engagement are specified.

7. *Payment Methods.*

- (a) upon the sale and delivery of any debt issue, the Financial Consultant shall submit a bill to the City for the services rendered by the Financial Consultant with respect to such debt and payment of the fee amount shall be due at the time of closing on the debt transaction;
- (b) for the completion of requested Services which do not involve the issuance of debt, any fee amount required to be paid hereunder shall be billed and paid in periodic payments (most often monthly) as set forth in the applicable statement of work

8. *Financial Consultant an Independent Contractor.*

For purposes of this Agreement and the Services to be performed hereunder, the Financial Consultant, its officers, employees and agents shall not be considered to be officers, employees, agents or servants of the City. The Financial Consultant is and shall be considered to be an independent contractor in all respects and as such its personnel will not be supervised by City officers or personnel and the City will not furnish facilities or equipment to the Financial Consultant for its use in the performance hereof.

9. *Conflict of Interest*

The Financial Consultant represents that if a situation occurs whereby an interest of the City is in conflict with the interests of another client of the Financial Consultant, the Financial Consultant shall promptly disclose the conflict to the City.

10. *Additional Services.*

If authorized in advance by the City and in compliance with the terms of this Agreement, the Financial Consultant may furnish services in addition to the basic services described herein. Compensation for those additional services shall be as mutually agreed to by the parties.

11. *No Sales Obligation of the Financial Consultant.*

The City acknowledges that neither the Financial Consultant nor its principals shall be obligated in any way for any part of a distribution, underwriting, placement, issuance or sale of any bonds, notes or other forms of indebtedness relating to this Agreement.

12. *Amendments.*

The parties hereto may request changes in the Services or other provisions of this Agreement at any time, but no change shall be effective until it has been mutually agreed to by the parties in writing or is required to be made pursuant to or because of changes in federal, state or local laws relating to debt issuance by local governments. Except for amendments due to changes in law which shall be deemed to take place immediately as of the effective date of the change in law, all other amendments must be in writing and authorized by both parties, by a duly executed amendment of this Agreement.

13. Termination.

Unless previously terminated according to Section 9 of this Agreement, it is agreed that either party may terminate this Agreement by providing the other party at least six (6) months written notice of termination. Any such termination shall be accomplished by one party giving the other party written notice thereof, at least thirty (30) calendar days in advance of the desired termination date. Neither party shall have any liability to the other for damages or other losses because of a termination of this Agreement unless that termination is wrongful and not done in good faith; provided, however, if a termination should occur, the City agrees to pay the Financial Consultant all amounts due for Services actually performed through and including the termination date and the Financial Consultant shall deliver to the City all data, reports and information that would be due on the termination date.

14. Miscellaneous.

- (a) *Governing Law.* This Agreement shall be governed in all respects by the laws of the State of Utah, without regard to the conflict of laws rules thereof.
- (b) *Successors and Assigns.* This Agreement may not be assigned by either party without the written consent of both the City and the Financial Consultant; provided, however, the Financial Consultant has the right to assign this Agreement as part of a merger, consolidation, or other type of acquisition, as long as the assignee agrees to assume all of Financial Consultant's obligations hereunder.
- (c) *Entire Agreement.* This Agreement is the full and entire understanding and agreement of the parties with regard to the subjects discussed herein.
- (d) *Notices.* All notices and other communications required or permitted under this Agreement shall be in writing and may be sent by personal delivery, telecopy, overnight delivery service or U.S. Mail, in which event it may be mailed by first-class, certified or registered, postage prepaid. All such notices and communications shall be addressed to the Financial Consultant at the following address at such other address that the Financial Consultant shall have furnished to the City in writing.

Managing Partner
Lewis Young Robertson & Burningham, Inc.
41 North Rio Grande Street, Suite 101
Salt Lake City, UT 84101

Notices to be mailed to the City shall be sent to:

City Manager
City of Draper
1020 E. Pioneer Road
Draper, UT 84020

- (e) *Severability.* If any provision of this Agreement shall be determined, by a court of competent jurisdiction, to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (f) *Titles and Subtitles.* The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
- (g) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (h) *Further Assurances.* Each party to this Agreement shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as the other party hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized this ___ day of _____, 2014.

[SEAL]

By: _____

City Manager

Attest:

By: _____

City Recorder

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.

By: _____

Officer

Attest:

By: _____

Title: _____

Attachment A

Pursuant to Paragraph 6 of the preceding Agreement, the cost of each service requested by the City will be negotiated on a case-by-case basis once the full detailed scope of services is described and requested by the City.

The following schedule provides a general range of fees for services for the benefit of the City.

- I. Financial Services related to the structuring and issuance of debt.
 - A. The minimum fee for any transaction will be \$8,000 per transaction for very small transactions with a cap of no more than \$52,500 per transaction for any large transaction.
 - B. \$2.75 for every \$1,000 issued
- II. Other Consulting Services:
 - A. For services other than debt related transactions we will quote the City a “not to exceed” fee when we have a reasonable understanding of the detailed scope of work that will be required by the City which when signed by both parties will become an addendum to this contract.

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CONSENT

ITEM #D

REQUEST FOR COUNCIL ACTION

To:	Mayor & City Council
From:	Troy Wolverton, City Engineer
Date:	March 18, 2014
Subject:	Resolution 14-19 – A Resolution Approving the Adoption of Interlocal Agreement between Draper City and Salt Lake County for the Realignment of a Portion of the Jordan River Trail Passing Under State Route SR-71 at Approximately 12400 South
Applicant Presentation:	N/A
Staff Presentation:	N/A
RECOMMENDATION: Approve Resolution 14-19 – A Resolution Approving the Adoption of Interlocal Agreement between Draper City and Salt Lake County for the Realignment of a Portion of the Jordan River Trail Passing Under State Route SR-71 at Approximately 12400 South	
BACKGROUND AND FINDINGS: Salt Lake County is prepared to realign the existing Jordan River Trail crossing under the bridge spanning the Jordan River near Rotary Park. High flows in the river during spring runoff floods the trail rendering it non-passable. Salt Lake County proposes to construct improvements that will separate high river flows in the Jordan River and the Jordan River Trail. In conjunction with this work, Salt Lake County will install a sump drain and pump which will lift runoff from the trail and discharge flows to the Jordan River. Draper City maintains a metered electrical source at the Rotary Park Restroom Facility. Salt Lake County desires to connect the proposed pump to the electrical source and meter at the Rotary Park Restroom as the trail runoff under the bridge will no longer flow to the river. The additional electrical expense is expected to be minimal and would be paid by Draper City under this proposal. Use of the overflow parking area at Rotary Park for a construction staging area, access to the site through Rotary Park and trenching of power conduits to the sump pump in Rotary Park are also requested and provided for in the Interlocal agreement.	
FISCAL IMPACT: Finance Review: <u> <i>Bob</i> </u> <ul style="list-style-type: none">Assuming the pump motor ran for 24 hours a day, the estimated electrical cost is \$1.63 per day. A 60 watt light bulb left on for 24 hours is estimated to cost \$0.12 per day for comparison. The proposed pump is not expected to run 24 hours per day.Funding source currently established to pay for electrical at the Rotary Park Restroom would be used to pay the additional electrical expense.	
SUPPORTING DOCUMENTS: <ul style="list-style-type: none">Resolution 14-19Interlocal Agreement	

RESOLUTION NO. 14-19

A RESOLUTION APPROVING THE ADOPTION OF INTERLOCAL AGREEMENT BETWEEN DRAPER CITY AND SALT LAKE COUNTY FOR THE REALIGNMENT OF A PORTION OF THE JORDAN RIVER TRAIL PASSING UNDER STATE ROUTE SR-71 AT APPROXIMATELY 12400 SOUTH.

WHEREAS, the Jordan River Trail is an existing trail system for which Draper City and Salt Lake County have entered into an Interlocal Agreement concerning the development, construction, maintenance, and management of the portions of the trail within Draper City; and

WHEREAS, a section of trail passing under the bridge crossing of State Route SR-71 at 12400 South is often closed due to high Jordan River flows flooding the trail during spring runoff rendering the trail unusable, impassible and unsafe during such conditions; and

WHEREAS, Salt Lake County proposes to construct improvements between the Jordan River and the trail to prevent river flows from submerging the trail thereby enabling safe passage and the trail to remain open during such conditions; and

WHEREAS, Salt Lake County desires to connect a sump pump to the existing metered electrical service maintained by Draper City at the Rotary Park Restroom Facility and have Draper City paying the cost of the additional electricity needed to energize the sump pump;

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

Section 1. Interlocal Cooperation Agreement Approved. The Draper City Council hereby approves that certain Interlocal Cooperation Agreement between Draper City and Salt Lake County, which Agreement is attached hereto as Exhibit "AA" and incorporated herein by reference. The Mayor of Draper City is hereby authorized to sign the agreement on behalf of the City.

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS ____ DAY OF _____, 2014.

ATTEST:

DRAPER CITY

CITY RECORDER

TROY K. WALKER

EXHIBIT "AA"

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

SALT LAKE COUNTY

And

THE CITY OF DRAPER

This INTERLOCAL COOPERATIVE AGREEMENT ("Agreement") is made and entered into this day of _____ 2014, by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("County"), and CITY OF DRAPER ("City"), a municipal corporation of the State of Utah ("City"). The County and City are sometimes referred to as the "Parties."

RECITALS

WHEREAS, County and City entered into an Interlocal Agreement on September 6, 2006, concerning the development, construction, maintenance, and management of the sections of the Jordan River Trail that pass within the boundaries of City; and

WHEREAS, County, for Salt Lake County Parks and Recreation and the City desire to enter into an Interlocal Cooperation Agreement providing for the County and/or its authorized contractor to carry out the realignment of the Jordan River Trail along 12400 South; and

WHEREAS, as part of the realignment, County shall install and assume responsibility for continuing maintenance of a water sump pump and related electrical systems as part of the realignment of the Jordan River Trail along 12400 South; and

WHEREAS, City is willing to grant continuing access to property along the Jordan River to facilitate such improvements under certain terms and conditions; and

WHEREAS, City is willing to assume responsibility to pay the cost of electricity needed to operate the water sump pump to be installed by County; and

WHEREAS, County and City are governmental entities and authorized pursuant to the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-101, *et seq.* to enter into agreements for the joint cooperation of the parties for the benefit of their residents;

NOW, THEREFORE, the Parties, in consideration of the promises and covenants contained in this Agreement, the receipt of which is acknowledged, covenant and agree as follows:

AGREEMENT

1. County's Responsibilities. The County will cause to be met the following:

a. County will be responsible for all costs related to the realignment of the portion of the Jordan River Trail, and the installation of the sump pump and associated electrical system as shown in Exhibit A. as described in Exhibit A, attached hereto and incorporated by reference.

b. County will be responsible for any upgrade of the existing system that might be necessary to accommodate the added power demand.

c. County will be responsible for the care and maintenance of the new construction.

d. County's contractor will restore the site and irrigation system to a condition equal to its original condition.

2. City's Responsibilities. The City will cause to be met the following:

a. Draper City shall allow access, at any time, to construct, maintain, repair or replace the new electrical system as shown in Exhibit A. Access shall include the use of a staging area, defined by Exhibit B, attached hereto and incorporated by reference.

b. Draper City shall pay for all power incidental to operating the water sump pump.

3. Said improvements shall be constructed in a commercially workman like manner. The construction site and the area used for ingress and egress shall be returned to a condition similar to that which existed prior to construction.

4. County shall require its contractor to name City as an "additional insured" on all insurance policies issued or procured for this project.

5. Duration and Termination. This Agreement shall take effect upon execution of this Agreement and shall continue in effect until the September 6, 2006 Interlocal Agreement between City and County concerning the Jordan River Trail shall expire. This Agreement may be terminated at any time by the Parties by executing a writing as provided in paragraph 9b, below.

6. Separate Legal Entity. This Agreement does not create a separate legal entity.

7. Liability and Indemnification. Both parties are governmental entities under the Utah Governmental Immunity Act, Title 63, Chapter 30, Utah Code Ann., 1953, as amended. Consistent with the terms of this Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.

8. Notice. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two (2) days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the Parties as set forth below:

County: Salt Lake County Mayor
2001 South State Street, N2100
PO Box 144575
Salt Lake City, UT 84114-4575

City: Draper City Manager
1020 East Pioneer Road
Draper UT 84020

9. Miscellaneous Provisions. It is mutually agreed and understood by and between said Parties that:

(a) Agents, employees, or representatives of each party shall not be deemed to be the agents, employees or representatives of the other;

(b) This Agreement contains the entire agreement between the parties, with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified, or altered except in writing, and signed by the parties.

(c) No real or personal property will be acquired, held, or disposed of in this cooperative undertaking.

(d) The County designates Wayne Johnson, Associate Director of Park Operations, as representative to assist in the management of this Agreement. The City designates Glade Robbins, Draper City Public Works Director, as representative to assist in the management of this Agreement. The representatives shall have no control over the means, methods, techniques or procedures employed in the services of this Agreement.

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IN WITNESS WHEREOF, the patties have subscribed their names the day and year first above written.

SALT LAKE COUNTY

DRAPER CITY

By: _____

By: _____

Mayor Ben McAdams or Designee

Mayor Troy K. Walker or designee

Date: _____

Date: _____

Approved as to Form and Legality:

By: _____

Deputy District Attorney

Date: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-9

By: _____

Draper City Attorney

Date: _____

Return to Agenda

CONSENT
ITEM #E



Ben McAdams
Salt Lake County Mayor

Erin Litvack
Community Services
Department Director

**PARKS & RECREATION
DIVISION**

Michele Nekota
Division Director

February 28, 2014

Troy Wolverton, City Engineer
Draper City
1020 East Pioneer Road
Draper, Utah 84020

Re: Request to waive the Land Disturbance Permit, Fees and Requirements for the Jordan River Trail Realignment at 124th South

Dear Mr. Wolverton,

The Parks & Recreation Division is ready to realign the Jordan River Trail as it passes under 123rd/126th South Street on the east side of the Jordan River, as well as constructing a wall to protect the trail from being flooded. The work is being done to improve the use and safety of the Jordan River Trail.

Construction will include a small sump pump to remove incidental water from the low point of the trail and return it to the River. The County is requesting an electrical connection to the Rotary Park restroom, that the City pay the minimal cost of power for the pump, and that the Contractor be able to use the Rotary Park overflow parking area as secondary staging for their electrical work.

The County is preparing an Interlocal Agreement for approval by the City Council and the Mayor to address the electrical connection and related issues.

The County is also requesting that the City Council accept the Performance Bond between CraCar Construction and the County to satisfy the requirements of Section 18-4 (Bonding to insure completion of land disturbance activities). The County assures that it would exercise its rights under the bond to repair or correct any defective work as necessary to meet City standards.

The proposed work will not be impacting any significant vegetation or top organic layers of soil at the site. Based on this, Salt Lake County respectfully requests that the Land Disturbance Permit and related fees for this project be waived.

Thank you for your consideration.

Respectfully,

Emery Crook, Associate Director
Park Planning and Development

RESOLUTION NO. 14-23

A RESOLUTION ACCEPTING SALT LAKE COUNTY PERFORMANCE BOND AS SECURITY FOR LAND DISTURBANCE PERMIT ISSUANCE FOR THE JORDAN RIVER TRAIL REALIGNMENT UNDER 12400 SOUTH (SR-71).

WHEREAS, the Jordan River Trail is an existing trail system for which Draper City and Salt Lake County have entered into an Interlocal Agreement concerning the development, construction, maintenance, and management of the portions of the trail within Draper City; and

WHEREAS, Salt Lake County desires to obtain a Land Disturbance Permit from Draper City granting authorization to construct the Jordan River Trail Realignment Under 12400 South; and

WHEREAS, Salt Lake County is a governmental agency and as such is requesting the Draper City Council waive the requirement for payment of permit (\$50) and inspection (\$100) fees as required by the Draper City Municipal Code and Consolidated Fee Schedule; and

WHEREAS, Salt Lake County is requesting the Draper City Council accept their 100% construction performance bond between Salt Lake County and CraCar Construction as sufficient security to satisfy the provisions of Draper City Municipal Code Section 18-4-010(c)(3) which requires security in the amount of 110% of the engineer's estimate of probable cost of the project; and

WHEREAS, Salt Lake County has committed to exercise its right under the performance bond to repair or correct any defective work as necessary to meet City standards.

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

Section 1. Payment of Land Disturbance Permit and Inspection Fees Waived.

The Draper City Council hereby approves that certain Land Disturbance Permit and Inspection Fees shall not be assessed or required of Salt Lake County for the Jordan River Trail Realignment Under 12400 South Project. The City Engineer is hereby authorized to waive the permit and inspection fee requirement.

Section 2. 100% Construction Performance Bond Satisfies Security Provisions.

The Draper City Council hereby authorizes the acceptance of the 100% construction performance bond between Salt Lake County and CraCar Construction as security to insure the satisfactory restoration and revegetation of the Jordan River Trail Realignment Under 12400 South. The City Engineer is hereby authorized to accept the 100% construction performance bond.

Section 3. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of the Resolution shall be severable.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS ____ DAY OF _____, 2014.

ATTEST:

DRAPER CITY

CITY RECORDER

TROY K. WALKER

Return to Agenda

CONSENT
ITEM #F

ATTACHMENT C:
SCOPE OF WORK

The purpose of this Contract is to provide funding to Draper City (Contractor) to hire the Communities That Care (CTC) Coordinator. The CTC Coordinator shall be a Draper City employee and serve on the Draper City's Prevention Coalition. The \$10,000 State funding and \$10,000 County funding is to be matched by both dollars and in-kind match using city revenue sources. The purpose of the contract is for Draper City to administer the Communities That Care system within Draper City and to work with Salt Lake County Division of Behavioral Health Services to ensure CTC is being implemented as it is designed. These funds are primarily to be used for the CTC Coordinator position, but Draper City may use a portion of these funds, with permission from the Salt Lake County and the DHS/DSAMH program manager, to fund additional prevention activities as described in the CTC Model as found at www.communitiesthatcare.net.

1. Draper City shall:

- a. Establish the Substance Abuse and Mental Health Services Administration's (SAMHSA) Communities That Care system by:
 - (1) CTC Coalition members attend CTC training provided by the State and County, starting within one month of coordinator hire date and proceeding as outlined in the CTC planning model. Training reports shall be made available to Salt Lake County staff upon request and shall be included in semi-annual reports.
 - (2) The Draper City CTC Coalition shall allow Salt Lake County to monitor the CTC coordinator's performance to ensure fidelity to the CTC program guidelines. Annual checklists as outlined in CTC shall be kept on file by the Coalition and provided to Salt Lake County as requested.
 - (3) The Draper City CTC Coalition shall provide semi-annual progress reports as outlined in the CTC system, due December 31 and June 30 of each year to the Salt Lake County Prevention Coordinator that include progress reports on the phases of CTC implementation.
- b. Draper City shall hire a CTC Coordinator and ensure the following requirements are met:
 - (1) Ensure the CTC Coordinator is hired within the fiscal year of the contract period. The Salt Lake County Prevention Coordinator shall be notified when the Coordinator is hired.
 - (2) The CTC Coordinator shall be certified in the Western Regional Expert Team's (formerly Western Center for Applied Prevention Technology) Substance Abuse Prevention Specialist Training and CTC within 4 months of Coordinator hire start date. Contractor shall mail or fax a copy of the completion certificates to the Salt Lake County Prevention Coordinator program manager within one month of the completion date.

2. Reimbursement:

- a. The Draper City CTC Coalition shall submit monthly invoices to the Salt Lake County Prevention Coordinator for services in accordance with the terms and conditions in Attachments A and B of this Contract. The invoices shall include:
 - (1) A detailed description of the service required of the Draper City CTC Coalition within the scope of work of this contract that was rendered by the Draper City CTC Coalition;
 - (2) The invoice will show each service billed 1/3 to the State, 1/3 to the County and 1/3 to the City.

- (3) Date(s) services rendered;
- (4) Draper City's contract number;
- (5) Draper City's contractor's name;
- (6) Draper City's contractor's address for payment;
- (7) Draper City's contractor's phone number;
- (8) Draper City's contractor's signature; and
- (9) Expenses incurred by the Draper City CTC Coalition as indicated by the line items in the attached Cost Sheet/Budget.

Invoices submitted by Draper City to the Salt Lake County Prevention Coordinator without the required information will not be paid and shall be returned to Draper City for completion.

ATTACHMENT D: COST SHEET

Salt Lake County Communities That Care BCM Log#: 29175 April 1, 2014 - March 31, 2014

Category	Total Cost	Amount from State	Amount from City	Amount from County
Salary and Benefits	\$24,000	\$8,000	\$8,000	\$8,000
Equipment, program supplies and other costs	\$3,000	\$1,000	\$1,000	\$1,000
Travel and Training expenses	\$3,000	\$1,000	\$1,000	\$1,000
TOTAL	\$30,000	\$10,000	\$10,000	\$10,000

Agreement No. AL13516C

AN INTERLOCAL AGREEMENT BETWEEN SALT LAKE COUNTY AND DRAPER CITY FOR COMMUNITIES THAT CARE

THIS AGREEMENT made and entered into this ____ day of _____, 2014, by and between Draper City, as a body politic of the State of Utah, hereinafter referred to as “Draper”, and Salt Lake County, as a body politic of the State of Utah, through the County’s Division of Behavioral Health Services, hereinafter referred to as “County”.

WHEREAS, Utah Code Ann. §11-13-202 provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions; and

WHEREAS, the COUNTY and Draper City are “public agencies” as contemplated in Utah Code Ann. § 11-13-101, *et seq.* - Interlocal Cooperation Act; and

WHEREAS, the COUNTY and Draper City are desirous to hire a “Communities That Care (CTC)” Coordinator that will assist municipalities within the Contractor’s Local Authority District in establishing their own CTC coalitions; and

WHEREAS, it is beneficial for the COUNTY, the CITY and their respective citizens that the Parties cooperate in accomplishing the foregoing;

NOW, THEREFORE, in consideration of the mutual promises contained within this Agreement, the Parties hereby agree as follows:

I. Interlocal Contract Period

This Agreement is effective April 1, 2014 through March 31, 2015. This Agreement may be renewed for two (2) additional one (1) year periods, beginning and ending on the anniversary date, unless terminated earlier under other provisions of the Agreement.

II. Interlocal Cooperation Act Requirements

In satisfaction of the requirements of the Interlocal Cooperation Act (the “ICA”), Utah Code Ann. §11-13-202, *et seq.*, and in connection with this Agreement, the parties agree as follows:

- a. This Agreement shall be approved by each party’s legislative body pursuant to § 11-13-202.5 of the ICA
- b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to §11-13-202.5 of the ICA;

- c. A duly executed original counterpart of this Agreement shall be filed with keeper of records of each party, pursuant to §11-13-209 of the ICA;
- d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs;
- e. No separate legal entity is created by the terms of this Agreement; and
- f. The Mayor of Salt Lake County and Draper City, or their designees, are designated as the joint administrators of this Agreement for all purposes of the ICA, pursuant to §11-13-207(1) of the ICA.
- g. COUNTY shall own all equipment, records and other things used to provide services under this Agreement. Upon termination, all such equipment, records, and other things shall remain the property of COUNTY.

II. POINT OF CONTACT

DRAPER

Agency: Draper City
 Address: 1020 East Pioneer Road
 Draper, Utah 84020
 Contact Person: To be Determined
 Phone: (801) 576-6540

COUNTY

Agency: Salt Lake County Division of Behavioral Health Services
 Address: 2001 South State Street, S2300
 Salt Lake City, UT 84114-4575
 Contact Person(s): Kitt Curtis, Project Coordinator
 Marjeen Nation, Accountant
 Phone: (385) 468-4723
 FAX: (385) 468-4740

WHEREFORE, the parties hereto have signed this Agreement the day and year first above written.

SALT LAKE COUNTY:

Ben McAdams, Mayor or Designee

DRAPER CITY:

Troy Walker, Mayor or Designee

ATTEST:

Draper City, City Recorder

BEHAVIORAL HEALTH SERVICES:

Pat Fleming, Director or Designee

[Return to Agenda](#)

CONSENT

ITEM #G

AMENDED DRAPER CITY PROPERTY LEASE AGREEMENT # 13-97

THIS AGREEMENT is made and entered into as of February 1, 2014 ("Effective Date"), by and between CITY OF DRAPER, a municipal corporation of the state of Utah ("City") with offices located at 1020 East Pioneer Road, Draper, Utah, 84020 and ~~Wads IV~~ CRTC LLC, a Limited Liability Corporation authorized to and doing business in the state of Utah, of ~~166 E. 14000 South, Suite 200~~ 2151 E Iron Horse Place, Draper, Utah 84020 ("Lessee").

WITNESSETH

WHEREAS, City owns the building located at 14886 South Traverse Ridge and,

WHEREAS, Lessee desires to enter into an agreement for the lease of space located at 14886 South Traverse Ridge for the purpose of operating a Retail and Restaurant business.

NOW, THEREFORE, in consideration of the foregoing recitals and the following mutual promises and considerations, the parties hereby agree as follows:

ARTICLE 1: LEASED PREMISES

City hereby leases to Lessee and Lessee hereby lets from City, the building and grounds constituting approximately 4,000 square feet and including eight (8) adjacent parking spaces ("Leased Premises"), as shown on Exhibit A, attached hereto and hereby incorporated by reference.

ARTICLE 2: TERM

The initial term of this Agreement shall be for four (4) years, commencing upon the Effective Date and continuing through January 31, 2018. Upon mutual agreement the term may be renewed for Two (2) additional one (1) year terms under the same rent and other terms and conditions unless otherwise negotiated. Further extension may be negotiated if it is in the best interest of the City to do so.

ARTICLE 3: RENT AND FEES

A. Beginning February 1, 2014 and continuing through January 31, 2018, Lessee shall make payments to City as follows:

<u>Contract Year</u>	<u>Annual Rent ("Rent")</u>
February 1, 2014 through January 31, 2015	\$ 1,800
February 1, 2015 through January 31, 2016	\$ 1,800
February 1, 2016 through January 31, 2017	\$ 1,800
February 1, 2017 through January 31, 2018	\$ 1,800

B. Payment. Rent under this Agreement shall be due and payable as follows:

1. Yearly in Advance. Rent for Leased Premises as provided in Article 3.A above and any other charge not otherwise addressed in this Article 3 shall be due and payable on a yearly basis, in advance and without notice or demand therefore. Rent for the first year of the term shall be paid at the time of execution of this

Lease. Rent for each subsequent year shall be paid on the first (1st) day of each February during the term of this Agreement. Should Lessee vacate the Leased Premises at any time, no proration of the annual rent already paid shall be made.

2. **Late Fees and Interest.** Without waiving any other right of action available to City, in the event of any monetary default hereunder, if Lessee fails to pay when due any amount required to be paid by Lessee under this Agreement, Lessee shall pay a sum equal to five percent (5%) per month of such unpaid amount as a service fee. In addition, if Lessee fails to pay within ten (10) days of the date due any amount required to be paid by Lessee under this Agreement, such unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date of such amount to the date of payment in full, with interest.
3. **No Set-offs or Deductions.** All Rent shall be paid without abatement, deduction, offset, or prior notice or demand, unless specifically provided otherwise by the terms of the Agreement.
4. **Accord and Satisfaction.** No payment by Lessee or receipt by City of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent due, and no endorsement or statement on any check or in any letter or other transmittal shall be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of any Rent, or to City's right to pursue any other remedy provided in this Agreement or by law.
5. **Payment Address.** Lessee shall make all payments and provide all financial information to City's Finance Department at the following address:

City of Draper
Attn: Finance Department- Accounts Receivable
1020 East Pioneer Road, Draper UT 84020

ARTICLE 4: SECURITY DEPOSIT

Upon execution of this Agreement, Lessee shall provide City a security deposit in the amount of Three Thousand Dollars (\$3,000). The parties agree that this security deposit shall be held by City throughout the term of this Agreement as security for Lessee's full performance of all its obligations to City, and that City may apply such security deposit in City's sole discretion to any sum that Lessee owes to City under this agreement, including without limitation late rent, property damage, interest and fees, or other monetary obligations of any kind under this Agreement. Upon termination of this Agreement for any reason, City shall refund the available remaining portion, if any, to Lessee within sixty (60) days of City's determination that all amounts due to City have been paid. Lessee shall have no entitlement to any deposit funds until such time.

ARTICLE 5: INDEMNITY

- A. Lessee agrees to indemnify, save harmless and defend City, its officers and employees, from and against all losses, claims, demands, actions, damages, costs, charges, and

causes of action of every kind or character, including without limitation attorneys' fees to the extent they are caused by Lessee's wrongful, reckless, or negligent performance hereunder. Lessee's duty to defend City shall exist regardless of whether City or Lessee may ultimately be found to be liable for anyone's negligence or other conduct. If City's tender of defense, based upon this indemnity provision, is rejected by Lessee, and Lessee is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Lessee shall pay City's reasonable costs, expenses, and attorneys' fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require Lessee to indemnify City against City's negligence or wrongdoing.

- B. Without limitation, the terms of this indemnity include an agreement by Lessee to indemnify, defend and hold harmless City from and against any and all expense, loss, claim, damage, or liability suffered by City by reason of Lessee's breach of any environmental requirement existing under federal, state or local law, regulation or policy in connection with any of Lessee's acts, omissions, operations or uses of property relating to this Agreement, or such a breach by the act or omission of any of Lessee's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs, diminution in the value of City property, and reasonable legal fees and costs incurred by City in connection with enforcement of this provision. The provisions of this paragraph shall survive the termination of Lessee's tenancy and of this Agreement. Nothing herein shall be construed to require the indemnitor to indemnify the indemnitee against the indemnitee's negligence or wrongdoing.

ARTICLE 6: USES AND PRIVILEGES

- A. Lessee shall have the nonexclusive right and privilege in connection with Lessee's use of Leased Premises to coordinate and engage in retail and restaurant activities, including without limitation the right to obtain and operate under a Full-Service Restaurant Liquor License and Dining Club License granted by the Utah Department of Alcoholic Beverage Control.
- B. Rights of Access. Lessee shall have the right of ingress and egress from Leased Premises over and across City owned roadways serving for its employees, representatives, agents, patrons, guests, and suppliers, subject to such laws, ordinances, rules and regulations as now or may hereafter have. City hereby retains the right of ingress and egress over, through, and across Leased Premises at any time.
- C. Signage. Lessee shall not, without the prior written approval of City (which shall not be unreasonably withheld, conditioned or delayed) and the SunCrest Owners' Association, erect, maintain, or display any signs on Leased Premises. The term "signs," as used herein, shall mean advertising signs, billboards, identification signs, or symbols, posters, or any similar devices.
1. Subject to the foregoing, Lessee shall have the right to install identification signs as may be necessary for the proper conduct of Lessee's services as contemplated hereunder. All such signs shall be consistent with any overall signing codes established or to be established by City.

2. Prior to the erection, construction or placing of any sign on upon Leased Premises, Lessee shall submit for City's approval drawings, sketches, designs, and dimensions of such signs. Approval shall not be unreasonably withheld, conditioned or delayed. Any conditions, restrictions, or limitations with respect to the use thereof as imposed by City in writing shall become conditions of this Agreement.
- D. Required Business Services. Lessee shall obtain any and all required business licenses to operate and provide the basic retail and restaurant services.
 - E. Prohibited Services. Lessee shall have no right to perform any services not listed in this Article 6 hereof unless prior written approval by the City is granted and terms of this agreement are amended to reflect said change. City's approval of such services shall not be unreasonably withheld, conditioned or delayed. Nothing in this Agreement shall be deemed to permit Lessee to engage commercially in any other business or other phase of business, except that for which approval is specifically granted herein (i.e., retail and restaurant businesses).

ARTICLE 7: UTILITIES

Lessee shall be reasonable for all utility services required by Lessee during the term of this Agreement for Leased Premises or facilities located thereon.

ARTICLE 8: MAINTENANCE AND REPAIRS

- A. City shall maintain the structural components and roof of the Leased Premises. Painting, staining or other maintenance of exterior walls shall be performed by the City. Except as otherwise stated above, Lessee shall maintain the entire Leased Premises and every improvement thereon in good and neat appearance, repair and safe condition during the entire term hereof. All such maintenance, repairs and replacements shall be of quality equal to the original in materials and workmanship. Lessee shall be responsible for all janitorial services required to maintain Leased Premises in good and neat appearance. Lessee shall also be responsible for all snow removal from all sidewalks and parking lots serving the Leased Premises.
- B. Lessee shall provide, at its sole expense, suitable covered metal dumpster style receptacles or City-approved receptacles for all such garbage, trash, and other refuse. Lessee shall keep Leased Premises, at all times, free and clear of wastepaper, trash, rubbish, debris, discarded plastic, graffiti, discarded pallets, or anything unsightly or detrimental to health or likely to create a fire hazard or conducive to deterioration to remain on any part of Leased Premises.
- C. City warrants the HVAC, Refrigerators and Freezers for a term of one year from the execution of this agreement. Lessee shall be responsible for the maintenance and repair of the HVAC, Refrigerators and Freezers. All such maintenance, repairs and replacements shall be of quality equal to the original in materials and workmanship.

ARTICLE 9: CONSTRUCTION OR IMPROVEMENTS

- A. Lessee shall obtain the prior written approval of City and the SunCrest Architectural Committee before making or causing to be made any exterior alterations, changes in,

and additions to Leased Premises. City's approval of other alterations, changes or additions shall not be unreasonably withheld, conditioned or delayed. Any said construction, change in, and/or additions to Leased Premises shall be at the sole cost of Lessee.

- B. All alterations, changes, or additions to Leased Premises shall become, immediately upon completion, the property of City and shall remain upon and be surrendered with Leased Premises at the expiration or termination of this Agreement, as herein provided. This shall not apply, however, to Lessee's trade fixtures, as called out in article 17, which may be removed by Lessee at the expiration or termination of this Agreement.
- C. All such alterations, changes, or additions may be inspected by City at all reasonable times.
- D. Subject to the waiver and reimbursement provisions of clause A above, prior to making any alterations, changes in, and/or additions to Leased Premises, Lessee shall obtain all required and necessary building permits from the City at Lessee's sole cost and expense.

ARTICLE 10: REMOVAL AND DEMOLITION

Lessee shall not remove or demolish, in whole or in part, any improvements upon Leased Premises (other than Lessee's trade fixtures) without the prior written consent of City which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by a reasonable improvement specified in such consent.

ARTICLE 11: TAXES AND LICENSES

Lessee agrees to pay, on or before the last day on which payment therefore may be made without penalty, all nondiscriminatory taxes, including without limitation privilege taxes, assessments, or charges which, during the term hereof, may become a lien or be levied by the State, County, City, or other tax-levying body on all personal property of Lessee, upon all improvements made to Leased Premises by Lessee in connection with issues and occupancy thereof, and upon the possessory interest, if any, of Lessee in Leased Premises, which shall specifically include, but not by way of limitation, any taxes levied under UTAH CODE ANN. § 59-4-101, *et seq.*, (1953), as amended, or its successor, if applicable.

ARTICLE 12: RULES AND REGULATIONS

In conducting its operations hereunder, Lessee shall comply with all applicable federal, state, county, and city laws, rules and regulations in its use of Leased Premises.

ARTICLE 13: INSURANCE

- A. Lessee, at its own cost and expense, shall secure and maintain the following policies of insurance:
 - 1. Commercial general liability insurance. Lessee shall provide commercial general liability insurance coverage for injury to property and person to protect City herein from such claims and actions. Said insurance shall have limits of not less than \$2 million per occurrence limit of liability. The commercial general liability policy

or policies shall provide coverage for premises operations, acts of independent contractors and completed operations. The City shall be named as an additional insured on the policy.

2. Workers Compensation. Lessee shall furnish to City adequate evidence of compliance with Workers Compensation, Social Security, and Unemployment Compensation, provisions to the extent such are applicable to Lessee's operations hereunder.
 3. Renter's Insurance. Lessee shall provide it's own renter's insurance, if desired by Lessee, to protect Lessee's personal property.
- B. All policies of insurance and bonds provided herein shall be issued by insurance companies listed on the current Department of the Treasury Fiscal Services List 570 or having a general policy holders rating of not less than "A-" in the most current available "Best's Insurance Reports," and be qualified to do business in the state of Utah.
 - C. Certificates evidencing the required Commercial General Liability, Business Auto Coverage and Workers Compensation Insurance coverage shall be filed with City upon execution of this Agreement, and a certificate evidencing the required Special Form Coverage Insurance shall be provided to City upon request. Such certificates shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with City. If such insurance coverage is canceled or reduced, Lessee shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies qualifying under subparagraph B hereof.
 - D. City reserves the right to increase insurance limits and coverage hereunder consistent with industry standards, statute or judicial decision; provided, however, that any such increase shall be consistent with other similarly situated tenants. Lessee shall cause its insurance coverage(s) hereunder to be increased to any such new limit.
 - E. In the event that Lessee shall at any time fail to furnish City the certificate or certificates required, City, upon written notice to Lessee of its intention to do so, shall have the right to secure the required insurance, at the cost and expense of Lessee, and Lessee agrees to reimburse City promptly for the cost thereof and ten percent (10%) for cost of administration.
 - F. All insurance policies, with the exception of Workers Compensation, shall name and certificates shall show City as an additional insured.

ARTICLE 14: DAMAGE OR DESTRUCTION OF LEASED PREMISES

- A. City shall keep the Building and any other insurable improvements on the Leased Premises insured against loss by fire and all of the risks and perils insured against in a "special form" commercial property insurance policy. The coverage limits shall not be less than a reasonable estimate of the cost of replacing said Building and improvements.

The "cost of replacing the Building" means the cost of replacing damage to the Building with new materials of like and quality except for foundation, footings, and other building elements customarily excluded from the applicable coverage. City may, in its discretion, choose to self-insure the Building, but in any event City hereby waives subrogation against Lessee and releases and waives its entire claim of recovery for loss, damage, injury, and all liability of every kind and nature which may arise out of, or incident to, fire and/or any other extended coverage perils, in, on, or about the building Leased Premises. B. If the Leased Premises are completely destroyed by means other than by an act or omission of Lessee, Lessee shall not be required to reconstruct the Leased Premises.

- C. Under no circumstances shall City be liable for damage to or loss or destruction of Lessee's personal property.

ARTICLE 15: TERMINATION AND DEFAULT

- A. This Agreement shall expire at the end of the full term hereof, unless sooner terminated as provided hereinafter.
- B. This Agreement shall be subject to cancellation by Lessee after the happening of one or more of the following events:
 - 1. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or any substantial part or parts thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) days from operating thereon.
 - 2. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.
 - 3. Any other activity beyond the reasonable control of Lessee which substantially restricts Lessee's use of Leased Premises for a period of ninety (90) days.
- C. Lessee may exercise the above right of termination by delivering a written notice of termination to City at the address set forth herein at any time after the lapse of the applicable period of time and this Agreement shall terminate as of that date and time. Delivery may be by hand or by certified mail. Rentals and fees due hereunder shall be payable up to and including the date of said termination.
- D. This Agreement may be terminated by City in the event Lessee shall:
 - 1. be in arrears in the payment to City of the whole or any part of the amounts agreed upon hereunder for a period of twenty (20) days after written notice from City to Lessee;

2. make a voluntary or involuntary assignment of this Agreement contrary to Article 18 hereof;
 3. abandon Leased Premises and fail to pay any amounts required hereunder; or,
 4. except for payment of rents and fees, default in the performance of any of the covenants and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from City of said default. If the nature of the default is such that it cannot be cured within thirty (30) days, City shall not terminate this Agreement if Lessee commences to cure the default within thirty (30) days and thereafter diligently pursues the cure to completion.
- E. In the case of any of the aforesaid events of termination, City may exercise the above right of termination by delivering a written notice of termination to Lessee at the address set forth herein, and this Agreement shall terminate as of that date and time. Delivery may be by hand or by certified mail. Thereafter, City may take immediate possession of Leased Premises and all improvements thereon and remove Lessee's personal property. Any rental due hereunder shall be payable to said date of termination.
- F. It is agreed that failure to declare this Agreement terminated upon the default of Lessee for any reasons set forth above shall not operate to bar or destroy the right of City to declare this Agreement null and void by reason of any subsequent violation of the terms of this Agreement.

ARTICLE 16: ASSIGNMENT AND SUBLEASING

Lessee shall not assign, transfer, pledge, hypothecate, surrender or otherwise encumber or dispose of this Agreement or interest in or any estate created by this Agreement, or any interest in any portion of the same, or permit any other person or entity to use and or occupy Leased Premises without the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed. Any such purported transfer described above is prohibited and of no force or effect unless the parties thereto comply with the provisions of this Article 18.

ARTICLE 17: REMOVAL OF PERSONAL PROPERTY

- A. Title to personal property and trade fixtures shall at all times remain in Lessee, and Lessee shall have the right at any time to remove any or all personal property or trade fixtures of every kind and nature whatsoever which Lessee may have placed or installed upon Leased Premises. Any and all fixtures, tools, devices, appliances, furniture, pictures, furnishings, equipment, and supplies of every kind and nature, heretofore or hereafter placed or installed by Lessee on Leased Premises, as between City and Lessee, shall be and remain the personal property of Lessee, notwithstanding the same are or may be attached or affixed to the floors, ceilings, or any other parts of any buildings or structures on Leased Premises. Lessee shall have said right to remove same provided that, upon any such removal, Lessee shall repair, at its own expense, any damage resulting there from and leave Leased Premises in a clean and neat condition, with all improvements in place.

- B. Lessee shall remove all personal property from Leased Premises prior to termination of this Agreement. City shall be entitled to remove all personal property from Leased Premises if Lessee fails to remove said personal property, and City shall store such property at Lessee's expense, plus twenty percent (20%) of the removal and storage expense cost of administration for thirty (30) days after termination of this Agreement. After such thirty (30)-day period, City may dispose of such property and apply any proceeds to amounts due to City under this Agreement.

ARTICLE 18: INSPECTION OF LEASED PREMISES

City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Lessee's operations as is reasonably practical) to enter upon Leased Premises for the following purposes:

- A. To inspect such Leased Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied and is complying with the terms and conditions of this Agreement with respect to such Leased Premises.
- B. To perform maintenance or make repairs and replacements in any case where Lessee is obligated but has failed to do so after City has given reasonable written notice. If the work prescribed in the notice is not completed by Lessee in a manner reasonably satisfactory to City, and Lessee fails to correct such work within the time specified by City in the mailed notice, City may, at City's sole option, and at Lessee's sole cost and expense, enter upon the demised premises and perform whatever work may, in the opinion of City, be required to correct the maintenance deficiencies. If City exercises this option, Lessee shall pay to City a sum equal to the direct cost of labor and materials expended for said work, plus a surcharge equal to twenty percent (20%) of said direct cost.
- C. To do any and all things which City deems necessary for the proper general conduct, security, and operation of City provided that City agrees not to treat Lessee less favorably than other tenants of City similarly situated.

ARTICLE 19: FORCE MAJEURE

Any prevention, delay, or stoppage of performance of Lessee's or City's obligations hereunder due to acts of God, governmental restrictions, governmental controls, governmental regulations, enemy or hostile government action, civil commotion, fire or other casualty, or any other causes beyond the reasonable control of either shall not be deemed to be a breach of this agreement or a violation of or failure to perform any covenants hereof, and either shall have a reasonable time after cessation of any of such causes within which to render performance delayed thereby.

ARTICLE 20: QUIET ENJOYMENT

City represents that Leased Premises is zoned to permit the uses provided for in this Agreement. City represents that it has a marketable title and unencumbered fee interest to Leased Premises, and that so long as Lessee performs its obligations hereunder and pays rent

as provided herein Lessee shall enjoy quiet possession of the Leased Premises.

ARTICLE 21: REDELIVERY OF LEASED PREMISES

Lessee shall, upon termination of this Agreement quit and deliver up Leased Premises to City peaceably, quietly, and in as good order and condition as the same now are or may hereafter be improved by Lessee or City, ordinary wear and tear excepted. Ordinary wear and tear shall not include deterioration that occurs after delivery of the Leased Premises to Lessee at the commencement of the term of this Agreement and that could have been prevented by proper maintenance practices, or by Lessee performing all of Lessee's obligations under this Agreement.

ARTICLE 22: HOLDING OVER

In the event Lessee remains in possession of Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy at will from month to month, under the terms and conditions herein, which may be terminated at any time by City giving thirty (30) days prior written notice of termination.

ARTICLE 23: NO THIRD PARTY BENEFICIARIES

This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to bona fide successors in interest, any rights to claim damages or to bring any suit, action or other proceeding against either the City or the Lessee because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.

ARTICLE 24: REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES

Lessee represents that it has not: (1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance, Title 19, Draper City Municipal Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in City's conflict of interest ordinance, Title 19, Draper City Municipal Code.

ARTICLE 25: AGREEMENT MADE IN UTAH

This Agreement has been made in, shall be construed in accordance with and enforced under the laws of the state of Utah.

ARTICLE 26: SUCCESSORS

This Agreement shall bind and inure to the benefit of any successor of City and any successor, assignee, or sub-lessee of Lessee.

ARTICLE 27: HEADINGS

The Article headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 28: NON-WAIVER

Any waiver of any breach of covenants herein contained to be kept and performed by either party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or termination for any succeeding breach either of the same condition or covenant or otherwise.

ARTICLE 29: TIME OF ESSENCE

Time is of the essence of this Agreement.

ARTICLE 30: NOTICES

Notices to City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

City of Draper
Attn: David Dobbins, City Manager
1020 E. Pioneer Road, Draper UT, 84020

ARTICLE 31: ENTIRE AGREEMENT AND ALTERATIONS

- A. This Agreement supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures, representations, and information conveyed, whether oral or in writing, between the parties hereto or their respective representatives or any other person purporting to represent City or Lessee. Lessee acknowledges that it has not been induced to enter into this Agreement by any representations not set forth in this Agreement, it has not relied on any such representation or construction of this Agreement, and City shall have no liability for any consequences arising as a result of any such Representations.
- B. No alteration, amendment, change, or addition to this Agreement shall be binding upon City or Lessee unless in writing and signed by both parties.

ARTICLE 32: ADDITIONAL PROVISIONS

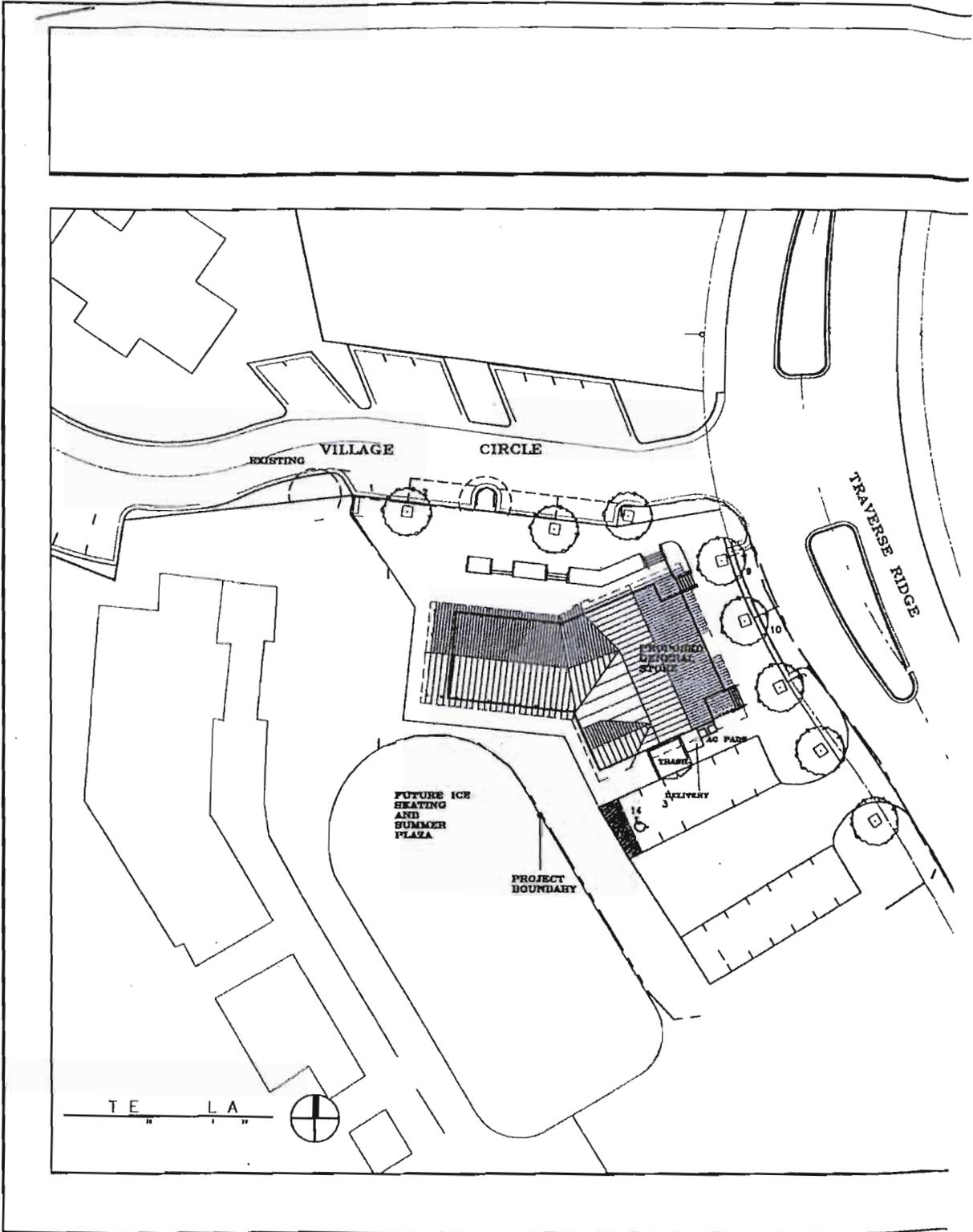
- A. Nothing in this Agreement shall be deemed to require Lessee to operate its business during any particular hours, days, or periods. Nothing in this Agreement shall be deemed to require Lessee to continue to operate in the Leased Premises if Lessee

determines, in its sole discretion, that it is not profitable or desirable to do so, so long as Lessee pays its rent and maintains the Leased Premises as required herein and otherwise performs its obligations hereunder.

- B. In the event that Tenant needs more parking to operate its business in the Leased Premises, Tenant shall have the option to use the unimproved lot owned by the City located to the south of the Leased Premises, for no additional rent. Tenant may, at its option and at its sole expense, improve said lot for parking use, including without limitation installing asphalt paving, striping, and lighting.
- C. During the term or extended term of this Agreement, Lessee shall have a right of first refusal to buy the Leased Premises, as follows: City agrees, for itself and its successors and assigns ("successors"), not to sell, lease, or transfer ("transfer") the Leased Premises or any portion thereof to any person or entity during the term or extended term hereof without first giving written notice (the "Notice of Sale") to Lessee. The Notice of Sale shall include the complete terms of the proposed transfer, shall identify the proposed purchaser, lessee or transferee, and shall have attached thereto a photocopy of the bona fide offer and counteroffer, if any, duly executed by both City (or successor) and the prospective purchaser, lessee or transferee. For a period of ten (10) days after receipt by Lessee of the Notice of Sale, Lessee may give written notice (the "ROFR Notice of Exercise") to City (or successor) of Lessee's exercise of its right to purchase the Leased Premises on the same terms, price and conditions as set forth in the Notice of Sale. If Lessee gives a timely ROFR Notice of Exercise, then Lessee and City (or successor) will enter into a written agreement for Lessee to acquire the Leased Premises, with the same terms and at the same price as contained in the Notice of Sale. If Lessee does not give a timely Notice of Exercise there shall be a conclusive presumption that Lessee has elected not to exercise Lessee's rights hereunder, and City (or successor) may thereafter transfer the Leased Premises to the transferee upon the terms identified in the Notice of Sale; provided, however, that: (a) if there is any modification of (i) the property to be transferred, (ii) the sales price, rent or other consideration for the transfer, (iii) the identity of the transferee, or (iv) any other material term or condition contained in the Notice of Sale, or (b) if the transfer is not consummated within 180 days of the date of the Notice of Sale, then before consummating the transfer City shall give a new Notice of Sale to Lessee and the ROFR shall reapply to said transfer.
- D. Lessee intends to apply for a Full-Service Restaurant Liquor License from the Utah Department of Alcoholic Beverage Control for use in connection with the Leased Premises. In the event that City does not give the Local Consent required for Lessee to obtain said license, Lessee shall have the right to cancel this Agreement and receive a full refund of all rents and deposits paid to City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

EXHIBIT A
MAP OF LEASED PREMISES



[Return to Agenda](#)

CONSENT

ITEM #H

RESOLUTION NO. 14-24

**RESOLUTION OF THE LEGISLATIVE BODY OF DRAPER CITY
APPOINTING TROY K. WALKER TO SERVE AS MEMBER OF THE
UNIFIED FIRE AUTHORITY GOVERNING BOARD**

WHEREAS, Draper City is a member of the Unified Fire Authority; and

WHEREAS, Draper City is required to designate a Council member or City Manager as a member of the Board of Directors of the Unified Fire Authority; and

WHEREAS, the City Council has determined that Troy K. Walker is the best suited candidate to serve on said board.

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

Section 1. **Appointment.** Troy K. Mayor Walker is hereby appointed to serve a four (4) year term to represent and vote in Draper City's behalf at any and all meetings of the Unified Fire Authority Board.

Section 2. **Severability.** If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.3.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon its adoption by City Council.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS 18TH, DAY OF MARCH, 2014.

DRAPER CITY

By: _____

Mayor

ATTEST:

City Recorder

ITEM #4

REQUEST FOR COUNCIL ACTION

To:	Mayor & City Council
From:	Doug Ahlstrom
Date:	March 14, 2014
Subject:	Authorization of Condemnation Power for 13200 S. and Fort Street Widening and Improvements
Staff Presentation:	Doug Ahlstrom
RECOMMENDATION: Approve Resolution #14-21 Authorizing the Use of Eminent Domain for Properties Located on 13200 South.	
<p>The city council has determined it is in the public interest to widen and improve portions of 13200 South Street and Fort Street. The city has had many meetings during which the width of the roads and intersections as well as the proposed improvements and their location within the right-of-way were discussed. Public comment has been received regarding these items. The city has acquired the necessary right-of-way from many of the abutting property owners. There are still a few who have not accepted the offers of the City:</p> <p>William and Dana Walsh – will not sign, has hired legal counsel Derek Coulter (Mary Sjoblom, Trustee) – will not sign Mike Carlson – has not responded</p> <p><u>Potential condemnations:</u> Darrell Smith – has not signed but may be ok based upon recent conversations with him Wayne Ballard – has not signed but Todd Hammond is confident he will Chad Fisher – has not signed but most likely will before Tuesday's meeting</p> <p>The city attorney requests approval of Resolution #14-21 which will allow the filing of eminent domain complaints against any or all who have not signed agreements to dedicate their frontage property to the public right-of-way.</p>	
PREVIOUS LEGISLATIVE ACTION:	
<ul style="list-style-type: none">• None	
FISCAL IMPACT: Finance Review: _____	
<ul style="list-style-type: none">• Costs of property acquisition• Costs of legal actions	
SUPPORTING DOCUMENTS: Resolution #14-21	

RESOLUTION NO. 14-21

**A RESOLUTION OF THE DRAPER CITY COUNCIL AUTHORIZING
THE FILING OF AN EMINENT DOMAIN ACTION TO ACQUIRE REAL
PROPERTY FOR THE PURPOSE OF WIDENING AND IMPROVING
13200 SOUTH AND FORT STREETS**

WHEREAS, the portion of 13200 South Street at and between Fort Street and Bear Hollow Cove and the portion of 13200 South Street between Golden Pheasant Drive and 13261 South are to be immediately widened by the City and improved with sidewalks, curb, gutter and parkstrips; and

WHEREAS, the city council has budgeted monies for the acquisition of the necessary right-of-way and for construction of the street with curb, gutter, sidewalk, and parkstrips; and

WHEREAS, appraisals have been made of all abutting properties and the necessary frontage has been acquired from many of the abutting property owners; and

WHEREAS, Draper City has offered to purchase the properties for the just compensation value but certain property owners have refused the offer, making a taking necessary; and

WHEREAS, Utah Code Ann. §78B-6-504 authorizes a municipality, upon the payment of just compensation, to take real property by eminent domain for uses authorized by law, which include roads or streets for public vehicular use and bicycle paths and sidewalks adjacent to paved roads; and

WHEREAS, construction of the road and use of all the property sought to be condemned will commence immediately upon a grant of occupancy of the properties; and

WHEREAS, the properties sought to be acquired are not already appropriated to some other public use; and

WHEREAS, before taking a final vote to approve the filing of an eminent domain action, the Draper City Council provided written notice to each owner of the property to be taken of each public meeting of the Draper City Council at which a vote on the proposed taking is expected to occur and allowed the property owners the opportunity to be heard on the proposed taking; and

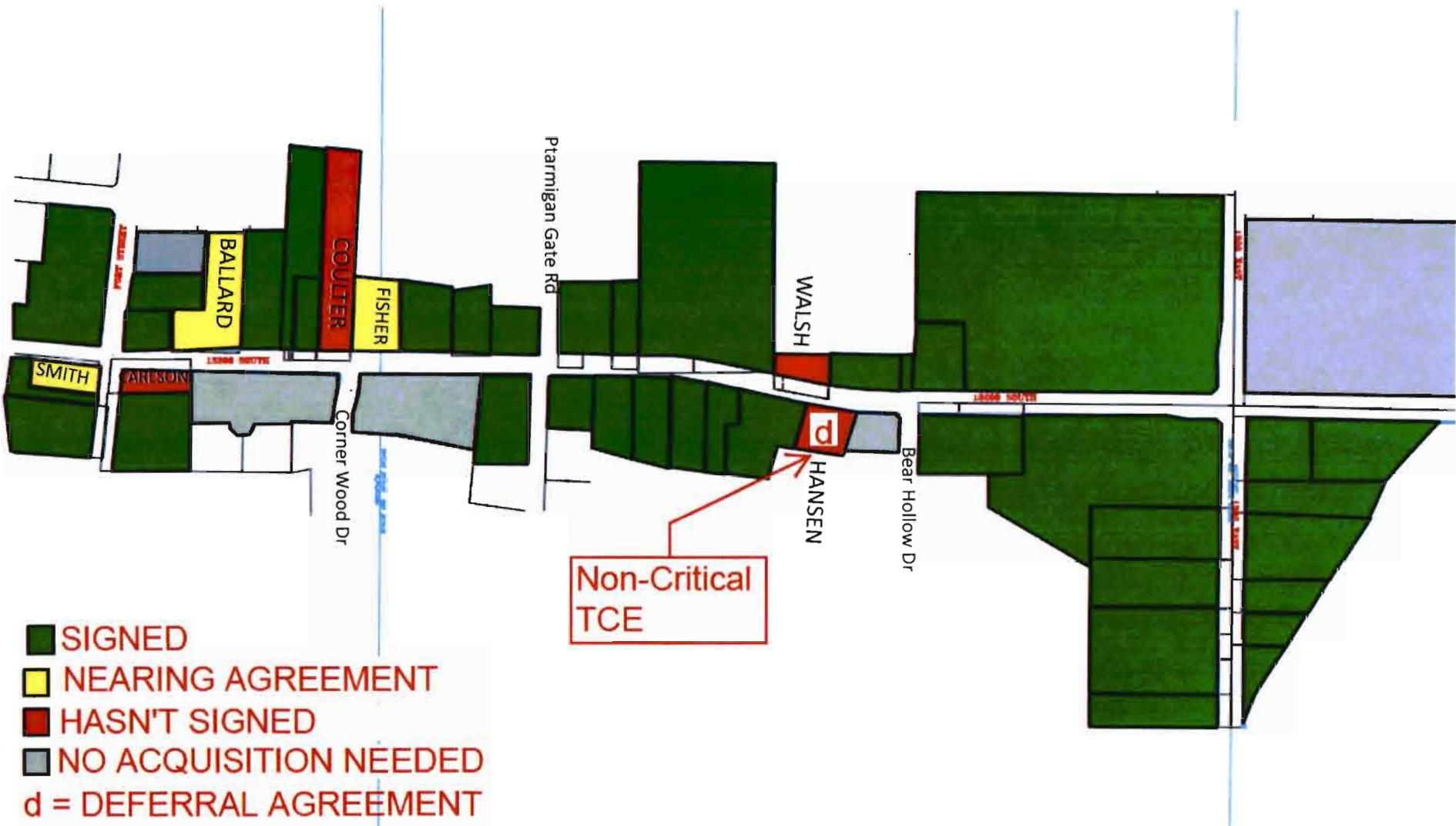
WHEREAS, such notice was mailed to the owners' address as shown on the records of the county assessor's office at least ten (10) business days before the public meeting;

NOW THEREFORE, BE IT RESOLVED by the Draper City Council that, having provided notice as required by law to the property owner and having allowed the owners the opportunity to be heard on the proposed taking, Draper City staff is hereby authorized to file an eminent domain action to acquire the remaining properties needed for widening and improving 13200 South and Forts Streets. The council finds that widening the street is a use authorized by law, the taking is necessary for the use, construction and use of all property sought to be condemned will commence within a reasonable time, and the properties are not already appropriated to some public use and there is no "more necessary public use" affecting these properties.

DATED this 18th day of March, 2014.

Troy K. Walker, Mayor

Rachelle Conner, Draper City Recorder



- SIGNED
- NEARING AGREEMENT
- HASN'T SIGNED
- NO ACQUISITION NEEDED
- d = DEFERRAL AGREEMENT

Non-Critical
TCE