

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Debbie McKean
Mark Preece

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

Acting City Recorder
Cathy Brightwell

City Engineer
Ben White

Public Works Director
Steve Maughan

CITY COUNCIL MEETING

*NOTICE IS HEREBY GIVEN THAT THE WEST BOUNTIFUL CITY COUNCIL
WILL HOLD A MEETING ON TUESDAY, JULY 15, 2014 AT 7:30 PM
AT THE CITY OFFICES AT 550 NORTH 800 WEST.*

Invocation/Thought by Invitation
Pledge of Allegiance - James Ahlstrom

Agenda

1. Accept Agenda.
2. Public Comment (two minutes per person) or if a spokesperson has been asked by a group to summarize their comments, five minutes will be allowed.
3. Consider request by the developer of Olsen Ranches subdivision to defer the Water Right Fee and the Storm Drain Impact Fee, and have them paid as part of future building permits for each home.
4. Consider final plat approval for the Frank Chase Subdivision at approximately 950 W 1600 North.
5. Consider Resolution #342-14, approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah, finding that it is in the best interests of West Bountiful City, Utah to enter into said agreement, and authorizing the execution and delivery thereof. (Golf Equipment)
6. Planning Commission Report.
7. Engineering Report.
8. Police Report.
9. Administrative Report.
10. Mayor/Council Reports.
11. Approval of Minutes from the July 1, 2014 City Council Meeting.
12. Executive session, pursuant Utah Code 52-4-205 (a) to discuss the character, professional competence, or physical or mental health of an individual.
13. Adjourn.

According to the American's with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should contact Cathy Brightwell, Acting City Recorder, at (801) 292-4486.

This agenda was posted on the State Public Notice website, the City website, emailed to the Mayor and City Council, and sent to the Clipper Publishing Company on July 10, 2014.

MEMORANDUM



TO: Mayor and City Council
DATE: May 1, 2014
FROM: Ben White
RE: **Olsen Ranches Fees Due with Final Plat**

The developer of Olsen Ranches is petitioning City Council to defer the Water Right Fee and the Storm Drain Impact Fee and have them paid as part of a building permit application for each proposed home. The combined total for the two fees is \$26,560.16.

History

Payment of the storm drain impact, water right and inspection fees is a Code requirement for new subdivisions (16.08.050(F) and 16.28.130(A)).

The payment of the storm drain fee was always collected as part of the subdivision approval process. During 2007 and 2008, there were a couple subdivisions where, presumably in error, the storm drain impact fee was not collected from the developers at the time of plat approval. In those cases, the fee was collected when applicants applied for new home building permits.

In recent history, collection of these fees has been handled inconsistently.

- The Ranches at Lakeside Subdivision received a deferral of Water Right and Storm Drain Impact Fees which were to be paid as part of a home building permit.
- The same fees were not deferred for Alice Acres.
- The Hogan two-lot subdivision was given a deferral of fees for the one vacant lot created by the subdivision.
- The storm drain impact fees were waived as part of the Skiddy Subdivision as the City's contribution to installing the storm drain pipe.

Staff Recommendation

Staff does not have a recommendation whether the requested fees should be deferred however Staff suggests that a consistent policy be followed.

It is difficult to keep track (often for many years or decades until the last house in a development is constructed) when some developments pay fees and some defer fees. Staff suggests that a definitive policy be adopted and adhered to.

MEMORANDUM



TO: Mayor and City Council

DATE: July 9, 2014

FROM: Ben White

RE: **Frank Chase Subdivision, 950 West 1600 North, Final Plat Approval**

The Frank Chase Subdivision is a proposed 1.53 acre subdivision with three residential lots. Two of the lots will contain existing homes and the third will allow for the construction of a new home (it currently contains one accessory building). The proposal includes:

- Three 0.5 acre lots meeting the minimum area requirements for the R-1-22 zone.
- All lots meet the minimum 85' frontage requirements.
- The property is located on an existing street so there is no street to dedicate.
- The installation of one storm drain box; utility laterals for one of the lots; and curb, gutter and sidewalk along 1600 North along the frontage of all three lots

Planning Commission held a public hearing on April 8th and made a favorable recommendation to approve the application. It was Planning Commission's recommendation that the required curb and sidewalk improvements not be waived.

Staff Recommendation

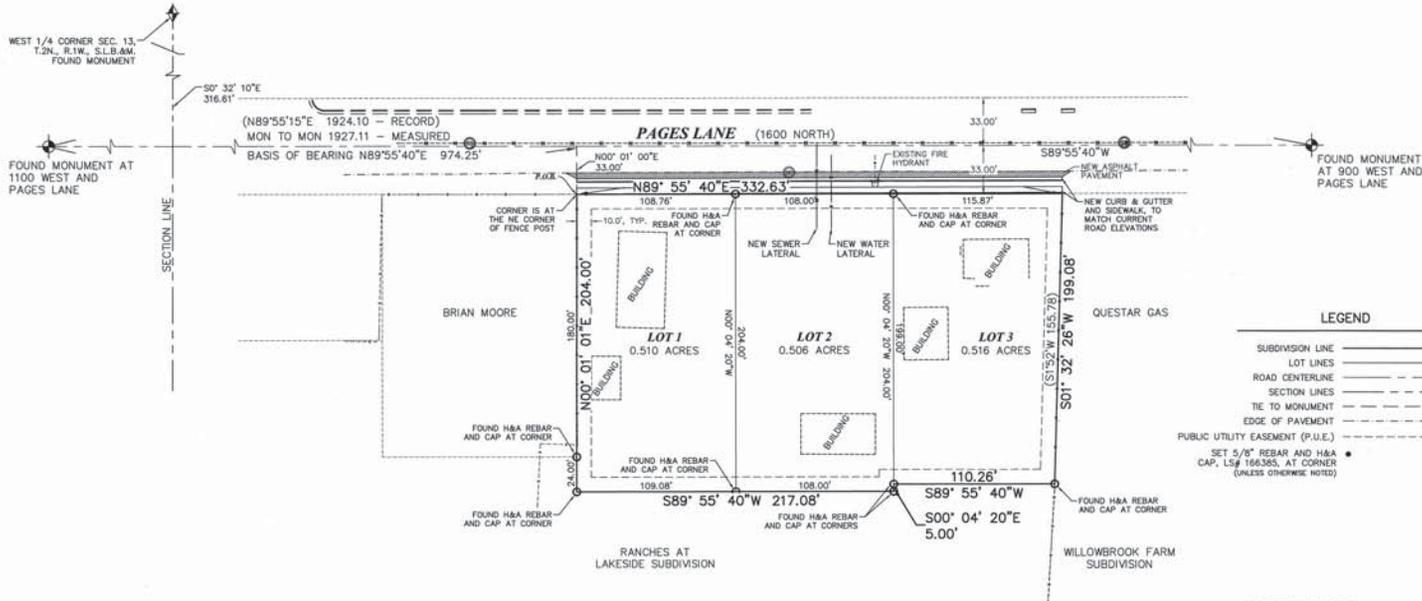
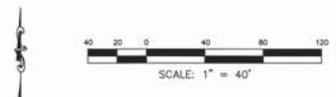
Staff recommends final plat approval for this development with the following considerations:

1. Applicant provides a title report for review by the City Attorney that contains no items of concern to the City Attorney.
2. Storm drain impact fees and water right fees would be due at the time of plat recording unless deferred by the City Council
3. Payment of the Public Improvement Inspection Fee.
4. Applicant provides an acceptable means to satisfy bonding requirements for the public improvements, namely curb, sidewalk, utility services, a storm drain catch basin and asphalt.

FRANK CHASE SUBDIVISION

LOCATED IN THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, S.L.B.&M.
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

MARCH 2014
PRELIMINARY PLAT



SURVEYOR'S CERTIFICATE

I, VON R. HILL, A PROFESSIONAL LAND SURVEYOR HOLDING CERTIFICATE NO. 166385 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH, DO HEREBY CERTIFY THAT BY THE AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HEREWITH AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS HEREAFTER TO BE KNOWN AS FRANK CHASE SUBDIVISION.

VON R. HILL

BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE SOUTH LINE OF PAGES LANE SAID POINT BEING SOUTH 00°32'10" EAST 316.61 FEET ALONG THE SECTION LINE TO THE CENTERLINE OF PAGES LANE AND NORTH 89°55'40" EAST 947.25 FEET AND SOUTH 07°01'00" WEST 33.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH AND RUNNING THENCE NORTH 89°55'39" EAST 332.63 FEET TO A FENCE LINE AND A BOUNDARY LINE AGREEMENT;
THENCE SOUTH 01°32'30" WEST 198.08 FEET ALONG SAID LINE;
THENCE SOUTH 89°55'40" WEST 110.26 FEET;
THENCE SOUTH 00°04'20" EAST 5.00 FEET;
THENCE SOUTH 89°55'40" WEST 217.08 FEET;
THENCE NORTH 00°01'00" EAST 204.00 FEET TO THE POINT OF BEGINNING.
BEGINNING ON THE SOUTH LINE OF A 4-ROD STREET, 19 RODS SOUTH AND EASTERLY ALONG SOUTH LINE OF SAID 4-ROD STREET 1089.9 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE EAST ALONG THE SOUTH LINE OF SAID STREET 192 FEET;
THENCE SOUTH 01°52' WEST 155.78 FEET;
THENCE WEST 192 FEET;
THENCE NORTH 01°52' EAST 155.78 FEET TO THE POINT OF BEGINNING.
CONTAINING 1.532 ACRES

ACKNOWLEDGMENT

ON THIS _____ DAY OF _____, 20____, THERE PERSONALLY APPEARED BEFORE ME _____ SIGNERS OF THE OWNER'S DEDICATION, WHO DULY ACKNOWLEDGED THEY SIGNED IT FREELY AND VOLUNTARILY AND FOR THE PURPOSES MENTIONED HEREIN.

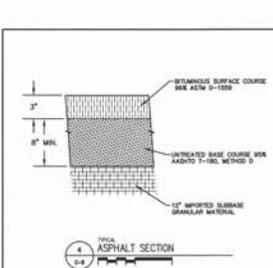
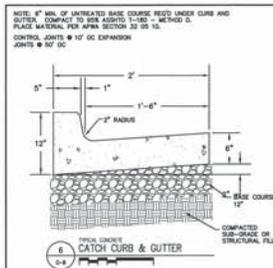
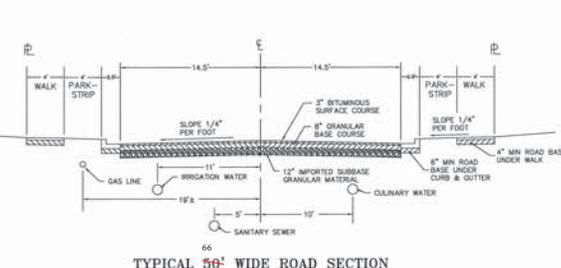
NOTARY PUBLIC: _____
RESIDENCE: _____

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND, HAVING CAUSED SAME TO BE SUBDIVIDED INTO PRIVATE LOTS, HEREAFTER TO BE KNOWN AS FRANK CHASE SUBDIVISION, DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE.

SIGNED THIS _____ DAY OF _____, 20____.

FRANK CHASE SUBDIVISION
LOCATED IN THE SW 1/4 OF SEC. 13, T.2N., R.1W., S.L.B.&M.
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH



QUESTAR GAS APPROVAL
QUESTAR APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. QUESTAR MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS, OBLIGATIONS OR LIABILITIES PROVIDED BY LAW OR EQUITY. THIS APPROVAL DOES NOT CONSTITUTE ACCEPTANCE, APPROVAL OR ACKNOWLEDGMENT OF ANY ITEMS CONTAINED IN THE PLAT, INCLUDING THOSE SET FORTH IN THE OWNER'S DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF NATURAL GAS SERVICE. FOR FURTHER INFORMATION PLEASE CONTACT QUESTAR'S RIGHT-OF-WAY DEPARTMENT AT 1-800-366-8633.
APPROVED THIS _____ DAY OF _____, 20____.
QUESTAR GAS COMPANY
BY: _____
TITLE: _____

HILL & ARGYLE, Inc.
Engineering and Surveying
181 North 200 West, Suite #4, Bountiful, Utah 84010
(801) 298-2236 Phone, (801) 298-5883 Fax
14-137 03/10/14

RECOMMENDED FOR APPROVAL
APPROVED THIS _____ DAY OF _____, 20____
WEST BOUNTIFUL CITY ENGINEER

RECOMMENDED FOR APPROVAL
APPROVED THIS _____ DAY OF _____, 20____ BY THE
PLANNING COMMISSION OF WEST BOUNTIFUL CITY.
CHAIRMAN: _____

WEST BOUNTIFUL CITY COUNCIL
PRESENTED TO THE CITY COUNCIL OF WEST BOUNTIFUL, UTAH THIS
DAY OF _____, 20____, AT WHICH TIME THIS SUBDIVISION
WAS APPROVED AND ACCEPTED.
CITY RECORDER ATTEST: _____

RECOMMENDED FOR APPROVAL
APPROVED THIS _____ DAY OF _____, 20____
WEST BOUNTIFUL CITY ATTORNEY

DAVIS COUNTY RECORDER
ENTRY NO. _____ FEE PAID _____
FILED FOR RECORD AND RECORDED THIS _____ DAY OF _____, 20____ AT
_____ IN BOOK _____ OF _____
COUNTY RECORDER _____
BY _____ DEPUTY

BOND AGREEMENT
FOR COMPLETION OF SUBDIVISION IMPROVEMENTS
Frank Chase Subdivision
(Cash Form)

This Bond Agreement is made and entered into effective this ____ day of _____, 2014, by and between **DARREN OGDEN CHASE and KELLY LYNN CHASE, CO-SUCCESSOR TRUSTEES OF THE FRANK O. CHASE FAMILY LIVING TRUST DATED JULY 2, 2013** (collectively, “*Developer*”); and **WEST BOUNTIFUL CITY**, a municipal corporation organized and existing under the laws of the State of Utah (the “*City*”).

RECITALS

A. Section 16.16.030.K.1 of the West Bountiful Municipal Code, 2000, as amended (the “*Code*”), requires that prior to final subdivision plat approval and recordation, a developer must enter into a bond agreement acceptable to the City as security for the completion of all improvements required in the proposed subdivision. Subsection 16.16.030K.2 of the Code provides that the deposit of cash, by a cashier’s check payable only to the City, is an acceptable form of bond agreement.

B. Developer has prepared and desires to record a final plat for a proposed subdivision of land in the City known as *Frank Chase Subdivision* (the “*Subdivision*”). Developer and the City have entered into a Subdivision Improvements Agreement of even date governing the development of the Subdivision (the “*Improvements Agreement*”).

C. The parties are willing to enter into this Agreement to satisfy the Code’s requirement that certain funds be held in an account, to be disbursed by the City only in accordance with the terms and conditions of this Agreement, in order to ensure the satisfactory completion of all onsite and offsite improvements required by the City for the Subdivision (the “*Improvements*”), consistent with the Improvements Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SUBDIVISION ACCOUNT.

a. **Establishment of Subdivision Account.** Developer delivers with this Agreement a cashier’s check, made payable to the order of the City only, in the amount of **THIRY-EIGHT THOUSAND SIX HUNDRED TWELVE DOLLARS AND FORTY CENTS (\$38,612.40)** (the “*Proceeds*”). The City will deposit the Proceeds in a separate account (the “*Subdivision Account*”), and will hold the Proceeds subject to authorized disbursements, pending expiration of the Warranty Period, as defined below. The Proceeds represent one hundred twenty percent (120%) of the estimated cost of the Public Improvements, as defined below. For purposes of this Agreement, “*Public Improvements*” means all Improvements intended for public dedication, and includes the Improvements itemized in the cost estimate attached as **Exhibit A**. “*Warranty Period*” means the two-year period beginning on the date the City provides Developer written acceptance of the completed Improvements, as provided in Section 16.16.030(L) of the Code (“*City Acceptance*”).

b. **Assignment of Proceeds.** Developer hereby assigns to the City all of its right, title, and interest in and to the principal amount of the Proceeds as an independent guaranty for the satisfactory completion of the Public Improvements. The City will be entitled to immediate access to the Proceeds as provided in this Agreement, but Developer will remain fully liable to complete and warrant

the Public Improvements irrespective of whether the Proceeds are adequate to fully cover the cost to install, repair, or replace them.

2. COMPLETION OF IMPROVEMENTS. Within 18 months after the date of this Agreement, Developer will satisfactorily complete all Improvements in accordance with the Improvements Agreement, the Code, the City's subdivision standards and specifications, and all other applicable laws and requirements (collectively, the "***Subdivision Requirements***").

3. WARRANTY OF IMPROVEMENTS. Developer warrants that the Public Improvements will meet the Subdivision Requirements, and will remain in good condition, free from defects in workmanship or materials during the Warranty Period (as defined in Section 1.a, above), without charge or cost to the City.

4. REDUCTION OF PROCEEDS. During construction of the Public Improvements, portions of the Proceeds may be disbursed in accordance with the procedure outlined in this section as Public Improvements are completed. Upon written request from Developer, made no more than once every 30 days, the City will inspect the completed Public Improvements. If the City finds the completed Public Improvements comply with the Subdivision Requirements, the City will disburse Proceeds not exceeding the value of the completed Public Improvements; provided, that the Proceeds will not be reduced below the amount of Retained Proceeds (as defined below), except in accordance with Section 5. Proceeds will be disbursed only upon Developer's compliance with the Improvements Agreement and the City's written approval. It is agreed that this section contemplates disbursements during the course of the construction of Public Improvements in the nature of "Progress Payments" made to permit interim payments to contractors, subcontractors or suppliers for costs and expenses incurred in the construction of such improvements.

5. RETAINAGE. Notwithstanding any disbursement of Proceeds under Section 4, the Proceeds will not be reduced below **THREE THOUSAND TWO HUNDRED SEVENTEEN DOLLARS AND SEVENTY CENTS (\$3,217.70)**, which amount constitutes a retainage of ten percent (10%) of the initial Proceeds (collectively, the "***Retained Proceeds***"), until the expiration of the Warranty Period. Upon City Acceptance of all of the Public Improvements, all Proceeds, except the Retained Proceeds, shall be disbursed to Developer. The Retained Proceeds will be held in the Subdivision Account to ensure that the Public Improvements do not have any latent defects or damage, and they continue to meet the Subdivision Requirements during the Warranty Period. Nevertheless, Developer will remain fully liable for any substandard, defective, or damaged Public Improvements irrespective of whether the Retained Proceeds are adequate to cover the cost to repair or replace them. At the expiration of the Warranty Period, the remaining Proceeds in the Subdivision Account, if any, plus interest calculated as described in this Agreement, will be disbursed to Developer as provided in Section 11.

6. DEFAULT. Developer will be in default under this Agreement if any of the following occurs:

a. Abandonment. Developer abandons the Subdivision, as determined by the City in its sole discretion.

b. Failure to Perform.

(1) *Failure to Complete Improvements.* Developer fails to complete the Improvements according to the Subdivision Requirements within the time specified in this Agreement.

(2) **Failure during Warranty Period.** The City finds any of the Public Improvements to be substandard or defective during the Warranty Period and, after ten (10) days' written notice of such failure, Developer has not repaired or replaced the substandard or defective Public Improvements; or, if the failure is not capable of being cured within such time, has not commenced to cure the failure within such time and diligently completed the cure within a reasonable time thereafter, as determined by the City Engineer in his sole discretion.

(3) **Emergency Situation.** The City determines, in its sole discretion, that an emergency situation exists relative to the Public Improvements and, after verbal notice followed by written notice within three (3) days, Developer has not remedied the emergency situation within a reasonable time, as determined by the City Engineer in his sole discretion; provided, however, that such emergency situation results from Developer's failure to comply with its obligations under this Agreement or the Subdivision Requirements.

(4) **Other Failure.** Developer otherwise substantially fails to perform its obligations under this Agreement or the Improvements Agreement and, after ten (10) days' written notice from the City of such failure, Developer has not cured the failure; or, if the failure is not capable of being cured within such time, has not commenced to cure the failure within such time and diligently completed the cure within a reasonable time thereafter, as determined by the City Engineer in his sole discretion.

c. **Insolvency.** Developer becomes insolvent, a receiver is appointed for Developer, or a voluntary or involuntary petition in bankruptcy pertaining to Developer is filed before Developer's obligations under this Agreement or the Improvements Agreement have been satisfied.

d. **Foreclosure.** Foreclosure proceedings are commenced against any portion of the Subdivision property or any such property is conveyed in lieu of foreclosure before Developer's obligations under this Agreement or the Improvements Agreement have been satisfied.

7. **REMEDIES.** In the event of Developer's default under this Agreement, the City will be entitled to pursue any remedies allowed under this Agreement, at law, or in equity, including the following:

a. **Use of Proceeds.** The City may use the Proceeds to complete, repair, or replace the Public Improvements upon written certification from the City Engineer that Developer is in default of its obligations under this Agreement and the Proceeds are required to pay costs and expenses incurred in completing, repairing or replacing the Public Improvements. If the certification is made before the beginning of the Warranty Period, Developer will promptly replace the disbursed Proceeds so that no less than the amount of the Retained Proceeds is on deposit in the Subdivision Account at the beginning of the Warranty Period. In the event the City receives Proceeds in excess of those required for the City to complete, repair, or replace the defective Public Improvements, the City will pay any Proceeds in excess of the Retained Proceeds plus any applicable interest to Developer upon City Acceptance of the Public Improvements.

b. **Completion of Improvements by the City.** Developer hereby grants to the City, its officers, employees, agents and contractors, the unrestricted right to enter upon the Subdivision property for the purpose of completing or remedying the Public Improvements in the event of Developer's default. All costs the City incurs in completing or remedying the Public Improvements, including attorney fees, administrative fees, and court costs, whether incurred in litigation or otherwise, will be included in the cost of the Improvements. The amount of such costs will be deducted from the Proceeds available for disbursement to Developer upon final approval of the Public Improvements at the end of the Warranty Period.

c. Deficiency. Upon written notice including documentation reasonably supporting costs incurred, Developer will compensate the City for all costs the City incurs as a result of Developer's default to the extent such costs are not covered by the Proceeds. Such costs include all costs described in Section 7.f.

d. Suspension of Building Permits. The City Administrator may suspend the issuance of new building permits within the Subdivision until: (1) the Public Improvements are satisfactorily completed, repaired, or replaced; (2) a substitute bond agreement has been executed and delivered to the City, and the City agrees to accept the substitute bond agreement; or (3) other arrangements acceptable to the City have been made to insure the satisfactory completion, repair, or replacement of the Public Improvements.

e. Specific Enforcement. The City may specifically enforce Developer's obligations under this Agreement, including the obligation to install, pay for, and warrant the Public Improvements.

f. Costs and Attorney Fees. The City may collect from Developer all costs necessary to complete, repair, or replace the Public Improvements or enforce this Agreement, including all administrative costs; inspection fees; permit fees; and reasonable attorney, engineering, consultant, and expert witness fees, whether incurred in litigation or otherwise.

The City's remedies under this Agreement, at law, and in equity are cumulative.

8. INDEMNIFICATION.

a. Generally. Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability, claims, demands, suits or causes of action arising out of or otherwise resulting from the Public Improvements until such time as the Public Improvements have been finally completed, whether by Developer or by the City, and approved and accepted by the City at the expiration of the Warranty Period.

b. For Insufficient Proceeds. In the event the City elects to complete the Public Improvements or remedy substandard or defective Public Improvements, Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability in excess of the Proceeds for the payment of any labor or material liens which may result from the work of any contractor (including subcontractors and materialmen of any such contractor) hired by the City or which may arise due to insufficient Proceeds.

c. Defense of Claims. With respect to Developer's agreement to defend the City, the City will have the option of either providing for its own defense, or requiring Developer to undertake the defense of the City, either of which will be at Developer's sole cost and expense.

9. INSURANCE. In the event the City elects to complete, repair, or replace the Public Improvements, Developer will pay the premium of an insurance policy covering liability, damage, loss, or injury to any person or property, including damage to Developer or its property, as a result of the work of any contractor or agent the City retains to complete or remedy the Public Improvements, in accordance with the following: (a) the City, in its sole discretion, will determine the extent and scope of insurance coverage; (b) Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants, and contractors, from and against all liability that exceeds the insurance policy limits; (c) if Developer fails to pay the premium, the City, at its option, may use the Proceeds as necessary to pay

the premium as part of the costs described in Section 7.f; and (d) the City will suspend the issuance of any building permits until the premium has been paid and a bond is in place to secure the payment of future premiums.

10. DEVELOPER'S INDEPENDENT OBLIGATIONS. Developer's obligations to complete and warrant the Public Improvements and fulfill its other obligations under this Agreement and the Subdivision Requirements: (a) are independent of any obligation or responsibility of the City, express or implied; (b) are not conditioned upon the commencement of actual construction work in the Subdivision or upon the sale of any lots or portion of the Subdivision; and (c) are independent of any other remedy available to the City to secure completion of the Public Improvements. Developer may not assert as a defense that the City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Developer of its duty to perform, or preclude the City from requiring Developer's performance under this Agreement.

11. TERMINATION OF SUBDIVISION ACCOUNT.

a. Procedure for Closing Subdivision Account. As provided in Section 16.16.030.N of the Code, at the end of the Warranty Period, the Proceeds remaining in the Subdivision Account may be disbursed to Developer and the Subdivision Account will be closed, according to the procedure outlined in this subsection. Upon written request from Developer, the City will conduct a final on-site review of all Public Improvements. Upon written verification that (a) all Public Improvements have been completed in compliance with the Subdivision Requirements; (b) the City has been reimbursed for all of its costs and expenses incurred in connection with the completion, repair, or replacement of Public Improvements; and (c) all contractors, subcontractors, laborers and materialmen who have provided services and material in connection with the completion of the Public Improvements have been fully paid and discharged and all mechanic's liens have been released, the City will refer the matter to the City Council. Upon the approval of the City Council in accordance with Section 16.16.030.N of the Code, the City will disburse to Developer, or its designee, all Proceeds and any other funds remaining in the Subdivision Account (including interest), and then close the Subdivision Account.

b. Distribution of Interest. To the extent required by Utah Law, Developer is solely responsible to ensure that any interest accrued on the Proceeds is distributed to all subcontractors on a pro-rata basis according to the work performed by each subcontractor during construction and installation of the Improvements. Any interest not required by law to be so disbursed shall be held or disbursed as part of the Proceeds as set forth in this Agreement.

12. CITY'S RIGHTS AND OBLIGATIONS. The City acknowledges, understands, and agrees as follows:

a. Disbursement of Proceeds. The City will continue to hold the Proceeds indefinitely until such time as the City disburses the Proceeds according to the provisions of this Agreement.

b. Permitted Assumptions. The City acts as a depository under this Agreement, and is not liable for the sufficiency, correctness, genuineness, validity, form, or execution of any instrument deposited with it; or the identity, authority, or rights of any person executing or depositing the instrument. The City will not incur any liability in acting upon any notice, request, waiver, consent, receipt, or other paper or document the City reasonably believes to be genuine and to be signed by the proper party or parties.

c. Disputes. The City may consult with legal counsel in the event of any dispute over the interpretation or enforcement of this Agreement or the City's duties under this Agreement. In the event of any dispute resulting in adverse claims or demands with respect to the Proceeds, the City will be entitled, at its option, to refuse to comply with any such claim or demand as long as the dispute continues. The City will not be liable to Developer for its refusal to comply with the adverse demands, and will be entitled to continue so to refrain from complying until: (i) the rights of the adverse claimants have been finally adjudicated in a court having jurisdiction of the parties and the Proceeds involved in the dispute; or (ii) the City receives written instructions from the parties involved in the dispute that all differences shall have been resolved by agreement. In the event of any such dispute, the City will also be entitled to file an interpleader action and recover from Developer all costs and expenses incurred in connection with such action, including reasonable attorney's fees.

d. Fees. The City will be entitled to reimbursement of all out-of-pocket expenses reasonably incurred in performing its obligations under this Agreement, including reasonable attorney fees.

13. MISCELLANEOUS PROVISIONS.

a. Covenants Run with the Land. Developer will not assign any rights or delegate any obligations under this Agreement without the City's prior written consent, except as otherwise provided in this Agreement. The covenants contained in this Agreement will be construed as covenants with respect to real property and will run with the land; accordingly, the City may record this Agreement or a memorandum of this Agreement. The covenants contained in this Agreement will be binding upon Developer's agents, legal representatives, successors in interest, and assigns. Upon final approval of the Public Improvements at the end of the Warranty Period, the City will execute and deliver such documents as shall be required to release any recording of this Agreement as an encumbrance against the land.

b. Severability. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the remaining provisions.

c. Captions. The section and paragraph headings contained in this Agreement are for the purpose of reference only and will not limit or otherwise affect the construction of any provision of this Agreement.

d. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties in that regard. No modification of this Agreement will be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Agreement must be in writing and must be signed by the party waiving the provision.

e. No Third-Party Beneficiaries. This Agreement is made for the exclusive benefit of the parties and their respective heirs, successors, and assigns. No other person or entity, including lot purchasers, contractors, subcontractors, laborers, and suppliers, will have any interest under this Agreement or be classified as a third-party beneficiary. The City will not be liable to any claimant, in any way, for any obligation of Developer under this Agreement or otherwise.

f. Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.

g. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, EXCEPT AS SUCH LAWS MAY BE PREEMPTED OR SUPERSEDED BY THE LAWS OF THE UNITED STATES. THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF THE COURTS OF THE STATE OF UTAH, OR THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF UTAH, AS THE CASE MAY BE, WITH VENUE IN DAVIS COUNTY, AS THE SOLE FORUM FOR ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

h. No Partnership. The transactions contemplated under this Agreement are Developer's installation and warranty of the Improvements, and do not constitute a partnership, joint venture or other association between the parties.

i. Notices. All notices required under this Agreement must be in writing and will be deemed to have been sufficiently given or served when presented personally or when deposited in the United States Mail, by registered or certified mail, addressed as follows:

TO DEVELOPER: Kelly Chase
P.O. Box 702
Bountiful, UT 84011-0702

TO CITY: West Bountiful City
Attention: City Administrator
550 North 800 West
West Bountiful, Utah 84087

Either party may designate a different address by written notice to the other party. Any notice given under this Agreement will be deemed given as of the date delivered or mailed.

j. Warranty of Authority. The persons signing this Agreement on behalf of the parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective parties and that the respective parties have agreed to be and are bound hereby.

k. Joint and Several Liability. The obligations of Developer under this Agreement are joint and several.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

DEVELOPER:

FRANK O. CHASE FAMILY LIVING TRUST
DATED JULY 2, 2013

Darren Ogden Chase, Co-Successor Trustee

Kelly Lynn Chase, Co-Successor Trustee

THE CITY:

WEST BOUNTIFUL CITY

Kenneth Romney, Mayor

ATTEST:

Cathy Brightwell, City Recorder

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss
COUNTY OF _____)

On the _____ day of _____, 2014, appeared before me **Darren Ogden Chase and Kelly Lynn Chase**, who, being duly sworn, did acknowledge that they are **Co-Successor Trustees of the Frank O. Chase Family Living Trust dated July 2, 2013**, the Developer of the **Frank Chase Subdivision** named in the foregoing Agreement, and that they signed the Agreement as duly authorized Co-Successor Trustees on behalf of Developer.

NOTARY PUBLIC

STATE OF UTAH)
 : ss
COUNTY OF DAVIS)

On the _____ day of _____, 2014, appeared before me **Kenneth Romney and Cathy Brightwell**, personally known to me or proved to me on the basis of satisfactory evidence to be the Mayor and City Recorder, respectively, of West Bountiful City, who duly acknowledged that the foregoing instrument was signed on behalf of the City by authority of a duly adopted resolution of its City Council, and that the City executed the same.

NOTARY PUBLIC

EXHIBIT A

Estimated Cost of Public Improvements

**West Bountiful City
Subdivision Bond Estimate**

8-Jul-14

Frank Chase Subdivision

Developer: Darren and Kelly Chase

Bonding Entity: CASH

Address: P.O. Box 702, Bountiful, UT 84011-0702

Phone: (801)205-3619

No.	Item Description	Quantity	Units	Unit Cost	Bond Amount	Amount Released	Percent Released
Sanitary Sewer							
1	Laterals to new SS line	1	EA	3,200.00	\$3,200.00	\$0.00	0.00%
2	Water Lateral	1	EA	3,500.00	\$3,500.00	\$0.00	0.00%
3	SD Inlet Combo Box	1	EA	2,500.00	\$2,500.00	\$0.00	0.00%
4	Curb and Gutter	333	LF	19.00	\$6,327.00	\$0.00	0.00%
5	Sidewalk	333	LF	20.00	\$6,660.00	\$0.00	0.00%
6	Asphalt Roadway	1665	SF	6.00	\$9,990.00	\$0.00	0.00%
TOTAL WORK AMOUNTS					\$32,177.00		
TOTAL BOND (120%)					\$38,612.40		
TOTAL BOND RELEASED APPROVED TO DATE						\$0.00	
LESS PREVIOUS BOND RELEASE(S) AMOUNT						\$0.00	
REMAINING BOND AMOUNT						\$38,612.40	
BOND AMOUNT TO BE RELEASED						\$0.00	

DEVELOPMENT AGREEMENT *FRANK CHASE SUBDIVISION*

This DEVELOPMENT AGREEMENT (“*Agreement*”) is made and entered into effective this _____ day of _____, 2014, by and between **DARREN OGDEN CHASE and KELLY LYNN CHASE, CO-SUCCESSOR TRUSTEES OF THE FRANK O. CHASE FAMILY LIVING TRUST DATED JULY 2, 2013** (collectively, “*Developer*”); and **WEST BOUNTIFUL CITY**, a Utah municipal corporation (the “*City*”).

RECITALS

A. Developer is the owner of approximately 1.53 acres of real property located in the City, which Developer proposes to subdivide pursuant to Title 16 of the West Bountiful Municipal Code, as amended (the “*Code*”), under the name of “*Frank Chase Subdivision*” (the “*Subdivision*”).

B. The City’s Planning Commission and City Council have approved, subject to certain requirements described below, the final plat for the Subdivision (the “*Final Plat*”), a copy of which is attached as **Exhibit A**.

C. The City’s approval of the Final Plat is subject to (1) the execution and recordation of this Agreement or a memorandum of this Agreement; (2) the execution of a bond agreement acceptable to the City as security for the satisfactory completion and warranty of all onsite and offsite improvements required for the Subdivision (collectively, the “*Improvements*”); and (3) compliance with all requirements of the City’s zoning ordinances and development regulations, including Title 16 of the Code.

D. Developer is willing to complete the Improvements and develop the Subdivision in harmony with the long-range goals and policies of the City’s general plan and in compliance with the Code and this Agreement.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEVELOPMENT OF SUBDIVISION. The approved uses, density, intensity, and configuration of the components of the Subdivision are depicted in the Final Plat (**Exhibit A**) and the profile drawings prepared by Developer’s engineer, and approved by the City Engineer (collectively, the “*Construction Drawings*”), copies of which are attached as **Exhibit B**. Developer will develop all parcels within the Subdivision as a single project and in conformity with the requirements of the Final Plat and Construction Drawings.

2. OWNERSHIP OF SUBDIVISION. Prior to recordation of the Final Plat, Developer will provide the City appropriate evidence, including a preliminary title report, of Developer’s ownership of all real property within the Subdivision.

3. COMPLETION OF IMPROVEMENTS. Developer will provide, construct, and install the Improvements in a satisfactory manner in compliance with the requirements of this Agreement, the Code, the City’s subdivision standards and specifications, and all other applicable laws and requirements (collectively, the “*Subdivision Requirements*”). Developer will complete all of the Improvements within 18 months after the date of this Agreement; provided, that upon written application submitted prior to the

expiration of the 18-month period, the City, through its City Council, may extend the time for completing all of the Improvements for up to an additional six months for good cause shown.

4. SPECIFIC STANDARDS FOR IMPROVEMENTS. The Improvements will be constructed and installed in accordance with the following standards:

a. Scope of Improvements. The Improvements include all onsite and offsite improvements, both those intended for public dedication (the “*Public Improvements*”) and otherwise, described in the Construction Drawings.

b. Culinary Water. All culinary water main lines within the Subdivision will be constructed and tied to the City’s existing culinary water main line in strict compliance with the Code and all other applicable standards and engineering requirements of the City and the Utah State Division of Drinking Water.

c. Secondary Irrigation Water. All pressurized secondary irrigation water lines within the Subdivision will be constructed and tied to the Weber Basin Water Conservancy District main trunk line in strict compliance with all applicable standards and engineering requirements of the Weber Basin Water Conservancy District.

d. Sanitary Sewer. All sanitary sewer lines within the Subdivision will be constructed and tied to the South Davis Sewer Improvement District’s main sewer trunk lines in strict compliance with all applicable standards and engineering requirements of the South Davis Sewer Improvement District.

e. Storm Drainage. Developer will construct and install adequate storm drainage collection systems, sub-surface collection systems and other surface and underground water drainage facilities in accordance with the Construction Drawings, and in strict compliance with the Code and all other applicable standards and engineering requirements of the City. Developer will obtain a UPDES permit from the State of Utah for storm water pollution prevention. Developer will maintain the permit in place until (1) all disturbed land within the Subdivision is stabilized (meaning paved and concreted, homes built and landscaping installed, or vegetation re-established); or (2) Developer’s construction is complete in accordance with this Agreement and all lots in the Subdivision have been conveyed to third parties, whichever occurs first.

f. Street Improvements. All street, parking, and hardscape improvements, including curb and gutter, sidewalk, street construction, road surfacing, drainage swales, drive approaches in drainage swales, bridges, trails, walking paths, and associated road improvement structures will be constructed and fully improved in strict compliance with the Code and all other applicable standards and engineering requirements of the City.

g. Construction Period. Developer will otherwise:

- (1) Develop the Subdivision in accordance with accepted development procedures;
- (2) Take all precautions reasonably necessary to prevent injury to persons or property during the construction period;
- (3) Take reasonable steps to contain and abate dust resulting from construction activities;
- (4) Provide such road surface, including road base and gravel, during construction as will render the streets and parking areas within the Subdivision reasonably accessible and conducive to travel by trucks and heavy equipment;

(5) Take all necessary precautions to prevent undue amounts of dirt or debris from being tracked onto or deposited upon the properties and public streets adjoining the Subdivision;

(6) Be responsible for all expenses incurred by the City or others in cleaning such properties or public streets of any undue amount of dirt or debris deposited as a result of construction activities within the Subdivision;

(7) Prevent and abate weeds on property within the Subdivision in accordance with the Code for as long as Developer owns such property; and

(8) Avoid damaging streets, curbs, sidewalks, and other improvements within or adjacent to the Subdivision during development and construction; and repairing any such damage at Developer's own expense.

h. Unforeseen Circumstances. The City has provided certain drawings and other information to Developer with respect to the location of existing water lines, storm drain lines, and other subsurface infrastructure within the Subdivision or necessary for the development of the Subdivision. The City does not warrant the precise locations of such subsurface infrastructure. Any unforeseen circumstances relative to the Improvements arising during construction, including subsurface infrastructure and soil conditions, will be the sole responsibility of Developer.

i. Diligent Prosecution of Work. Developer will diligently prosecute the work of constructing and installing the Improvements to completion. All Improvements will be constructed and installed in a workmanlike manner in compliance with applicable laws and industry standards. All Improvements will be of a high quality, and will be consistent with the provisions of this Agreement.

j. Building Permit Prerequisites. The City will authorize the construction of any building within the Subdivision only after the following requirements have been satisfied:

(1) **Fire Protection.** The building will be located on a lot that lies within 500 feet of a fire hydrant that is fully charged with water and under sufficient pressure to provide adequate fire protection.

(2) **Street and Parking Surfaces.** The building will be located on a lot served by a street surface and parking areas improved to the extent necessary to be passable for fire fighting and other emergency equipment and apparatus. The street surface must be constructed the full width of the final street design, including curb and gutter. All street and parking surfaces must be constructed, at a minimum, with either an asphalt surface course or compacted gravel road base placed to the final finish elevation of the asphalt surface (additional thickness may be required if building construction is to begin during any month from October through March).

(3) **Sewer Connection.** The City has received an acceptance letter from South Davis Sewer District approving connection to the sanitary sewer system.

(4) **As-built Drawings.** Acceptable record/as-built drawings have been submitted to the City for review and acceptance.

k. Stop Work Order. In the event the City determines Developer is in violation of any provision of this Agreement, including the foregoing standards for Improvements, and sufficient cause exists to stop the work, then, upon five (5) days' written notice to Developer, the City may shut down all work on the Subdivision and prevent further construction or building activity until Developer remedies

the violation and is once again in full compliance with the provisions of this Agreement. Any such stop work order will be without prejudice to any other right or remedy of the City.

5. DEDICATION OF PUBLIC IMPROVEMENTS. Upon the satisfactory completion and final inspection of the Improvements, Developer will dedicate to the City all Public Improvements, including the culinary water system, storm drain lines, streets, and sidewalk, curb and gutter. Developer will continue to repair and replace the Public Improvements as necessary during the Warranty Period, as provided below.

6. WARRANTY OF IMPROVEMENTS. Developer warrants that the Improvements and any improvements restored by Developer will comply with the Subdivision Requirements and will remain in good condition, free from all defects in workmanship or materials during the Warranty Period (as defined below), without charge or cost to the City. For purposes of this Agreement, “*Warranty Period*” means the one-year period beginning on the date the City provides Developer written acceptance of the completed Improvements in accordance with Section 16.16.030.N of the Code.

7. SECURITY FOR DEVELOPER’S OBLIGATIONS. To secure the satisfactory completion of the Improvements and Developer’s warranty obligations under the Code and this Agreement, Developer and the City will enter into a bond agreement or agreements in a form acceptable to the City (collectively, the “*Bond Agreement*”). Under the Bond Agreement, the City or a federally insured bank will hold in a separate escrow account (the “*Escrow Account*”) an amount of money specified in the Bond Agreement (the “*Proceeds*”), subject to authorized disbursements, pending expiration of the Warranty Period. The Proceeds represent 120 percent of the estimated cost of the Improvements, as itemized in the Bond Agreement. Developer will assign to the City all of its right, title, and interest in and to the principal amount of the Escrow Account as an independent guaranty for the satisfactory completion of the Improvements, and the City will be entitled to immediate access to the Proceeds, as provided in the Bond Agreement. Developer will remain fully liable to complete and warrant the Improvements and surface of the Subdivision property even if the Proceeds are inadequate to fully cover the cost to install, repair, or replace them.

8. FEES AND CHARGES. Developer will pay all fees and charges required by the Code, including public improvement inspection fees before the Final Plat is recorded; and all lot-specific required fees and charges, including building permit fees, before any building permit is issued.

9. DEFAULT. Developer will be in default under this Agreement if any of the following occurs:

a. Abandonment. Developer abandons the Subdivision, as determined by the City in its sole discretion.

b. Failure to Perform.

(1) Failure to Complete Improvements. Developer fails to complete the Improvements according to the Subdivision Requirements within the time specified in this Agreement.

(2) Failure during Warranty Period. The City finds any of the Improvements to be substandard or defective during the Warranty Period and, after ten (10) days’ written notice of such failure, Developer has not repaired or replaced the substandard or defective Improvements at Developer’s own expense; or, if the failure is not capable of being cured within such time, Developer has not commenced to cure the failure within such time and diligently completed the cure at its own expense within a reasonable time thereafter, as determined by the City in its sole discretion.

(3) **Emergency Situation.** The City determines, in its sole discretion, that an emergency situation exists relative to the Improvements and, after verbal notice followed by written notice within three (3) days, Developer has not remedied the emergency situation within a reasonable time, as determined by the City in its sole discretion.

(4) **Other Failure.** Developer otherwise substantially fails to perform its obligations under this Agreement and, after ten (10) days' written notice from the City of such failure, Developer has not cured the failure; or, if the failure is not capable of being cured within such time, has not commenced to cure the failure within such time and diligently completed the cure within a reasonable time thereafter, as determined by the City in its sole discretion.

c. **Insolvency.** Developer becomes insolvent, a receiver is appointed for Developer, or a voluntary or involuntary petition in bankruptcy pertaining to Developer is filed at any time before Developer's obligations under this Agreement have been satisfied.

d. **Foreclosure.** Foreclosure proceedings are commenced against any property within the Subdivision or such property is conveyed in lieu of foreclosure before Developer's obligations under this Agreement have been satisfied.

10. REMEDIES. In the event of Developer's default under this Agreement, the City will be entitled to pursue any remedies allowed under this Agreement, at law, or in equity, including the following:

a. **Disbursement of Proceeds.** The City will be entitled to withdraw some or all of the Proceeds from the Escrow Account upon written request, in accordance with the Bond Agreement. The City will utilize the withdrawn Proceeds for the purpose of satisfactorily completing, repairing, or replacing the Improvements. In the event the City receives Proceeds in excess of those required to complete, repair, or replace the Improvements, the City will pay the excess Proceeds plus interest to Developer upon final approval of the Improvements at the end of the Warranty Period.

b. **Completion of Improvements by the City.** The City may elect to complete, repair, or replace the Improvements, as it deems necessary. Developer hereby grants to the City, its officers, employees, agents and contractors, the unrestricted right to enter upon the Subdivision property for the purpose of completing or remedying the Improvements in the event of Developer's default. All costs the City incurs in completing or remedying the Improvements, including attorney fees, administrative fees, and court costs, whether incurred in litigation or otherwise, will be included in the cost of the Improvements. The amount of such costs will be deducted from the Proceeds available for disbursement to Developer upon final approval of the Improvements at the end of the Warranty Period.

c. **Deficiency.** Upon written notice, Developer will compensate the City for all costs the City incurs as a result of Developer's failure to perform its obligations under this Agreement to the extent such costs are not covered by the Proceeds. Such costs include all costs described in Section 10.f.

d. **Suspension of Building Permits.** The City may suspend the issuance of new building permits within the Subdivision until: (1) the Improvements are satisfactorily completed, repaired, or replaced; (2) a substitute bond agreement has been executed and delivered to the City, and the City Council agrees to accept the substitute bond agreement; or (3) other arrangements acceptable to the City Council have been made to insure the satisfactory completion, repair, or replacement of the Improvements.

e. **Specific Enforcement.** The City may specifically enforce Developer's obligations under this Agreement, including the obligation to install, pay for, and warrant the Improvements.

f. Costs and Attorney Fees. The City may recover from Developer all costs necessary to complete, repair, or replace the Improvements or enforce this Agreement, including all administrative costs; inspection fees; permit fees; and reasonable attorney, engineering, consultant, and expert witness fees, whether incurred in litigation or otherwise.

The City's remedies under this Agreement, at law, and in equity are cumulative.

11. INDEMNIFICATION.

a. Generally. Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability, claims, demands, suits or causes of action arising out of or otherwise resulting from the Improvements until such time as the Improvements have been finally completed, whether by Developer or by the City, and the Improvements have been approved and accepted by the City at the expiration of the Warranty Period, except to the extent of any actionable negligence or other fault attributable to the City.

b. For Insufficient Proceeds. In the event the City elects to complete the Improvements or remedy substandard or defective Improvements, Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability in excess of the Proceeds for the payment of any labor or material liens which may result from the work of any contractor (including subcontractors and materialmen of any such contractor) hired by the City or which may arise due to insufficient Proceeds.

c. Defense of Claims. With respect to Developer's agreement to defend the City, the City will have the option of either providing for its own defense, or requiring Developer to undertake the defense of the City, either of which will be at Developer's sole cost and expense.

12. INSURANCE. Developer will maintain throughout the development of the Subdivision and the Warranty Period insurance in types and amounts reasonably acceptable to the City, covering liability, damage, loss, or injury to any person or property, including damage to Developer or its property, as a result of the work of any contractor or agent in the development of the Subdivision, including the installation or construction of the Improvements or the completion or repair of the Improvements by the City. Developer's indemnity obligations under Section 11, above, shall include any liability that exceeds the insurance policy limits. Developer will provide at least annually proof of the insurance required under this Agreement. If Developer fails to maintain insurance as required, the City, at its option, may obtain such insurance and collect from Developer the cost of insurance premiums as part of the City's recoverable costs, as described in Section 10.f. The City may suspend the issuance of any building permits until such insurance is in place.

13. DEVELOPER'S INDEPENDENT OBLIGATIONS. Developer's obligations to complete and warrant the Improvements and fulfill its other obligations under this Agreement and the other Subdivision Requirements: (a) are independent of any obligation or responsibility of the City, express or implied; (b) are not conditioned upon the commencement of actual construction work in the Subdivision or upon the sale of any lots or part of the Subdivision; and (c) are independent of any other remedy available to the City to secure completion of the Improvements. Developer may not assert as a defense that the City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Developer of its duty to perform, or preclude the City from requiring Developer's performance under this Agreement.

14. CONNECTION TO CITY SYSTEMS. The City will permit Developer to connect the Improvements to the City's water and storm drain systems upon Developer's performance of its

obligations under this Agreement and compliance with the Subdivision Requirements, including payment of all connection, review, and inspection fees.

15. INSPECTION AND PAYMENT.

a. Inspection of Improvements. Notwithstanding any provision of this Agreement to the contrary, the Improvements, their installation, and all other work performed by Developer or its agents under this Agreement may be inspected at such times as the City may reasonably require; in particular, an inspection will be required before any trench containing Improvements is closed. Developer will pay any required connection fees, impact fees, and inspection fees required by City ordinance or resolution prior to such inspection.

b. Right to Enter Subdivision. Developer grants to the City, its officers, employees, agents and contractors, the unrestricted right to enter upon the property within the Subdivision for the purpose of inspecting, completing, repairing, or replacing the Improvements and taking any other necessary remedial action, both before and during the Warranty Period.

c. Payment to Third Parties. Developer will timely pay all third parties for labor and materials provided for the Improvements. Developer will promptly remove all liens for labor and materials from the Subdivision property, and will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability for such liens. The disbursement of Proceeds under the Bond Agreement will be conditioned on the waiver or satisfaction of all such liens.

16. MISCELLANEOUS PROVISIONS.

a. Covenants Run with the Land. Developer will not assign any rights or delegate any obligations under this Agreement without the City's prior written consent. Notwithstanding the foregoing, the covenants contained in this Agreement will be construed as covenants that touch and concern real property and will run with the land. Such covenants will be binding upon the successors, assigns, agents, and legal representatives of Developer in the ownership or development of any portion of the Subdivision. The City may record this Agreement or a memorandum of this Agreement.

b. Severability. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the remaining provisions.

c. Captions. The section and paragraph headings contained in this Agreement are for the purpose of reference only and will not limit or otherwise affect the construction of any provision of this Agreement.

d. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties in that regard. No modification of this Agreement will be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Agreement must be in writing and must be signed by the party waiving the provision.

e. No Third-Party Beneficiaries. This Agreement is made for the exclusive benefit of the parties and their respective heirs, successors, and assigns. No other person or entity, including lot purchasers, contractors, subcontractors, laborers, and suppliers, will have any interest under this Agreement or be classified as a third-party beneficiary. The City will not be liable to any claimant, in any way, for any obligation of Developer under this Agreement or otherwise.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

DEVELOPER:

FRANK O. CHASE FAMILY LIVING TRUST
DATED JULY 2, 2013

Darren Odgen Chase, Co-Successor Trustee

Kelly Lynn Chase, Co-Successor Trustee

THE CITY:

WEST BOUNTIFUL CITY

Kenneth Romney, Mayor

ATTEST:

Cathy Brightwell, City Recorder

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss
COUNTY OF _____)

On the _____ day of _____, 2014, appeared before me ***Darren Ogden Chase and Kelly Lynn Chase***, who, being duly sworn, did acknowledge that they are ***Co-Successor Trustees of the Frank O. Chase Living Trust dated July 2, 2013***, the Developer of the ***Frank Chase Subdivision*** named in the foregoing Agreement, and that he signed the Agreement as duly authorized Co-Successor Trustees on behalf of Developer.

NOTARY PUBLIC

STATE OF UTAH)
 : ss
COUNTY OF DAVIS)

On the _____ day of _____, 2014, appeared before me ***Kenneth Romney and Cathy Brightwell***, personally known to me or proved to me on the basis of satisfactory evidence to be the Mayor and City Recorder, respectively, of West Bountiful City, who duly acknowledged that the foregoing instrument was signed on behalf of the City by authority of a duly adopted resolution of its City Council, and that the City executed the same.

NOTARY PUBLIC

EXHIBIT LIST

- Exhibit A** Final Plat
- Exhibit B** Construction Drawings

MEMORANDUM



TO: Mayor & Council

DATE: July 10, 2014

FROM: Duane Huffman

RE: **Equipment Lease for Golf Course Equipment**

As part of the FY 2015 budget, \$13,000 was included for the lease of a new mower for the roughs at Lakeside Golf Course. Attached to this memo is a resolution to approve a lease with Zions Bank for this purpose. The highlights of the lease are as follows:

- Mower Cost: \$66,867.20
- Lease Term: Six Years
- Interest Rate: 2.1%
- Annual Payment: \$12,009
- Total Interest: \$4,685.84
- Equipment can be purchased at anytime

In general, it is preferable to purchase equipment without the use of financing. However, given the current cash holdings of the Golf Course Fund, the life expectancy of this type of equipment, and the relatively low interest rate available, I am comfortable recommending this lease agreement.

WEST BOUNTIFUL CITY

RESOLUTION #342-14

A RESOLUTION APPROVING THE FORM OF THE EQUIPMENT LEASE AGREEMENT WITH ZIONS FIRST NATIONAL BANK, SALT LAKE CITY, UTAH, FINDING THAT IT IS IN THE BEST INTERESTS OF WEST BOUNTIFUL CITY, UTAH TO ENTER INTO SAID AGREEMENT, AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF.

WHEREAS, the City Council (the "Governing Body") has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

WHEREAS, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to West Bountiful City, Utah; and

WHEREAS, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

Be it resolved by the Governing Body of West Bountiful City, Utah as follows:

Section 1. The terms of said Equipment Lease Agreement are in the best interest of West Bountiful City, Utah for the leasing of the equipment described therein.

Section 2. The Mayor and City Recorder are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of West Bountiful City, Utah.

Section 3. The officers of the Governing Body and West Bountiful City, Utah are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Adopted and approved this 15th day of July, 2014.

By _____
Ken R. Romney, Mayor

VOTING:

Mark Preece	Yea ____	Nay ____
James Ahlstrom	Yea ____	Nay ____
James Bruhn	Yea ____	Nay ____
Kelly Enquist	Yea ____	Nay ____
Debbie McKean	Yea ____	Nay ____

ATTEST:

Cathy Brightwell, Acting City Recorder

LEASE PURCHASE AGREEMENT

This equipment lease (the "Lease") dated as of July 23, 2014, by and between Zions First National Bank, One South Main Street, Salt Lake City, Utah 84111 ("Lessor"), and West Bountiful City, Utah ("Lessee") a body corporate and politic existing under the laws of the State of Utah. This Lease includes all Exhibits hereto, which are hereby specifically incorporated herein by reference and made a part hereof.

Now therefore, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Lease Of Equipment

Section 1.1 *Agreement to Lease*. Lessor hereby demises, leases, and lets to Lessee and Lessee rents, leases and hires from Lessor, the "Equipment" (as hereinafter defined), to have and to hold for the term of this Lease; provided, however, that the obligation of Lessor to lease any item of the Equipment and to make payment to the Vendor therefor is subject to the condition precedent that Lessee shall provide the following at its cost, in form and substance satisfactory to Lessor:

- (i) Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 10.2 hereof;
- (ii) Invoice of the Vendor of such item of Equipment; and
- (iii) Delivery And Acceptance Certificate in the form attached hereto as Exhibit "E" executed by Lessee acknowledging delivery to and acceptance by Lessee of such item of Equipment.

Section 1.2 *Title*. During the term of this Lease, title to the Equipment will be transferred to, and held in the name of, Lessee, subject to retransfer to Lessor as provided in Section 3.4. Upon termination of this Lease as provided in Sections 3.3 (a) or 3.3 (c), title to the Equipment will transfer automatically to Lessor without the need for any further action on the part of Lessor, Lessee, or any other person, provided that if any action is so required, Lessee by this Lease appoints Lessor its irrevocable attorney in fact to take any action to so transfer title to the Equipment to Lessor. Lessor at all times will have access to the Equipment for the purpose of inspection, alteration, and repair.

Section 1.3 *Security*. To secure the payment of all of Lessee's obligations to Lessor under this Lease, Lessee grants to Lessor a security interest in the Equipment and in all additions, attachments, accessions, and substitutions to or for the Equipment. The security interest granted herein includes proceeds. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices, and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or advisable to establish and maintain its security interest in the

Equipment. Lessor understands and agrees that the security interest granted in this Section shall be subject and subordinate to presently existing security interests and/or purchase money security interests in miscellaneous equipment which may be installed in accordance with the provisions of Section 9.3.

ARTICLE II

Definitions

The terms defined in this Article II shall, for purposes of this Lease, have the meaning herein specified unless the context clearly otherwise requires:

“Business Day” shall mean any day except Saturday, Sunday and legal holidays on which banks in the State of Utah are closed.

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

“Commencement Date” shall mean the date when the term of this Lease begins and Lessee’s obligation to pay rent accrues, as set forth in Section 3.1.

“Equipment” shall mean the property which Lessor is leasing to Lessee referred to in Section 1.1 and more fully described in Exhibit “A.”

“Lessee” shall mean West Bountiful City, Utah.

“Lessor” shall mean Zions First National Bank, Salt Lake City, Utah, its successors and assigns.

“Option Purchase Price” shall mean the amount which Lessee must pay Lessor to purchase the Equipment, as determined by Article V.

“Original Term” shall mean the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date, as set forth in Section 3.2.

“Principal Outstanding” means the remaining unpaid principal outstanding under this Lease as specified on Exhibit “C” attached hereto.

“Renewal Terms” shall mean all of the additional periods of one year (coextensive with Lessee’s fiscal year) for which this Lease shall be effective in the absence of a termination of the Lease as provided in Article III.

“Rental Payment Date” means the dates upon which Rental Payments are to be made by the Lessee to the Lessor hereunder as specified on Exhibit “C” attached hereto.

“Rental Payments” means the rental payments payable by Lessee pursuant to the provisions of this Lease during the Term hereof.

“Term” or “Term of this Lease” shall mean the Original Term and all Renewal Terms provided for in this Lease under Section 3.2.

“Vendor” shall mean the manufacturer of the Equipment and the manufacturer’s agent or dealer from whom Lessor purchased or is purchasing the Equipment.

ARTICLE III

Lease Term

Section 3.1 *Commencement*. The Term of this Lease shall commence as of:

_____ the date this Lease is executed.

_____ days after the receipt, installation, and operation of the Equipment, and its acceptance by Lessee, as indicated by an acceptance certificate signed by Lessee.

_____ the date the Vendor receives full payment for the Equipment from Lessor.

 X July 23, 2014.

Such date will be referred to as the Commencement Date.

Section 3.2 *Duration of Lease: Nonappropriation*. This Lease will continue until the end of the fiscal year of Lessee in effect at the Commencement Date (the “Original Term”). Thereafter, this Lease will be automatically extended for six (6) successive additional periods of one year coextensive with Lessee’s fiscal year (each, a “Renewal Term”), unless this Lease is terminated as hereinafter provided.

The parties understand that as long as Lessee has sufficient appropriated funds to make the Rental Payments hereunder, Lessee will keep this Lease in effect through all Renewal Terms and make all payments required herein or Lessee will exercise its option under Article V to purchase the Equipment. Lessee hereby declares that, as of the date of the execution of this Lease, Lessee currently has an essential need for the Leased Equipment which is the subject of this Lease to carry out and give effect to the public purposes of Lessee. Lessee reasonably believes that it will have a need for the Equipment for the duration of the Original Term and all Renewal Terms. If Lessee does not appropriate funds to continue the leasing of the Equipment for any ensuing Renewal Term, this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Lessor of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect; provided, however, that a failure to give such written notice shall not constitute an event of default, result in any liability on the part of the Lessee or otherwise affect the termination of this Lease as set forth hereinabove.

Section 3.3 *Termination*. This Lease will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Lease and the failure of Lessee to appropriate funds to continue the leasing of the Equipment for the ensuing Renewal Term;
- (b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Equipment;
- (c) a default by Lessee and Lessor's election to terminate this Lease under Article VII herein; or
- (d) the expiration of the Term of this Lease.

Section 3.4 *Return of Equipment Upon Termination*. Upon termination of this Lease pursuant to Sections 3.3 (a) or 3.3 (c), Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 9.2 hereof in the following manner as may be specified by Lessor:

- (a) By delivering the Equipment to Lessor at Lessee's principal place of business; or
- (b) By loading the Equipment at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the destination designated by Lessor.

Lessee shall obtain all governmental authorizations to permit return of the Equipment to Lessor and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

ARTICLE IV

Rental Payments

Section 4.1 *Amount*. Lessee will pay Lessor as rent for the use of the Equipment during the Original Term and any Renewal Terms on the dates and in the amounts set forth in Exhibit "C" attached hereto. All Rental Payments shall be paid, exclusively from legally available funds, in lawful money of the United States of America to Lessor at or to such other person or entity or at such other place as Lessor may from time to time designate by written notice to Lessee.

Section 4.2 *Portion of Rental Payments Attributable to Interest*. The portion of each Rental Payment which is paid as and is representative of interest is set forth in Exhibit "C" attached hereto.

Section 4.3 *No Right to Withhold*. Notwithstanding any dispute between Lessee, Lessor, Vendor or any other party, Lessee will make all Rental Payments when due, without withholding any portion of such rent, pending final resolution of such dispute by mutual agreement between the parties thereto or by a court of competent jurisdiction.

Section 4.4 *Rental Payments to Constitute a Current Obligation of the Lessee.* The Lessee and the Lessor acknowledge and agree that the obligation of the Lessee to pay Rental Payments hereunder constitutes a current obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any provision of Sections 10–8–6 or 11–1–1 through 11–1–2, Utah Code Annotated 1953, as amended, or Section 3, 4, or 5 of Article XIV of the Utah Constitution, or any other constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the credit of the Lessee to the payment of the Rental Payments, or the interest thereon, nor shall this Lease obligate the Lessee to apply money of the Lessee to the payment of Rental Payments beyond the then current Original Term or Renewal Term, as the case may be, or any interest thereon.

ARTICLE V

Purchase Of Equipment

Section 5.1 *Option Purchase Price.* On any Business Day on or after July 23, 2014, Lessee may purchase the Equipment from Lessor at a price equal to the principal amount outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such date is a Rental Payment Date, in which case, the principal amount outstanding as of such date), plus accrued interest from such Rental Payment Date to such date of calculation at the rate of interest per annum in effect for the period during which the calculation is made, as set forth in Exhibit “C.”

Section 5.2 *Manner of Exercise of Option.* To exercise the option, Lessee must deliver to Lessor written notice specifying the date on which the Equipment is to be purchased (the “Closing Date”), which notice must be delivered to Lessor at least thirty (30) days prior to the Closing Date specified therein. At the closing, Lessor will deliver to Lessee a bill of sale transferring the Equipment to Lessee free and clear of any lien or encumbrance created by or arising through Lessor, but without warranties, and will deliver all warranties and guarantees of Vendors of the Equipment.

Section 5.3 *Conditions of Exercise of Option.* Lessee may purchase the Equipment pursuant to the option granted by this Lease only if Lessee has made all Rent Payments when due (or has remedied any defaults in the payment of rent, in accordance with the provisions of this Lease) and if all other representations, covenants, warranties, and obligations of Lessee under this Lease have been satisfied (or all breaches of the same have been waived by Lessor in writing).

Section 5.4 *Termination Purchase.* Upon the expiration of the Term of the Lease and provided that the conditions of Section 5.3 have been satisfied, Lessee shall be deemed to have purchased the Equipment (without the payment of additional sums) and shall be vested with all rights and title to the Equipment. Lessor agrees that upon the occurrence of the events as provided in this Section, it shall deliver to Lessee the documents specified in Section 5.2, and shall comply with the provisions of Section 5.2 relating to termination upon exercise of the option to purchase.

ARTICLE VI

Representations, Covenants, And Warranties Of Lessee And Lessor

Section 6.1 *Representations, Covenants and Warranties of Lessee*. Lessee represents, covenants, and warrants as follows:

- (a) Lessee is a body corporate and politic, duly organized and existing under the Constitution and laws of the State of Utah.
- (b) Lessee is authorized by the Constitution and laws of the State of Utah to enter into this Lease and to effect all of Lessee's obligations hereunder. The governing body of Lessee has executed the resolution attached as Exhibit "B" to this Lease which specifically authorizes Lessee to execute and deliver this Lease.
- (c) All procedures and requirements, including any legal bidding requirements, have been met by Lessee prior to the execution of this Lease in order to insure the enforceability of this Lease and all rent and other payment obligations will be paid out of funds legally available for such purpose.
- (d) The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of this Lease was authorized, as evidenced by the certificate of open meeting law attached to the Resolution of Governing Body which is attached hereto as Exhibit "B."
- (e) The letter attached to this Lease as Exhibit "D" is a true opinion of Lessee's counsel.
- (f) Lessee will use and service the Equipment in accordance with Vendor's instructions and in such a manner as to preserve all warranties and guarantees with respect to the Equipment.
- (g) During the term of this Lease, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.
- (h) The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.
- (i) The Equipment shall be used solely by Lessee and shall not be subject to any direct or indirect private business use.
- (j) Lessee covenants and certifies to and for the benefit of Lessor throughout the term of this Lease that:

- (1) No use will be made of the proceeds of this Lease, or any funds or accounts of Lessee which may be deemed to be proceeds of this Lease, which use, if it had been reasonably expected on the date of execution of this Lease, would have caused this Lease to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code;
 - (2) Lessee will at all times comply with the rebate requirements of Section 148(f), to the extent applicable;
 - (3) in order to preserve the status of this Lease as other than a “private activity bond” as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease is outstanding: (I) none of the proceeds of this Lease or the Equipment financed therewith shall be used for any “private business use” as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code; and (II) no part of this Lease shall be secured in whole or in part, directly or indirectly, by any interest in any equipment used in any such “private business use” or by payments in respect of such equipment, and shall not be derived from payments in respect of such equipment;
 - (4) it will not take any action or omit to take any action such that would cause interest on this Lease to become ineligible for the exclusion from gross income of Lessor as provided in Section 103 of the Code.
- (k) The obligations of Lessee under this lease are not federally guaranteed within the meaning of Section 149(b) of the Code.
- (l) This Lease is being executed for the purpose of acquiring the Equipment and is not being issued to refund or refinance any outstanding obligation of Lessee, nor to reimburse Lessee for any expenditures made prior to sixty (60) days before the date the Governing Body (as defined in the Resolution of the Governing Body attached hereto) of the Lessee adopted the Resolution of the Governing Body attached hereto.
- (m) In compliance with Section 149 (e) of the Code relating to information reporting, Lessee has caused or will cause to be filed with the Internal Revenue Service, IRS form 8038–G or 8038–GC, as appropriate.
- (n) Lessee has selected the Equipment and desires to lease the Equipment for use in the performance of its governmental or proprietary functions. Lessor, at Lessee’s request, has ordered or shall order the Equipment and shall lease the same to Lessee as herein provided, Lessor’s only role being the facilitation of the financing of the Equipment for the Lessee. Lessor will not be liable for specific performance or for damages if the supplier or manufacturer of the Equipment for any reason fails to fill, or delays in filling, the order for the Equipment. Lessee acknowledges that Lessor is not a manufacturer of or a dealer in the Equipment (or similar equipment) and does not inspect the Equipment prior to delivery to Lessee. Lessee agrees to accept the Equipment and authorizes Lessor to add the serial number of the Equipment to Exhibit “A.” Lessor shall have no obligation to install, erect, test, inspect, or service the Equipment. *For purpose of this Lease and of any purchase of the Equipment*

effected under this Lease, Lessor expressly disclaims any warranty with respect to the condition, quality, durability, suitability, merchantability or fitness for a particular purpose of the Equipment in any respect, and any other representation, warranty, or covenant, express or implied. Lessor will not be liable to Lessee for any liability, loss, or damage caused or alleged to be caused, directly or indirectly, by any inadequacy, deficiency, or defect in the equipment, or by any use of the equipment, whatsoever. Lessor assigns to Lessee, without recourse, for the Term of this Lease all manufacturer warranties and guarantees, express or implied, pertinent to the Equipment, and Lessor directs Lessee to obtain the customary services furnished in connection with such guarantees and warranties at Lessee's expense, subject to Lessee's obligation to reassign to Lessor all such warranties and guarantees upon Lessor's repossession of the Equipment.

- (o) During the term of this Lease, Lessee covenants and agrees (1) to include in its annual tentative budget prepared by the appropriate officials acting on behalf of Lessee in accordance with applicable law an item for expenditure of an amount necessary to pay the Rental Payments for the Equipment during the next succeeding Renewal Term, and (2) to take such further action (or cause the same to be taken) as may be necessary or desirable to assure that the final budget submitted to the governing body of Lessee for its consideration seeks an appropriation of moneys sufficient to pay such Rental Payments.
- (p) There are no legal or governmental proceedings or litigation pending or, to the best knowledge of Lessee, threatened or contemplated (or any basis therefore) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of this Lease
- (q) Lessee has never non-appropriated or defaulted under any of its payment or performance covenants, either under any municipal lease of the same general nature as this Lease or under any of its bonds, notes or other debt obligations for which its general credit or revenues are pledged.

Section 6.2 *Representations, Covenants and Warranties of Lessor.* Lessor represents, covenants, and warrants as follows:

- (a) During the term of this Lease, Lessor will provide Lessee with quiet use and enjoyment of the Equipment, without suit, trouble, or hindrance from Lessor, except upon default by Lessee as set forth in this Lease.
- (b) Lessor has not caused to be created any lien or encumbrance on the Equipment except the security interest provided in Section 1.3 of this Lease.

ARTICLE VII
Events Of Default And Remedies

Section 7.1 *Events of Default Defined*. The following shall be “events of default” under this Lease and the terms, “event of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 7.1 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 7.1 are subject to (i) the provisions of Section 3.2 hereof with respect to nonappropriation; and (ii) if by reason of *force majeure* Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article IV hereof, Lessee shall not be deemed in default during the continuance of such inability. The term “*force majeure*” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms, droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

Section 7.2 *Remedies on Default*. Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, Lessor shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

- (a) With or without terminating this Lease, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, holding Lessee liable for the difference between (i) the rents and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, as appropriate, and (ii) the purchase price, rent or other amounts paid by a purchaser, lessee or sublessee of the Equipment pursuant to such sale, lease or sublease; and

- (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 7.3 *No Remedy Exclusive*. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article VII it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.4 *Waiver of Certain Damages*. With respect to all of the remedies of Section 7.2 above, Lessee expressly waives any damages occasioned by Lessor's repossession of the Equipment.

ARTICLE VIII

Payment Of Taxes, Fees, Permits, And Utility Services

Section 8.1 *Interpretation*. This Lease for all purposes will be treated as a net lease.

Section 8.2 *Taxes and Fees*. Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, and other taxes and fees, together with any penalties, fines, and interest on such taxes and fees imposed or levied with respect to the Equipment and the ownership, delivery, lease, possession, use, operation, sale, and other disposition of the Equipment, and upon the rental or earnings arising from any such disposition, except any federal or state income taxes payable by Lessor on such rental or earnings. Lessee may in good faith and by appropriate proceedings contest any such taxes and fees so long as such proceedings do not involve any danger of sale, forfeiture, or loss of the Equipment or of any interest in the Equipment.

Section 8.3 *Permits*. Lessee will provide all permits and licenses necessary for the installation, operation, and use of the Equipment. Lessee will comply with all laws, rules, regulations, and ordinances applicable to the installation, use, possession, and operation of the Equipment. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Equipment, such changes or additions will be made by Lessee at its own expense.

Section 8.4 *Utilities*. Lessee will pay all charges for gas, water, steam, electricity, light, heat or power, telephone, or other utilities furnished to or used in connection with the Equipment (including charges for installation of such services) during the term of this Lease. There will be no abatement of rent on account of the interruption of any such services.

ARTICLE IX

Use, Repairs, Alterations, And Liens

Section 9.1 *Use*. Lessee will not install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee agrees that the Equipment is and at all times will remain personal property not withstanding that the Equipment or any part of the Equipment may now or hereafter become affixed in any manner to real property or to any building or permanent structure.

Section 9.2 *Repairs*. Lessee at its own cost will service, repair, and maintain the Equipment so as to keep the Equipment in as good condition, repair, appearance, and working order as when delivered to and accepted by Lessee under this Lease, ordinary wear and tear excepted. At its own cost, Lessee will replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices will be free and clear of all liens, encumbrances, and rights of others, and immediately will become a part of the Equipment and will be covered by this Lease (for all purposes including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.3 *Alterations*. Lessee may install such miscellaneous equipment as may be necessary for use of the Equipment for its intended purposes so long as either (a) the installation of such equipment does not alter the function or manner of operation of the Equipment, or (b) Lessee, upon termination of this Lease (other than termination pursuant to Section 3.3(b) or (d), restores the Equipment to its function and manner of operation prior to the installation of such equipment. Subject to the obligations described above, Lessee may remove such equipment upon termination of this Lease, if the removal of such equipment will not substantially damage the Equipment. Without the prior written consent of Lessor, Lessee will not make any other alterations, changes, modifications, additions, or improvements to the Equipment except those needed to comply with Lessee's obligations to change, add to, or repair the Equipment as set forth in Sections 9.2 and 10.3 herein. Any alterations, changes, modifications, additions, and improvements made to the Equipment, other than miscellaneous equipment installed as set forth above, immediately will become a part of the Equipment and will be covered by this Lease (for all purposes, including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.4 *Liens*. Except with respect to the security interest provided in Section 1.3 hereof, Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment or any interest in the Equipment. Lessee promptly and at its own expense will take such action as may be necessary to duly discharge any mortgage, pledge, lien, charge, encumbrance, or claim, not excepted above, if the same arises at any time.

ARTICLE X

Indemnification, Insurance, And Damage To Or Destruction Of The Equipment

Section 10.1 *Indemnification*. Lessee assumes liability for and agrees to indemnify Lessor from and against any and all liability (including attorney's fees) of any nature imposed upon, incurred by, or asserted against Lessor which in any way relates to or arises out of ownership, delivery, lease, possession, use, operation, condition, sale, or other disposition of the Equipment. Notwithstanding anything contained in this Section to the contrary, Lessor shall not be indemnified for, or relieved of, any liability which may be incurred from Lessor's breach of this Lease.

Section 10.2 *Insurance*. Lessee at Lessor's option will either self insure, or at its cost, will cause casualty insurance, public liability insurance, and property damage insurance to be carried and maintained on the Equipment, with all such coverages to be in such amounts sufficient to cover the value of the Equipment at the commencement of this Lease (as determined by the purchase price paid by Lessor for the Equipment), and to be in such forms, to cover such risks, and with such insurers, as are acceptable to Lessor. A combination of self-insurance and policies of insurance may be utilized. If policies of insurance are obtained, Lessee will cause Lessor to be the named insured on such policies as its interest under this Lease may appear. Insurance proceeds from insurance policies or budgeted amounts from self-insurance as relating to casualty and property damage losses will, to the extent permitted by law, be payable to Lessor to the extent of the sum of the Option Purchase Price of the Equipment at the time of its damage or destruction and all amounts due and owing hereunder. Lessee will deliver to Lessor the policies or evidences of insurance satisfactory to Lessor, if any, together with receipts for the initial premiums before the Equipment is delivered to Lessee. Renewal policies, if any, together with receipts showing payment of the applicable premiums will be delivered to Lessor at least thirty (30) days before termination of the policies being renewed. By endorsement upon the policy or by independent instrument furnished to Lessor, such insurer will agree that it will give Lessor at least thirty (30) days' written notice prior to cancellation or alteration of the policy. Lessee will carry workmen's compensation insurance covering all employees working on, in, or about the Equipment, and will require any other person or entity working on, in, or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverages throughout the Term of this Lease.

Section 10.3 *Damage to or Destruction of the Equipment*. If all or any part of the Equipment is lost, stolen, destroyed, or damaged, Lessee will give Lessor prompt notice of such event and will, to the extent permitted by law, repair or replace the same at Lessee's cost within thirty (30) days after such event, and any replaced Equipment will be substituted in this Lease by appropriate endorsement. All insurance proceeds received by Lessor under the policies required under Section 10.2 with respect to the Equipment lost, stolen, destroyed, or damaged, will be paid to Lessee if the Equipment is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement, such proceeds will be paid to Lessor to the extent of the then remaining portion of the Rental Payments to become due during the Term of this Lease less that portion of such Rental Payments attributable to interest which will not then have accrued. No loss, theft, destruction, or damage to the Equipment will impose any obligation on Lessor under this Lease, and this Lease will continue in full force and effect

regardless of such loss, theft, destruction, or damage. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss, theft, destruction, or damage to the Equipment and for injuries or deaths of persons and damage to property however arising, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such damage to property be to Lessee's property or to the property of others.

ARTICLE XI

Miscellaneous

Section 11.1 *Assignment and Sublease by Lessee*. Lessee may not assign, transfer, pledge, or encumber this Lease or any portion of the Equipment (or any interest in this Lease or the Equipment), or sublet the Equipment, without the prior written consent of Lessor. Consent to any of the foregoing acts shall not constitute a consent to any subsequent like act by Lessee or any other person. Lessee agrees that Lessor may impose on the Equipment such plates or other means of identification as necessary to indicate that the Equipment is subject to this Lease and the restrictions set forth in this Section.

Section 11.2 *Assignment by Lessor*. The parties hereto agree that all rights of Lessor hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part; provided that (1) notice of any such assignment, transfer or other disposition is given to Lessee at least five (5) days prior thereto; (2) prior to any such assignment, transfer or other disposition, the name and address of the assignee or transferee must be registered on registration books maintained by Lessee for this Lease; and (3) prior to any such assignment, transfer or other disposition, this Lease must be surrendered to Lessee and the interest of any such assignee or transferee indicated on the face hereof and after such notation hereon, Lessee will redeliver this Lease to the new owner or owners hereof. Lessee shall maintain registration books for this Lease and shall be obligated to make the payments required hereby, including principal and interest payments, solely to the registered owner or owners hereof.

Section 11.3 *Lessor's Right to Perform for Lessee*. If Lessee fails to make any payment or fails to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, Lessor may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and any expenses incurred by Lessor, as the case may be, together with interest thereon as herein provided, will be deemed to be additional rent payable by Lessee on Lessor's demand.

Section 11.4 *Addresses*. All notices to be given under this Lease will be made in writing and mailed or delivered by registered or certified mail, return receipt requested to the following addresses until either Lessee or Lessor gives written notice to the other specifying a different address:

- (a) if to Lessee, at West Bountiful City, Utah, 550 North 800 West, West Bountiful, UT 84087. Attention: Duane Huffman.

(b) if to Lessor, at Zions First National Bank, One South Main Street, 17th Floor, Salt Lake City, Utah, 84133. Attention: Public Financial Services.

Section 11.5 *Manner of Payment*. All payments by Lessee will be made in cash, by certified or cashier's check, or by other manner acceptable to Lessor.

Section 11.6 *Nonwaiver*. No breach by Lessee in the satisfaction of any representation, covenant, warranty, or obligation contained herein or imposed hereby may be waived except by the written consent of Lessor, and any such waiver will not operate as a waiver of any subsequent breach. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or obligation and until complete performance by Lessee of said covenant or obligation Lessor shall be entitled to invoke any remedy available to it under this Lease despite said forbearance or indulgence. No collection of rent shall operate as a waiver of any default.

Section 11.7 *Severance Clause*. Any provision in this Lease which is prohibited by Law will be treated as if it never were a part of this Lease, and the validity of the remaining terms of this Lease will be unaffected.

Section 11.8 *Entire Agreement; Addendum*. This Lease and the attached Exhibits constitute the entire agreement between Lessor and Lessee and supersedes any prior agreement between Lessor and Lessee with respect to the Equipment, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by Lessor and Lessee.

Section 11.9 *Amendments*. This Lease may be amended only by a written document signed by Lessor and Lessee, or their respective successors and assigns.

Section 11.10 *Inurement*. Subject to the restrictions in Section 11.1 above, this Lease is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and assigns.

Section 11.11 *Governing Law*. This Lease is governed by the laws of the State of Utah.

Section 11.12 *Headings*. Headings used in this Lease are for convenience of reference only and the interpretation of this Lease will be governed by the text only.

Section 11.13 *Offset*. Rental Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Rental Payments or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Equipment or any restriction or interference with Lessee's use of the Equipment.

Section 11.14 *Interest*. If Lessee fails to pay any Rental Payment or other amount due hereunder within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the rate of one percent (1%) per month.

Section 11.15 *Nature of this Agreement*. Lessor and Lessee agree that it is their intention that, for federal income tax purposes, the interest of Lessor in the Equipment is as a secured

party and the interest of Lessee is as a debtor with the aggregate principal amount of the Rental Payments constituting the purchase price of the Equipment, and that Lessor neither has nor will have any equity in the Equipment.

Section 11.16 *Set-Up Fee*. As additional consideration for the rights herein granted to Lessee, Lessee agrees to pay Lessor a commencement or set-up fee of Five hundred dollars (\$ 500.00) on the date this Lease is executed.

Section 11.17 *Designation of Issue for Tax Purposes*. In accordance with Section 265 of the Code, Lessee hereby designates this Lease as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. Lessee reasonably anticipates that the total amount of tax-exempt obligations [other than (i) private activity bonds, as defined in Section 141 of the Code (a qualified 501 (c)(3) bond, as defined in Section 145 of the Code, and any bond issued to refund certain obligations issued before August 8, 1986 as described in Section 265 (b)(3)(B)(ii)(II) of the Code not being treated as a private activity bond for this purpose), (ii) any obligation to which Section 141 (a) of the Code does not apply by reason of Sections 1312, 1313, 1316 (g) or 1317 of the Tax Reform Act of 1986 and which is described in Section 265 (b)(3)(C)(ii)(II) of the Code, and (iii) any obligation issued to refund (other than to advance refund within the meaning of Section 149 (d)(5) of the Code) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation] which will be issued by the Lessee and by any aggregated issuer during the current calendar year will not exceed \$10,000,000.

Section 11.18 *Exhibits*. This Lease shall not be effective as against Lessor until such time as all Exhibits attached hereto, consisting of Exhibits "A" through "E," inclusive, are completed to the satisfaction of Lessor and delivered to Lessor.

EXHIBITS

- Exhibit A..... Description Of Equipment
- Exhibit B Resolution Of Governing Body
- Exhibit C Payment Schedule
- Exhibit D..... Opinion Of Lessee’s Counsel
- Exhibit E Delivery and Acceptance Certificate

Executed this ____ day of _____, 20____.

Lessor:

Zions First National Bank

By _____
Alex Buxton, Vice President

Lessee:

West Bountiful City, Utah

By _____
Kenneth Romney, Mayor

EXHIBIT A
Description Of Equipment

<u>Quantity</u>	<u>Description/Serial Numbers</u>
1	Toro Groundsmaster 4700-D

Initials of Lessee Signatory

EXHIBIT B
Resolution Of Governing Body
Extract Of Minutes

July 15, 2014

West Bountiful City, Utah

The City Council (the “Governing Body”) of West Bountiful City, Utah met in regular session at its regular meeting place in West Bountiful City, Utah on July 15, 2014, with the following members of the Governing Body present:

Kenneth Romney	Mayor
James Bruhn.....	Council Member
James Ahlstrom.....	Council Member
Debbie McKean	Council Member
Mark Preece	Council Member
Kelly Enquist	Council Member

Also present:

Cathy Brightwell.....Acting City Recorder

Absent:

After the meeting had been duly called to order and the minutes of the preceding meeting read and approved, the following resolution was introduced in written form, read in full, and pursuant to motion duly made by Council Member _____ and seconded by Council Member _____ was adopted by the following vote:

YEA:

NAY:

The resolution was then signed by the _____ in open meeting and recorded by the _____. The resolution is as follows:

A resolution approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah. Finding that it is in the best interests of West Bountiful City, Utah to enter into said Agreement, and authorizing the execution and delivery thereof.

Whereas, the City Council (the “Governing Body”) has determined that a true and very real need exists for the leasing of the equipment described in the Equipment Lease Agreement presented to this meeting; and

Whereas, the Governing Body has reviewed the form of the Equipment Lease Agreement and has found the terms and conditions thereof acceptable to West Bountiful City, Utah; and

Whereas, the Governing Body has taken the necessary steps including any legal bidding requirements, under applicable law to arrange for the leasing of such equipment under the Equipment Lease Agreement.

Be it resolved by the Governing Body of West Bountiful City, Utah as follows:

Section 1. The terms of said Equipment Lease Agreement are in the best interests of West Bountiful City, Utah for the leasing of the equipment described therein.

Section 2. The Mayor and Acting City Recorder are hereby authorized to execute and deliver the Equipment Lease Agreement and any related documents necessary to the consummation of the transactions contemplated by the Equipment Lease Agreement for and on behalf of West Bountiful City, Utah.

Section 3. The officers of the Governing Body and West Bountiful City, Utah are hereby authorized and directed to fulfill all obligations under the terms of the Equipment Lease Agreement.

Adopted and approved this _____ day of _____, 20_____.

By _____
Kenneth Romney, Mayor

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

I, Cathy Brightwell hereby certify that I am the duly qualified and acting Acting City Recorder of West Bountiful City, Utah.

I further certify that the above and foregoing instrument constitutes a true and correct copy of the minutes of a regular meeting of the City Council including a Resolution adopted at said meeting held on July 15, 2014, as said minutes and Resolution are officially of record in my possession, and that a copy of said Resolution was deposited in my office on _____, 20____.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of West Bountiful City, Utah this _____ day of _____, 20____.

By _____
Cathy Brightwell, Acting City Recorder

[S E A L] ↑

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

I, Cathy Brightwell, the duly qualified Acting City Recorder of West Bountiful City, Utah do hereby certify:

- (a) that in accordance with the requirements of Section 52-4-202 (2), Utah Code Annotated (1953), as amended, public notice of the 20____ Annual Meeting Schedule of the City Council (the “Governing Body”) of West Bountiful City, Utah was given, specifying the date, time and place of the regular meetings of the Governing Body scheduled to be held during the year, by causing a Notice of Annual Meeting Schedule for the Governing Body to be posted on _____, 20____, at the principal office of the Governing Body at West Bountiful City, Utah; said Notice of Annual Meeting Schedule having continuously remained so posted and available for public inspection during regular office hours of the undersigned until the date hereof; and causing a copy of the Notice of Annual Meeting Schedule to be provided on _____, 20____ to at least one newspaper of general circulation within the geographic jurisdiction of West Bountiful City, Utah, or to a local media correspondent;
- (b) that in accordance with the requirements of Section 52-4-202 (1), Utah Code Annotated (1953), as amended, public notice of the regular meeting of the Governing Body on July 15, 2014, was given by specifying in a Notice of Regular Meeting the agenda, date, time and place of the meeting and by causing the Notice of Regular meeting to be posted at the principal office of the Governing Body on the _____ day of _____, 20____ a date not less than 24 hours prior to the date and time of the Governing Body’s regular meeting, and to be provided on the _____ day of _____, 20____, to at least one newspaper of general circulation within the geographic jurisdiction of West Bountiful City, Utah, or to a local media correspondent.

In witness whereof, I have hereunto set my hand and affixed the official seal of West Bountiful City, Utah this _____ day of _____, 20_____.

By _____
Cathy Brightwell, Acting City Recorder

[SEAL] ↑

EXHIBIT C
Payment Schedule

Lessee: West Bountiful City, Utah

Date of Lease: July 23, 2014

Amount Due: \$67,367.20

1. Interest has been computed at the rate of 2.1 % per annum. Interest shall accrue from the Commencement Date.
2. Rental payments shall be due semi-annually commencing January 23, 2015. The payments set forth on the attached debt service schedule shall be due on the 23rd day of January and July up to and including July 23, 2020.
3. The Option Purchase Price, on any given date of calculation, is equal to the Principal Outstanding on the Rental Payment Date immediately preceding the date of calculation (unless such calculation date is a Rental Payment Date, in which case, the Principal Outstanding as of such date) plus accrued interest from such Rental Payment Date at the rate set forth in paragraph number 1 above.

[Please see the attached Debt Service Schedule]

The remainder of this page has been intentionally left blank

West Bountiful City, Utah

\$67,367.20 Equipment Lease Purchase

Dated July 23, 2014

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
07/23/2014	-	-	-	-
01/23/2015	5,297.06	2.100%	707.36	6,004.42
07/23/2015	5,352.68	2.100%	651.74	6,004.42
01/23/2016	5,408.89	2.100%	595.53	6,004.42
07/23/2016	5,465.68	2.100%	538.74	6,004.42
01/23/2017	5,523.07	2.100%	481.35	6,004.42
07/23/2017	5,581.06	2.100%	423.36	6,004.42
01/23/2018	5,639.66	2.100%	364.76	6,004.42
07/23/2018	5,698.88	2.100%	305.54	6,004.42
01/23/2019	5,758.72	2.100%	245.70	6,004.42
07/23/2019	5,819.18	2.100%	185.24	6,004.42
01/23/2020	5,880.29	2.100%	124.13	6,004.42
07/23/2020	5,942.03	2.100%	62.39	6,004.42
Total	\$67,367.20	-	\$4,685.84	\$72,053.04

Yield Statistics

Bond Year Dollars	\$223.14
Average Life	3.312 Years
Average Coupon	2.1000022%
Net Interest Cost (NIC)	2.1000022%
True Interest Cost (TIC)	2.1000024%
Bond Yield for Arbitrage Purposes	2.1000024%
All Inclusive Cost (AIC)	2.3365479%

IRS Form 8038

Net Interest Cost	2.1000022%
Weighted Average Maturity	3.312 Years

Lease 07/23/14 (6yr Semi) | SINGLE PURPOSE | 6/27/2014 | 4:24 PM

Initials of Lessee Signatory

EXHIBIT D
Opinion Of Lessee's Counsel
(Use Attorney's Letterhead)

To: Zions First National Bank
One South Main Street
Salt Lake City, Utah 84111

Gentlemen:

As counsel for West Bountiful City, Utah ("Lessee"), I have examined duly executed originals of Equipment Lease Agreement (the "Lease") dated July 23, 2014, between the Lessee and Zions First National Bank, Salt Lake City, Utah ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Lease. Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of Utah.
2. The Lease has been duly authorized, executed, and delivered by Lessee.
3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of the Lease was authorized.
4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditors' rights generally.
5. The Lease is in accordance with and does not violate the usury statutes of the State of Utah, if any.
6. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.
7. The Equipment (as defined in the Lease) constitutes personal property and when subjected to use by Lessee will not become fixtures under applicable law.

Attorney for Lessee

EXHIBIT E
Delivery And Acceptance Certificate

To: Zions First National Bank

Reference is made to the Equipment Lease Agreement between the undersigned (“Lessee”), and Zions First National Bank (“Lessor”), dated July 23, 2014, (“the Lease”) and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
4. The serial number for each item of Equipment which is set forth on Exhibit “A” to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

West Bountiful City, Utah

By: _____
(Authorized Signature)

(Print name and title)

Date: _____

Witness

1 **West Bountiful City** **PENDING** **July 8, 2014**
2 **Planning Commission**

3 **Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice
4 website and the West Bountiful City website, and sent to Clipper Publishing Company on July 3,
5 2014 per state statutory requirement.

6 **Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, July**
7 **8, 2014, at West Bountiful City Hall, Davis County, Utah.**

8

9 **Those in Attendance:**

10

11 **MEMBERS PRESENT:** Chairman Denis Hopkinson, Alan
12 Malan, Mike Cottle, Laura Charchenko, and Corey Sweat.

13

14 **MEMBERS/STAFF EXCUSED:** Terry Turner.

15

16 **STAFF PRESENT:** Ben White (City Engineer), Cathy
17 Brightwell (Acting Recorder), Duane Huffman (City
18 Administrator), and Debbie McKean (Secretary).

19

20 **VISITORS:** Heather Sathers

21 The Planning Commission Meeting was called to order at 7:30 p.m. by Chairman Hopkinson.
22 Mike Cottle offered a prayer.

23 **I. Accept Agenda**

24 Chairman Hopkinson reviewed the agenda. Mike Cottle moved to accept the agenda deleting
25 Item #3 from the agenda as requested by Staff. Alan Malan seconded the motion. Voting was
26 unanimous in favor among members present.

27 **Business Discussed:**

28 **II. Consider Conditional Use Application from D.L. Shippen Concrete Inc., to build a**
29 **swimming pool at 995 West 1700 North three (3) feet from rear corner of garage.**

30 Commissioner packets included a memorandum date July 3, 2014 from Ben White/Cathy
31 Brightwell regarding a Conditional Use Permit for Shippen Concrete, Inc. to build a pool for the
32 Sather's at 995 West 1700 North along with the Conditional Use Permit application and a site
33 plan for the proposed addition of a pool.

34 Memorandum stated the following information:

- 35 • Mr. Shippen submitted the application on July 2, 2014 to build a pool for the Sather's at
- 36 995 West 1700 North (Ruby Way). A building permit application was submitted on June
- 37 25, 2014 but he found that the measurements he used for the side yard were not correct.
- 38 • The distance between the home and the side fence is 37 feet. There is a required 20 foot
- 39 side setback and a pool width of 14 feet which will leave 3 feet between the corner of the
- 40 pool and the corner of the garage. In addition, there are large trees at the rear of the
- 41 property that will not allow the pool to set back any farther than the proposal.
- 42 • Section 17.24.050.B was included in the memorandum for reference.
- 43 • A list of criteria to determine if the applicant is eligible for approval.

44 Ben White introduced the Conditional Use application submitted by Mr. Shippen referring to the
 45 items stated in the memorandum. This is a corner lot located in the Olsen Farm subdivision.
 46 Because it is a corner lot there is a 20 foot side setback required. Applicant desires to build 3
 47 feet from the corner of the garage. Mr. White explained that after further review he believes the
 48 20 foot side setback does not apply beyond the corner of the garage allowing the applicant some
 49 flexibility in building this structure.

50 Mr. Hopkinson reviewed the options with the Commissioners. Staff recommends the
 51 commission decide on a minimum distance between the pool and garage corner and adjust the
 52 pool within that footprint.

- 53 • Laura Charchenko stated that ADA requirements are at least 4 feet and acknowledged
- 54 that Mrs. Sather is in a wheelchair.
- 55 • Mike Cottle suggested a 5 feet minimum. He was concerned with safety issues.
- 56 • Alan Malan recognized the lot is pie shaped and asked how much wider it gets from the
- 57 garage to the end of the pool. Some discussion took place about using the bottom edge of
- 58 the pool to measure the 20 foot setback which should give them 6 feet between the corner
- 59 of the garage and pool. He also asked if the 3 foot gate described on the plans was 3 feet
- 60 wide or 3 feet high. Applicant responded that it is a double gate with each gate 2 - 3 feet
- 61 wide and 6 feet high.
- 62 • Corey Sweat inquired which way the home was facing and Mrs. Sather's stated it was
- 63 facing north.

64 **ACTION TAKEN:**

65 **Corey Sweat moved to approved the application for David Shippen to construct a**
 66 **pool for the Sather's at 995 West 1700 North with the condition that the 20 foot**
 67 **measurement starts at the southeast corner of the pool and there will be a minimum**
 68 **of 5 feet from the northwest corner of the pool to the corner of the garage. The**
 69 **application meets the following findings. The proposed use at the particular**
 70 **location is necessary or desirable to provide a service or facility that will contribute**
 71 **to the general well-being of the neighborhood and the community; the proposed use,**
 72 **under the circumstances of the particular case, will not be detrimental to the health,**
 73 **safety, or general welfare of persons residing or working in the vicinity, or injurious**
 74 **to property or improvements in the vicinity; the proposed use and/or accompanying**

75 **improvements will not inordinately impact schools, utilities, and streets; the**
 76 **proposed use of building materials and landscaping which are in harmony with the**
 77 **area, and compatibility with adjoining uses; the proposed use will comply with the**
 78 **regulations and conditions specified in the land use ordinance for such use; the**
 79 **proposed use will conform to the intent of the city's general plan; and the conditions**
 80 **to be imposed in the conditional use permit will mitigate the reasonably anticipated**
 81 **detrimental effects of the proposed use and accomplish the purposes of this**
 82 **subsection. Alan Malan seconded the motion and voting was unanimous in favor.**
 83

84 **III. Consider Conditional Use Application from David Vance to build a garage at 654 West**
 85 **1000 North that does not meet standard setback requirements.**

86 Commissioner's packets included a memorandum dated July 3, 2014 from Ben White regarding
 87 a request for a Conditional Use Permit for David Vance to build a garage at 654 West 1000
 88 North with the Conditional Use Permit application and a site plan.

89 The memorandum included the following information:

- 90 • An application was received on July 3, 2014 from David Vance for a Conditional Use
 91 permit for a garage he is building at 654 West 1000 North which request the need for the
 92 garage to set farther away from his house placing it only 6 feet from his covered patio.
- 93 • 17.24.050.B was included in the memorandum for reference.
- 94 • The property already has a large accessory structure on the property. If the proposed
 95 structure is built it would cover 32% of the rear yard. It is permissible for Mr. Vance to
 96 place the structure in the rear yard with the CUP, but his request is to build closer than
 97 feet to the existing accessory structure.
- 98 • A list of criteria to determine if the applicant meets criteria for approval of the
 99 application.
- 100 • It was also noted in the memorandum that the carport currently located on the west side
 101 of the corner of the lot is severely limited.
- 102 • Staff stated two opposing points to consider regarding the consideration of this
 103 application.

104
 105 **ACTION:**

106 *This item was removed due to the fact that with further study of the conditions this application*
 107 *met current city code and did not need a Conditional Use Permit.*
 108

109 **IV. Discuss ordinance amendment to re-instate former supplementary regulations related**
 110 **to exceptions to height limitations.**
 111

112 Commissioner packets included a memorandum dated July 3, 2014 from Duane Huffman
113 regarding re-instatement of Former Supplementary Regulations related to exceptions to height
114 limitations.

115 Memorandum included the following:

- 116 • History of the Ordinance since 1965 regarding height restrictions.
- 117 • History of the Omission of the supplemental regulations chapter.
- 118 • Recommendation to schedule a public hearing to consider a recommendation to the City
119 Council on re-instating this exception for the commercial and industrial zones.

120 Duane Huffman took the stand to address the Commission in regards to the re-instatement of the
121 former *supplementary regulations* related to exceptions to height limitations. He referred to the
122 supplementary regulations that were included in the previous ordinances and explained that the
123 entire section was eliminated and each of the items within that section moved to more
124 appropriate locations within the Municipal Code. It was discovered recently that the language
125 addressing exceptions to height regulations was somehow eliminated entirely during this
126 transition even though his review of record does not suggest the omission was intentional.

127 Mr. Huffman made a proposal for the Planning Commission to take the issue under review and
128 make a recommendation to City Council.

- 129 • Alan Malan made comments as to whether there is a process in place to keep this from
130 happening in the future. Mr. Huffman stated that he is not sure it can be assured. He
131 feels that it was just an oversight. Mr. Malan feels there should be reference back to the
132 original ordinance in order to have a trail kept. Mr. Huffman stated that with his review
133 of past minutes and such this was not an intentional mistake.
- 134 • Mike Cottle asked what the height limitations were. Ben White responded that it is 100
135 feet.
- 136 • Chairman Hopkinson stated that the intent of having this in the ordinance was to give
137 lenience to industrial. He gave some information regarding why this regulation was
138 initially adopted. He feels the omission of the language is more a legal issue than a need
139 for the city. He asked if we put the language back in does it have to be the same or can
140 other conditions be added on it.
- 141 • Mr. Huffman responded that given the circumstances it should be reinstated **as is** with a
142 discussion item to be put in place for a later date. Some discussion took place regarding
143 needs of some industries to build at higher elevations.
- 144 • Mr. Hopkinson posed the question as to how this would be beneficial to our community.
- 145 • Mr. Huffman stated the higher the tower the less detriment it is to our residents. He
146 understands that there may be a need to readdress and discuss the impacts at a further
147 time.
- 148 • Corey Sweat asked for some clarification regarding what was eliminated in the language
149 of the current ordinance.

150 Some discussion took place regarding different points of view regarding what is the best for air
 151 quality. Mr. Hopkinson stated that is why it is important to have a discussion with the
 152 community to come to a resolution of the matter.

- 153 • Ben White noted that most things dealing with emissions have to be approved by the
 154 State which looks at the overall picture. Municipalities may choose differently from the
 155 State standards.
- 156 • Mr. Huffman cautioned the Commission to reinstate the language that was left out as is
 157 and then have discussion in the future about any changes they propose to make.
- 158 • Chairman Hopkinson would like Staff to collect information regarding the effects of the
 159 downfall at various heights. Staff will try to gather that data. He would like to move
 160 quickly on this issue.
- 161 • Ben White stated that we need to hold a public hearing. Chairman Hopkinson felt that
 162 this needs to be published very well because it affects the whole community.
- 163 • Mr. Huffman restated the need to just clean up the ordinance now and then can work on it
 164 further in the near future.
- 165 • Mr. Hopkinson still wanted staff to move forward gathering information regarding the
 166 downfall as stated above. He gave examples of the type of information he desires the
 167 staff to bring back.
- 168 • Corey Sweat asked if Holly would be allowed to proceed with their expansion without
 169 this language in the ordinance.
- 170 • Duane Huffman simply explained the prior history and agreement that would allow the
 171 grandfathering of the restrictions that would be placed.
- 172 • Mr. Huffman informed them that the Council is in the process of a second amendment to
 173 the original agreement for the expansion. He stated the city cannot grant permission
 174 outside their code without a variance situation.
- 175 • Chairman Hopkinson does not want a public hearing scheduled until after the information
 176 is received.
- 177 • Cathy Brightwell noted that the earliest a public hearing could be held would be August
 178 12th giving them the opportunity to further discuss the issue and their next meeting.
- 179 • Chairman Hopkinson asked to hold that date for the public hearing.

180

181 **VI. Staff Report**

- 182 • Alice Acres is slowly moving forward. Olsen Ranches received final plat approval from
 183 City Council; hard construction to begin in a few weeks.
- 184 • Hopkinson subdivision was approved last week.
- 185 • Chase Subdivision has been on hold due to some financial issues but they have been
 186 resolved and you should see some activity in the near future.
- 187 • 4th North overpass will probably not begin until Spring 2014.

- 188 • 800 West project between Pages Lane and 1900 North has been tested and water laterals
189 should be connected next week. There will be some construction to repair old lines. An
190 old box culvert has been found and needs to be removed.
- 191 • This week we will be seal coating throughout the city and streets will be shut down for 24
192 hour periods. City Hall parking lot is being done this Saturday.
- 193 • Pony Haven property has been sold but there has been no development proposals
194 submitted.
- 195 • Cathy Brightwell informed the Commission that a new FT Public Works position has
196 been approved and opened with an emphasis on water qualifications. If you know of any
197 qualified applicants please send them to the city website. The ad runs through July 23.

198

199 **VII. Approval of Minutes of June 24, 2014 meeting minutes**

200

201 **ACTION TAKEN:**

202 **Laura Charchenko moved to approve of the minutes dated June 24, 2014 as presented.**
 203 **Alan Malan seconded the motion and voting was unanimous in favor among those**
 204 **members present.**

205

206 **VI. Adjournment**

207

208 **ACTION TAKEN:**

209 **Mike Cottle moved to adjourn the regular session of the Planning Commission meeting.**
 210 **Laura Charchenko seconded the motion. Voting was unanimous in favor. The meeting**
 211 **adjourned at 8:27 pm.**

212

213

214

215 The foregoing was approved by the West Bountiful City Planning Commission on July 22, 2014, by
 216 unanimous vote of all members present.

217

218 _____

219 Cathy Brightwell – Acting City Recorder

220

221

WEST BOUNTIFUL CITY POLICE DEPARTMENT

550 North 800 West
West Bountiful, Utah 84087
Office 801- 292-4487/Fax 801 - 294-3590

Todd L. Hixson
Chief of Police

Kenneth Romney
Mayor

West Bountiful City Council Report June, 2014

Statistics program is down and no report will be created. All other information reported is collected between council meetings reports.

Reserve Officer Program

Officer Wilkinson, the reserve coordinator, is starting the recruitment process for new reserve officers. This will take some time to complete, but we excited to be able to move forward in this process.

Alcohol Officer Program

Nothing new to report

Crossing Guards

Enjoying summer vacation

Personnel

Detective Altenes' yearly anniversary was on July 12, 2014. This completes Detective Altenes' first "full-time" year with West Bountiful. Detective Altenes' worked for the police department as a part-time alcohol enforcement officer prior to coming to us full-time.

A department staff meeting is set for July 31, 2014. Over the last year we have seen many new officers join the West Bountiful Team. This staff meeting will be longer than normal and we will be covering information from all the staff meetings from the past three years.

Officer Corey Boyle did an excellent job preparing the safety fair this year. Each year he is able to find little ways to make it run smoother allowing for a more enjoyable time for those involved. When you see Officer Boyle please recognize him for his efforts.

Officer Matt Robbins was assigned to coordinate the police department's role with the parade this year. He did an excellent job. I know he worked hard coordinating meetings and making sure the smallest of details were taken care of.

EMPAC

The EmPAC meeting scheduled for July 16, 2014 at 1730 hours was cancelled. Chief Hixson was unable to attend the meeting. The month of July has proven to be busy for everyone. It was determined not to reschedule for July.

The EmPAC meeting on June 18, 2014 at 1730 hours went well. The trailer is coming along quickly.

General Information

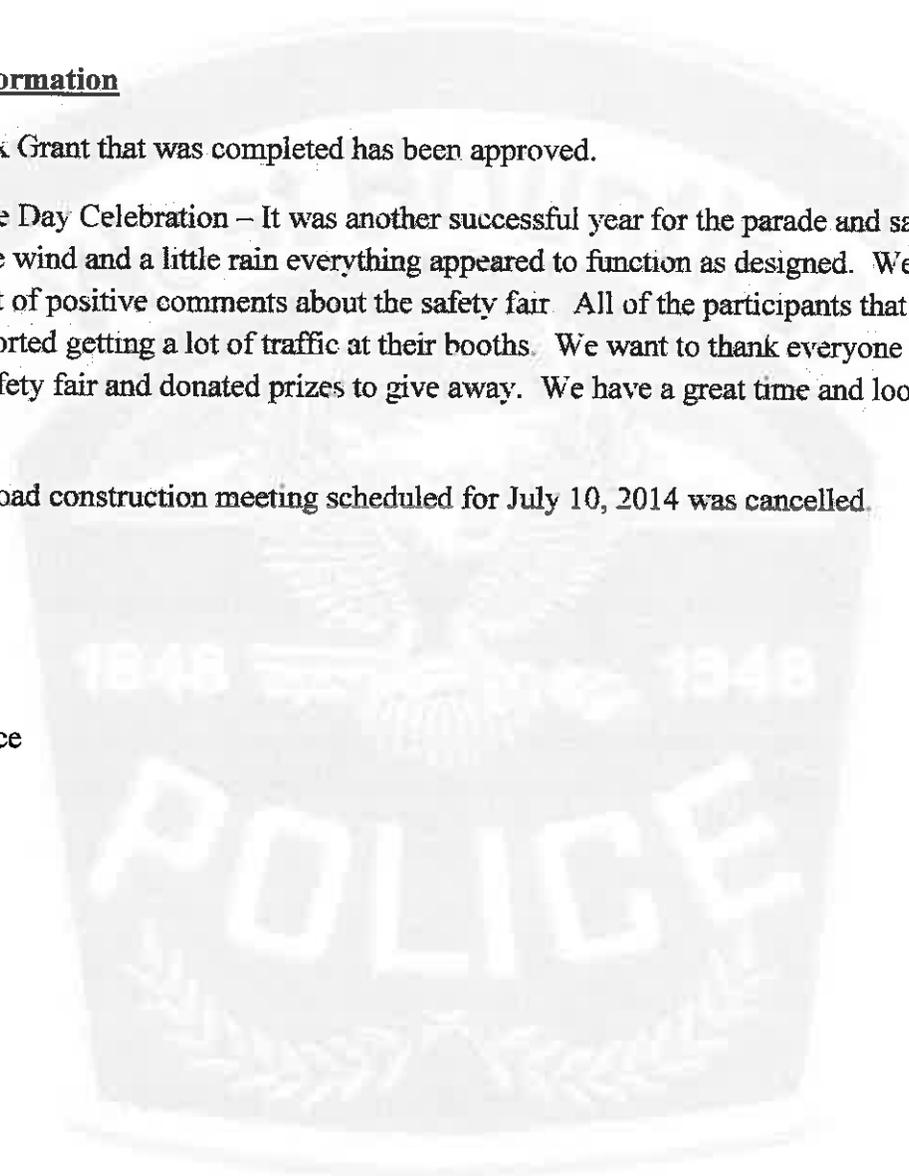
The Beer Tax Grant that was completed has been approved.

Independence Day Celebration – It was another successful year for the parade and safety fair. Despite some wind and a little rain everything appeared to function as designed. We have received a lot of positive comments about the safety fair. All of the participants that were involved reported getting a lot of traffic at their booths. We want to thank everyone that took part in the safety fair and donated prizes to give away. We have a great time and look forward to next year.

The UDOT road construction meeting scheduled for July 10, 2014 was cancelled.

Thank You,

Todd Hixson
Chief of Police



1 Minutes of the West Bountiful City Council meeting held on **Tuesday, July 1, 2014** at West
2 Bountiful City Hall, 550 N 800 West, Davis County, Utah.

3
4 Those in attendance:

5
6 **MEMBERS:** Mayor Kenneth Romney, Council members James Ahlstrom, James Bruhn,
7 Kelly Enquist, Debbie McKean, Mark Preece

8
9 **STAFF:** Duane Huffman (City Administrator), Steve Doxey (City Attorney), Chief Todd
10 Hixson, Steve Maughan (Public Works Director), Cathy Brightwell (Acting City Recorder)

11
12 **VISITORS:** Alan Malan, Terry Turner, and Denis, Danny & Bonnie Hopkinson
13

14
15 Mayor Romney called the meeting to order at 7:30 pm. James Bruhn gave an Invocation, and the
16 Pledge of Allegiance was led by Debbie McKean.

17
18 **1. Accept Agenda**

19
20 **MOTION:** *Debbie McKean moved to approve the agenda as written. James Bruhn*
21 *seconded the Motion which PASSED by unanimous vote of all members*
22 *present.*

23
24 **2. Public Comment**

25
26 No comments.
27

28 **3. Consider approval of Ordinance 362-14 amending Municipal Code Section 2.32 “Arts**
29 **Council” to recognize many years of dedicated service.**

30 Duane Huffman asked that this item be tabled.

31
32 **MOTION:** *Debbie McKean moved to table Ordinance 362-14, amending Municipal*
33 *Code Section 2.32 “Arts Council.” James Bruhn seconded the Motion*
34 *which PASSED by unanimous vote of all members present.*
35

36 **4. Consider approval of a single lot subdivision for the Hopkinson family at**
37 **approximately 1277 N 800 West.**

38 Mayor Romney asked that before having a discussion, that the council members take an extra
39 minute to once again review the minutes of the last planning commission meeting regarding this
40 issue.

41 Council member Bruhn asked how the setback for the sidewalk will transition to a wider park
42 strip to accommodate large trees to the south of this lot. Mayor Romney responded that the intent is
43 to have a wider park strip down 800 West but it is not clear at what point the park strip will widen.

44 Council member Ahlstrom noted there appears to be two issues to consider. First, whether
45 the request can be considered a single lot subdivision, or whether it is a two lot subdivision. The
46 second issue is whether to remove the newly proposed lot from the historic district. Regarding the
47 removal from the historic district, he commented that he agrees with planning commission's
48 recommendation which defers to property owner rights. Council member Preece added that he does
49 not have heartburn over the request. Mayor Romney commented that his initial thought was to
50 question the purpose of our historic district. He said in some cities it is clear where and why a
51 historic district exists, but it is not as clear in West Bountiful because of the mix of different age
52 homes in the area along 800 West. If we are we trying to make the whole street look like 1890, it
53 will be very difficult. In response to a question, the Mayor explained that the historic district
54 currently ends at the north side of this lot.

55 Council member Ahlstrom asked Steve Doxey if he thinks this is really a one lot subdivision
56 or a two lot subdivision. Mr. Doxey replied that our Code is not clear and the State only provides for
57 small and large subdivisions. Mr. Huffman responded that there is no clear definition of the two
58 types of subdivisions but he concurs that the result will be one new buildable lot. There was then
59 discussion about a deferral agreement for improvements based on which type of subdivision it is. If
60 it is determined that it is a one lot subdivision, there is no issue regarding improvements on the
61 larger parcel. If it is determined that it is really a two lot subdivision, a deferral agreement might be
62 necessary.

63
64 **MOTION:** *Debbie McKean moved to approve a single lot subdivision for the*
65 *Hopkinson family at approximately 1277 N 800 West with a stipulation*
66 *that curb and gutter be installed in front of lot 1 on 800 West. Mark*
67 *Preece seconded the Motion which PASSED.*
68

69 **5.** Consider Ordinance 363-14 amending the West Bountiful City Zoning Map, per a request
70 from Danny and Bonnie Hopkinson to remove the property at approximately 1277 N 800
71 West from the Historic Overlay District.

72 This issue was well discussed under item 4 above.

73
74 **MOTION:** *Kelly Enquist moved to adopt Ordinance 363-14 amending the West*
75 *Bountiful City Zoning Map, per a request from Danny and Bonnie*
76 *Hopkinson, to remove the property at approximately 1277 N 800 West*
77 *from the Historic Overlay District. James Bruhn seconded the Motion*
78 *which PASSED.*
79

80 The vote was recorded as follows:

81 James Ahlstrom – Aye
82 James Bruhn – Aye
83 Kelly Enquist – Aye
84 Debbie McKean – Aye
85 Mark Preece – Aye
86

87 **6.** Consider the creation of an Ad Hoc Committee for research and recommendations
88 regarding playground equipment at the City Park.

89 The city is looking at selecting playground equipment and would like to get people involved.
90 Council members McKean and Enquist offered to serve for this purpose. The Council discussed
91 having about 4 additional citizens to be appointed after a recommendation from Council members
92 McKean and Enquist. The committee will research different types of equipment and bring back a
93 recommendation. Council member Ahlstrom inquired as to the timeframe for this process. The
94 Mayor responded that the goal will be to get the equipment installed before next summer.

95
96 **MOTION:** *James Bruhn moved to establish an ad hoc committee for research and*
97 *recommendations regarding playground equipment at City Park.*
98 *Committee appointments will be made by the Mayor with the advice and*
99 *consent of city council. James Ahlstrom seconded the Motion which*
100 *PASSED by unanimous vote of all members present.*

101
102 **7. Consider approval of 60-month lease of ten 2014 Yamaha YDRA “The Drive” Gasoline**
103 **Golf Cars with an annual payment of \$6,915.00.**

104 Duane Huffman explained the plan to replace 10 carts from a 2009 lease with these new
105 leases. With the additional carts the City leased earlier this year, 40 of our 60 carts will be three
106 years-old or newer.

107 Council member Ahlstrom reviewed the lease agreement and believes it is the same as
108 previous agreements, in that we were able to modify some of the warranty provisions, but were not
109 able to make other modifications to Yamaha’s standard agreement language. He also commented
110 that we need to get more carts. Mayor Romney agreed, stating that we will need to see how the
111 funds look at the end of this season.

112
113 **MOTION:** *Mark Preece moved to approve a 60 month lease of ten 2014 Yamaha*
114 *YDRA “The Drive” gasoline golf cars with an annual payment of*
115 *\$6,915.00. Debbie McKean seconded the Motion which PASSED by*
116 *unanimous vote of all members present.*

117
118 The vote was recorded as follows:

119 James Ahlstrom – Aye
120 James Bruhn – Aye
121 Kelly Enquist – Aye
122 Debbie McKean – Aye
123 Mark Preece – Aye
124

125 **8. Consider approval of Pipeline Crossing Agreement with Union Pacific Railroad**
126 **Company.**

127 This agreement is to allow the City to cross UPR property/right-of-way with a new water
128 line. Steve Doxey brought attention to sections of the proposed agreement that could be interpreted
129 to unduly place risk on the City, including sections that would require the City to pay for the
130 mitigation of *any* harmful elements unearthed during the placement of the line and a section that
131 could require us to remove the line at their request. However, Utah law likely provides some

132 protection under principles of shared negligence. Mr. Doxey would like to ask UPR to change these
133 provisions.

134
135 **MOTION:** *James Ahlstrom moved to approve a Pipeline Crossing agreement with*
136 *Union Pacific Railroad company subject to legal review. James Bruhn*
137 *seconded the Motion which PASSED.*

138
139 The vote was recorded as follows:

140 James Ahlstrom – Aye
141 James Bruhn – Aye
142 Kelly Enquist – Aye
143 Debbie McKean– Aye
144 Mark Preece – Aye

145
146 **9. Consider approval of Pipeline Crossing Agreement with Utah Transit Authority.**

147 This agreement is to allow the City to cross UTA property/right-of-way with a new water
148 line. Steve Doxey stated that this agreement is more consistent with Utah law; however, section 8-2
149 is troublesome regarding hazardous material. Again, the City assumes all responsibility if hazardous
150 material is found during construction, and he recommends we request this provision be deleted.

151
152 **MOTION:** *James Ahlstrom moved to approve a Pipeline Crossing Agreement with*
153 *Utah Transit Authority subject to legal review. Mark Preece seconded*
154 *the Motion which PASSED.*

155
156 The vote was recorded as follows:

157 James Ahlstrom – Aye
158 James Bruhn – Aye
159 Kelly Enquist – Aye
160 Debbie McKean– Aye
161 Mark Preece – Aye

162
163 **10. Discussion on the city's participation on maintenance of the Legacy Trail.**

164 Duane introduced his memo discussing the history of the City's involvement with the
165 maintenance of the Legacy Trail. The question at hand now is whether the City is looking to re-
166 engage UDOT regarding our belief that we are not responsible for the trail, or should we begin to
167 work with other cities? Council member McKean asked if costs associated with the trail are eligible
168 for RAP tax funding, and Duane answered that they are. Several council members expressed
169 concern with the condition of the trail and the wastefulness of UDOT in relation to the inoperable
170 irrigation system. The Mayor asked staff to estimate the long-term cost of the trail. Council member
171 Ahlstrom theorized that if the City was approached by someone now who offered to build a trail if
172 we maintain it, the City would probably jump at the offer. He agreed UDOT pulled a fast one and
173 we were upset, but it is a nice amenity. Council member Preece stated that it is probably time we
174 stepped up and take care of the trail, but he is very frustrated because of how the whole thing was
175 handled by UDOT from the beginning. There was some discussion about the value of working

176 together with the other entities to provide continuity along the trail, as well as an idea to seek a
177 private sponsor for the trail, similar to Chevron and the Jordan River trail. Duane asked about the
178 City's willingness to participate with the other entities for asphalt maintenance this summer. One
179 approach would be to participate as an equal partner, and another would be to participate
180 proportionate to the section within West Bountiful. Duane stated that participating proportionately
181 should not prohibit us from going forward with any planned projects. The consensus of the
182 discussion was to look into the long term costs of the trail, and explore participating proportionately
183 with this year's asphalt maintenance.

184

185 **11. Public Works Report**

186

187 Steve Maughan gave a brief overview of city projects and activities. He reported that
188 sidewalks are complete on Pages Lane in front of the Park; and the fence was modified including
189 closing up the opening by the tracks. To make it safer, they also began putting boulders along the
190 sidewalk on Pages Lane where it was so steep. Sidewalks connecting to 1810 North were also done.

191 The new irrigation is working fantastic in the Park and the enclosures are in and look great.
192 We have good coverage with filters that we didn't have before, especially on north end. It is green
193 for first time in years. In response to a question, he explained the entire park is on one system with
194 close to 70 stations on the north end and 35 stations on the south, all running through filters.

195 Almost all relatively new asphalt in the City will be seal coated the week of July 7, including
196 the golf course and city hall parking lots.

197 Steve said he is working on an ad for the new full-time public works employee. This will be
198 great as we're falling farther and farther behind.

199 Round 1 of roadside mowing has been done including the road near the sewer district, which
200 will again be mowed after a planned service project.

201 800 West update. We are hesitant to go into Pages Lane until after the parade so things have
202 slowed down. In the meantime we will be working on water line testing and storm drains. He said
203 we found an unexpected six foot wide concrete culvert with no bottom to it in the intersection at
204 Pages Lane and 800 West. Our water line goes under it and there is also a rotten storm drain running
205 through. Council member Bruhn explained it was an abandoned line from years ago. Steve said he
206 is getting bids to remove it all; it does not make sense to put a new road on top of rotten pipe. He
207 said if things go well, he still expects to have new asphalt the end of July. Council member McKean
208 shared a compliment she received that the 900 West project went very smooth for residents and that
209 all involved did a good job.

210

211 **12. Administrative Report**

212

213 Duane Huffman expressed the challenge he had with this week's payroll, but everything is
214 expected to go through fine. He added that he plans to have a staffing recommendation by the next
215 Council meeting to replace Heidi's position.

216

217 **13. Mayor/Council Reports**

218

219 James Ahlstrom – no report

220

221 Mark Preece reported that the Youth Council applications are due today and they will begin
222 reviewing them soon.

223
224 James Bruhn reported Wasatch Integrated is still working on negotiations with Hill AFB, and
225 they just signed a new agreement with the Administrator for another 5 years.

226
227 Debbie McKean gave an update of July 4th preparations. One of the food vendors cancelled a
228 week before the event, leaving only a hot dog vendor and taco vendor. Suggestions were made that
229 Arby's and Chick-Fil-A might be able to help. Debbie reviewed council assignments. Mayor
230 Romney asked Steve to make sure sprinklers are off a couple of days in advance of Friday morning's
231 flag raising ceremony. Council member McKean also reminded members to pick up shirts and
232 candy.

233
234 Kelly Enquist commented that the lighting at the Park looks good on the flag and motion
235 detectors seem to be working well. Steve noted the difficulty we have had with the volleyball
236 lighting. Kelly said he thought they were under a maintenance contract with Rocky Mountain
237 Power.

238 He reported the Weber Basin tour that he went on with Council member Preece and Duane
239 Huffman was interesting and he learned a lot.

240 Mr. Enquist asked Steve Maughan if we were still using the well. Steve responded that the
241 well was turned off 3 weeks ago.

242
243 Mayor Romney said he expects to see everyone at the flag raising ceremony on Friday
244 morning. The speaker will be Dave Monson, a local World War II veteran. He and his wife are also
245 grand marshals of the parade.

246
247 **14. Approval of Minutes from the June 17, 2014 City Council Meeting.**

248
249 **MOTION:** *Debbie McKean moved to approve the minutes from the June 17, 2014*
250 *meeting as presented. James Bruhn seconded the Motion which*
251 *PASSED by unanimous vote of all members present.*

252
253 **15. Executive session, pursuant Utah Code 52-4-205 (c) to discuss pending or reasonably**
254 **imminent litigation, and (d) to hold a strategy session to discuss the purchase, exchange,**
255 **or lease of real property.**

256 **MOTION:** *James Ahlstrom moved to go in to Executive Session at 9:22 p.m., in the*
257 *police training room, to discuss pending or reasonably imminent*
258 *litigation and (d), to hold a strategy session to discuss the purchase,*
259 *exchange, or lease of real property in the police training room. Mark*
260 *Preece seconded the Motion which PASSED.*

261
262 The vote was recorded as follows:
263 James Ahlstrom – Aye
264 James Bruhn – Aye
265 Kelly Enquist – Aye

266 Debbie McKean– Aye
267 Mark Preece – Aye
268

269 **MOTION:** *Debbie McKean moved to close the Executive Session at 10:12 p.m.*
270 *James Ahlstrom seconded the Motion which PASSED by unanimous*
271 *vote of all members present.*
272

273 The vote was recorded as follows:
274 James Ahlstrom – Aye
275 James Bruhn – Aye
276 Kelly Enquist – Aye
277 Debbie McKean– Aye
278 Mark Preece – Aye
279

280 After the meeting resumed, Council member Enquist asked about the soil testing from
281 the berm. Duane Huffman explained that residents had raised concerns regarding the material used
282 by Holly for the berm, so the city had engaged a firm to provide testing. He said the sample data is
283 in but the report is not complete as they are waiting on interpretation of results. Mr. Enquist asked
284 how the samples were taken and if the company had been selected by the City or by Holly. Duane
285 confirmed that the company had been selected by the City and they took samples at different levels
286 throughout the berm to get the best possible samples, based on a structured methodology. He also
287 reported that Holly met with the residents as requested and they have agreed to re-grade the area
288 (when appropriate).
289

290 **Adjourn**
291

292 **MOTION:** *Mark Preece moved to adjourn this meeting of the West Bountiful City*
293 *Council at 10:20 pm. James Ahlstrom seconded the Motion which*
294 *PASSED by unanimous vote of all members present.*
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298 The foregoing was approved by the West Bountiful City Council by unanimous vote of all members
299 present on Tuesday, July 15, 2014.
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CATHY BRIGHTWELL (ACTING CITY RECORDER)