

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AN IMPACT FEE FACILITIES PLANS AND AN IMPACT FEE ENACTMENT FOR _____ SERVICES AND NOTICE OF PUBLIC HEARING

WHEREAS, Brigham City (the "City") is a political subdivision of the State of Utah, authorized and organized under applicable provisions of Utah law; and

WHEREAS, the City has legal authority, pursuant to Title 11, Chapter 36a of the Utah Code Annotated, as amended ("Impact Fees Act" or "Act"), to impose development impact fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to new Development Activity; and

WHEREAS, the City desires to update and amend such fees to be referred to hereafter as "Impact Fees" in accordance with applicable provisions of the Impact Fees Act in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner as more particularly provided herein; and

WHEREAS, the City has previously enacted and imposed Impact Fees; and

WHEREAS, the City has properly noticed its intent to prepare the Citywide Impact Fees Facilities Plan and the Impact Fee Analysis as required by law and the City has through its consultants, completed the Citywide Impact Fees Facilities Plan and Impact Fee Analysis, a copy of which is attached as Exhibit A, in accordance with applicable provisions of the Impact Fees Act, which Citywide Impact Fees Facilities Plan and Impact Fee Analysis are more particularly described and adopted herein; and

WHEREAS, the City has provided the required notice and held a public hearing before the City Council regarding the proposed Impact Fees, and Citywide Impact Fees Facilities Plan and Impact Fees Analysis in accordance with applicable provisions of the Impact Fees Act; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRIGHAM CITY, STATE OF UTAH, AS FOLLOWS:

**SECTION I
ORDINANCE REPEALED**

The provisions of Ordinances 99-01 and 04-33 specifically adopting and amending Impact Fees are hereby repealed and superseded by the provisions of this Ordinance to the extent they relate to Impact Fees. This Ordinance may be referred to and cited as the "Impact Fee Ordinance."

**SECTION II
PURPOSE**

This Impact Fee Ordinance establishes the City's Impact Fees policies and procedures and is promulgated pursuant to Title 11, Chapter 36a, Part 4, Enactment of Impact Fees, and other requirements of the Impact Fees Act. This Ordinance amends and adopts Impact Fees for certain capital facilities within the City Service Area as defined herein, provides a schedule of Impact Fees for Development Activity, and sets forth direction for challenging, modifying and appealing Impact Fees.

SECTION III

**ADOPTION OF IMPACT FEES FACILITIES
PLAN AND IMPACT FEE ANALYSIS**

The Citywide Impact Fees Facilities Plan (IFFP) and Impact Fee Analysis (IFA) as set forth in Exhibit A is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

Title 6 of the Brigham City Code is hereby enacted to read as follows:

TITLE 6. IMPACT FEES

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Chapter 6.01. Impact Fees

6.01.020. Definitions.

Words and phrases that are defined in the Impact Fees Act shall have the same definition in this Impact Fee Ordinance. The following words and phrases are defined as follows:

1. "City" means a political subdivision of the State of Utah and is referred to herein as the City of Brigham City, Utah.
2. "Development Activity" means, except as otherwise provided in the Impact Fees Act, any construction or expansion of a building, structure or use, any change in use of a building or structure, or any changes in the use of land within the Service Area that creates additional demand and need for public facilities related to Transportation.
3. "Development Approval" means any written authorization from the City that authorizes the commencement of Development Activity.
4. "Equivalent Residential Unit" means that portion of a facility that has an impact on the park, fire, police, storm water, waste water, water, transportation, or power infrastructure of the City that is equivalent to a single family residence.
5. "Impact Fee" means a payment of money imposed upon new Development Activity as a condition of development approval to mitigate the impact of the new development on public infrastructure.

"Impact fee" does not include a tax, special assessment, building permit fee, hookup fee, fee for project improvements, or other reasonable permit or application fee.

6. "*Impact Fee Analysis*" means the written analysis of each impact fee required by Section 11-36a-303 of the Impact Fees Act.

7. "*Impact Fee Facilities Plan*" means the plan required by Section 11-36a-301 of the Impact Fees Act.

8. "*Project Improvements*" means site improvements and facilities that are: planned and designed to provide service for development resulting from a Development Activity; necessary for the use and convenience of the occupants or users of development resulting from a Development Activity; and not identified or reimbursed as a System Improvement. "Project Improvements" does not mean System Improvements as more particularly defined herein.

9. "*Proportionate Share*" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

10. "*Public Facilities*" means impact fee facilities as defined in the Impact Fees Act that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity. For purposes of this Ordinance, and as defined in the Impact Fees Act, impact fee facilities include those capital facilities described in the Impact Fees Facility Plan.

11. "*Service Area*" means a geographic area designated by the City on the basis of sound planning or engineering principles in which a public facility, or a defined set of public facilities, provides service within the area. The Service Area for purposes of this Ordinance is more particularly described in Section V.

12. "*System Improvements*" means existing public facilities that are: identified in the impact fee analysis under Section 11-36a-304 of the Impact Fees Act; and designed to provide services to service areas within the community at large and future public facilities identified in the impact fee analysis under Section 11-36a-304 that are intended to provide service to service areas within the community at large. "System Improvements" do not include project improvements as defined herein.

6.01.030. Statutory Authority and Restrictions.

1. *Impact Fees Act Authority.* The City is authorized to impose impact fees subject to and in accordance with applicable provisions of the Impact Fees Act. An impact fee is defined as a payment of money imposed upon new Development Activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. Impact fees may only be established for public facilities as defined in Section 11-36a-102 that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision. Public facilities for which impact fees may be imposed include public facilities for transportation facilities.

2. *Impact Fees Act Restrictions.* Pursuant to Section 11-36a-202 of the Impact Fees Act, the City may not impose an impact fee to: (1) cure deficiencies in public facilities serving existing development; (2) raise the established level of service of a public facility serving existing development; (3) recoup more than the local political subdivision's costs actually incurred for excess capacity in an existing System Improvement; or (4) include an expense for overhead, unless the expense is calculated pursuant to a

methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the Federal Office of Management and Budget for federal grant reimbursement.

6.01.040. Service Area.

The Impact Fees Act requires the City to establish one or more service areas within which the City will calculate and impose a particular impact fee. The service area within which the proposed Impact Fees will be imposed includes all of the area within the corporate limits and jurisdictional boundaries of the City.

6.01.050. Impact Fee Facilities Plan.

1. *Impact Fee Facilities Plan Required.* Pursuant to Section 11-36a-301 of the Impact Fees Act, before imposing or amending an impact fee, the City is required to prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new Development Activity. The impact fee facilities plan shall identify the demands placed upon existing public facilities by new Development Activity and the proposed means by which the City will meet those demands.

2. *Citywide Impact Fees Facilities Plan.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-302 of the Impact Fees Act and has caused to be prepared a Citywide Impact Fees Facilities Plan ("IFFP"). The IFFP has been prepared based on reasonable growth assumptions for the City and general demand characteristics of current and future users of facilities. The IFFP identifies the impact on System Improvements created by Development Activity and estimates the proportionate share of the costs of impacts on System Improvements that are reasonably related to new Development Activity. As shown in the IFFP, the City has considered all revenue sources to finance the impacts on System Improvements, including grants, bonds, interfund loans, impact fees, and anticipated or accepted dedications of System Improvements. The IFFP establishes that impact fees are necessary to maintain proposed level of service that complies with applicable provisions of Section 11-36a 302 of the Impact Fees Act.

3. *Plan Certification.* The IFFP includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the plan certifying that the IFFP complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the IFFP and Storm Drain IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the IFFP and IFA, together with the summary, and this Ordinance, in the Brigham City Library and the City Recorder's Office at Brigham City Hall at least ten (10) days before the public hearing.

6.01.060. Impact Fee Analysis.

1. *Impact Fee Analysis Required.* Pursuant to Section 11-36a-303 of the Impact Fees Act, each local political subdivision intending to impose an impact fee shall prepare a written analysis of each impact fee

to be imposed and a summary of the impact fee analysis designed to be understood by a lay person. The impact fee analysis shall identify the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated Development Activity; identify the anticipated impact on System Improvements required by the anticipated Development Activity to maintain the established level of service for each public facility; demonstrate how the anticipated impacts are reasonably related to the anticipated Development Activity; estimate the proportionate share of the costs for existing capacity that will be recouped and the costs of impacts on System Improvements that are reasonably related to the new Development Activity and identify how the impact fee is calculated.

2. *Impact Fees Analysis.* The City has, through its consultants, researched and analyzed the factors set forth in Section 11-36a-304 of the Impact Fees Act, including the proportionate share analysis required therein, and has caused to be prepared an Impact Fees Analysis ("IFA"). The IFA identifies the impacts upon public facilities required by the Development Activity and demonstrates how those impacts on System Improvements are reasonably related to the Development Activity, estimates the proportionate share of the costs of impacts on System Improvements that are reasonably related to the Development Activity, and identifies how the Impact Fees are calculated.

3. *Analysis Certification.* The IFA includes a written certification in accordance with Section 11-36a-306 of the Impact Fees Act from the person or entity that prepared the analysis certifying that the IFA complies in each and every relevant respect with the Impact Fees Act.

4. *Compliance with Noticing Requirements.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the IFFP and IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the IFFP and IFA, together with the summary, and this Ordinance, in the Brigham City Library and the City Recorder's Office at Brigham City Hall at least ten (10) days before the public hearing.

6.01.070. Calculation of Impact Fees.

1. *Impact Fee Calculations.* Pursuant to Section 11-36a-305, in calculating an impact fee, the City may include: the construction contract price; the cost of acquiring land, improvements, materials, and fixtures; the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the System Improvements; and debt service charges if the City might use impact fees as a revenue stream to pay principal and interest on bonds, notes, or other obligations issued to finance the costs of the System Improvements. In calculating the proposed Impact Fees, the City has based such amounts calculated on realistic estimates and the assumptions underlying such estimates are more particular disclosed in the IFA.

2. *Previously Incurred Costs.* To the extent that new growth and development will be served by previously constructed improvements, the City's Impact Fees may include public facility costs and outstanding bond costs related to the improvements previously incurred by the City. As provided in the IFA, a buy-in component is contemplated in the analysis and therefore the interest costs associated with any outstanding storm bond obligations have been included in the calculation of the Impact Fees.

6.01.080. Impact Fee Schedule and Formula.

1. *Impact Fee Schedule or Formula Required.* Pursuant to Section 11-36a-402 of the Impact Fees Act, the City is required to provide a schedule of impact fees for each type of Development Activity that specifies the amount of the impact fee to be imposed for each type of System Improvement or the formula that the City will use to calculate each impact fee.

2. *Maximum Impact Fee Schedule.* Based on the IFA, the maximum Impact Fees which the City may impose on Development Activity within the defined Service Area is set forth in the following schedules:

Maximum Impact Fee Schedules

Table 1.1: Maximum Impact Fee Per Unit

	Single Family		Multi-Family		Non-Residential	
	Max. Impact Fee Per Land Use	Adopted Impact Fee	Max. Impact Fee Per Land Use	Adopted Impact Fee	Max. Impact Fee Per Land Use	Adopted Impact Fee
Parks	\$3,115		\$1,746		-	
Fire	\$171		\$171		\$350	
Police	\$10		\$10		\$13	
Storm Water (Per ERU)	\$1,026		\$1,026		\$1,026	
Waste Water (Per ERU)	\$1,689		\$1,689		\$1,689	
Water (Per ERU)	\$2,366		\$2,366		\$2,366	
Transportation	\$354		\$249		See Chart Below	
Power	See Charts Below					

Table 1.2: Transportation Impact Fee By Land Use Type

Land Use	ITE Code	Unit	Daily Trips	Trip End Adjustment	Pass By & Internal Adjustment	Net Trip	Max. Impact Fee Per Land Use	Adopted Impact Fee
Single Family Residential	210	Residential Unit	9.57	50%	100%	4.8	\$345.00	
Residential PUD	270	Residential Unit	4.5	50%	100%	2.3	\$167.00	
Multi-Family Residential	220	Residential Unit	6.72	50%	100%	3.4	\$249.00	
Shopping Center	820	1,000 SF	58.93	50%	45%	13.3	\$981.00	
Warehouse/Industrial	130	1,000 SF	6.96	50%	90%	3.1	\$232.00	
Light Industrial	110	1,000 SF	6.97	50%	90%	3.1	\$232.00	
Office	710	1,000 SF	11.01	50%	65%	3.6	\$265.00	

Table 1.3: Power Impact Fee – Residential Single Phase Service Sizes

AMPS	KVA	Peak Demand (kW)	Max. Impact Fee	Adopted Impact Fee
100	24	3	\$1,026.00	
125	30	4	\$1,368.00	
150	36	5	\$1,710.00	
200	48	6	\$2,052.00	
225	54	8	\$2,736.00	
400	96	24	\$4,104.00	

Table 1.4: Power Impact Fee – Commercial Single Phase Service Sizes

AMPS	KVA	Peak Demand (kW)	Max. Impact Fee	Adopted Impact Fee
100	24	3	\$1,026.00	
125	30	5	\$1,710.00	
150	36	7	\$2,394.00	
200	48	12	\$4,104.00	
400	96	19	\$6,498.00	

Table 1.5: Power Impact Fee – Commercial 3 Phase (120/208V) or (120/240V) Service Sizes

AMPS	KVA	Peak Demand (kW)	Max. Impact Fee	Adopted Impact Fee
125	45	9	\$3,078.00	
150	54	14	\$4,788.00	
200	72	18	\$6,156.00	
400	144	36	\$12,312.00	
600	216	54	\$24,624.00	
800	288	72	\$24,624.00	
1000	360	90	\$30,780.00	
1200	432	108	\$36,936.00	
1600	576	144	\$49,248.00	
2000	720	180	\$61,560.00	

Table 1.7: Power Impact Fee – Commercial Phase 3 (120/240V) Service Sizes

AMPS	KVA	Peak Demand (kW)	Max. Impact Fee	Adopted Impact Fee
125	52	9	\$3,078.00	
150	62	14	\$4,788.00	
200	83	18	\$6,156.00	
400	166	36	\$12,312.00	
600	249	54	\$18,468.00	
800	332	72	\$24,624.00	
1000	415	90	\$30,780.00	
1200	498	108	\$36,936.00	
1600	664	144	\$49,248.00	
2000	830	180	\$61,560.00	

6.01.090. Adjustments and Credits.

1. *Adjustments.* In accordance with Section 11-36a-402 of the Impact Fees Act, the City may adjust the Impact Fees at the time the fee is charged to respond to 1) unusual circumstances in specific cases, or 2) a request for a prompt and individualized impact fee review for the Development Activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected, and 3) to ensure that impact fees are imposed fairly. The Impact Fees assessed to a particular development may also be adjusted should the developer supply sufficient written information, studies and/or data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.

2. *Developer Credits.* In accordance with Section 11-36a-402 of the Impact Fees Act, a developer, including a school district or a charter school, may be allowed a credit against Impact Fees or proportionate reimbursement of Impact Fees if the developer 1) dedicates land for a System Improvement, 2) builds and dedicates some or all of a System Improvement, or 3) dedicates a public facility that the City and the developer agree will reduce the need for a System Improvement; provided that the System Improvement is: (i) identified in the City's IFFP; and (ii) is required by the City as a condition of approving the Development Activity. To the extent required in Section 11-36a-402, the City shall provide a credit against Impact Fees for any dedication of land for, improvements to, or new construction of any System Improvements provided by the developer if the facilities are , 1) are System Improvement; or 2) are dedicated to the public and offset the need for an identified System Improvement.

3. *Waiver for "Public Purpose".* The City Council may, on a project by project basis, authorize exceptions or adjustments to the Impact Fees for Development Activity attributable to 1) low income housing; 2) the State; 3) a school district; 4) a charter school; or 5) other Development Activity which the City Council determines to have a broad public purpose.

- a. Waivers provided under this paragraph shall be by resolution of the City Council.
- b. For development activities requesting a waiver as serving a broad public purpose, the City Council shall find that such activities will provide benefits to the citizens of Brigham City as a whole and will accomplish a defined purpose of the Brigham City General Plan that may otherwise require the expenditure of City funds to accomplish. If the City Council is unable to make such a finding, no exemption shall be provided.
- c. The City Council shall consider requests for exemption of development activities due to the provision of low income housing only under the following circumstances:
 - i. The developer is a bona fide non-profit organization which has the provision of low income housing as a principal objective;
 - ii. The Developer has established procedures that will ensure that the dwelling or dwellings for which the exemption is requested will remain affordable to low income households for a period of not less than thirty (30) years;
 - iii. The developer has established procedures that will guarantee the long term maintenance and upkeep of the low income housing development, including all structures, landscaping and other site features; and
 - iv. The Planning Commission and City Council find that the project demonstrates quality in site planning and architecture.

4. *"Impact Fee Adjustment Committee."* Requests for adjustment or waiver of Impact Fees, or for developer credits, shall be reviewed by the Impact Fee Adjustment Committee (the "Committee"), which shall be comprised of three (3) members, which shall be the Community and Economic Development Director, the Chief Building Official, and the City Engineer. The Director of Public Works and the Director of Public Power shall advise the Committee, and may

act as alternate members in the event that one of the committee members is unable to attend. Committee members may also designate a member of their respective departments to act as their alternate in the event they are unable to attend.

- a. All requests for adjustment or waiver of Impact Fees or developer credits shall be submitted to the Community and Economic Development Department, which shall forward the request to the Committee. The Committee shall convene as needed to review all requests.
 - b. Requests for adjustment or waiver of Impact Fees or developer credits must be requested in writing by the developer, and must include evidence supporting the request, and compiled, as applicable, in a standard form as it relates to Equivalent Residential Units as defined herein.
 - c. If the request for adjustment or waiver or developer credit is the result of land dedication, or improvement of new public services or buildings, then a fair market appraisal shall be made of the proposal and shall be submitted, with any other evidence, to the committee for review. The appraisal shall be at the expense of the developer. Land dedication must first be approved by the City Council.
 - d. All submitted requests shall be reviewed by the committee within 14 days from the date a complete application is submitted, and all decisions of the committee shall be submitted in writing to the developer within 30 days following the committee meeting.
 - e. The committee is authorized or deny requests for adjustment of impact fees. In such cases, the committee's decision may be appealed to the City Council
 - f. The committee shall make recommendations to the City Council regarding requests for waiver of Impact Fees.
 - g. Minutes of committee meetings shall be submitted to the City Council.
 - h. The Committee shall be subject to the requirements of the Utah Open and Public Meetings Act (Title 52 Chapter 4 of the Utah Code).
5. Except for the exemption of low income housing, in the event that the City Council exempts a project from the payment of all or a portion of Impact Fees, it shall establish one or more sources of funds other than Impact Fees to offset funds that would otherwise be paid in the form of Impact Fees. Applications for exceptions are to be filed with the City at the time the applicant first requests the extension of service to the applicant's development or property.

6.01.100. Notice and Hearing.

1. *Notice.* All noticing requirements set forth in the Impact Fees Act, including, but not limited to, provisions of Title 11, Chapter 36a, Part 5, Notice, including notice of intent to prepare an impact fee facilities plan, notice to adopt or amend an impact fee facilities plan, notice of preparation of impact fee analysis, and notice of intent to adopt impact fee enactment, have been provided. Copies of the IFFP and IFA, together with a summary designed to be understood by a lay person, and this Impact Fee Ordinance, have been made available to the public by placing a copy of the IFFP and IFA, together with the summary, and this Ordinance, in the Brigham City Library and the Recorder's Office at Brigham City Hall at least ten (10) days

before the public hearing. Notice has also been provided in accordance with applicable provisions of Utah Code Ann. § 10-9a-205.

2. *Hearing.* The City Council held a public hearing regarding the IFFP, the IFA, and this Impact Fee Ordinance, on May 17, 2018, and a copy of the Ordinance was available in its substantially final form at the Brigham City Library and the City Recorder's Office in the Brigham City Hall at least ten (10) days before the date of the hearing, all in conformity with the *requirements* of Utah Code Ann. § 10-9a-205 and applicable noticing provisions of the Impact Fees Act.

6.01.110. Impact Fee Account and Expenditures.

1. *Impact Fees Accounting.* Pursuant to Section 11-36a-601 of the Impact Fees Act, the City will establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected, deposit a receipt for an impact fee in the appropriate ledger account established herein, and retain the interest earned on each fund or ledger account in the fund or ledger account.

2. *Reporting.* At the end of each fiscal year, the City shall prepare a report on each fund or ledger account showing the source and expenditures as required by law. Annually, the City shall produce and transmit to the State Auditor a certified report in accordance with Section 11-36a-601 in a format developed by the State Auditor.

3. *Impact Fee Expenditures.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may expend Impact Fees only for a System Improvement: (i) identified in the IFFP; and (ii) for the specific public facility type for which the fee was collected. Impact fees will be expended on a first-in first-out basis.

4. *Time of Expenditure.* Except as otherwise provided by law, the City shall expend or encumber Impact Fees for a permissible use within six (6) years of their receipt. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

5. *Extension of Time.* Pursuant to Section 11-36a-602 of the Impact Fees Act, the City may hold the impact fees for longer than six (6) years if it identifies in writing: (i) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and (ii) an absolute date by which the fees will be expended.

6. *Refunds.* Pursuant to Section 11-36a-603 of the Impact Fees Act, the City shall refund any Impact Fees paid by a developer, plus interest earned, when: (i) the developer does not proceed with the Development Activity and has a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted. An impact that would preclude a developer from a refund from the City may include any impact reasonably identified by the City, including, but not limited to, the City having sized facilities and/or paid for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned

Development Activity even though that capacity may, at some future time, be utilized by another development.

7. *Other Impact Fees.* To the extent allowed by law, the City Council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, at the discretion of the City Council, include but not be limited to reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the City's system.

8. *Additional Fees and Costs.* The Impact Fees authorized herein are separate from and in addition to user fees and other charges lawfully imposed by the City and other fees and costs that may not be included as itemized component parts of the Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.

9. *Fees Effective at Time of Payment.* Unless otherwise provided in the City's Consolidated Fee Schedule, the City will collect the Impact Fees prior to final plat recording or prior to building permit issuance, as applicable. The fees will be calculated by the City. Unless the City is otherwise bound by a contractual requirement, the Impact Fees shall be determined from the fee schedule in effect at the time of payment.

10. *Imposition of Additional Fee or Refund after Development.* Should any developer undertake development activities such that the ultimate acreage or other impact of the Development Activity is not revealed to the City, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the Impact Fee is not initially charged against all acreage within the development, the City shall be entitled to charge an additional Impact Fee to the developer or other appropriate person covering the acreage for which an impact fee was not previously paid.

6.01.120. Challenges to Impact Fees.

1. *Request for Information.* Pursuant to Section 11-36a-701, a person or entity required to pay an Impact Fee who believes the Impact Fee does not meet the requirements of law may file a written request for information with the City Administrator. As required by law, the City Administrator shall, within two (2) weeks after the receipt of the request for information provide the person or entity with the IFFP, the IFA, and any other relevant information relating to the Impact Fee.

2. *Advisory Opinion.* A potentially aggrieved person may request an advisory opinion from a neutral third party regarding compliance of the Impact Fees with the Impact Fees Act by filing such request with the Office of the Property Rights Ombudsman in accordance with the procedures and provisions of Title 13, Chapter 43, known as the Property Rights Ombudsman Act. The aggrieved party requesting an advisory opinion is not required to exhaust the administrative appeals procedures set forth in Subsection 3 before requesting an advisory opinion.

3. *Appeal.* A person or entity that has paid Impact Fees under the provisions of this Ordinance may challenge such impact fees pursuant to the provisions set forth in Title 11, Chapter 36a, and Part 7 of the Impact Fees Act regarding Challenges.

- a. *Grounds for Challenge.* Pursuant to Section 11-36a-701, a person or entity that has paid Impact Fees under the provisions of this Ordinance may challenge: (1) the impact fees; (2) whether the City complied with the notice requirements of the Impact Fees Act with respect to the imposition of the impact fees; and/or (3) whether the City complied with other procedural requirements of the Impact Fees Act for imposing the impact fee.
- b. *Sole Remedy.* The sole remedy for challenging the notice requirements is the equitable remedy of requiring the City to correct the defective notice and repeat the process. The sole remedy for challenging the impact fee is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated. Reasonable attorney's fees may be awarded to the substantially prevailing party to the extent provided in the Impact Fees Act.
- c. *Imitation.* A challenge to an impact fee is initiated by filing:
 - i. An appeal to the City Council pursuant to the administrative appeal procedures set forth herein;
 - ii. A request for arbitration as provided in Section 11-36a-705 of the Impact Fees Act; or
 - iii. An action in district court.
- d. *Time Restrictions.* The time for filing a challenge to the impact fees shall be filed in accordance with the time limitations set forth in Section 11-36a-702, depending upon the type of challenge. The deadline to file an action in district court is tolled from the date that a challenge is filed using the administrative procedures set forth in Subsection 3 until thirty (30) days on which a final decision is rendered in the administrative appeals procedure.

4. *Administrative Appeal Procedure.* The City hereby adopts an administrative appeal procedure to consider and decide challenges to the Impact Fees. Any person or entity that has paid an Impact Fee pursuant to this Ordinance may challenge or appeal the impact fee by filing written notice of administrative appeal with the City within thirty (30) days after the day on which the person or entity paid the impact fee. The notice of appeal shall set forth the grounds for the appeal and shall include any applicable filing fees as set forth in the City's Consolidated Fee Schedule. Upon receiving the written notice of appeal, the City Council shall set a hearing date to consider the merits of the challenge or appeal. The person or entity challenging or appealing the fee may appear at the hearing and present any written or oral evidence deemed relevant to the challenge or appeal. Representatives of the City may also appear and present evidence to support the imposition of the fee. The City Council shall hold a hearing and make a decision within thirty (30) days after the date the challenge or appeal is filed.

5. *Mediation.* In addition to the methods of challenging an impact fee as provided herein, a specified public agency may require the City to participate in mediation of any applicable impact fee in accordance with the provisions of Section 11-36a-704 of the Impact Fees Act. A written request for mediation must be filed in accordance with Section 11-36a-704 no later than thirty (30) days after the day on which the impact fee is paid.

6. *Declaratory Judgment Action.* Pursuant to Section 11-36a-701, a person or entity residing in or owning property within the Service Area, or an organization, association, or a corporation representing the interests of persons or entities owning property within the Service Area are deemed to have standing to file a declaratory judgment action challenging the validity of an impact fee.

6.01.130. Miscellaneous.

1. *Severability.* If any section, subsection, paragraph, clause or phrase of this Impact Fee Ordinance shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose, the provisions of this Impact Fee Ordinance are declared to be severable.

2. *Interpretation.* This Impact Fee Ordinance has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Ordinance shall not be affected by such division or by any heading contained herein.

3. *Other Impact Fees Not Repealed.* Except as otherwise specifically provided herein, this Impact Fee Ordinance shall not repeal, modify or affect any impact fee of the City in existence as of the effective date of this Ordinance.

SECTION IV EFFECTIVE DATE

In accordance with the provisions of Utah Code Ann. Section 11-36a-401, this ordinance and the impact fees adopted herein or pursuant hereto shall not take effect until ninety (90) days after the day on which the ordinance is approved.

[Signature Page to Follow]

PASSED AND APPROVED this 17th Day of May, 2018.

Mayor Tyler M. Vincent

[SEAL]

VOTING:

Dennis J. Bott	Yea__	Nay__
Alden Farr	Yea__	Nay__
Ruth Jensen	Yea__	Nay__
Thomas Peterson	Yea__	Nay__
Mark Thompson	Yea__	Nay__

ATTEST:

Mary Kate Christensen
City Recorder

EXHIBIT A
CITYWIDE IMPACT FEE FACILITIES PLAN (IFFP)
AND IMPACT FEE ANALYSIS (IFA)

DRAFT