

CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
August 12, 2014 – POLICY SESSION

Mission Statement: To provide leadership in advancing core community values; sustain safety, security and health; and provide progressive, caring and effective services. We take pride in building a community where individuals, families and businesses can develop and thrive.

Executive Conference Room
55 South State Street
Third Floor
Clearfield, Utah

6:00 P.M. WORK SESSION

Discussion on an Interlocal Agreement with North Davis Fire District (NDFD)
Discussion on the Ballot Language for the PARAT (Parks, Arts, Recreation, Aquatics, Trails) Tax
Discussion on the Impact Fee Study RFP (Request for Proposal)
Discussion of the Proposed Rezones of City and CDRA Properties Located at Approximately 888 South 2000 East and 497 South Main from Various Zoning Designations to PF (Public Facilities) Zone

****ADJOURN CITY COUNCIL WORK SESSION AND IMMEDIATELY RECONVENE
AS THE CDRA IN A WORK SESSION ****

CDRA WORK SESSION

Discussion on a Proposed Lease Agreement for Property located at 50 South Depot Street

(Any items not addressed prior to the Policy Session will be addressed in a Work Session immediately following the Policy Session)

City Council Chambers
55 South State Street
Third Floor
Clearfield, Utah

7:00 P.M. POLICY SESSION

CALL TO ORDER:

OPENING CEREMONY:

APPROVAL OF MINUTES:

Mayor Shepherd

Councilmember Jones

June 24, 2014 – Work Session

July 8, 2014 – Work Session

July 22, 2014 – Policy Session

July 29, 2014 – Work Session

SCHEDULED ITEMS:

1. **CITIZEN COMMENTS**
2. **CONSIDER APPROVAL OF AN AGREEMENT WITH HORROCKS ENGINEERS TO CONDUCT AN IMPACT FEE STUDY FOR THE CITY'S CULINARY WATER, SANITARY SEWER AND STORM DRAINAGE SYSTEMS**

BACKGROUND: Proposals were received from consultants interested in providing professional services to conduct an impact fee study on the culinary water, sanitary sewer and storm drainage

systems. The selection committee reviewed the qualifications, experience and fee structures of each of the proposals, and recommends that Horrocks Engineers be awarded the contract.

RECOMMENDATION: Approve the agreement with Horrocks Engineers to provide an impact fee study on Clearfield City's culinary water, sanitary sewer and storm drainage systems and authorize the Mayor's signature to any necessary documents.

3. CONSIDER APPROVAL OF RESOLUTION 2014R-18 AUTHORIZING THE PARAT TAX BALLOT LANGUAGE AND SUBMITTING THE QUESTION TO VOTERS

BACKGROUND: Clearfield City has a strong history of and continued interest in supporting facilities, programs and organizations designed to improve Parks, Arts, Recreation, Aquatics and Trails (PARAT) opportunities for its residents. The City's continued support could be enhanced by providing additional revenue for such purposes so it desires to provide an opinion question election regarding the imposition of a local sales and use tax to fund PARAT facilities, programs and organizations.

RECOMMENDATION: Approve Resolution 2014R-18 authorizing the PARAT Tax ballot language and submitting the question to voters and authorize the Mayor's signature to any necessary documents.

4. CONSIDER APPROVAL OF RESOLUTION 2014R-19 AUTHORIZING THE INTERLOCAL AGREEMENT WITH NORTH DAVIS FIRE DISTRICT (NDFD)

BACKGROUND: Clearfield City and the North Davis Fire District have entered into previous Interlocal Agreements to govern the terms of services provided by the Fire District. This agreement serves to clarify some details regarding the relationship between the parties and those terms of services.

RECOMMENDATION: Approve Resolution 2014R-19 authorizing the Interlocal Agreement with the North Davis Fire District and authorize the Mayor's signature to any necessary documents.

COMMUNICATION ITEMS:

Mayor's Report
City Councils' Reports
City Manager's Report
Staffs' Reports

****ADJOURN AS THE CITY COUNCIL AND RECONVENE AS THE CDRA****

1. APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE JULY 8, 2014 WORK SESSION, THE JULY 22, 2014 WORK SESSION, THE JULY 22, 2014 POLICY SESSION AND THE JULY 29, 2014 WORK SESSION

2. CONSIDER APPROVAL OF A LEASE AGREEMENT WITH SODA POP CULTURE LLC FOR THE REAL PROPERTY AND RESTAURANT SPACE, FURNITURE, FIXTURES AND EQUIPMENT LOCATED AT 50 SOUTH DEPOT STREET (PARCEL ID# 12-001-0193)

BACKGROUND: Soda Pop Culture LLC is a custom soda drink business which requires a drive-thru. As soon as the CDRA's building at 50 South Depot Street was vacated by the former tenant, the owners of Soda Pop Culture expressed interest in leasing the property on a short-term month-to-month basis.

RECOMMENDATION: Approve the Lease Agreement with Soda Pop Culture LLC for the real property and restaurant space, furniture, fixtures and equipment located at 50 South Depot Street (Parcel ID# 12-001-0193), and authorize the Chair's signature to any necessary documents.

*****ADJOURN AS THE CDRA*****

Dated this 7th day of August, 2014.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of July, 2014, by and between **CLEARFIELD CITY CORPORATION**, a Utah Municipal Corporation with its principal offices at 55 South State Street, Clearfield City, Davis County, State of Utah, hereinafter referred to as “Clearfield City” or the “City” and **NORTH DAVIS FIRE DISTRICT**, a Utah Special Service District, having its principal office at 381 North 3150 West, West Point City, Davis County, State of Utah, referred to herein as the “District”. The City and the District are sometimes referred to herein collectively as the “Parties” and sometimes as a “Party.” Said Parties agree as follows:

RECITALS

1. The District is a Special Service District organized and existing for the purpose of providing fire protection, emergency medical and ambulance services (the “Services”) within the corporate limits of Clearfield City and West Point City (the “Service Area”).
2. The City desires to enter into an Interlocal Cooperation Agreement (the “Agreement”) under the terms and provisions of which Agreement the District will provide Services to the City.
3. The District desires to enter into the Agreement with the City for the purpose of providing Services within the corporate limits of the City.
4. The District and the City are authorized to enter into Interlocal Cooperation agreements such as this Agreement pursuant to the provisions of the Interlocal Cooperation

Act, §§11-13-101 et seq. Utah Code Annotated, 1953. No separate legal or administrative entity is created by this Agreement. This Agreement is entered into in accordance with the terms and provisions of the Interlocal Cooperation Act which is incorporated herein by reference insofar as any terms or provisions thereof may be pertinent or applicable.

5. The Parties are now desirous of entering into this Agreement for said purpose as more fully described herein.

NOW, THEREFORE, for and in consideration of the covenants, agreements, mutual promises, and conditions contained herein, and other good and valuable consideration, it is hereby agreed by and between the City and the District as follows:

AGREEMENT

Section One: **INCORPORATION OF RECITALS**

All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

Section Two: **DURATION OF AGREEMENT**

This Agreement shall be effective as of the 1st day of July, 2014 and shall continue and remain in full force and effect for a period of fifty (50) years unless terminated sooner by the mutual consent of the Parties or as otherwise provided by law.

Section Three: **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to provide a legal means for the District to provide Services, as hereinabove defined, within the corporate limits of the City.

Section Four: **PRIOR INTERLOCAL AGREEMENTS**

The City and the District are parties to prior Interlocal Agreements as follows:

A. An Interlocal Agreement Between Clearfield City, West Point City and the North Davis Fire District.

1. This Agreement has an effective date of July 1, 2005.
2. This 2005 Agreement has terminated in accordance with the terms thereof and has been fully performed and implemented by the Parties hereto and is superseded in its entirety by the new Agreement set forth herein.

B. Agreement

1. This Agreement was entered into as of the 1st day of July, 2005.
2. This 2005 Agreement has terminated in accordance with the terms thereof and has been fully performed and implemented by the Parties hereto and is superseded in its entirety by the new Agreement set forth herein.

Section Five: **DISPATCH SERVICES**

Clearfield will provide dispatch services for the District at an annual cost of Eighty Five Thousand Dollars (\$85,000.00). Clearfield and the District may evaluate the cost annually to determine if there should be an adjustment.

The standards of service for the dispatch services shall be established by the Parties. Such services shall continue on the same basis as they are currently being provided until changed by the Parties.

The agreement for dispatch services contained in this Section Five may be terminated by mutual consent of the Parties.

Section Six: **IMPACT FEES**

A. **Residential Impact Fees.** Clearfield City agrees to collect District impact fees for the construction of single family residences and forward those impact fees to the District.

B. **Commercial, Industrial, and Multi-Family Impact Fees.** The District shall compute, and Clearfield City will collect, commercial, industrial, or multi-family residential District impact fees as applicable within its jurisdiction. All responsibility and liability for the computation of the impact fee shall belong to the District.

C. **Impact Fees Generally.** In those situations where Clearfield City collects an impact fee the following provisions shall govern:

1. The paying party shall sign a form acknowledging that payment is for a District impact fee and releasing the City from any claim against the City with respect to such impact fee. If the paying party refuses to sign the form, they shall be required to make payment directly to the District.
2. Clearfield City will make good faith efforts to collect the correct District impact fee from the paying party, but will not be liable to the District for any errors or mistakes.

3. Clearfield City shall be deemed only an intermediary to receive impact fee payments for the District and shall do it solely for the convenience of those paying the impact fee.
4. The District impact fee shall be regarded as that belonging solely to the District and Clearfield City shall not in any way be regarded as “imposing” or “collecting” such fee within the meaning of the Impact Fees Act §11-36a-101 et seq., Utah Code Annotated, 1953.
5. Clearfield has not done, nor has any duty to do, an impact fee analysis with respect to impact fees of the District. The District has in place a procedure for any person, firm or entity to challenge or appeal the assessment or payment of District impact fees and any challenge or protest with respect to District impact fees shall be the responsibility of the District to defend and justify and not that of the City.
6. The District shall indemnify and hold Clearfield harmless for any loss, expense, injury or damage to the City resulting from any claim against the City in connection with the receiving payment for District impact fees, including all costs and attorney’s fees incurred by the City in connection with any claim.
7. The District shall remit, to the City Twenty Dollars (\$20.00) per impact fee collected, to be paid to the City on a monthly basis. This

amount may be increased upon approval of the District Board if the City shows that its costs of collection have increased substantially.

8. The City may, upon six (6) months' notice to the District, cease to collect the impact fee, by referring all further collections to the District offices in West Point, Utah, at the conclusion of the six (6) month period of time.
9. The District may at any time assume responsibility for collecting its impact fees by giving Clearfield thirty (30) days advance notice of its intent to do so.

Section Seven: RESPONSIBILITIES OF THE DISTRICT

During the term of this Agreement the District will provide first responder fire protection, emergency medical and ambulance services within the corporate limits of the City, including:

- A. Fire prevention, fire suppression, extinguishment, investigations and other fire-related services.
- B. Emergency and non-emergency medical and ambulance services.
- C. Response to hazardous materials incidents, flooding, terrorism and other emergency incidents.

The District represents that it has adequate personnel and equipment to provide said Services to its Service Area, including the City.

The District will provide all personnel and equipment and training necessary to furnish the Services. Personnel shall be employees of the District and not the City. Furthermore, the City shall not be legally responsible for any action, or failure to take action, on the part of the District or its employees.

Section Eight: **RESPONSIBILITIES OF THE CITY**

During the term of this Agreement the City agrees to provide the District with all necessary information to enable the District to provide the Services including, but not limited to, maps, addresses, building plans, emergency telephone numbers and all other information reasonably necessary as determined by the District Fire Chief.

The District shall not be legally responsible for any action, or failure to take action, on the part of the City or its employees.

Section Nine: **COOPERATION BETWEEN PARTIES**

The District and the City agree that representatives of each shall meet regularly to review and discuss procedures and any potential problems involved in providing the Services. Either Party may make recommendations and suggestions to promote the effective and efficient delivery of Services.

Section Ten: **INSURANCE, LIABILITY AND INDEMNIFICATION**

Each Party shall be responsible for conducting its respective activities. Each Party agrees to maintain public liability and property damage insurance covering activities to be conducted under the terms of this Agreement with coverage in an amount not less than a

Combined Single Limit Coverage of One Million Dollars (\$1,000,000.00) per occurrence and to name the other as an additional named insured.

Each Party is responsible and liable for its own, as well as its employees', officers', and agents' wrongful acts of negligence. Each of the Parties agrees to indemnify, hold harmless and defend the other Party, its elected and appointed officials, officers, employees, agents and representatives against any and all expenses, liabilities, losses, costs, suits and damages, and claims of every kind, including costs and attorneys' fees, which are due to either its own, or its employees' negligent acts or omissions related to or in connection with the performance of this Agreement. Both Parties acknowledge and agree that they are local governmental entities under the Governmental Immunity Act of Utah (the "Act") and nothing in this Agreement shall be construed so as to waive any immunity, as it relates to third parties, enjoyed or bestowed to either the City or the District pursuant to the Act.

Section Eleven: **ASSIGNMENT**

Neither Party hereto may assign this Agreement or any interest therein without first obtaining the written consent of the other Party. Any attempt to assign any right or privilege connected with this Agreement without the prior written consent of the other Party shall be void.

Section Twelve: ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the Parties. Any prior understanding or representations of any kind shall not be binding upon either Party except to the extent incorporated in this Agreement.

Section Thirteen: MODIFICATION IN WRITING

The Parties anticipate that there may be amendments and modifications to this Agreement. However, any such modification or amendment to this Agreement shall be binding only if it is in writing and signed by both Parties with the same formality as connected with the execution of this Agreement.

Section Fourteen: BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the successors of the Parties.

Section Fifteen: APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section Sixteen: DEFAULT

In the event of a default of this Agreement by either Party, said Party shall have thirty (30) days to cure said default. The Parties agree to negotiate in good-faith to resolve any and all conflicts. It is agreed that this Agreement shall not be terminated for default unless it can be shown that the defaulting Party acted in bad-faith or with malice in causing the default

Section Seventeen: SEVERABILITY

If any provisions of this Agreement are construed or held by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain in full force and effect.

Section Eighteen: ATTORNEYS FEES

Should the services of any Attorney be required to enforce this Agreement, the defaulting Party agrees to pay reasonable Attorney's fees and costs.

Section Nineteen: NOTICE

Any notices to the respective Parties shall be as follows:

For the City:

Clearfield City Manager
55 South State Street
Clearfield, Utah 84015

For the District:

Fire Chief
North Davis Fire District
381 North 3150 West
West Point, Utah 84015

IN WITNESS WHEREOF, each Party to this Agreement has caused it to be executed as of the day and year first above written.

NORTH DAVIS FIRE DISTRICT

CLEARFIELD CITY CORPORATION

KATHRYN MURRAY
Chairman
Administrative Control Board

MARK SHEPHERD
Mayor

ATTEST:

ATTEST:

MICHELLE LIMON
Clerk

NANCY DEAN
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the _____ day of August, 2014 personally appeared before me KATHRYN MURRAY, who being by me duly sworn did say, each for herself, that she, the said KATHRYN MURRAY, is the Chairman of the Administrative Control Board of North Davis Fire District, and he, the said MICHELLE LIMON, is the Clerk of the Administrative Control Board of the North Davis Fire District, and that the within and foregoing instrument was signed on behalf of the said North Davis Fire District by authority of a Resolution of the said Board and said Kathryn Murray and Michelle Limon, each duly acknowledged to me that the said North Davis Fire District executed the same and that the seal affixed is the seal of the said North Davis Fire District.

(SEAL)

NOTARY PUBLIC
Residing at:
My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the _____ day of August, 2014, personally appeared before me MARK SHEPHERD and NANCY DEAN, who being by me duly sworn did say, each for himself and herself, that he, the said Mark Shepherd, is the Mayor of Clearfield City, Davis County, State of Utah, and that she, the said Nancy Dean, is the City Recorder of Clearfield City, Davis County, State of Utah, and that the within and foregoing instrument was signed on behalf of the said City by authority of a Resolution of the City Council of said City and said Mark Shepherd and Nancy Dean each duly acknowledged to me that the said City executed the same and that the seal affixed is the seal of the said City.

(SEAL)

NOTARY PUBLIC
Residing at:
My Commission Expires:

Approved and reviewed as to proper form and compliance with applicable law:

Approved and reviewed as to proper form and compliance with applicable law:

FELSHAW KING
Attorney for District

BRIAN E. BROWER
City Attorney

IMPACT FEE STUDY
Evaluation Data

Evaluator	Proposal	Qualifications	Project Team Personnel	Project Approach	Fee Proposal	Total Score
JJ Allen	Horrocks	15	13	30	30	88
	LYR&B	15	15	40	15	85
M. Becraft	Horrocks	10	15	35	30	90
	LYR&B	15	15	15	20	60
R. Knapp	Horrocks	15	15	30	30	90
	LYR&B	15	15	40	20	90
S. Hess	Horrocks	12	14	35	30	91
	LYR&B	15	14	40	25	94
S. Hodge	Horrocks	15	14	34	27	90
	LYR&B	14	10	38	25	87

Horrocks Engineers total score 449

Lewis Young Robertson and Burningham total score 416

	<u>City Impact Fee</u>	<u>Fire District Fee</u>	<u>Total</u>
Horrocks Engineers	\$42,470.00	\$12,207.00	\$54,677.00
LYR&B	\$53,281.00	\$16,538.00	\$69,819.00

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
June 24, 2014

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Ron Jones	Councilmember
	Mike LeBaron	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Scott Hodge	Public Works Director
	Rich Knapp	Administrative Services Director
	Jessica Hardy	Budget Analyst
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Greg Walkenhorst – Waste Management of Utah, Lance Allen – Waste Management of Utah, Josh Hughes – Mountain West Curbside Recycling, Robb Kelly – Mountain West Curbside Recycling, Kathryn Murray

DISCUSSION ON THE SOLID WASTE COLLECTION CONTRACT, CURBSIDE RECYCLING AND GREEN WASTE

Rich Knapp, Administrative Services Director, reported the City had been using Waste Management as its solid waste collector since 2003. He added a Request for Proposal had been solicited in 2012 for the services and the awarded contract at that time was for two years with three, one year renewal options. He stated it would be staff’s recommendation to renew the contract at this time for one year. He added the extension allowed a rate increase from \$4.38 to \$4.45 for the first can. He reported the garbage fund was healthy and could absorb that cost and staff was recommending no rate increase to the residents at this time.

Councilmember Bush inquired if the City had the option to renew the contract longer than the one year option at this time. Mayor Shepherd believed the City didn’t have time to solicit new proposals since the current contract would expire July 1, 2014. He believed the City should solicit a Request for Proposals next year prior to expiration of the contract renewal since the City would have contracted with Waste Management for three years. Mr. Knapp mentioned the City had requested an extension of three years and reported Waste Management’s preference was for

just a one year extension. He mentioned the utility department received very few complaints regarding the curbside trash collection provided by Waste Management.

Mr. Knapp introduced Greg Walkenhorst and Lance Allen from Waste Management to the Council. Adam Lenhard, City Manager, requested they share information about Waste Management and its operations in Clearfield. Mr. Walkenhorst explained Waste Management began servicing Clearfield City in 2003 from its West Haven location. He reported it also took over ownership and maintenance of the City's residential containers at that time. Mr. Knapp stated no council action was needed for extending the contract.

Mr. Knapp reported the utility department often received requests about the opportunity for a curbside recycling program. He continued the response had historically been the City was affiliated with Wasatch Integrated (burn plant) which burned approximately fifty percent of the collected waste which was converted to energy used by Hill Air Force Base. He emphasized staff was not recommending a curbside recycling program at this time and shared a list of pros and cons associated with a recycling program. He mentioned it wouldn't be cost effective to implement recycling at this time. A discussion took place regarding recycling programs and corresponding costs.

Mr. Walkenhorst reported Waste Management offered cardboard, paper, plastic containers, recycling and green waste recycling. He mentioned there were two reasons to recycle: lower tipping fees as well as the environmental aspect.

Mr. Lenhard asked the Council if it believed there was an interest in both curbside recycling in a single container and also green waste recycling. Councilmember LeBaron mentioned he had received inquiries from residents living in his area. JJ Allen, Assistant City Manager, reported he recently toured Wasatch Integrated and officials there had requested cities offer a curbside green waste recycling program as burning green waste wasn't effective.

Councilmember Benson reported she had received a number of questions regarding recycling during her campaign for City Council. Councilmember Bush added he too had residents asking the same of him. Councilmember Young inquired about the opt-out option. Mayor Shepherd believed the City wouldn't want to offer an opt in or out option. Lance Allen, Waste Management, responded it was difficult to push a recycling program citywide. He mentioned twenty percent of residents opted out of participating in a recycling program. A discussion took place about the costs associated with participation levels and the different recycling options.

The Council directed staff to further research recycling costs and options.

Mr. Allen and Mr. Walkenhorst left the meeting at 6:28 p.m.

DISCUSSION ON THE 2013/2014 FISCAL YEAR BUDGET AMENDMENTS

Rich Knapp, Administrative Services Director, distributed a handout and reviewed the proposed budget amendments with the Council.

He reported the City was now being required to recognize its costs associated with all City facilities for water usage/consumption so the budget was being amended to account for that cost. He stated most of the estimated \$350,000 cost was associated with the irrigation of City properties. He anticipated actual costs would be lower than that amount estimated. He clarified putting the cost in the budget was merely an accounting technicality. Mr. Lenhard mentioned it was the City's goal to meter water used for park irrigation in the future to have an accurate accounting. JJ Allen, Assistant City Manager, pointed out metering would also reflect potential water losses. Mr. Knapp also mentioned that issue was brought up during the City's bond rating last fall.

Mr. Knapp reviewed amendments regarding the CDRA budget.

DISCUSSION ON THE CEMETERY POLICY

Eric Howes, Community Services Director, informed the Council of the recent situation experienced by City staff regarding a grave not being prepared for a Saturday burial and reviewed the City's policy. He reviewed the City's procedures with the Council and explained the major adjustments being made to the policy. He believed the changes would eliminate problems associated with weekend burials in the future.

He reported on costs associated with Saturday burials and shared a brief comparison from other entities with the Council. He believed the City wasn't charging enough to cover its costs and proposed a fee increase. He requested direction from the Council.

Councilmember LeBaron didn't want the City to profit from burying people in the City cemetery. He suggested the City only charge its actual costs. Councilmember Young, Jones and Benson expressed agreement with Councilmember LeBaron's remarks. Mr. Lenhard directed Mr. Howes to get with Human Resources to determine an actual cost and propose amendments to the Consolidated Fee Schedule. He also recommended changes for afternoon burials. The Council emphasized the importance of educating the consumer and expressed its support for the increase to cover the City's costs.

Mr. Howes also suggested an increase for plot transfer fees specific to cemetery plots and shared a specific example regarding plot transfer fees. He reminded the Council that the City's current fee was the difference between the purchase price for resident and non-resident at the original time of purchase. He reported staff was experiencing challenges in implementing the transfer fee because of the difficulty in determining the original cost. Mr. Howes proposed a new plot transfer fee of \$100 within the first year of purchase and after one year the transfer fee would be \$10. He summarized people generally wouldn't want to make that type of purchase in someone else's name for a long period of time. The Council expressed agreement with the proposal.

Councilmember Benson moved to adjourn the work session and reconvene in a CDRA work session at 6:58 p.m., seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Jones, LeBaron and Young. Voting NO – None.

The minutes for the CDRA are in a separate location

DRAFT

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
July 8, 2014

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Ron Jones	Councilmember
	Mike LeBaron	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Scott Hodge	Public Works Director
	Eric Howes	Community Services Director
	Scott Hess	Development Services Manager
	Rich Knapp	Administrative Services Director
	Kim Dabb	Operations Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Kathryn Murray.

Mayor Shepherd called the meeting to order at 6:36 p.m.

DISCUSSION ON THE BID AWARD FOR THE 550 EAST ROADWAY IMPROVEMENT PROJECT

Scott Hodge, Public Works Director, announced a bid opening for the 550 East Roadway Improvement Project had recently taken place. He reminded the Council that the City had been required to obtain signatures of residents on the Road Dedication Plat and indicated the City had all but one. He stated three bids were received from contractors and distributed a handout specific to the bids.

Mr. Hodge reviewed the information provided on the handout:

- The City had appropriated \$586,000 for the project
- The lowest bid was \$711,171
- Contingency and Engineering costs were approximately \$98,000
- Additional funding in the amount of \$223,171 was needed to complete the project

Mr. Hodge stated he had reviewed the submitted bids in depth and reported mobilization and landscaping costs were significantly higher when compared with the 450 West CDBG project which was a similar project. He pointed out the City was completing the bid process late in the

construction season and believed that was the reason only three bids were submitted. He explained contractors' schedules were probably full and if they were going to add another project they wanted to get paid well.

Mr. Hodge reviewed how the proposed project had been budgeted by using each of the Enterprise Funds and pointed out the shortfall for each fund if the project was to be completed at this time. He also mentioned another funding source would need to be identified if the project was to go forward. He also reviewed the projects listed on the bottom of the page which could be scaled back or in which a surplus could potentially be recognized.

He stated since the end of the construction season was nearing and given the fact the scope of the project would be no less than three months for completion, it would be his recommendation to not award the bid for the project at this time. He suggested staff be prepared to rebid the project early next year allowing time to recognize some additional funds to appropriate toward the project in addition to anticipating lower bids being submitted.

The Council expressed agreement with Mr. Hodge's recommendation.

DISCUSSION ON GOOGLE FIBER

Councilmember LeBaron informed the Council that there were portions of neighborhoods in the southern end of the City which had limited options when it came to Internet access. He stated Google Fiber might be a potential benefit to the City because it offered higher speeds and faster service.

He mentioned Google Fiber had a selection process used to determine which cities could offer their product and indicated it was a difficult process. He briefly shared some of those items taken into consideration during the selection process. He believed the product would outperform what currently existed in the area. He reported he had discussed the issue with Mayor Curtis from Provo City which had been selected as one of the first three cities in the nation to offer Google Fiber to its residents. He added it had been selected because Provo City had already incurred the expense of installing its own fiber network infrastructure.

He suggested the City's close proximity to Hill Air Force Base (HAFB) as well as the Freeport Center and the mixed use rail stop soon coming to the City would appeal to Google with respect for a case study. He reported Mayor Curtis had indicated Google Fiber had significantly benefitted all Provo City residents as competitors had reduced their prices and increased internet speeds. He stated he would like staff to commit time to further study the option of trying to bring Google to the table for discussions. He requested input from the Council.

Councilmember Young stated he would be interested to know what it would take on behalf of the City to discuss possibilities with Google. Councilmember LeBaron mentioned the first question to be answered for Google was whether there was a demand for the product and they requested each interested resident put up one dollar to be used to measure that demand. He expressed his opinion the City might be three or four years away from asking that from its residents.

Councilmember Benson inquired how the City would spread the word and believed many residents didn't read the information provided in the utility bill or newsletter. Councilmember LeBaron further explained the process and added much research would need to be completed and it would probably take three years before residents were asked to put up a dollar.

Councilmember LeBaron publicly declared he had a relative who worked for Google Fiber and emphasized whether the City proceeded one way or the other, he wouldn't directly benefit in any way.

Councilmember Bush inquired if there would be any benefit in inviting neighboring cities to participate as one large group. Councilmember LeBaron believed that might be an option.

Mayor Shepherd expressed concern relative to staff's time in attempting contact with Google. Adam Lenhard, City Manager, stated he had signed up the City as an interested entity and had provided necessary information. He indicated staff would definitely make every effort possible in moving forward with Google Fiber.

The meeting adjourned at 6:55 p.m.

DRAFT

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
July 29, 2014

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Ron Jones	Councilmember
	Mike LeBaron	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Mike Stenquist	Assistant Police Chief
	Aaron Cox	Code Enforcement Officer
	Rich Fisher	Emergency Preparedness Mgr.
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Scott Hodge	Public Works Director
	Dan Schuler	Storm Water Manager
	Scott Hess	Development Services Manager
	Marliss Scott	Public Relations/Marketing
	Rich Knapp	Administrative Services Director
	Summer Palmer	Human Resource Manager
	Nancy Dean	City Recorder

VISITORS: Terri Gallina, Joseph Moore, Ruth & Gordon Jones, Dustin & Wendi Birch, Jeff Schmidt, Ryan Brown, Sterling Allen, Whitney Brown, Wendy Byington, Darlene Parkinson, Sharla Carlson, Dave Miller, Annie Neil, Chaz Walker, Andrea Staggers, D. Brown, David Evans, Jamie Yeager, Tracy Skeen, Jugler Brady, Kelly and Jennifer Bybee

CITY COUNCIL OPEN HOUSE FOR ANTELOPE ELEMENTARY SCHOOL
NEIGHBORHOOD

Mayor Shepherd and City Council members and staff welcomed residents to the open house highlighting different city services. Residents were provided with information about the budget, economic development, planning and zoning, police department efforts, code enforcement, emergency preparedness, fire safety, utility and road projects and recreational opportunities.

Mayor Shepherd thanked the staff members for their preparations and the residents for coming and participating in the process.

Following the City Council Open House, the City Council and the CDRA met in the Executive Conference Room located at the Clearfield City Building, 55 South State Street, to consider a motion to enter into Closed Session for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property, Utah Code Ann. § 52-4-204 and §52-4-205(1)(d).

Councilmember Benson moved to adjourn to a Closed Session at 8:29 p.m. for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property. Utah Code Ann. § 52-4-204 and §52-4-205(1)(d), seconded by Councilmember Young. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Jones, LeBaron, and Young. Voting NO – None.

The minutes for the closed session are kept in a separate location.

DRAFT

IMPACT FEE STUDY
Evaluation Data

Evaluator	Proposal	Qualifications	Project Team Personnel	Project Approach	Fee Proposal	Total Score
JJ Allen	Horrocks	15	13	30	30	88
	LYR&B	15	15	40	15	85
M. Becraft	Horrocks	10	15	35	30	90
	LYR&B	15	15	15	20	60
R. Knapp	Horrocks	15	15	30	30	90
	LYR&B	15	15	40	20	90
S. Hess	Horrocks	12	14	35	30	91
	LYR&B	15	14	40	25	94
S. Hodge	Horrocks	15	14	34	27	90
	LYR&B	14	10	38	25	87

Horrocks Engineers total score 449

Lewis Young Robertson and Burningham total score 416

	<u>City Impact Fee</u>	<u>Fire District Fee</u>	<u>Total</u>
Horrocks Engineers	\$42,470.00	\$12,207.00	\$54,677.00
LYR&B	\$53,281.00	\$16,538.00	\$69,819.00

CLEARFIELD CITY RESOLUTION 2014R-18

A RESOLUTION SUBMITTING AN OPINION QUESTION TO CLEARFIELD RESIDENTS REGARDING THE IMPOSITION OF A LOCAL SALES AND USE TAX TO ASSIST IN FUNDING THE CLEARFIELD COMMUNITY ARTS CENTER, THE CLEARFIELD AQUATIC CENTER, AND THE COMMUNITY PLAZA PARK AT CLEARFIELD STATION, AS WELL AS OTHER PARKS, ARTS, RECREATION, AQUATICS, AND TRAILS (“PARAT”) FACILITIES, PROGRAMS AND ORGANIZATIONS

WHEREAS, Clearfield City (the “City”) has a strong history of and continued interest in supporting facilities, programs and organizations designed to improve Parks, Arts, Recreation, Aquatics, and Trails (“PARAT”) opportunities for its residents; and

WHEREAS, the City’s continued support of such PARAT facilities, programs and organizations for its residents could be enhanced by providing additional revenue to be used for those purposes; and

WHEREAS, Utah Code Ann. § 59-12-1402 provides for an opinion question election regarding the imposition of a local sales and use tax of 0.1% (1/10 of one percent, or one penny on a \$10 sale) on qualifying transactions within Clearfield to be submitted to the voters in the City as a ballot proposition to express each resident’s opinion regarding the imposition of such a tax to fund PARAT facilities, programs and organizations; and

WHEREAS, pursuant to Utah Code Ann. § 59-12-1402 (6), prior to submitting an opinion question regarding a PARAT Tax to the City’s residents, the Clearfield City Council provided written notice to the Davis County Commission of its intent to submit said opinion question to Clearfield residents and the Davis County Commission responded with Davis County Resolution No. 2014-200 indicating that the County’s legislative body is not seeking to impose a similar tax throughout Davis County; and

WHEREAS, the City has determined it is in the best interests of its residents to submit an opinion question to the voters in the City as a ballot proposition on the November 4, 2014 regular general election ballot regarding the proposed PARAT Tax in Clearfield;

NOW THEREFORE BE IT RESOLVED by the Clearfield City Council that:

- 1) Pursuant to the statutory authority granted by Utah Code Ann. § 59-12-1402, an opinion question regarding the imposition of the proposed PARAT Tax shall be placed upon the November 4, 2014 regular general election ballot as a ballot proposition so that each Clearfield resident has the opportunity to express an opinion on the imposition of proposed tax.

- 2) The opinion question shall be submitted to Clearfield residents as a ballot proposition on the ballot for the November 4, 2014 regular general election in substantially the following form:

OFFICIAL BALLOT PROPOSITION FOR IMPOSING A PARAT TAX IN CLEARFIELD

Shall Clearfield City, Utah, be authorized to impose a 0.1% sales and use tax for funding Parks, Arts, Recreation, Aquatics, and Trails (“PARAT”) facilities, programs and organizations?

FOR IMPOSITION OF THE PARAT TAX

AGAINST IMPOSITION OF THE PARAT TAX

- 3) Pursuant to applicable law, City staff is hereby directed to:
- a) provide a copy of this resolution to both the Lieutenant Governor and the Davis County Clerk;
 - b) provide notice of the ballot proposition election on the PARAT Tax opinion question by:
 - i) publishing notice once per week during three consecutive weeks in a newspaper having general circulation in Clearfield not less than 21 days, nor more than 35 days prior to the election;
 - ii) publishing notice on the Utah Legal Notices website for the three weeks immediately preceding the election;
 - iii) preparing and providing a voter information pamphlet including arguments for and against imposition of the PARAT Tax to each household containing a registered voter who is eligible to vote on the ballot proposition not less than 15 days, nor more than 45 days prior to the election;
 - c) make efforts to notify the City’s residents of the opportunity to file a request to prepare and provide arguments either for or against the imposition of the PARAT Tax which may be included in the voter information pamphlet to be distributed to each household in Clearfield containing a registered voter who is eligible to vote on the ballot proposition;
 - d) post the arguments and rebuttal arguments designated by the election officer both for and against the imposition of the PARAT Tax on the Statewide Electronic

Voter Information Website and the City’s website for 30 consecutive days prior to the election, as well as publishing them in the City’s newsletter;

- e) schedule a public meeting of the City Council at least 4, but not more than 14 days prior to the November 4, 2014 election where arguments for and against the imposition of the PARAT Tax can be presented and where any interested party may be heard; and
- f) perform any other tasks necessary or required by law in order to properly bring the PARAT Tax opinion question set forth above as a ballot proposition to the people of Clearfield on the November 4, 2014 general election.

Passed and adopted by the City Council at its regular meeting on the 12th day of August, 2014.

ATTEST

CLEARFIELD CITY CORPORATION

Nancy R. Dean, City Recorder

Mark R. Shepherd, Mayor

VOTE OF THE COUNCIL

AYE:

NAY:

CLEARFIELD CITY RESOLUTION 2014R-19

A RESOLUTION AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN CLEARFIELD CITY AND NORTH DAVIS FIRE DISTRICT

WHEREAS, Clearfield City (the “City”), West Point City, and the North Davis Fire District (the “District”) are “public agencies” as defined under the Utah Interlocal Cooperation Act and are therefore authorized to enter into agreements with one another for joint or cooperative action; and

WHEREAS, the City, West Point City, and the District previously entered into two Interlocal Agreements dated and effective July 1, 2005 to govern the terms of services provided by the District; and

WHEREAS, the City and the District wish to clarify some details regarding the relationship between the parties and the terms under which services are provided; and

WHEREAS, the parties have prepared and proposed approval of a new and updated Interlocal Cooperation Agreement with an effective date of July 1, 2014, which is intended to replace and supersede the previous agreements;

NOW THEREFORE BE IT RESOLVED, by the Clearfield City Council, that the attached Interlocal Cooperation Agreement between Clearfield City and the North Davis Fire District is hereby approved and the Mayor is duly authorized to execute said agreement, as well as any other necessary associated documents to accomplish its purposes, on behalf of the City.

Passed and adopted by the City Council at its regular meeting on the 12th day of August, 2014.

ATTEST:

CLEARFIELD CITY CORPORATION:

Nancy R. Dean, City Recorder

Mark R. Shepherd, Mayor

VOTE OF THE COUNCIL

AYE:

NAY:

EXCUSED:

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of July, 2014, by and between **CLEARFIELD CITY CORPORATION**, a Utah Municipal Corporation with its principal offices at 55 South State Street, Clearfield City, Davis County, State of Utah, hereinafter referred to as “Clearfield City” or the “City” and **NORTH DAVIS FIRE DISTRICT**, a Utah Special Service District, having its principal office at 381 North 3150 West, West Point City, Davis County, State of Utah, referred to herein as the “District”. The City and the District are sometimes referred to herein collectively as the “Parties” and sometimes as a “Party.” Said Parties agree as follows:

RECITALS

1. The District is a Special Service District organized and existing for the purpose of providing fire protection, emergency medical and ambulance services (the “Services”) within the corporate limits of Clearfield City and West Point City (the “Service Area”).
2. The City desires to enter into an Interlocal Cooperation Agreement (the “Agreement”) under the terms and provisions of which Agreement the District will provide Services to the City.
3. The District desires to enter into the Agreement with the City for the purpose of providing Services within the corporate limits of the City.
4. The District and the City are authorized to enter into Interlocal Cooperation agreements such as this Agreement pursuant to the provisions of the Interlocal Cooperation

Act, §§11-13-101 et seq. Utah Code Annotated, 1953. No separate legal or administrative entity is created by this Agreement. This Agreement is entered into in accordance with the terms and provisions of the Interlocal Cooperation Act which is incorporated herein by reference insofar as any terms or provisions thereof may be pertinent or applicable.

5. The Parties are now desirous of entering into this Agreement for said purpose as more fully described herein.

NOW, THEREFORE, for and in consideration of the covenants, agreements, mutual promises, and conditions contained herein, and other good and valuable consideration, it is hereby agreed by and between the City and the District as follows:

AGREEMENT

Section One: INCORPORATION OF RECITALS

All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

Section Two: DURATION OF AGREEMENT

This Agreement shall be effective as of the 1st day of July, 2014 and shall continue and remain in full force and effect for a period of fifty (50) years unless terminated sooner by the mutual consent of the Parties or as otherwise provided by law.

Section Three: PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide a legal means for the District to provide Services, as hereinabove defined, within the corporate limits of the City.

Section Four: PRIOR INTERLOCAL AGREEMENTS

The City and the District are parties to prior Interlocal Agreements as follows:

A. An Interlocal Agreement Between Clearfield City, West Point City and the North Davis Fire District.

1. This Agreement has an effective date of July 1, 2005.
2. This 2005 Agreement has terminated in accordance with the terms thereof and has been fully performed and implemented by the Parties hereto and is superseded in its entirety by the new Agreement set forth herein.

B. Agreement

1. This Agreement was entered into as of the 1st day of July, 2005.
2. This 2005 Agreement has terminated in accordance with the terms thereof and has been fully performed and implemented by the Parties hereto and is superseded in its entirety by the new Agreement set forth herein.

Section Five: DISPATCH SERVICES

Clearfield will provide dispatch services for the District at an annual cost of Eighty Five Thousand Dollars (\$85,000.00). Clearfield and the District may evaluate the cost annually to determine if there should be an adjustment.

The standards of service for the dispatch services shall be established by the Parties. Such services shall continue on the same basis as they are currently being provided until changed by the Parties.

The agreement for dispatch services contained in this Section Five may be terminated by mutual consent of the Parties.

Section Six: **IMPACT FEES**

A. **Residential Impact Fees.** Clearfield City agrees to collect District impact fees for the construction of single family residences and forward those impact fees to the District.

B. **Commercial, Industrial, and Multi-Family Impact Fees.** The District shall compute, and Clearfield City will collect, commercial, industrial, or multi-family residential District impact fees as applicable within its jurisdiction. All responsibility and liability for the computation of the impact fee shall belong to the District.

C. **Impact Fees Generally.** In those situations where Clearfield City collects an impact fee the following provisions shall govern:

1. The paying party shall sign a form acknowledging that payment is for a District impact fee and releasing the City from any claim against the City with respect to such impact fee. If the paying party refuses to sign the form, they shall be required to make payment directly to the District.
2. Clearfield City will make good faith efforts to collect the correct District impact fee from the paying party, but will not be liable to the District for any errors or mistakes.

3. Clearfield City shall be deemed only an intermediary to receive impact fee payments for the District and shall do it solely for the convenience of those paying the impact fee.
4. The District impact fee shall be regarded as that belonging solely to the District and Clearfield City shall not in any way be regarded as “imposing” or “collecting” such fee within the meaning of the Impact Fees Act §11-36a-101 et seq., Utah Code Annotated, 1953.
5. Clearfield has not done, nor has any duty to do, an impact fee analysis with respect to impact fees of the District. The District has in place a procedure for any person, firm or entity to challenge or appeal the assessment or payment of District impact fees and any challenge or protest with respect to District impact fees shall be the responsibility of the District to defend and justify and not that of the City.
6. The District shall indemnify and hold Clearfield harmless for any loss, expense, injury or damage to the City resulting from any claim against the City in connection with the receiving payment for District impact fees, including all costs and attorney’s fees incurred by the City in connection with any claim.
7. The District shall remit, to the City Twenty Dollars (\$20.00) per impact fee collected, to be paid to the City on a monthly basis. This

amount may be increased upon approval of the District Board if the City shows that its costs of collection have increased substantially.

8. The City may, upon six (6) months' notice to the District, cease to collect the impact fee, by referring all further collections to the District offices in West Point, Utah, at the conclusion of the six (6) month period of time.
9. The District may at any time assume responsibility for collecting its impact fees by giving Clearfield thirty (30) days advance notice of its intent to do so.

Section Seven: RESPONSIBILITIES OF THE DISTRICT

During the term of this Agreement the District will provide first responder fire protection, emergency medical and ambulance services within the corporate limits of the City, including:

- A. Fire prevention, fire suppression, extinguishment, investigations and other fire-related services.
- B. Emergency and non-emergency medical and ambulance services.
- C. Response to hazardous materials incidents, flooding, terrorism and other emergency incidents.

The District represents that it has adequate personnel and equipment to provide said Services to its Service Area, including the City.

The District will provide all personnel and equipment and training necessary to furnish the Services. Personnel shall be employees of the District and not the City. Furthermore, the City shall not be legally responsible for any action, or failure to take action, on the part of the District or its employees.

Section Eight: **RESPONSIBILITIES OF THE CITY**

During the term of this Agreement the City agrees to provide the District with all necessary information to enable the District to provide the Services including, but not limited to, maps, addresses, building plans, emergency telephone numbers and all other information reasonably necessary as determined by the District Fire Chief.

The District shall not be legally responsible for any action, or failure to take action, on the part of the City or its employees.

Section Nine: **COOPERATION BETWEEN PARTIES**

The District and the City agree that representatives of each shall meet regularly to review and discuss procedures and any potential problems involved in providing the Services. Either Party may make recommendations and suggestions to promote the effective and efficient delivery of Services.

Section Ten: **INSURANCE, LIABILITY AND INDEMNIFICATION**

Each Party shall be responsible for conducting its respective activities. Each Party agrees to maintain public liability and property damage insurance covering activities to be conducted under the terms of this Agreement with coverage in an amount not less than a

Combined Single Limit Coverage of One Million Dollars (\$1,000,000.00) per occurrence and to name the other as an additional named insured.

Each Party is responsible and liable for its own, as well as its employees', officers', and agents' wrongful acts of negligence. Each of the Parties agrees to indemnify, hold harmless and defend the other Party, its elected and appointed officials, officers, employees, agents and representatives against any and all expenses, liabilities, losses, costs, suits and damages, and claims of every kind, including costs and attorneys' fees, which are due to either its own, or its employees' negligent acts or omissions related to or in connection with the performance of this Agreement. Both Parties acknowledge and agree that they are local governmental entities under the Governmental Immunity Act of Utah (the "Act") and nothing in this Agreement shall be construed so as to waive any immunity, as it relates to third parties, enjoyed or bestowed to either the City or the District pursuant to the Act.

Section Eleven: **ASSIGNMENT**

Neither Party hereto may assign this Agreement or any interest therein without first obtaining the written consent of the other Party. Any attempt to assign any right or privilege connected with this Agreement without the prior written consent of the other Party shall be void.

Section Twelve: ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the Parties. Any prior understanding or representations of any kind shall not be binding upon either Party except to the extent incorporated in this Agreement.

Section Thirteen: MODIFICATION IN WRITING

The Parties anticipate that there may be amendments and modifications to this Agreement. However, any such modification or amendment to this Agreement shall be binding only if it is in writing and signed by both Parties with the same formality as connected with the execution of this Agreement.

Section Fourteen: BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the successors of the Parties.

Section Fifteen: APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section Sixteen: DEFAULT

In the event of a default of this Agreement by either Party, said Party shall have thirty (30) days to cure said default. The Parties agree to negotiate in good-faith to resolve any and all conflicts. It is agreed that this Agreement shall not be terminated for default unless it can be shown that the defaulting Party acted in bad-faith or with malice in causing the default

Section Seventeen: SEVERABILITY

If any provisions of this Agreement are construed or held by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain in full force and effect.

Section Eighteen: ATTORNEYS FEES

Should the services of any Attorney be required to enforce this Agreement, the defaulting Party agrees to pay reasonable Attorney's fees and costs.

Section Nineteen: NOTICE

Any notices to the respective Parties shall be as follows:

For the City:

Clearfield City Manager
55 South State Street
Clearfield, Utah 84015

For the District:

Fire Chief
North Davis Fire District
381 North 3150 West
West Point, Utah 84015

IN WITNESS WHEREOF, each Party to this Agreement has caused it to be executed as of the day and year first above written.

NORTH DAVIS FIRE DISTRICT

CLEARFIELD CITY CORPORATION

KATHRYN MURRAY
Chairman
Administrative Control Board

MARK SHEPHERD
Mayor

ATTEST:

ATTEST:

MICHELLE LIMON
Clerk

NANCY DEAN
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the _____ day of August, 2014 personally appeared before me KATHRYN MURRAY, who being by me duly sworn did say, each for herself, that she, the said KATHRYN MURRAY, is the Chairman of the Administrative Control Board of North Davis Fire District, and he, the said MICHELLE LIMON, is the Clerk of the Administrative Control Board of the North Davis Fire District, and that the within and foregoing instrument was signed on behalf of the said North Davis Fire District by authority of a Resolution of the said Board and said Kathryn Murray and Michelle Limon, each duly acknowledged to me that the said North Davis Fire District executed the same and that the seal affixed is the seal of the said North Davis Fire District.

(SEAL)

NOTARY PUBLIC
Residing at:
My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the _____ day of August, 2014, personally appeared before me MARK SHEPHERD and NANCY DEAN, who being by me duly sworn did say, each for himself and herself, that he, the said Mark Shepherd, is the Mayor of Clearfield City, Davis County, State of Utah, and that she, the said Nancy Dean, is the City Recorder of Clearfield City, Davis County, State of Utah, and that the within and foregoing instrument was signed on behalf of the said City by authority of a Resolution of the City Council of said City and said Mark Shepherd and Nancy Dean each duly acknowledged to me that the said City executed the same and that the seal affixed is the seal of the said City.

(SEAL)

NOTARY PUBLIC
Residing at:
My Commission Expires:

Approved and reviewed as to proper form and compliance with applicable law:

Approved and reviewed as to proper form and compliance with applicable law:

FELSHAW KING
Attorney for District

BRIAN E. BROWER
City Attorney

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
6:00 P.M. WORK SESSION
July 8, 2014

(This meeting was held prior to a City Council work and policy session.)

PRESIDING:	Bruce Young	Chair
PRESENT:	Keri Benson	Director
	Kent Bush	Director
	Ron Jones	Director
	Mike LeBaron	Director
	Mark Shepherd	Director
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Scott Hodge	Public Works Director
	Eric Howes	Community Services Director
	Scott Hess	Development Services Manager
	Rich Knapp	Administrative Services Director
	Kim Dabb	Operations Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Kathryn Murray

Chair Young called the meeting to order at 6:00 p.m.

DISCUSSION ON THE LISTING AGREEMENTS WITH NEWMARK GRUBB ACRES

JJ Allen, Assistant City Manager, stated the City Council and CDRA would consider approval of proposed listing agreements for the three parcels of property across the street from the City building. He reminded the Council the CDRA owned two of the parcels: the pine tree parcel and the property in which Rocket Fuel Coffee was located, the old Taco Time property. He mentioned the City owned the Clearfield Auto Parts parcel. He reported the combined parcels were a total of 2.3 acres and would be known as Clearfield Center.

Mr. Allen stated the City would enter into a Listing Agreement with Newmark Grubb Acres and Ryan Flint would be the City's agent. He highlighted the following changes to the Agreement:

- Instead of a one year term, the City would be limiting it to six months, following which the term would change to a month to month basis with a cancellation term of 30 days.
- Provision that the parcels would need to be marketed together to a developer with a bonafide project which would redevelop the property in its entirety. He emphasized the

City desired a project more substantial than just occupying the Auto Parts building or Taco Time building.

- The City Council and the CDRA Board would need to approve the proposed project.
- The commission for the sale was based on the going rate of six percent to be equally divided with the buyer's broker or four percent if Mr. Flint brings the buyer to the City. If the City decided to convey the property without a sale to incentivize the development, then the commission to the broker would be a flat \$18,000.
- The addition of a list of excluded parties with which the City had previously discussed the possible sale of the property for different projects. Any of the listed participants who brought viable projects that the City chose to move forward with would be a separate transaction and no commission would be paid to Mr. Flint. Adam Lenhard, City Manager, requested Wasatch Advantage and Holmes Homes, and any of their respective affiliates, be included in the list of excluded parties.

Mr. Allen asked if there were any questions from the Board regarding the proposed agreement. Mayor Shepherd inquired if Mr. Flint and Newmark had accepted the edits. Mr. Allen responded they had accepted the City's proposal. Director Benson inquired if the current tenants were aware the City was actively marketing the parcels. Mr. Allen stated both tenants were currently leasing the facilities on a month to month basis and the City would be marketing the parcels.

Director Benson asked if the City would be able to recoup its costs associated with the original purchase of the parcels. Mayor Shepherd was hopeful that would be the result. Brian Brower, City Attorney, emphasized the lease agreements with the current tenants made it very clear that at any time the City could terminate the lease. He mentioned the City paid more than it wanted when it purchased the auto parts building and believed the City lease revenue had offset those original costs.

Mr. Allen also informed the CDRA it currently owned a retail pad fronting State Street in front of Kent's grocery store, 588 South State Street. He reported the City recently received an inquiry from a broker representing a sandwich shop. City staff believed now might be a good time to market the property. He stated a separate listing agreement for that parcel was also on the agenda and would come before the Board for consideration.

Mr. Allen reviewed specifics to the listing agreement:

- Instead of a one year term, the City would be limiting it to six months, following which the term would change to a month to month basis with a cancellation term of 30 days.
- The CDRA Board would have the right to approve the tenant or retailer which would occupy the space.
- The same language regarding the commission was included with the exception if the property was to be conveyed without a sale, the flat fee would be \$5,000.

Director LeBaron expressed concern that a possible building in the parking lot would limit visibility to other businesses in the shopping center's parking lot. Mr. Allen couldn't speak to that speculation; however, it was the City's intent to bring business to the City and synergy to the downtown area.

Mr. Lenhard disclosed Ryan Flint was his neighbor and announced he had purposely not involved himself in any discussions regarding the parcels or Listing Agreements. Mr. Allen reported Mr. Flint was currently serving on the City's Economic Development Task Force and believed him to be trustworthy. Mayor Shepherd mentioned Mr. Flint had a vested interest in Clearfield as he was affiliated with Legend Hills and listed properties in that area.

DISCUSSION ON A LOAN AGREEMENT WITH CLEARFIELD STATION LLC

JJ Allen, Assistant City Manager, distributed the Clearfield Station Loan Agreement handout which reflected comments generated by staff. He stated the developer had not yet seen any of the comments and reviewed them with the Board:

- The amount of the requested loan had not yet been identified.
- The inclusion of a required promissory note on every advance.
- The promissory note would have an accompanying amortization and repayment schedule.
- Each promissory note should also identify the collateral.
- Lender's position on the pledged collateral shall be either first or second position.

Adam Lenhard, City Manager, mentioned the CDRA had previously been in the loan business and there were loan funds that were never recovered. He believed significant funds had been written off because proper checks and balances were not in place. He stated Davis County had recently established a very sophisticated business loan fund and the City would be leaning on that expertise of "best practices" to be included in the agreement to ensure the City's taxpayer dollars were not at risk unnecessarily.

- Requirement for personal guarantee by either John Thackeray or Kevin Garn, or both. He explained this was necessary because in the event the business didn't repay the funds personal assets could be pursued. He stated this would provide another layer of protection for the CDRA.

Mr. Allen reviewed the additional five documents used by Davis County for lending and a discussion took place. He mentioned Thackeray-Garn was familiar with the forms used by the County.

Director LeBaron stated he wanted something in place in case the development wasn't successful. A discussion took place regarding the CDRA's position for collateral. The Board was willing to take second position for collateral. Mr. Allen believed there were significant issues which needed to be addressed in section 3, paragraph b, specific to disbursement and repayment of funds. He stated it would be his recommendation for one lump disbursement with an amortization schedule because it would be much easier for the City to manage. He would be proposing a ten year term requiring a minimum payment regardless of whether the tax increment had been triggered.

Mr. Allen stated he would send a revision with the reviewed edits of the Loan Agreement to the developer.

Director Shepherd moved to adjourn as the CDRA and reconvene as the City Council in a work session at 6:36 p.m., seconded by Director Benson. All voting AYE.

DRAFT

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
6:30 P.M. WORK SESSION
July 22, 2014

(This meeting was held prior to a City Council work and policy session.)

PRESIDING:	Bruce Young	Chair
PRESENT:	Keri Benson	Director
	Kent Bush	Director
	Ron Jones	Director
	Mike LeBaron	Director
	Mark Shepherd	Director
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Greg Krusi	Police Chief
	Scott Hodge	Public Works Director
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Scott Hess	Development Services Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder
EXCUSED:	Brian Brower	City Attorney

VISITORS: Kathryn Murray

Vice Chair Bush called the meeting to order at 6:30 p.m.

DISCUSSION ON GRANTING AN EASEMENT TO ROCKY MOUNTAIN POWER ON
PROPERTY LOCATED AT 690 SOUTH STATE STREET

JJ Allen, Assistant City Manager, shared a visual presentation illustrating the location of the YES Print & Copy sign. He reminded the Council the condition of the sign had been previously discussed and staff was directed to work at getting it removed. He indicated the sign was immediately adjacent to the power lines and explained the process required to de-energize the power lines. He pointed out property currently owned by the CDRA, at the intersection of 700 South and State, could accommodate the needed easement for the installation of an underground temporary power line needed to allow the above ground power line to be de-energized, allowing for the sign to be removed. He directed the Council to the visual map illustrating the location of the sign in relation to the CDRA property. He concluded this would allow neighboring businesses to continue to receive power during the sign removal process.

Chair Young arrived at 6:35 p.m.

The Board discussed the permanency of the underground improvement needed to de-energize the power line and directed staff to see if the line could be permanently used as underground power lines for the area so the above ground lines could be removed. Adam Lenhard, City Manager, believed the newly installed short line would be permanent and remain in place should power need to be isolated at a later date but was unsure of the possibility of using the line as a permanent solution for the above ground power lines in the area. He indicated that staff would explore the possibility of such a solution.

Mr. Allen mentioned First National Bank had been contacted regarding the issue and reported they hadn't expressed any concerns.

Director Shepherd moved to adjourn as the CDRA and reconvene as the City Council in a work session at 6:40 p.m., seconded by Director LeBaron. All voting AYE.

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
7:00 P.M. POLICY SESSION
July 22, 2014

(This meeting was held following the regularly scheduled City Council Meeting.)

PRESIDING:	Bruce Young	Chair
PRESENT:	Keri Benson	Director
	Kent Bush	Director
	Ron Jones	Director
	Mike LeBaron	Director
	Mark Shepherd	Director
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Greg Krusi	Police Chief
	Scott Hodge	Public Works Director
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Scott Hess	Development Services Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder
EXCUSED:	Brian Brower	City Attorney

VISITORS: David Hansen, Michael Millard, Amber Huntsman – Thackeray Garn Companies, Sam J Chelemes, Chris Chelemes, Bob Bercher & Family, Mike Christensen – Thackeray Garn Companies, Kathryn Murray, Alan Christensen – Boy Scout Troop 486, Gareth Williams – Boy Scout Troop 486, Dallen Howes

Chair Young called the meeting to order at 7:50 p.m.

APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE JUNE 24, 2014 WORK SESSION AND THE JULY 8, 2014 POLICY SESSION

Director LeBaron moved to approve the Clearfield Community Development and Renewal Agency (CDRA) minutes from the June 24, 2014 work session and the July 8, 2014 policy session as written, seconded by Director Shepherd. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Jones, LeBaron and Shepherd. Voting NO – None.

APPROVAL OF RESOLUTION 2014R-12 AUTHORIZING THE GRANTING OF AN UNDERGROUND RIGHT OF WAY EASEMENT TO PACIFICORP (DBA ROCKY MOUNTAIN POWER) AT 690 SOUTH STATE STREET (DAVIS COUNTY PARCEL ID#12-434-0001)

JJ Allen, Assistant City Manager, stated City staff had been working for several months with the owners of the YES Print & Copy sign at 400 South State to accomplish its removal. Because the sign was so close to the power lines, the lines needed to be de-energized while the sign was being removed. He explained to de-energize the lines with the least disruption to other power customers in the area, Rocky Mountain Power would need to install a new underground line across CDRA property at 690 South State Street (on the east side of First National Bank). This easement was needed for the new line.

Director Jones moved to approve Resolution 2014R-12 authorizing the granting of an Underground Right of Way Easement to PacifiCorp (dba Rocky Mountain Power) at 690 South State Street (Davis County Parcel ID#12-434-0001), and authorize the Chair's signature to any necessary documents, seconded by Director Shepherd. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Jones, LeBaron and Shepherd. Voting NO – None.

There being no further business to come before the Community Development and Renewal Agency, **Director Bush moved to adjourn as the Community Development and Renewal Agency at 7:52 p.m., seconded by Director Benson. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Jones, LeBaron and Shepherd. Voting NO – None.**

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
6:00 P.M. WORK SESSION
July 29, 2014

(This meeting was held following a City Council work session.)

PRESIDING:	Bruce Young	Chair
PRESENT:	Keri Benson	Director
	Kent Bush	Director
	Ron Jones	Director
	Mike LeBaron	Director
	Mark Shepherd	Director
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Nancy Dean	City Recorder

VISITORS: There were no visitors.

Following the City Council Open House at Antelope Elementary School, the CDRA and City Council met in the Executive Conference Room in the Clearfield City Building, 55 South State Street, to consider a motion to enter into Closed Session for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property, Utah Code Ann. § 52-4-204 and §52-4-205(1)(d).

Director Benson moved to adjourn to a Closed Session at 8:29 p.m. for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property. Utah Code Ann. § 52-4-204 and §52-4-205(1)(d), seconded by Director Young. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Jones, LeBaron, and Shepherd. Voting NO – None.

The minutes for the closed session are kept in a separate location.

Staff Report



To: Clearfield CDRA Board of Directors
From: JJ Allen, Assistant City Manager
Date: August 7, 2014
Re: Lease of 50 South Depot Street to Soda Pop Culture, LLC

I. RECOMMENDED ACTION

Approve the Lease Agreement with Soda Pop Culture, LLC for the real property and restaurant space, furniture, fixtures and equipment located at 50 South Depot Street (Parcel ID No. 12-001-0193), and authorize the Chair's signature to any necessary documents.

II. DESCRIPTION / BACKGROUND

In 2013, the CDRA purchased the old Taco Time at 50 South Depot Street (also addressed as 50 South State Street) for the purpose of redevelopment, in conjunction with property to the south. While efforts to recruit a developer for the redevelopment project were ongoing, the CDRA entered a month-to-month lease with Rocket Fuel Coffee Company. That tenant recently vacated the premises, and a new business—Soda Pop Culture—has approached the CDRA with an interest in leasing the property.

Soda Pop Culture, LLC is a custom soda drink business, similar to others that have recently located in northern Utah (e.g. Swig and Fiiz). A large portion of the sales for these types of businesses relies on drive-thru service, and the CDRA's building provides that amenity, along with plenty of traffic and potential customers.

The owners of Soda Pop Culture are well aware of the CDRA's intentions for redevelopment, and the fact that a sale is in the works with hopes for construction next spring. Even so, they are interested in this site on a short-term basis, so that they can "test the water." If the business is successful, they recognize that sooner or later they'd need to relocate.

The basic terms of the lease are as follows:

- Rent: \$1,500 per month
- Term: Month-to-month, with a 30-day notice to terminate
- Tenant is responsible for all utilities, plus taxes on personal property. CDRA is responsible for real property taxes (if any).

- Tenant is responsible for all repairs and maintenance of the property.

III. IMPACT

a. Fiscal

Until the property is sold, the lease will generate \$1,500 / month for the CDRA.

b. Operations / Service Delivery

Since it is a month-to-month lease, it should not complicate the City/CDRA's efforts to accomplish redevelopment of the property.

IV. SCHEDULE / TIME CONSTRAINTS

Soda Pop Culture is hoping to open for business at about the same time that the school year begins (August 25).

V. LIST OF ATTACHMENTS

- Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into between the Clearfield Community Development and Renewal Agency (the "CDRA"), and Soda Pop Culture, LLC ("Tenant");

WHEREIN IT IS MUTUALLY AGREED AS FOLLOWS:

1. Leased Premises. Tenant leases from the CDRA, the real property and restaurant space, furniture, fixtures and equipment located at 50 South Depot St., Clearfield City, Davis County, Utah (Davis County Tax I.D. parcel no. 12-001-0193); said premises shall hereinafter be referred to as the "Premises."

2. Use of Space. Tenant agrees and covenants that no unlawful use shall be made of the Premises, nor shall any unlawful business be conducted on the Premises. Tenant shall comply with all rules, regulations, zoning, ordinances of Clearfield City and shall use the Premises as designed and intended.

3. Term of Lease. Tenant shall lease the Premises from the CDRA on a month-to-month basis commencing on August 13, 2014. The CDRA reserves the right to assign its interest in the Lease or the Premises at any time, without restriction.

4. Termination. This Lease Agreement may be terminated by either party, without cause, for any or no reason, upon thirty (30) days' written notice. However, said lease may be terminated sooner by the CDRA, without notice, as provided herein. Upon the termination of this Lease, Tenant shall return peaceable possession of the Premises to the CDRA, in as good a condition as at the time the Premises were leased, reasonable wear and tear excepted, including any alterations, additions and improvements made thereto.

5. Inspection of the Premises by CDRA. Tenant shall permit the CDRA or the CDRA's agents to enter the Premises at any and all reasonable times for the purpose of inspecting the Premises, protecting the Premises or showing the same to prospective tenants or purchasers. The CDRA may take whatever actions it deems necessary to protect the Premises from abuse, waste, neglect or damage. The CDRA may place a sign on the Premises either for the rental or for the sale of the Premises.

6. Rent. Tenant covenants to pay rent to the CDRA in the amount of \$1,500.00 each month, in advance, on or before the first day of each month. The pro-rated remainder of the first month and the last months' rent (19 days @ \$48.39/day + 1 month @ \$1,500/month = \$2,419.35), in addition to the Security Deposit (\$1,500.00 as set forth in Section 7 below), is due and payable on or before the commencement of this Lease. The rent shall be payable at the office of the CDRA located at 55 S. State St. in Clearfield, or at such other place as the CDRA may designate. Tenant shall pay a late charge of 10% of the monthly rent if the rent is not paid by the 15th day of the month. If for any reason, a check is returned or dishonored; all future payments will be paid in cash or money order. In the event the Tenant is thirty days delinquent in

the payment of the rent amounts set forth herein, then Tenant shall immediately vacate the Premises or the CDRA shall immediately remove Tenant, this right is in addition to all other rights landlords may have.

7. Security Deposit. Prior to commencement of this Lease, Tenant agrees to pay the CDRA a security deposit in the amount of \$1,500.00. \$500.00 of the Security Deposit is non-refundable.

8. Alterations. Tenant shall not make any alterations, additions, improvements or changes in, on or to the Premises without the prior written consent of the CDRA. Tenant shall not allow to be filed and shall be liable for any mechanic's liens. Any improvements shall remain the property of the CDRA upon the termination of this Lease.

9. Signage. Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal, or advertisement of any kind to any part of the Premises, including without limitation the inside or outside of any windows or doors, without the express written consent of the CDRA. Tenant shall be responsible for the cost of and maintenance of any signage. However, the CDRA shall have full and complete control over all signage, including the right to remove any signs or other matter, installed without the CDRA's written permission, without being liable to Tenant for such removal.

10. Maintenance. Tenant shall maintain, at Tenant's expense, the Premises in good, safe and clean condition. Tenant shall be obligated for and responsible to repair all structures, walls, interior decorating, fixtures, equipment (including restaurant equipment), doors, heating, air conditioning equipment, electrical equipment, light globes and tubes, glass breakage, trash removal, snow removal, fences, and all damage caused by Tenant's negligence and that of Tenant's invitees, employees, or guests, to any portion of the Leased Premises. Tenant shall be responsible for the removal and control of all weeds and noxious plants. Tenant shall accomplish all repairs required of Tenant by this Lease in a reasonably expeditious and workmanlike manner.

11. Utilities and Taxes. Tenant shall be responsible for the payment of all utility expenses, including but not limited to electricity, natural gas, and municipal services, (culinary water, sanitary sewer, storm water, etc.) and other utilities. Tenant shall also pay all expenses and assessments to the Premises for Tenant's personal property taxes. The CDRA shall pay assessments for real property taxes only.

12. Adjacent Areas. Tenant agrees to keep common areas adjacent to the Premises free and clear from any obstacles, debris or hazardous condition.

13. Indemnification. Tenant shall indemnify, defend and hold harmless the CDRA and Clearfield City Corporation, its employees, elected and appointed officials from any claim, loss or liability arising out of or related to any activity of the Tenant, or the Tenant's invitees, employees or guests on the leased Premises or any condition of the leased Premises in the possession or under the control of the Tenant or that is incidental to Tenant's possession of the

leased Premises or from the Tenant's default or breach of any term, condition, agreement or other provision of this Lease. This Agreement to indemnify is intended to be construed as broadly as lawfully permissible. Tenant shall comply with all statutes, orders, ordinances, and requirements of all municipal, state and federal authorities pertaining to the use of the Premises. Tenant shall not allow a nuisance on the Premises. Tenant shall not permit the storage of any flammable material on the Premises.

14. Damage to Property. The CDRA shall not be liable for any damage to any property or injury to persons in the leased Premises during the term of this Lease, from whatever cause or source. Tenant shall give the CDRA, or to its agent, prompt written notice of any accident or damage to, or defacing of, any of the leased Premises. The CDRA shall have no obligation to accomplish any repair required of the CDRA herein until Tenant so notifies the CDRA of the need to repair. Thereafter, the CDRA shall have a reasonable time to accomplish repairs required of it herein.

15. Untenable Premises. In the event that Premises become untenable by reason of eminent domain; damage by fire, flood, earthquake, or act of God, and if said Premises shall remain untenable for sixty (60) days, then this Lease shall be terminated, and the parties shall incur no further liability with respect hereto. During the period that any aforementioned cause prevents Tenant's use of the Premises, rent shall be abated to the extent that such use is denied, unless such damage was caused by fault or neglect of Tenant, or Tenant's agents, employees, visitors, contractors or licensees, then Tenant shall be responsible for and repair any and all damage.

16. Abandoned Premises. In the event that Tenant shall be absent from the Premises for a period of five (5) consecutive days and during such period be delinquent in the payment of rent, Tenant shall, at the option of the CDRA be deemed to have abandoned the Premises; and any property left on the Premises shall be considered abandoned and may be disposed of by the CDRA as it shall see fit. Any and all property on the Premises is hereby subject to a lien in favor of the CDRA for payment of all sums due hereunder to the maximum extent allowed by law.

17. Insurance. The CDRA shall secure fire insurance to cover loss or destruction of the Premises by fire or other casualty. Tenant shall provide insurance on Tenant's personal property and all inventory situated on the Premises whether affixed or otherwise. Tenant shall carry comprehensive general liability insurance in the minimum sum of \$2,000,000.00 covering the Premises for both personal injury and property damage with the CDRA being jointly covered by such policy and a beneficiary of such. This provision shall not be construed to relieve Tenant of any obligation hereunder to indemnify the CDRA for claims arising from conduct of Tenant's business. Tenant shall provide the CDRA a copy of Tenant's policy prior to commencement of this Lease.

18. General Provisions.

18.1. Default. Tenant shall be in default if any of the following occur: the rent is not paid when due; if Tenant has failed to perform any provisions as obligated under the

Lease; Tenant's filing of Bankruptcy; or, the filing of a mechanics lien against the Premises. The CDRA shall have all remedies provided by Utah law, including terminating the Lease and recovering any damages associated therewith, as well as court costs and reasonable attorneys' fees.

18.2. Binding Effect. The terms and conditions of this Lease shall be binding upon the heirs, executors, administrators, and successors of the respective parties hereto. The obligations and covenants of the Tenant herein shall be the joint and several obligations of each of the parties named herein as Tenants.

18.3. Assignment. Tenant may not assign this Lease or sub-let the Premises without written permission of the CDRA.

18.4. Modifications, Waiver. This Lease may not be modified except in writing and signed by the parties hereto. No failure of the CDRA to enforce any term hereof shall be deemed a waiver, nor shall any acceptance of partial payment of rent be deemed a waiver of the CDRA's right to the full amount.

18.5. Time. Time is of the essence with respect to this Lease.

18.6. Headings. The provision captions appearing herein appear only as a matter of convenience and are not intended to limit or modify the provisions contained thereunder, construe or describe the scope or effect of any provision of this Lease.

18.7. Entire Agreement. The foregoing constitutes the entire Agreement between the parties with respect to matters contained herein.

18.8. Notice. Any notice which either party may be required to give shall be given by personal delivery or by mailing the same, certified or registered mail, return receipt requested, to:

THE CLEAFIELD COMMUNITY
DEVELOPMENT AND RENEWAL
AGENCY:

Clearfield CDRA
Attn: Assistant City Manager
55 S. State St.
Clearfield, UT 84015

TENANT:

Soda Pop Culture, LLC
Attn: Brad Boyle
478 East 550 North
Bountiful, UT 84010

18.9. Severability. If any term, covenant, or provision of this Lease or the application thereof to any person or circumstance shall at any time or to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

18.10. Governing Law and Jurisdiction. This Lease shall be governed by, interpreted under, and construed in accordance with the laws of the State of Utah. Any challenge or dispute under this Lease Agreement shall be brought in the Second Judicial Court, Davis County, Utah.

DATED this ____ day of _____, 2014.

CLEARFIELD COMMUNITY
DEVELOPMENT AND
RENEWAL AGENCY

SODA POP CULTURE, LLC

Bruce Young, Chair

Brad Boyle, Managing Member

ATTEST:

Nancy Dean, Secretary

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)

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COUNTY OF DAVIS)

On the ____ day of August, 2014, personally appeared before me, Mr. Brad Boyle, as signer of the foregoing lease agreement, who duly acknowledged to me that he executed the same on behalf of Soda Pop Culture, LLC with the appropriate corporate authority to do so.

NOTARY PUBLIC

Residing: _____